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Democratic Issues Forum

**“The Trump Administration’s Bias
Towards the Oil and Gas Industry
during the Government Shutdown”**

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Good afternoon Chairman Grijalva, Congressman Lowenthal and members of the Committee. Thank you for the opportunity to share my views on this timely issue regarding the Interior Department’s efforts to recklessly speed ahead onshore oil and gas drilling during this government shutdown, even while trash and human waste piles up in our National Parks, wildlife and cultural resource specialists essential to environmental protection are out on furlough, and the American public is shut out of leasing decisions.

My name is Drew McConville. I oversee The Wilderness Society’s government relations efforts, including tracking and monitoring the impacts that this lapse of appropriations is having on lands and mineral resources managed by the Bureau of Land Management (BLM). The Wilderness Society is a national public interest conservation organization with more than one million members and supporters. The Wilderness Society’s mission is to protect wilderness and inspire Americans to care for our wild places. Our organization actively supports solutions that balance extractive uses like energy with conservation through open, sustainable and science-based land management practices to maintain the long-term integrity of the landscape.

Quite simply, what we're seeing in stark relief during this shutdown is just how much the Trump Administration favors well-connected special interests above the public when it comes to managing lands and waters that belong to all Americans. Despite the fact that each day brings a new horror story about the impacts of the shutdown – from Joshua Trees cut down in Joshua Tree National Park to public servants relying on local food banks and yard sales to make ends meet -- it has become increasingly clear that the Department of the Interior (DOI) remains open for oil and gas interests. But while Interior staff have been brought back to process drilling permits and advance a controversial policy agenda, the public has been kept in the dark and shut out of land management decisions. This reckless behavior is not only wildly inequitable and illegal, but it endangers the very lands, waters, wildlife, and communities that the Department of the Interior is charged with protecting

Despite the government shutdown, BLM remains open for oil and gas interests

Although most DOI and BLM employees remain furloughed due to the shutdown and the agency has released very little information about what is happening behind closed doors, we know from government data, press reports, and interactions with agency staff that BLM employees have been called back to serve oil and gas stakeholders in processing permit applications, advancing leasing processes, and related activities.

Focused efforts to service the oil and gas industry's needs are bearing fruit. From the start of the shutdown through January 22, government databases indicate that BLM has approved 15 permits for new drilling operations, approved 12 new leases for oil and gas development, accepted 189 applications for drilling permits, and accepted 114 nominations of parcels to be leased for oil and gas development.¹

Meanwhile, planning and leasing processes to open more lands to drilling are continuing at a reckless pace. Comment periods for controversial management plans and leasing decisions have continued to run, and BLM has given no indication that it will put the brakes on impending lease sales impacting multiple Western states. In Alaska, BLM staff conducted a series of public meetings during the shutdown in order to open previously protected areas in the western Arctic (National Petroleum Reserve-Alaska), and, until challenged by Chairman Grijalva and others, planned to conduct meetings to push forward a leasing program in the Arctic National Wildlife Refuge.

Given the heavy emphasis the Administration has put on keeping drilling-related activities moving, it is unsurprising that oil and gas industry representatives have reported satisfaction with DOI's ongoing service. For example, on January 14 -- twenty-five days into the shutdown – the CEO of ConocoPhillips told Fox Business Network in an interview that the company's business and access to federal agencies hasn't yet been affected by the ongoing shutdown. "[W]e haven't been majorly impacted today. We're still having conversations with the Department of Interior, EPA, the BLM about our longer term permitting and the things we have in front of them as a

¹ <https://medium.com/westwise/government-shutdown-oil-and-gas-permitting-tracker-69f25dfa4dc0>

business. Now, obviously, if this carries on for a longer period of time, we're going to see some slowdown in that activity. [But we h]aven't been materially impacted today.”²

Meanwhile, the public has been shut out of leasing and other decision-making processes

The exceptional customer service reported by oil and gas executives stands in stark contrast to the experiences of the general public, as well as local and state elected officials, who have been repeatedly shut out of these same decision-making processes during the shutdown.

Since the start of the government shutdown, neither DOI nor the BLM have provided any information to the public regarding the status of upcoming lease sales and associated mandatory comment and protest periods. For example, a New Mexico scoping period was scheduled to commence on January 7, but no notices were posted. In addition, a protest period for a New Mexico lease sale was slated to begin on January 18, yet there have been no notices posted. This leaves stakeholders and impacted communities in the dark and wondering how their livelihoods will be impacted. Lease sales currently on the books for February and March would put more than one million acres on the auction block in seven states.

Limited public hearings chosen by the agency to proceed are either being rushed ahead with limited involvement from agency officials or are being postponed or cancelled. For example, notice of the NPR-A meetings described earlier was only disseminated to stakeholders the day before the first public hearing was held. Given the logistical challenges of travel in the Arctic region, it is unacceptable for Interior to provide such little notice.

Meanwhile, as BLM allows the clock to run on already-inadequate comment periods, furloughed staff and other challenges make meaningful public participation impossible or severely limited. The vast majority of agency staff are unavailable to answer questions or provide clarifying information for the public. Website outages, missing documents, and technical problems are recurring problems. For example, between outages of multiple sites, we are aware of at least eight days when relevant websites for commenting on BLM actions were unavailable. Comment extensions that have been granted have been extremely limited and inadequate, and notice of extensions appears to have been provided only on a limited basis on the evening of the expired deadlines.

Finally, even attempts to deliver physical comments to officially listed addresses -- as an alternative to spotty online systems -- have been thwarted by closed office buildings. As an example, a partner organization sent a package of comments via FedEx to BLM related to the hard rock mineral leases near the Boundary Waters. The package was rejected because BLM's district office was closed, and FedEx staff reported that other deliveries to this address had met

² https://video.foxbusiness.com/v/5990031270001/?wpisrc=nl_energy202&wpmmm=1#sp=show-clips

the same fate. In other cases where comments were mailed, we have concerns that Interior is likely to misplace or give short shrift to comments that are stockpiled during the shutdown.

Reckless oil and gas decisions could have disastrous consequences for the land, wildlife and nearby communities

Although BLM staff have been recalled to process permits for oil and gas activities, press reports and conversations with BLM staff indicate that archaeologists, fish and wildlife biologists, and air, water, and soil quality experts have not been similarly pulled back in to work. For example, in a statement to the Casper Star-Tribune, the Petroleum Association of Wyoming recently explained that while limited BLM staff had returned to processing permits, wildlife and cultural resources experts had not received similar exemptions to the shutdown.³ Combined with a clear mandate for staff to greenlight drilling and other so-called “energy dominance” activities, it is hard to imagine that BLM’s oil and gas decisions made during the shutdown are accounting for the full scope of impacts required by law and common sense.

Too much is at stake for BLM to short-circuit public and expert reviews. As this Committee well knows, the Arctic National Wildlife Refuge is one of the last truly wild places left in America. The coastal plain, a sacred place for the Gwich’in people that is now threatened by this Administration’s rush to drill, has been the birthing grounds to the massive Porcupine Caribou Herd for millennia and serves as a critical polar bear denning area. Ecologically sensitive areas being targeted in the National Petroleum Reserve-Alaska include Teshekpuk Lake and Colville River Special Areas, which are centrally important for many bird species, the Teshekpuk Lake Caribou Herd, and other subsistence resources.

In the lower-48, BLM has scheduled an oil and gas lease sale for February in Wyoming that endangers important sage grouse and mule deer habitat, as well as migratory corridors. In Colorado, BLM has scheduled a lease sale for March that includes several areas valued locally for their recreation opportunities, including the Temple Canyon Park in Canon City and the James M. Robb – Colorado River State Park and the Cameo areas near Grand Junction. In New Mexico, BLM has scheduled a lease sale for March that includes areas the BLM has identified as justifying protection for supporting migratory birds and herons in the Carlsbad Field Office. These are just a few examples of what could be lost permanently as BLM rushes to make final decisions without adequate public consultation or expert reviews.

Somewhat ironically, other forms of energy – particularly renewable energy like wind, solar and geothermal – are not receiving this preferred treatment. Renewable projects and planning activities sit at a standstill.

³ https://trib.com/business/energy/limited-federal-workers-return-to-work-on-wyoming-energy-projects/article_9195220d-790f-5e11-ae51-55438b128573.html

Finally, permitting new oil and gas activities during a shutdown is likely increasing the risk of serious impacts from spills and other accidents. Even with a skeletal crew of inspection and enforcement staff still on the job at BLM, most spills are self-reported by industry. With most of BLM shuttered, including regional and field offices, it is unclear who is prepared to answer calls and assist when accidents do happen.

Pushing oil and gas decisions forward without public input and expert review is not legal

DOI and BLM have failed to disclose to the public most of what they are doing and what they will proceed with as the shutdown continues. Additionally, they have provided only vague justifications for staffing and resource allocation during the shutdown, including BLM's brief contingency plan from January 2019. The three-page document replaced an earlier plan from December that is now unavailable to the public.

Although most of what is happening behind the scenes at BLM remains hidden, what we know raises serious questions about the legality of DOI and BLM's approach. In addition to potential violations of appropriations law, we have serious concerns about the inadequate consideration BLM appears to be giving to environmental and historical resource impacts in its rush to approve permits and greenlight leasing. Key laws, including the National Environmental Policy Act (NEPA), the Endangered Species Act, the National Historic Preservation Act, as well as tribal government-to-government consultation, cannot be simply ignored or short-circuited, but that is just what appears to be happening.

Shortchanging opportunities for public comment mandated by NEPA and other statutes is also a likely violation of both the spirit and letter of the law. As noted earlier, this shutdown has been plagued by examples of comment periods where vital information was unavailable to the public, key officials were unavailable or unresponsive, websites were down, comments could not be physically delivered, and other hurdles made public participation unreasonable or impossible.

Providing meaningful public participation in the oil and gas leasing process is a binding legal requirement. BLM should know this well after a September federal district court enjoined parts of their new oil and gas leasing policy. In that case, the court found that "the public involvement requirements of FLPMA and NEPA cannot be set aside in the name of expediting oil and gas lease sales."⁴

Adding insult to injury when it comes to public transparency, DOI is actually advancing a regulatory proposal during the shutdown to obscure even more information from the public. Released on the Friday between Christmas and New Years in the Federal Register, DOI published a rule that would make it easier for the Department to deny Freedom of Information Act requests and arbitrarily limit what documents it releases to the public. Office of the Federal Register procedures designed to ensure compliance with the Antideficiency Act during a

⁴ West. Watersheds Project v. Zinke, 336 F. Supp. 3d 1204, 1238 (D. Idaho 2018).

government shut-down provide that only “documents directly related to the performance of governmental functions necessary to address imminent threats to the safety of human life or protection of property” be published.⁵ Under no circumstances can the draft rule be considered directly related to the performance of such necessary governmental functions. Nonetheless, DOI has so far indicated no intention of extending the current deadline to comment on the proposed rule beyond January 28.

BLM should immediately stop permitting oil and gas activities, postpone pending lease sales, and extend all comment periods

In light of the risks posed to our lands, waters, wildlife, and communities of recklessly proceeding with oil and gas permitting and related activities without adequate resources, staffing, and public participation, The Wilderness Society believes BLM should immediately halt these activities. The agency should promptly and formally postpone all oil and gas lease sales until such time as BLM is able to conduct legally-compliant environmental reviews and comment and protest periods. Additionally, all comment periods occurring during the shutdown should be extended significantly beyond the re-opening of the government to provide meaningful opportunities for public participation.” Particularly given the unwillingness of DOI and BLM political leadership to put the public interest and the Department’s stewardship mandate ahead of the narrow interests of the oil and gas industry, Congress has a vitally important role to play too. We appreciate your sincere interest in these important issues and the strong efforts taken by Chairman Grijalva and other Members of Congress to push for answers and change at Interior. Moving forward, we are hopeful that Congress will exercise its oversight responsibilities to ensure that oil and gas activities undertaken during the shutdown have been properly conducted at DOI, call for investigations into questionable decisions even after the shutdown ends, and help put an end to the culture of industry bias that currently pervades the leadership of the Department of the Interior.

Thank you again for the opportunity to share our views with you today, and I look forward to answering any questions you have.

⁵ Office of the Federal Register, Publication Procedures for Federal Register Documents During a Funding Hiatus, 83 Fed. Reg. 63,540 (Dec. 10, 2018).