

Testimony of Kathleen Schroder
Before the
House Natural Resources Committee
Subcommittee on Energy and Mineral Resources

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

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Chairman Lamborn, Ranking Member Holt, and Members of the Subcommittee, thank you for the opportunity to appear before you today. I am an attorney with the law firm of Bjork Lindley Little PC in Denver, Colorado. In my practice, I assist oil and gas exploration and production companies with navigating the federal regulatory framework so that they can lease and develop federal oil and gas resources. I help clients understand the Bureau of Land Management's (BLM) land use planning process, the federal oil and gas leasing process, and the federal laws designed to disclose or minimize the impacts of development on the environment, including the National Environmental Policy Act, the National Historic Preservation Act, and the Endangered Species Act.

Heightened regulation, decreased access, and permitting delays can discourage development on federal lands. In draft resource management plans (RMPs) in Wyoming and Colorado, the BLM has proposed aggressive measures to regulate air quality, which oil and gas operators have challenged as beyond the BLM's statutory authority. In these RMPs, the BLM also has proposed to limit access to federal lands for future oil and gas leasing and development. These issues are then compounded by delays that operators experience in obtaining drilling permits from the BLM.

The combination of increased regulatory requirements and decreased access can drive up the costs of oil and gas exploration and development on federal lands, thus creating the risk that capital will be directed to lands that are largely private or State-owned such as in North Dakota and Texas. The long-term effects of decreased development of federal oil and gas resources may be felt on national, state and local levels. Decreased oil and gas development on federal lands reduces the amount of royalties generated, with less revenue distributed to the Treasury and the States. Decreased development will also result in fewer jobs being created in areas with large amounts of federal lands.

The Bureau of Land Management's Efforts to Regulate Air Quality through Resource Management Plans

Recent draft RMPs in Colorado and Wyoming contain extensive air quality mitigation, monitoring, and modeling requirements that apply to oil and gas development. Oil and gas operators have questioned the BLM's authority to impose these air quality measures. The Clean Air Act charges the Environmental Protection Agency with regulation of the nation's air resources. The EPA has delegated this authority to the States, and the States of Colorado and Wyoming have utilized this authority to implement regulations to curb emissions from oil and gas development. Industry has worked extensively with the EPA and States to reduce air emissions and address air quality issues. In light of these efforts, operators have encouraged the

BLM defer to the EPA and the States rather than creating duplicative and potentially inconsistent requirements.

In contrast, the BLM has little statutory authority to regulate air quality. When an area is in attainment with air quality standards, the Clean Air Act limits the BLM's authority to considering impacts from large-scale facilities on select sensitive areas within its jurisdiction. Similarly, the Federal Land Policy and Management Act (FLPMA) only requires the BLM to "provide" for compliance with pollution laws such as the Clean Air Act. Decisions of the Department of the Interior have reinforced that the States, and not the BLM, have the obligation to ensure compliance with the Clean Air Act.

Oil and gas operators have objected to the duplicative and significant mitigation, monitoring, and modeling requirements proposed in recent RMPs, arguing that they exceed the BLM's authority and run afoul of a formal agreement between the BLM and other federal agencies. For example, the BLM has proposed to require operators to implement extensive and expensive mitigation measures intended to reduce air emissions from their operations. One mitigation measure would be challenging, if not impossible, to implement because the equipment is not available in sufficient quantities. Other measures are not always technically feasible and may render the development of certain oil and gas resources uneconomic.

RMPs also propose to require extensive modeling of potential impacts to air quality from oil and gas operations, even though a nationwide Memorandum of Understanding (MOU) between the Department of the Interior, EPA, and the Department of Agriculture sets forth a comprehensive modeling protocol. Oil and gas operators believe the RMPs' modeling requirements conflict with the MOU and have advocated the BLM adhere to the MOU instead. Finally, the RMPs propose to require extensive monitoring of air impacts, and some monitoring requirements have the potential to delay development. Oil and gas operators have questioned not only the necessity of these measures in light of State efforts, but also whether the BLM possesses the technical air quality expertise necessary to administer these programs.

The EPA and the States have echoed the concerns of oil and gas operators. Citing concerns of operating certainty, streamlined regulatory compliance, and a competing regulatory regime, the EPA has suggested that the BLM should allow operators the opportunity to use state-required mitigation to achieve compliance with mitigation measures in the White River RMP in Colorado. Similarly, in a letter to the BLM, the Governor of the State of Wyoming objected to the limits on emissions from oil and gas operations set forth in the Lander RMP, which covers portions of central Wyoming. The Governor unequivocally stated that Wyoming, and not the BLM, has the authority to regulate air quality.

Oil and gas operators already must comply with Federal and State rules and regulations related to air quality. They are concerned that the BLM's duplicative requirements increase the burden and cost of developing federal lands, thus making federal lands less attractive for development. Moreover, by imposing monitoring and modeling requirements in RMPs, the BLM obligates itself to undertake greater oversight of air quality issues. The BLM must commit its own time and resources to administering and implementing the measures set forth in the RMP. As I will

detail later, some BLM field offices already struggle to process permits in a timely fashion. The BLM's efforts to add to management obligations can further slow the agency's processes.

Measures in Resource Management Plans Decrease Access to Federal Lands

Oil and gas operators are encountering decreased access to federal lands through constraints in RMPs. A conspicuous limit on access is closing BLM-managed lands that are currently available and designated for oil and gas leasing to future leasing. Oil and gas operators have maintained that closing lands to future leasing is the equivalent of withdrawing federal lands for a specific use. FLPMA defines a "withdrawal" of land as "withholding an area of Federal land from . . . sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area." Only the Secretary of the Interior and a handful of designees have the authority to make withdrawals. In order for the Secretary to withdraw five thousand or more acres of land, she must notify both Houses of Congress and follow statutory procedures.

In draft RMPs, however, the BLM has proposed to close lands that are currently available for oil and gas leasing to future leasing without any notification to Congress. In northwest Colorado, three draft RMPs collectively propose to close over 320,000 acres to future oil and gas leasing. As part of its revisions to the Lander RMP, the BLM proposed to close more than 166,000 acres to future oil and gas leasing, an increase of 663 percent over existing management. In the eyes of oil and gas operators, unilateral decisions by BLM to close hundreds of thousands of acres to future oil and gas leasing without notice to Congress would violate FLPMA's withdrawal procedures.

Although closures are a conspicuous way in which RMPs prohibit access to federal lands, RMPs also can limit access in less direct ways. For example, RMPs identify lands on which the BLM will prohibit surface occupancy on future oil and gas leases. Surface occupancy prohibitions severely constrain the ability to develop a lease because all surface infrastructure must be sited on a location off of the lease, which may not always be technologically feasible. In the three RMPs in northwest Colorado, the BLM proposed to prohibit surface occupancy on 1.1 million acres to be made available for future oil and gas leasing.

RMP closures and surface occupancy prohibitions are just two ways in which RMPs limit access to federal lands. The BLM's designation of Areas of Critical Environmental Concern, lands with wilderness characteristics, and areas in which rights-of-way will not be granted chip away at the lands available for oil and gas leasing and development. Although the BLM's multiple use mandate requires that it provide for other resources, oil and gas operators remain concerned that RMP prescriptions inappropriately and excessively limit access to federal lands for oil and gas development.

Permitting Backlog

Increased regulatory burdens and decreased access to federal lands are compounded by permitting delays. In some BLM field offices with high levels of oil and gas development, operators are experiencing significant delays in obtaining approvals of drilling permits and

rights-of-way. For example, in BLM's Farmington Field Office in the San Juan Basin of New Mexico, drilling permits can take several months to review while right-of-way applications can take over 6 months to process.

Permitting delays limit the amount of development that can occur and the rate of that development. Delays also create operational uncertainty, particularly when federal permitting timelines are contrasted against State permitting timelines. In Colorado, review of drilling permits on State and private lands is usually completed in less than 30 days. In other States such as Texas, the timeframe can be less than 10 days. Operators fear the permitting delays and operational uncertainty associated with federal mineral development jeopardize the future of oil and gas development on federal lands as well as the jobs, royalties, and economic benefits from it.

To alleviate delays, the BLM should engage in a dialogue with oil and gas operators to identify inefficiencies in permit processing and explore collaborative solutions. The BLM and industry have worked together in the past to improve the agency's processes while ensuring that the BLM meets its statutory and regulatory obligations. For example, the BLM and industry have partnered to implement hosted worker programs in which the BLM uses non-federal funding to hire an independent third party to assist with review and analysis associated with processing applications. The BLM pilot offices authorized by the Energy Policy Act of 2005 helped improve permit processing efficiency and provided resources to BLM field offices with greater permitting workloads. Oil and gas operators have encouraged these and similar efforts to improve permitting timeframes.

Conclusion

Recent draft RMPs in Colorado and Wyoming propose to increase regulation of air quality and decrease access to federal lands for oil and gas development. Oil and gas operators have advocated that BLM take several steps to reduce regulatory burdens and provide greater certainty for operations on federal lands. First, the BLM should defer to the EPA and States as the agencies with the expertise and statutory authority to regulate air resources rather than establishing its own air regulatory regime. Therefore, the BLM should eliminate the air quality mitigation, modeling and monitoring plans in RMPs and instead adhere to the terms of the interagency MOU related to air quality. Second, the BLM should increase access to federal lands for oil and gas development. Finally, the BLM should work with industry to identify ways to improve permit processing times.

Thank you for the opportunity to appear before you today. I look forward to answering questions.

Kathleen Schroder