

Statement of Sara Kendall, Washington, DC Office Director

U.S. House of Representatives, Committee on Natural Resources

Hearing on DOI Hydraulic Fracturing Rule

May 8, 2013

Mr. Chairman, thank you for the opportunity to testify. My name is Sara Kendall and I am the Washington, DC Office Director of the Western Organization of Resource Councils (WORC). WORC is a regional network of grassroots community organizations in the northern Rockies and Great Plains that include 10,000 members and 35 local chapters. About a third of our members are family farmers and ranchers, and many of them are directly affected by oil and gas development.

WORC has worked for responsible energy development in the West for more than 35 years. We began working on oil and gas development in the late 1980s, when coalbed methane development became one of the first unconventional technologies to take off, first in the San Juan Basin of Colorado and New Mexico, then in the Powder River Basin of Wyoming and Montana. Since then, we have worked with landowners, mineral owners and communities living in the midst of many of the major oil and gas plays in the West – including tight sands gas in the Piceance Basin and several others, and now the shale oil boom in the Bakken and Niobrara formations.

When it comes to the federal oil and gas program, WORC's perspective reflects the experience and interests of split estate landowners who own the surface above federal minerals but have limited rights to control the course of development on their land or even receive compensation for damages. About 58 million acres of federal minerals lie beneath private surface, mostly in the Montana, Wyoming, New Mexico, Colorado and North Dakota, affecting thousands of private land owners.

In the West's agricultural economy, individual landowners steward their land and water with a view toward long term productivity, which benefits the whole region. Oil and gas

development threatens this careful balance if not done right. Mineral owners have little inherent incentive to develop resources responsibly because, unlike landowners, they will not have to live with the long-term implications of destroyed soils, contaminated water and dried up aquifers. Their primary interest is in getting oil and gas from the ground quickly and efficiently at while minimizing expense.

Some of WORC's members have experience with the oil and gas industry that dates back to the 1950s and before, and some have scarred land on their ranches and "temporarily abandoned" wells that have not produced in as much as four decades and have yet to be reclaimed. The scale of the exploration and development taking place in many formations today is greater than in the past and often occurs in closer proximity to more people; the surface footprint is larger, the demand for water is much greater, and there is growing body of research regarding the risks of hydraulic fracturing and oil and gas development.

Yet, many of BLM's rules are decades old. Many state oil and gas agencies have updated their rules more recently, but there is great variation in their requirements. As the manager of more than 750 million subsurface acres of federal and Indian minerals, BLM has the opportunity and, we believe, the obligation to ensure these resources are developed responsibly. BLM must update its rules and policies in many different areas if we want to ensure that, decades from now, the legacy of today's federal oil and gas development will be reclaimed land that is capable of supporting the agricultural economy our region has relied on since it was first settled.

I'd like to highlight several points from the comprehensive rules WORC supports for hydraulic fracturing. We believe these are all common sense proposals that should be part of any regulatory regime. If states already require them, then a federal requirement would not impose new costs. If states do not require them, all the more reason for BLM to do so.

1. In the permitting process, applicants should be required to describe their proposed hydraulic fracturing operations in sufficient detail for regulators to evaluate the likely impacts and risks. For example, permits should include the depth of usable water, presence of any unplugged wells, the source and amount of water to be used, the anticipated pressures and fracture length and height, and waste water management plans.

There should be an opportunity for public review and comment, with a special emphasis on engaging surface owners and local residents who are directly affected.

2. Baseline water quality and quantity tests should be required for all surface water and all usable groundwater in advance of drilling and fracturing, and should be provided to BLM, state agencies and the landowner.
3. Well construction standards should ensure that wells will withstand anticipated stresses and protect water resources. Tests should be conducted to ensure wellbore integrity before hydraulic fracturing, and that pressures are maintained during hydraulic fracturing.
4. The use of pits should be discontinued and closed loop systems in which flowback fluids are stored in closed tanks should be required to be used. Several studies have identified pits used to store flowback and produced water as one of the most common sources of leaks and spills at oil and gas sites. Both unlined and lined pits pose serious risks, and can cause lasting harm.
5. Public disclosure of information about the chemicals used in hydraulic fracturing is not protective in and of itself, but provides the public with necessary information about the impacts and risks of hydraulic fracturing. In addition to detailed information about the chemicals themselves, disclosure should also: (a) include advance disclosure before drilling and fracturing as well as afterward; (b) require information to be posted on a public website and sent directly to regulatory agencies and landowners and residents; (c) be provided on a well-by-well basis in a format that can be easily be aggregated; (d) limit trade secret protections; (e) require immediate disclosure to medical professionals and first responders for diagnosis and treatment, and (f) provide for review for completeness, with penalties for failure to comply.

Hydraulic fracturing cannot be isolated from other aspects of the oil and gas exploration and development process, however, and WORC believes that a number of other changes to BLM's oil and gas program are critical.

6. BLM and all agencies must have staff sufficient in numbers, training and expertise to conduct inspections and take enforcement actions, as well as thoroughly review all APDs. Congress has tied BLM's hands by negating its authority to institute a cost recovery fee, and needs to take action to address what has become a problem of chronic understaffing.
7. Careful consideration must be given to the siting of wells and operations during the APD process. Applicants should be required to supply detailed information characterizing proposed sites, including information about fractures and faults. BLM should prohibit the siting of wells in sensitive areas, such as drinking watersheds or areas in which a suitable confining zone is not present, and should also institute safe setbacks from water bodies, public and private wells, surface water, drinking and agricultural water supplies, homes, schools, and health care facilities.
8. BLM's minimum bond amounts have not been increased in 50 years and, according to GAO, BLM's bond review and increase policies need to be clarified. These policies put federal taxpayers at risk for having to pay to plug, abandon and reclaim the current generation of federal oil and gas sites and, should BLM fail to do so, split estate landowners will be pay the price. This is an area where the states virtually uniformly have stronger standards than BLM, and state standards don't apply to BLM minerals. It's time for BLM to catch up with the states.
9. One of the best ways to ensure responsible oil and gas development is to empower surface owners to have a real say in the course of mineral development on their land. Today, private property owners over federal oil and gas have the same right to compensation for damages to crops and tangible improvements that were granted to them in the Stockraising Homestead Act of 1916. Most western states have granted surface owners greater rights – it's time Congress did the same.

Thank you again for the opportunity to testify.