House Committee on Natural Resources
Subcommittee on Energy and Mineral Resources
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"Energy in America: BLM's Red-Tape Run Around and Its' Impact on American Energy Production."
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Good afternoon honorable members of the Subcommittee on Public Lands and Environmental Regulation. My name is Lynn Jackson and I am an elected Councilman and Chair of the Grand County Council (our form of a county commission) in Grand County Utah. It's my honor to speak to you today. My comments are my own; representing 35 years of experience in public lands management (as a geologist, district oil and gas supervisor, interdisciplinary resource supervisor, regional research coordinator, and associate field manager), all in southeastern Utah. In addition I have done consulting work relative to the potash industry on public lands for the past three years. Timeframes available to me to prepare for this hearing did not allow formal County Council endorsement of my comments. However I am confident my comments will reflect the sentiment of our 7 member council. I would also emphasis that my experience with public lands has all been in southeastern Utah, and my observations will focus on my experience there.

Grand County is a rural county in southeastern Utah, 2.4 million acres in size with a population of 9300. We are home to Arches National Park, Canyonlands National Park, Dead Horse Point State Park, and Moab. We host 2 million+ recreationists a year. 73% of Grand County is federally owned; with 66% of that ownership belonging to the Bureau of Land Management. Only 6% of our county is private land. Our economic mainstay is recreation and tourism, with a smaller, but vital role for energy and mineral production. To say that our economic livelihood depends on federal land resources would be an extreme understatement.

In regard to the title for this hearing, several themes are suggested related to energy development on public lands topic. However from a county experience and from my past BLM experience I can tell you these same themes relate to BLM management for many other public land resources in our area. I could speak to at length to any of these themes, far beyond the allotted 5 minutes. But in lieu of the short time provided, I offer the following summary observations on those themes and have provided a lengthier and more detailed response for the record.

<u>BLM red-tape and overregulation</u>: Red tape and overregulation, in virtually all BLM resource management programs, has never been greater and continually grows worse by the year. Recently, an oil company operating in Grand County required 3 years to obtain permission to drill 9 development oil wells on federal leases in Grand County. These wells were successfully drilled in 2012, and added nearly $1 million dollars in royalty payments to our county budget.

The company has identified an additional 15 wells they would like to develop on their remaining Grand County leaseholds in this area and submitted application in August of last year. BLM initially balked at

processing these additional wells since they were located within an identified Master Lease Planning area, initiated under a 2010 Secretarial Order. After months of discussions they were finally able to "persuade" BLM the Master Leasing Process was developed to analyze "unleased federal lands". They were recently told BLM will proceed with processing, but to expect delays due to limited staffing. The company offered to pay for staffing, to help not only with this project, but other projects in the local BLM office. BLM has yet to decide if they will accept the companies offer.

The drilling of the wells is also required to help pay for a $70 million dollar gas pipeline BLM and the State of Utah has required them to build to capture associated gas from the field in order to eliminate venting and flaring. The company is set to initiate construction of the pipeline, after an 18 month approval process, but at this point without revenue from the proposed wells they will face a severe capital investment cash flow issue for its construction. BLM is fully aware that concurrent development of the 15 well drilling project was crucial in making the economic decision to build the pipeline.

In another project specific example it took BLM 4+ years to approve 2 exploration programs for potash in the region, one in Grand County and one immediately south in San Juan County. These two projects involved a total of 8 temporary exploratory drill holes. The wells would be plugged upon completion and the drill sites reclaimed. BLM would argue that it only took 18 months to approve the Plans of Operation, but that followed 3 years of internal BLM discussion over how and if they should proceed at all based on unclear regulatory guidelines and the pending Master Leasing Plan process.

The level of delay cost the potash companies the ability to raise capital on financial investment markets to drill the wells when potash commodity prices were rising rapidly, and they are now trying to find private equity partners to share in the $10-15 million dollars cost of these wells. In addition, there is no subsequent guarantee they can get leases for development with Master Leasing Plan decisions regarding where potash leasing and development will ultimately be allowed hanging in the balance, and not scheduled for completion for two years. Grand County currently has one underground solution mining operation that has been operating since the 1960's. That mine, occurring on 1,100 acres of state owned lands, is the single largest tax paying entity in our county, providing $1.1 million of our $12 million dollar annual operating budget. It provides 50+ year round, high paying jobs. Even though our county is very interested in exploring the possibility of additional, responsible potash development, federal red tape and overregulation of the exploration process may well preclude this opportunity.

Another case in point relative to "program" red tape and overregulation taken to extreme levels, is the effort BLM requires to conduct Native American "consultation". Most would agree that it is not unreasonable to have discussion with Native Americans on actions on federal lands that have direct impact on lands once belonging to those Native Americans. But again, the bureaucracy has taken this to extreme levels of implementation in southeastern Utah. Virtually every project on federal lands, regardless of size or scope of real impact, requires consultation with 14 separate tribes that have claimed some past cultural affiliation with this area. All letters must be sent certified, and if the tribe doesn't respond follow up certified letters are sent to "close the loop". This can add months to the review and approval process. And if a tribe has issues, particularly one tribe in the region with strong

ties to the Southern Utah Wilderness Alliance, they can raise questions and create issues that add yet more time to the process. Let's find a reasonable process for a reasonable level of consultation on projects of reasonable impact. The current process, backed by instruction memoranda and legal interpretations, is overkill by any practical measure.

Southeastern Utah is in an iconic landscape, and as citizens and county leaders we expect and insist these projects be done correctly and in the most environmentally sensitive and safe manner possible. But 3-5 year timeframes for processing and decision making seems a bit excessive for the level of exploration and development we are talking about here. Even at full development, the oil field in Grand County is projected to have no more than 50 to 60 wells, including the 20 or so currently in production. They will provide employment for 50-70 jobs. We are not talking about 2000 or 5000 wells for development, which commonly occur in larger hydrocarbon basins in the western US. Another 1000 acre potash operation does not seem extravagant in the 2.4 million acres in our county. There has to be a better, more efficient, effective and reasonable process for review and approval of these types of activities on federal lands.

Reaching beyond normal duties into areas where authority to regulate is questionable: From my experience in southeastern Utah, the larger problem is the reverse, other federal agencies reaching beyond their duties and boundaries and insisting they have direct input into management of BLM lands. This applies specifically to the National Park Service and a couple of state agencies. This is significantly critical in adding to delays, confusion and red tape experienced when trying to obtain approvals.

While we have a shared landscape in southeastern Utah, and other agencies and local governments should have some voice in its management, direct interference by the Park Service is one of the factors that lead to substantial timeframes and delays in approvals for resource uses on BLM lands in our area. Particularly in the arena of view sheds and air quality. We are grateful for the National Parks in our area. We are proud to host them and the economic benefits that come from them. We would never agree to allow development that would legitimately harm them. But one has to ask, what is a reasonable distance outside of a National Park boundary for the National Park Service to have direct influence over? In our area it seems to be any area outside the park visible from anywhere within the park, or any area on BLM lands that shares the air shed.

Another external agency that routinely interferes in management of BLM lands is the State Historic Preservation Office (SHPO). They have recently convinced BLM that in addition to companies paying for archeological surveys in areas of proposed operation and collection and testing of any sites they may find, they should now, when SHPO deems it necessary, pay for fundamental academic research regarding results from the surveys. This is a brand new twist. In a case in point they wanted the oil company in Grand County to pay for research from results of the pipeline archeological survey, of course after the company had already paid for all the survey work. The research would ostensibly answer academic questions of why Native Americans used lithic tool materials from various sites, and to determine if there was a pattern of why and where they carried the material from source to various use sites. I don't know where this ended up, but it caused delays of months to get final pipeline approval,

and the company felt they were in a bind and would have no option if they wanted to get their approvals. Yet again, overregulation of a reasonable program of requiring companies to pay for conducting inventories and avoiding sites to shorten approval timeframes, now taken to extremes with permit approvals hanging in the balance.

The Utah Division of Wildlife Resources (UDWR) is another external agency that causes fits for BLM and companies trying to conduct operations on BLM lands. This is particularly true for bighorn sheep. The irrationality of wildlife management on public lands is that BLM controls the habitat but UDWR controls the animals. As such, UDWR answers to no one when they choose to introduce these sheep, or other wildlife species, throughout the state on public lands. Once introduced, BLM must manage for the sheep by restricting access to any commercial development or activities in sheep habitat during certain times of the year associated with lambing and rutting. Even though the sheep is not on any list of threatened or endangered animals, all subsequent management is structured around their presence once introduced. Time limited access restrictions are then built into lease stipulations or applied to existing leases when operations are proposed.

UDWR recently introduced a non-native species of mountain goats onto our national forest in Grand County, over the objections of nearly everyone, including the Forest Service. Although this won't affect energy operations since there are none on this area of forest, I can assure you that the Forest Service will now be managing all other resource uses in the goats habitat around the "needs" of the goats.

And of course what wildlife issues would be complete without discussing the onerousness of the Threatened and Endangered species quagmire where the US Fish and Wildlife Service (USFWS) runs without oversight on all land jurisdiction. The impact of a T&E species is disastrous for commercial development. In Grand County the BLM is required to manage for Mexican Spotted owls. Although only one pair of owls has ever been found, most of our county has been determined to be habitat for the owls. This means every proposal, of any type, occurring within this designated habitat must be preceded by time consuming and expensive surveys to demonstrate the birds aren't in that particular area. These surveys add months to approvals. And the surveys are only good for two years, so it's not unusual for a given area to have multiple surveys over the years when the 2 year window has expired. I'm thankful every day that Grand County is not home to sage grouse. This law is in desperate need of overhaul with some common sense and oversight built into it.

Therefore in my experience it's not so much BLM extending its reach that result is red tape and delay, but more of external agencies extending their reach into BLM responsibilities and taking them to extremes. At the end of the day it's a situation where good ideas are taken to unworkable extremes, with BLM caught in the crossfire.

<u>Increasing claims of being understaffed and underfunded to handle current responsibilities</u>: Again, this is a significant problem, not only in a real sense but in an often times fabricated fashion to allow focus on program areas of current "political" favor. While our local BLM offices seem to have time and resources for conducting all the necessary survey clearances and work for recreation related activities, or other

activities not associated with mineral development, when it comes to resource extraction proposals, they always seem to be understaffed and require these companies to pay for the BLM time and the bulk of survey clearance and NEPA work.

As previously mentioned, in regard to development in the oil field in Grand County, the company has offered to fund an additional position for the local BLM office to assist with overflow work and expedite all NEPA projects within the office, not just for the development drilling project. The company provided documentation from other BLM offices were this arrangement was successful, and also provided examples of contractual documents for these agreements. BLM has had these documents for 3-4 months and have yet to take any action.

Many other processes, costing companies tens of thousands of dollars, have been developed to ostensibly address the issue of underfunding for BLM. None of these seem to be able to address backlogs in any meaningful manner. These include cost recovery, where companies directly pay BLM to cover the costs of staff time to assist in processing their applications. The companies also pay for third party archeological or wildlife surveys and data collection for their projects, also costing tens of thousands of dollars and taking weeks and months. The companies also hire and pay for third party contractors to prepare all draft NEPA documents for BLM. I don't know exact figures, they would be available from BLM and the companies, but all these costs would surely add up to high six figure costs. Yet requests for approval of the two relatively small projects in Grand County that I have discussed have taken 3-5 years.

Increasing surface use restrictions and expanding permit and RMP requirements: I believe most of us would agree that the use of public resources should have reasonable and effective mitigation to limit impacts from those uses. And I believe most would agree that we should take a reasonable amount of time to review and develop these measures. But over the years we have all seen project reviews and approvals taking longer and resulting in more and more use restrictions that are often redundant and unnecessary. Many of these come as a result of external agency involvement and insistence and not as direct mitigation to actual resource impacts.

After the last round of Utah Resource Management Plans in 2008, there were significant areas of lands in the Moab Field office where there were so many overlaying restrictive mitigation requirements that on the ground activities had only a 2-3 month window of the year where activities could be allowed. There are timing restrictions for big horn sheep, raptors, owls, antelope, and deer. They are timing restrictions for wet soils. There are timing restrictions for high recreation seasonal use. I found myself wondering, as the RMP unfolded, why anyone would want leases in an area with this level of restrictions. Where I an energy company, I would have taken my business elsewhere.

Deferral of the leases in Utah: The facts in this regard speak for themselves, leasing in eastern Utah has come to a virtual halt, particularly in the field offices where new RMP's were completed in 2008. There have been far more leases deferred from leasing under the 2008 RMPS's than have been made available

for leasing. I didn't have time to get actual figures, but have seen these figures and assure you this is the case. Data from BLM would easily confirm this.

BLM began deferring oil and gas leasing in these areas shortly after the RMP's were initiated, around 2003 to 2004. The idea initially was to defer leasing in areas where stipulations would likely change in the new RMP's. By 2005 -2006 this was expanded to virtually all the lands within the RMP areas. And as we all found out upon completion of the RMP's, leasing under the new terms and conditions was instantly halted through political fiat of a new administration and subsequent legal actions. This political blundering, of an outgoing administration to hold a leasing "fire sale", resulted in the "77 lease" controversy which ushered in the Secretarial Order to do follow up Master Leasing Plans, yet another layer of analysis and delay. BLM is now clearly within the parameters of the old metaphor, "paralysis of analysis".

In October 2008, upon the completion of the Utah RMP's, field offices were sent hundreds of lease parcels for review, all of the leases that had been deferred for several years during RMP preparation, and were given 3 weeks to process. In Moab, we were sent approximately 180 lease parcels. I and others complained up the line that it wasn't feasible, and we were told by the outgoing administration, down through channels, to just do it. With the quantity of parcels there was virtually no time to utilize the established practice of final document and field review prior to returning to the State office with recommendations. We simply attached the stipulations from the just completed RMP's and returned with recommendations. As I recall we had been able to process about 80 of the parcels sent to us.

BLM had a reasonable process in place for final review of lands nominated for leasing. A final review process to look on the ground in more detail than provided for by landscape level RMP's, and to determine if leases should go forward or if tracts should be deferred pending additional environmental review. If leaders at Interior, in the outgoing administration had listened to field offices, and acted responsibly and sent a reasonable number of parcels for review, I suggest there would never had been an MLP process developed.

In addition to overregulation, claims of underfunding and understaffing, external meddling, and red tape, I believe one of the biggest impediments to BLM doing a responsive job for users of public lands is top down political meddling in local BLM issues. The administration may try to convince you otherwise, that local BLM offices are empowered, but that is patently false, particularly in areas like southeastern Utah where there are so many issues in the spotlight. It is management by political fiat, actual resource issues are secondary at best.

Litigation: No discussion of problems and red tape for industry operating on public lands would be complete without some discussion of the current state of public land litigation. It is out of control by any measure, and plays a significant role in bottlenecking BLM with an ever increasing stream of often times conflicting legal decisions. Once again, we have allowed a fundamental tenant of democracy, the right for redress and review of government decisions by citizens, to go completely over the top. It's no longer a question of reasonable review of decisions, but is now used as an ideological tool to oppose and halt

any type of activity a given activist group is in disagreement with. There are no repercussions to these litigants whether they win or lose, so there is nothing at stake for them personally or financially in filing, more often than not, frivolous lawsuits. I would estimate that by the time I left BLM, fully 15-20% of BLM's time was dealing with litigation. The legal appeal process for public land activity is in serious need of reform. Even if BLM "issues" could be fixed, without fixing this system there will still be significant delays and confusion for industry trying to operate on public lands.

Impacts and considerations for county governments: From a county government perspective, this inability and paralysis of BLM to timely review and process use authorizations has a direct impact to revenue sources needed to provide necessary county infrastructure and services. It impacts revenue streams from bonus bid revenues from leasing federal lands that are shared with the state and county governments. Leasing delays then result in exploration and development delays and again, the loss of shared royalty revenues from production. The red tape results in companies taking their business elsewhere, to areas where they have some assurances as to the outcome of their investment dollars. I've no doubt that over the past decade this has resulted in the loss of millions of dollars for the eastern Utah counties hung up in this broken process. Again, review of BLM data for eastern Utah counties will clearly demonstrate this loss of federal revenue.

As an example, in fiscal year 2011-2012 Grand County received $430,000 in royalty production revenue from federal wells in our county. In 2012, after 3 years in the approval process, an oil company drilled 9 new producing oil wells in the area I have been previously discussing. Grand County's share of mineral revenue in fiscal 2012-2103, from these 9 wells, jumped to $1.3 million dollars. It allowed our county to keep our long term nursing home open and pay for other important infrastructure and services related to transportation, solid waste, and recreation. The importance of these revenues cannot be overstated.

Summary: In short, it is my opinion that current federal land management in our area works for no one. It does not work for local county governments. It does not work for our minerals industries that are required to spend hundreds of thousands of dollars for permits with no guarantee of returns. It does not work for our recreation industry who have little assurance of when and where mineral exploration or development activity may occur within an area they use commercially for their recreation businesses. It does not work for the conservation community who must constantly operate in the mode of litigation. And it does not work for those at BLM who would like to make it work. Believe me, I spent the last six years of my time as a manager, and I could not make the system work.

The system is broken and dysfunctional, but in my estimation it is not solely the fault of BLM. The bulk of the problems are a direct result of external meddling of Washington political appointees and external agencies and interest groups. The resulting convoluted web of policy and legal confusion and direction has resulted in BLM doing what bureaucracies are known to do, creating more red tape and developing mind numbing internal bureaucratic programs which further take away from capabilities to conduct resource management work. When you can't control the majority of your job, you respond by focusing on what you can control internally. Making more feel good work.

There can be a viable role for BLM in managing federal lands to not only meet the needs of our nation, but to also meet the needs of local citizens and governments surrounded in a sea of federal land ownership. But they can only play that vital role if they are allowed to function properly. The reasons are many and the dysfunction has been gradually increasing over the past 10-15 years. In a summary it stems from the following in order of impact:

- Political meddling and inappropriate interference in local affairs from the highest levels of the executive branch, from both "flavors" of political parties.
- External agency involvement making more and more conflicting demands on BLM.
- An endless stream of litigation and conflicting legal decisions.
- A never ending array of conflicting policies, guidelines, regulations, and Executive Orders.
- A management training and "culling" program which does not reward independent thinking or questioning.

Early in my career local and state BLM managers were given great latitude and authority to work with local communities so dependent of federal land resources. They were allowed to make decision that could enhance local economic opportunities, while at the same time managing for larger national priorities based on the administration in the White House. For the most part it worked. It wasn't perfect, but it worked far better than it does today.

I don't suggest trying to go back to those days, times have changed, there is far more interest and competition for all resources on our public lands. But I do suggest it is time for a new paradigm in how these lands are managed. It could be as drastic as the growing demand in western states that ownership of these federal lands be transferred to the states they occur in. The very ineffectiveness and political underhandedness that currently pervades management of these lands is the very thing that fuels these state sovereignty initiatives.

Or it could be vested stakeholders in these lands, working together to find workable solutions and compromise, and then enacting national legislation that provides a level of finality and certainty for these stakeholders, local government and even federal land management agencies to move forward in a productive, efficient and sustainable manner.

Congressman Rob Bishop currently has initiated such a process in southeastern Utah and results are encouraging. Stakeholders are engaged and willing to develop plans, make reasonable compromise, and come up with legislation that will help provide all resource users with the certainty to make long term plans. It could decrease the never ending stream of litigation. I'm hopeful this could also help BLM in their job of deciding where to prioritize work and to keep politicians out of the daily business of land management. Our county fully endorses and is fully engaged in this process.

This effort alone will not fix the problems BLM encounters when trying to meet its mission for providing responsible energy development on public lands, but hopefully it will help. And of course if this

legislation doesn't work, problems with BLM management in our area, both actual and perceived, will no longer matter. We have an administration in office who has all but assured us, that if we fail to reach agreement in this congressionally driven lands bill, they stand ready to create a new national monument which will cover all of the area where our modest oil, gas and potash resources reside in Grand County. The Antiquities Act, the final trump card.

Thank you.