

Testimony of Dennis Willis
Before the Energy and Minerals Subcommittee
Of
The House Committee on Natural Resources
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I want to thank the subcommittee for this opportunity to participate in this hearing and in our exercise of democracy. For most of 35 years, I was a public servant, employed by the Bureau of Land Management. The experience taught me well the importance of public participation and collaboration with diverse interests in the proper use and management of our national heritage that is the public lands. During my career I worked in many aspects of the oil and gas leasing program. From the development of RMP's to the preparation of lease sales, the permitting of an individual wildcat well to working of three EIS documents for full field development; I saw the value of listening, learning and utilizing the good information and great passion the public brought to the process. The management processes outlined in the Federal Land Policy and Management Act work because they seek involvement from all stakeholders regardless of the wealth, political influence, or popularity they may or may not have. I am here today as a private citizen, resident of a Utah county blessed with both mineral wealth and awesome, iconic western landscapes. I hope to demonstrate that collaborative planning processes meet the needs of all people, including the energy industry and that working together we can enjoy both the fruits of energy production and retain landscape character that is important to the economy and quality of life in the west. The need to promote the benefits while preventing or limiting the harms is where this committee should focus its attention, and this focus of this testimony.

I will focus on the issue of supposed "red tape" for companies pursuing drilling efforts on federally administered lands. What is burdensome red-tape to some are critical protections, due process, rules of fair play, and economic lifelines for others. Our laws, the rules of the game, can't be upended simply because of an inconvenience to one stakeholder, one industry, or one interest; they need to work for all the stakeholders at the table. What one industry sees as 'red tape' another industry sees as a lifeline, a local community sees as their ability to have their voices heard, and a parent sees as the future western landscape and lifestyle their child inherits.

Let me directly address the dubious claim that drilling is moving off of federal lands, to private lands simply because of 'red tape,' an argument at the heart of this hearing's impetus.

First, onshore oil drilling is up on both federal and non-federal lands. Second, it's clear that drilling activity for both oil and gas has been moving out of the intermountain west, dominated by federal lands to eastern areas largely dominated by private lands. Third, the price of natural gas peaked in 2005-2006 then experienced a crash in 2009, to less than a third of the peak price. Natural gas prices have rallied recently but are still trading at inflation adjusted historic lows. Meanwhile the price and profitability of oil and petroleum liquids have remained high. Lastly, drilling effort has historically follows higher priced resources in productive geologic target areas.

Some attribute the shift, to land dominated by oil and liquid resources to the low price of natural gas and the investment dollars and drilling chasing more lucrative oil targets in formations like the Bakken, Eagle Ford, and Niobrara. Others argue this shift is due to the avoidance of red tape associated with drilling on federal lands in the west.

For a downturn to occur there had to have been an uptick. When natural gas prices were high there was a boom in drilling activity on gas targets on federal lands in the west. It appears gas boom drilling was not displaced by dealings with federal bureaucracy. It is good to keep in mind that all things being equal, the intermountain west is a more expensive place to develop. Remoteness, terrain, mountain weather, lack of infrastructure all make the mountain west a more difficult and dangerous place to drill. Even though investment has steered away from natural gas drilling, there are still very active drilling programs for oil such as in the Uinta Basin of Utah. The supposed downturn has not hurt the production of oil from federal onshore leases. In fact, oil production has gone up every year for the last five years and is 35% higher than during the last year of President Bush's administration. This clearly suggests the profitability of the resource, not who owns the land, better determines where drilling takes place.

Drilling east of the Rockies does not mean companies do not deal with the BLM. The Tulsa Field Office has one of BLM's largest oil and gas programs, administering over 50 million acres of federal mineral estate in Texas, Oklahoma and Nebraska. Just recently, BLM sold 40 oil and gas leases in North Dakota with record high bids of \$17.5 million. In South Dakota, BLM administers 6000 leases covering 5.3 million acres. The Eastern States Field Office administers over 2,600 oil and gas leases. Evidently, federal oil and gas leases east of the Rockies remain desirable. Again, this would suggest that the resource, not who owns the land, better determines where companies want to drill.

The red tape question begs a comparison between what companies must do before drilling on federal lands, and what they need to do to drill on private or state lands. Oil and gas leasing and operations on private lands and for privately owned minerals are fundamentally different from those processes for drilling the public lands. They are really not comparable.

- Most private land owners operate on a shorter planning horizon than the United States as landowner. A private landowner, if he is to cash in, must do so in within his short lifetime and hopefully when he is young enough to enjoy it. The United States enjoys an immortality and longevity not available to individuals or even corporations. The US need not hurry in leasing its oil and gas. Fifty to 100 years from now, the resource will still be there, still be useful, likely worth more and the extraction technology better. No harm is done to the public estate by leaving some of these resources in the bank for later.
- The private land owner has complete free agency. They are not required to demonstrate their actions are not arbitrary and capricious under the Administrative Procedures Act. They are not responsible for assuring long term health of the land, protection of archaeological, historical and paleontological resources that benefit us all. They have no duty to the air, water, flora, fauna and scenic values. Most importantly, they do not have the awesome responsibility of managing iconic western landscapes for the benefit of all the American people.
- The private land holder has no obligation to account to, or act on behalf of the American public. BLM processes are more complex and time consuming in part because of public involvement and

participation. It is only right the ultimate owners of the land should have some say as to its use and disposition. Both FLPMA and NEPA require the BLM to assure public participation and accountability in decision making.

- Once the land is leased, the land owner enjoys little or no say in the oil and gas development process. The BLM uses a tiered process in oil and gas leasing, starting with land use planning, through leasing, drilling and production operations and ultimate reclamation. It enjoys a degree of discretion and decision making at each step.
- When comparing 'days it takes to get permits,' federal permitting times take into account the time it takes to work out problems between lease holders and land managers. With the federal system, companies apply for the permit -work out any problems – then receive the permit. On private land, where the state does the permitting, companies typically work out conflicts with property owners before applying for the permit (work out problems- apply-receive), making the process appear much shorter. As the Congressional Research Service explained: "Some critics of this lengthy timeframe highlight the relatively speedy process for permit processing on private lands. State agencies permit drilling activity on private lands within their state, with some approving permits within ten business days of submission. But oftentimes, some surface management issues are negotiated between the oil producer and the individual land/mineral owner. A private versus federal permitting regime does not lend itself to an "apples to- apples" comparison."

Public lands are managed for multiple uses. Multiple uses implies multiple users and multiple needs. The need is to strike balance among the many uses and users without undue damage to the landscape in the process. The best way to accomplish this balance is with a stakeholder process and open communication with all parties. BLM does this at most stages of the oil and gas development process, in the RMP, at the leasing and APD stages. The debate in the political arena too often involves a false dichotomy between total land protection and full industrial development. Multiple use and productive harmony is not so simple, it is a full spectrum of land uses that flows across the landscape. The stakeholder process and open communication, while possibly inconvenient for one stakeholder, is critical in striking a balance within a multiple use framework.

Land use plans are rather broad documents written at large scale levels, frequently covering millions of acres. At the RMP level, it is necessary to simplify and apply a broad brush widely over the landscape. In the area where I live, 78% of the public land is available for oil and gas leasing. That equates to 2.1 million acres of land, a large, course number. BLM has historically used a tiered planning process, where very general wide area plans are refined in further plans covering smaller areas and specific activities. This tiered approach is commonly used in other multiple use disciplines such as timber, grazing, wildlife and recreation. This tiered process is not unlike using Google Earth to look at a large area and then zooming into a scale and level of detail appropriate to the question at hand.

Oil and gas leasing and development decisions are site specific actions, in need of site specific consideration. The resources and uses public stake holders passionately care about are generally smaller and scattered throughout the lands identified as available for leasing. Once a lease sale is proposed, based on nominated tracts, those people come out of the woodwork to identify and promote their interest in selected lease tracts. Not only are RMP's too general to support some leasing

decisions, they are also dated. There is a constant stream of significant new information available to BLM decision makers. This new information must be considered regardless of the age of the RMP. Public interests and new information, if ignored, leads to protests and appeals of lease sales and protracted, costly litigation and uncertainty.

The key to reducing protests and litigation is think first, engage the public and do analysis before issuing the lease. The intent of MLPs is to get stakeholders, including the oil and gas industry to the table early, obtain information and prepare leases in an orderly fashion ahead of time, instead of trying to weed through protests and lengthy delays after contentious conflicts arise and stakeholders have their hackles up. MLPs hold great promise to protect sensitive resources and prevent the industry from unpleasant surprises. After all, companies want certainty, and these reforms are specifically designed to provide that certainty. It informs companies before they bid on the lease, if there are resource conflicts which may require extra sensitivity or extraordinary mitigation.

I can relate from personal experience a similar process that benefited industry and other stakeholders alike. Bill Barrett Corporation (BBC) wanted to develop natural gas in and around Nine Mile Canyon. Nine Mile Canyon is a treasure trove of both archaeological and historic sites set in a most scenic and dramatic landscape. A number of organizations and individuals care passionately about those very resources and expressed concerns over BBC's proposed activities. Since a main concern was cultural resources, a Programmatic Agreement was developed under the National Historic Preservation Act. There were 15 signatories and concurring parties, including BBC, State of Utah, two counties, the National Advisory Council on Historic Preservation, and several nonprofit archaeological organizations. The agreement worked to identify areas of potential conflict and allow drilling to move forward while providing for the needs of other multiple users. The remarkable cultural resources were protected and BBC was able to develop its leases. Utah Governor Gary Herbert praised the process as mineral development, "done right." Had an MLP been in place, BBC could have known from the outset that the area it was buying into was sensitive and commanded the attention of so many people. In fact the EIS for the project was commented on by 58,000 agencies and individuals including consultation with 15 Native American tribes. In spite of all the concerns and controversy, the project was not appealed or litigated. Nobody got everything they wanted, but everybody's needs were met.

Balancing the multiple uses and users on the public landscape is not an easy job or one to be approached lightly. The results are important to people and communities as well as the extractive industry. NEPA provides a great guide to federal agencies in making well informed, APA compliant decisions. The preamble to the act states:

To declare national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation..."

Sometimes the NEPA process is criticized for being so much red tape, and it can be, if not utilized correctly. However the implementing regulations would indicate otherwise:

CEQ Regulations at 40 CFR 1500.1(c) state:

Ultimately, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork-- even excellent paperwork – but to foster excellent action.

It is the better decisions and excellent action that benefit the public land owners in the long term. The process may be time consuming for industry, but they can benefit by avoiding the greater delay and expense of litigation, and as companies like Bill Barrett can attest; a better standing within the communities where they do business. These companies are also compensated by low lease rates. Not many private land owners offer leases at under \$3 per acre per year. The question is not whether or not there will be development but where, how and when it can occur.

Some argue that mineral development on public land is an economic savior to rural communities in the west. In some cases, it may be. Rural economies are best served by diverse economic activities. Diversity provides strength and resilience. Economies based on mineral extraction are subject to the inevitable bust that follows the boom. Examples abound. My county has more ghost towns than live ones, mostly following coal mines. The oil shale bust in western Colorado in 1982 is another example. In the following years, Grand Junction, Colorado's main street was largely boarded up. It has since recovered and grown with a much more diverse and stable economy than existed previously. Moab, Utah also suffered greatly when the uranium mills and mines closed. Moab has now more than recovered and is flourishing with an economy based on outdoor recreation and tourism.

Don't just take my word for it. Mesa County, Colorado, certainly supportive of extractive development has worked with the BLM to also promote balance and conservation in an effort to diversify their economy. It states:

Pg. 3-248 and on From the Grand Junction Field Office RMP "The national demand for energy has had dramatic impacts on the economy of Mesa County. Four significant boom and bust cycles associated with energy development include radium and oil at the turn of the last century, uranium mining in the 1950s, oil shale development in the 1970s, and more recently the explosion in natural gas development, which started in the early 2000s and busted with the national recession in 2008. As a result of these severe economic cycles, communities in Mesa County have put a great deal of effort into diversifying their economy."... "Access to public lands has been a critical contributor to this recruiting effort by increasing the quality-of-life appeal to potential businesses and their employees. Specifically, easy access to recreation and open space has increased the county's ability to recruit qualified professionals in higher education, medicine and business."

We often hear that making lands off limits to mineral development is a death knell to rural economics. That is not my experience. In 1996, President Clinton designated the Escalante Grand Staircase National Monument encompassing 1.9 million acres, mostly in Kane and Garfield Counties. This put coal reserves on the Kiaparowits Plateau off limits and closed the area to oil and gas leasing. Since 1996, my county, Carbon, saw several thousand acres of mineral rich BLM lands in Carbon County were transferred to the State of Utah. Since the Escalante Grand Staircase designation, Carbon has seen the development of four coalbed methane fields, a conventional gas field, some limited oil drilling and the opening of a sawmill. A new coal mine opened just across the line in Emery County, with the nearest population center, coal shipping facility and mine service companies all in Carbon County. While the monument is

closed to oil and gas development, 78% of the public lands in Carbon and Emery Counties are available for leasing.

In the twelve years after the monument Kane and Garfield counties population rose by 8%, jobs rose by 38% and per capita income increased by 30%. While the population around the GSENM was growing, Carbon County population declined and has just recovered to the 1996 level. Jobs grew by about 3%. Per capita income grew by just 11%. In 1996 both Kane and Garfield counties had lower per capita income than did Carbon. The reverse is now true despite all the extractive industry development in Carbon County.

In conclusion, I understand and appreciate the desire to increase efficiency and decrease red tape within the energy development process. I understand the frustration of oil and gas related companies when proposed leases that the BLM has announced for sale are taken off the market, withdrawn or deferred, because they run into a tidal-wave of unforeseen challenges. The industry has a right to be upset with this uncertainty, but the answer isn't to discredit the legitimate concerns of other interests. When leases are deferred, it is not out of deference to special interest groups wielding power and influence. The 77 leases deferred in the 2008 lease sale were not only deferred by BLM. They were also subject to a Federal Court injunction because the RMP did not provide sufficient rational basis to support a decision to lease those tracts. In the most recent Utah lease sale, another 57 nominated lease parcels were deferred for the same reason. There is no presumption that all nominated parcels will be leased. The nomination of a parcel can be arbitrary and capricious, the decision to lease it cannot be. The MLP process should help reduce the number of leases being deferred and litigated by dealing with conflict before the leasing stage.

I ask the committee to look at the process in place at the BLM not as red tape simply obstructing the oil and gas industry, but as rules of the game that allow fair and equal access to the many valuable uses and qualities provided by our public lands. As this discussion continues, the BLM and others have made strides to make the process more efficient, to guide decision making to more informed and up to date conclusions, and protect industry from the uncertainties that come with a lack of information and a lack of planning. I hope this hearing will serve as a forum for a constructive discussion about how the system can be further improved for all the users, stakeholders, important industries, and intangible benefits of our public lands which benefit the economies of local communities and underpin the beauty and culture that is the American West.