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***Energy in America: BLM's Red-Tape Run Around and its
Impact on American Energy Production***

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The dramatic growth in domestic oil and natural gas production has been truly transformational. States like North Dakota and New Mexico are reaping huge economic rewards including significant tax and royalty revenue. North Dakota has experienced large budget surpluses over the last few years and has even cut taxes because of the oil and natural gas industry.

Other states in the West could experience that same type of economic growth if the administration would encourage development in areas where it has the most control – on federal public lands. Instead, the Bureau of Land Management (BLM) has introduced additional red tape while taking advantage of the existing regulatory structure to further slow and block access to public lands in the West.

Oil and natural gas development provides real solutions for public lands states in the West and the entire country. If BLM provided reasonable access to non-park, non-wilderness lands in the West for oil and natural gas development, we could generate an additional \$23.4 billion in economic activity annually and over 100,000 jobs from projects already proposed. Instead, BLM has imposed new bureaucratic obstacles and more layers of redundant red tape, stifling local, state and federal government revenue and job creation.

Rather than responding rationally to a lack of funding and personnel at a time of declining budgets, BLM has piled more paperwork onto an overburdened staff who cannot process leases, environmental analyses, or permits in a reasonable timeframe. More time is now being spent pushing paper and less in the field ensuring protection of the land while enabling responsible energy development.

Another rational response to budget constraints would be to encourage revenue generating activities. Since the industry returns \$88.76 for every dollar spent by BLM administering the onshore oil and natural gas program, introducing inefficiency into the process directly reduces federal revenue.

About Western Energy Alliance

- Western Energy Alliance represents 480 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas across the West. Alliance members are mainly small businesses and independent producers.

- Because of the large portion of public lands in the West, our members are particularly affected by government policies that reduce access to energy owned by all Americans on federal lands. Our members are proud to produce 25% of America's natural gas and 21% of its oil production while disturbing only 0.07% of public lands.

Federal Production Not Keeping Pace

- The huge increase in U.S. oil and natural gas production over the last several years is the result of private sector investment in technology and improved techniques applied largely on private lands. 96% of the oil production growth since 2007 has been on private lands, according to the Congressional Research Service.
- Production has increased in spite of, not because of, the federal government. Where the government has the most control, on federal lands, production is simply not keeping pace with the growth overall across the nation.
- The reason for the disparity between federal and private/state lands is simple – federal government policies and additional bureaucracy make it extremely difficult to operate on public lands.

Balance on Public Lands

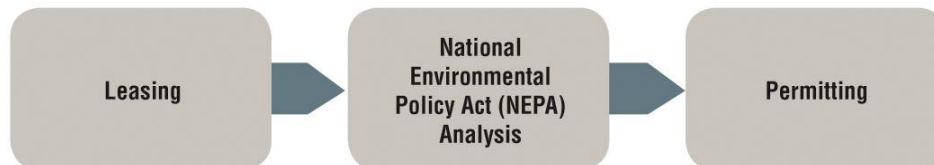
- New technologies like horizontal drilling and advances in hydraulic fracturing have enabled industry to dramatically reduce the environmental impact of oil and natural gas development. State regulation along with state implementation of federal regulations further ensure that operations are conducted in an environmentally protective manner.
- On federal lands, which belong to all Americans, there is and should be additional protections. Those protections are enshrined in the Federal Land Policy and Management Act (FLPMA), National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), Endangered Species Act (ESA) and other statutes, and for decades the approach has ensured the land is protected while also enabling development of the energy resources that all Americans own.
- However, that multiple-use balance has been upset by recent Interior Department policies that have added redundant layers of analysis and red tape, to the point that the process is just being used to stop responsible development.
- Whereas on private and state lands production occurs in a reasonable timeframe, on federal lands three years is a general minimum. Usually it is a matter of five to ten years, and we have seen delays stretching over sixteen years.

- Red tape such as additional layers of leasing analysis; environmental analyses that are stretching five to eight years; average permitting times of 228 to 307 days; and sage-grouse restrictions is hampering the productive use of public lands.
- To exacerbate delays, the Interior Department is adding an entirely new and redundant hydraulic fracturing regulatory regime, despite the fact that states have been successfully regulating fracking for decades without a single case of contamination from the process. There are no incidents on federal lands that indicate a need for more redundant regulation.

Federal Red Tape

The process for developing oil and natural gas on non-park, non-wilderness public lands is simple enough in theory, but ever-increasing government regulations make it extremely difficult and cost prohibitive. It often takes close to ten years or longer to navigate the bureaucratic maze in order to produce on a lease with an initial ten-year term.

Before a company can begin exploring for or developing oil and natural gas on federal lands, it must complete a lengthy three-step process. It is a challenge to navigate this process as companies are dependent on the federal government to complete certain key actions and approvals.



Only after all three of these lengthy and expensive steps have been taken can a company begin drilling and producing oil and natural gas.

- **Leasing Delays:** Policy changes from 2010 have added three new layers of leasing analysis onto a system that already had multiple layers of analysis.
 - As a result, BLM offered 66% less acreage in FY 2012 than in FY 2008. The justification then Interior Secretary Salazar gave for the reforms was to reduce lawsuits and protests, yet protests in the West remain high, at 66%.
 - The time from nomination to leasing has jumped from 3-6 months before the policy changes to 12-14 months in Wyoming, with similar results in other states.

- Regularly, parcels are deferred from lease sales just days prior. Once deferred, it takes at least a year for them to be put up for sale, but often deferred leases are deferred indefinitely for years.
- In a rare occasion for which we were able to obtain hard evidence, BLM deferred 57 leases from the November Utah lease sale five days before the sale in response to a letter from one special-interest group. The letter was sent nearly two months after the formal public protest period had close, as specified by the new leasing policies. Western Energy Alliance is appealing that deferral decision.
- According to the Mineral Leasing Act, section 226(b)(1)(A), and 43 CFR 3120.1-2(a), the Interior Department is required to hold at least four lease sales annually in states with oil and natural gas resources, yet BLM fails to meet this requirement.
- New Master Leasing Plan policies are creating another round of Resource Management Planning, which is a multi-year process, and holding up any leasing or development in areas identified as MLPs. MLPs could put off limits an additional 300 million barrels of oil, and 10.5 trillion cubic feet of natural gas, in addition to the huge energy resources that are already off limits.
- After putting in place all the additional analysis and processes, BLM now regularly complains that it does not have sufficient staff and resources to meet its current workload. BLM regularly defers leases just because it does not have the bandwidth to do all the processing for more robust lease sales.
- **National Environmental Policy Act (NEPA) Delays:** Environmental analyses under NEPA regularly take the government more than five years to complete.
 - Companies pay for the contractors to complete the NEPA analysis, but are kept at arms-length and BLM is responsible for taking the work from the contractor and finalizing the analyses.
 - By delaying projects for three or more years, BLM is preventing the yearly development of 2,055 wells, which would create 79,000 jobs and \$17.8 billion in economic impact annually. (See *Economic Impacts of Oil and Gas Development on Fed Lands in the West* from SWCA Environmental Consultants). This administration has approved only three major oil and natural gas projects.
 - Even NEPA for small projects is taking several years (see examples below.)

- **Permitting Delays:** We do not actually know how long it takes BLM to permit a well on average, as the Government Accountability Office found that it does not collect the data in a way that enables that analysis.
 - BLM has claimed an average between 228 and 307 days over the past few years. Our members regularly see federal permits taking two years, compared to about thirty days on average for corresponding state permits.
 - On top of all those delays, BLM is undergoing rule making regarding hydraulic fracturing despite lack of budget, expertise and manpower. Besides being extremely costly to society, at \$345 million in annual cost, it will inevitably increase permitting delays.

Greater Sage Grouse Restrictions

BLM is amending 68 Resource Management Plans to add protections for the Greater Sage Grouse. Western Energy Alliance supports its intentions to craft management policies to the species in order to demonstrate to the U.S. Fish & Wildlife Service (FWS) that a listing under the Endangered Species Act (ESA) is unnecessary. However, the one-size-fits-all federal plans are overly restrictive and exceed what is needed to demonstrate to FWS that the species is being adequately protected. The plans:

- Rely on studies that do not meet basic standards for scientific integrity.
- Do not adequately take into account local and state efforts to conserve the species. Local efforts tailored to on-the-ground circumstances are more effective than a one-size-fits-all federal approach.
- Fail to effectively balance the conservation of sage grouse with continued economic activity and do not adhere to the multiple-use concept mandated by statute.
- Often reply on outdated wildlife data.
- Include restrictions that are impractical to implement.

Examples of the Federal Process Preventing Development

- It took Stewart Petroleum, a sole proprietorship, nearly four years to get through the NEPA analysis and legal challenges by environmental groups for a nine-well natural gas project in eastern Utah. After four years of being unable to realize any return on its \$9 million investment, the company shifted to oil production on private lands in Kansas.
- Ewing Exploration, a six-person company, started an oil exploration project in the Bighorn Basin of Wyoming in 2005. Initial exploratory work determined that adjacent federal acreage was necessary to fully develop the resource. The preparation of an MLP as part of a Resource Management Plan amendment is indefinitely delaying bringing the

leases to auction and preventing Ewing from realizing a return on its initial \$3.5 million investment.

- Impact Energy Services, a sole proprietorship, may suffer from bad luck, but it is bad luck imposed by a federal government breaking its commitments and obligations. Impact had leases in Utah withdrawn by Interior Secretary Salazar in one of his first acts upon taking over in 2009. In 2011, the Forest Service attempted to withdraw Impact's leases in Wyoming purchased in 2006. While Western Energy Alliance was able to persuade the Forest Service to revoke that decision, bureaucratic inertia means that those leases continue to languish without being issued. This small business has suffered over half a million dollars in legal fees.
- WillSource Enterprise is another small company that has been prevented from producing on its leases going on sixteen years now. The federal government has prevented it from developing by asking for multiple environmental analyses over several years and other ad hoc requirements, and then turned around and is trying to revoke its leases because they are past the initial lease term.
- Western Energy Alliance sued the Department of the Interior over its failure to issue leases to companies within sixty days of receipt of payment after auction, as required by the Mineral Leasing Act. All leases had been outstanding between two and five years. It is analogous to making a purchase on eBay, and then not receiving the goods for years. When ordered by a federal district judge in Wyoming to make a decision on these leases, BLM simply turned around and asked the companies for more time.

In all these cases, the general public loses out in terms of energy all Americans own and return to the American taxpayer. Small businesses, the engines of our economy, are prevented from creating jobs and economic growth.