

February 27, 2023

The Honorable Deb Haaland
Secretary of the Interior
1849 C Street NW
Washington, D.C. 20240

RE: Recommendations for the Rulemaking to Revise Existing Regulations for the Federal Onshore Oil and Gas Leasing Program

Dear Secretary Haaland:

Thank you for your leadership in recently issuing guidance on the important federal onshore oil and gas program reform provisions that were included in the Inflation Reduction Act (IRA). While new regulations for the federal oil and gas program are not yet in place, the Bureau of Land Management's (BLM's) adherence to the Instruction Memoranda (IMs) issued on November 21, 2022, is critical for ensuring that leasing decisions on federal public lands and minerals are consistent with all applicable laws and do not perpetuate program deficiencies.

We write now to strongly urge the Department of Interior (DOI) to finalize new regulations for the federal onshore oil and gas program. Completing this rulemaking is of paramount importance, both to ensure durable, holistic reform and to avoid discrepancies between codified regulations and the law. Additionally, there are many other needed reforms that DOI has yet to address and should prioritize in its rulemaking, such as strengthening the onshore program's bonding and reclamation framework, limiting participation by speculators and bad actors that result in wasteful leasing of public lands, and allowing for the BLM to more strategically identify lands that may be nominated for leasing.

We, the undersigned organizations, therefore provide the attached appendix to outline essential elements of an updated federal onshore leasing program rule. We call on DOI to act expeditiously to issue its proposed rule to reform the onshore oil and gas leasing and permitting regulations and implement the IRA's onshore leasing-related provisions. The appendix is not an exhaustive list – rather, it includes immediate and tangible suggestions for the rulemaking at hand. We also urge you to utilize all available discretion to pursue additional changes that will move the BLM's stewardship of our public lands and minerals closer in line with the public's interest in protecting and preserving public lands, waters, and wildlife.

Thank you for considering these recommendations and others you may receive that build in further critical reforms designed to ensure DOI and its agencies can steward our shared public lands equitably and sustainably. We look forward to continued engagement on how DOI can better protect our public lands, waters, climate, and wildlife, and better serve our communities.

Sincerely,

Archaeology Southwest

Coalition to Protect America's National Parks

Colorado Fiscal Institute
Colorado Wildlife Federation, Inc.
Earthjustice
Environmental Defense Fund
Hispanic Access Foundation
League of Conservation Voters
Montana Wildlife Federation
National Audubon Society
National Parks Conservation Association
National Wildlife Federation
Natural Resources Defense Council
Nevada Conservation League
Nevada Wildlife Federation
New Mexico Voices for Children
New Mexico Wild

New Mexico Wildlife Federation
Northern Plains Resource Council
Nuestra Tierra Conservation Project
Public Citizen
Rocky Mountain Farmers Union
Rocky Mountain Wild
The Wilderness Society
Trout Unlimited
Upper Missouri Waterkeeper
Western Colorado Alliance
Western Organization of Resource Councils
Wild Montana
Wilderness Workshop
Wyoming Outdoor Council

CC: Tommy Beaudreau, Deputy Secretary, Department of the Interior
Laura Daniel-Davis, Principal Deputy Assistant Secretary – Land and Minerals Management,
Department of the Interior
Steve Feldgus, Deputy Assistant Secretary – Land and Minerals Management,
Department of the Interior
Tracy Stone-Manning, Director, Bureau of Land Management
Nada Culver, Deputy Director of Policy and Programs, Bureau of Land Management
Nicholas Douglas, Assistant Director – Office of Energy, Minerals, and Realty Management,
Bureau of Land Management

APPENDIX

As part of the anticipated rulemaking, we respectfully request that DOI consider, at a minimum, the following recommendations necessary for both refining and improving upon the policy guidance that was issued on November 21, 2022, and securing additional reforms for the federal onshore oil and gas program. Many of these revisions are essential to address existing inconsistencies between the regulations as codified and relevant statutory provisions. In addition, these important policy changes are critical for ensuring that management of our public lands, including for oil and gas leasing, better serves the public interest.

1. Establish a new mandate for the federal onshore oil and gas program: Prior to the signing of the IRA on August 16, 2022, the federal onshore oil and gas leasing program had not been updated in decades. As a result, the BLM had traditionally administered the onshore program as if leasing and development were required,¹ resulting in wasteful and

¹ See, e.g., Testimony from Michael Nedd, Deputy Director, Operations, BLM, to the U.S. House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources (Mar. 12, 2019) (leasing “required by the Mineral Leasing

antiquated leasing practices that harmed communities, taxpayers, and public lands, waters, and wildlife. Over the past two years, we have been encouraged by the current Administration's commitment to reviewing the federal onshore oil and gas leasing system and identifying the system's many longstanding deficiencies.

Recommendation: Now, with several important updates to the onshore program having been secured into law as part of the IRA, it is essential that the Interior Department take the next steps necessary for establishing a new mandate for the reformed leasing system consistent with law. Through its rulemaking, we urge DOI to establish a mandate that affirmatively recognizes that oil and gas leasing remains a discretionary action that should be authorized only when consistent with multiple use, sustained yield, and conservation mandates.

2. Strengthen the onshore program's bonding and reclamation framework: The existing regulatory framework for bonding and reclamation of federal oil and gas wells on public lands is completely inadequate. It allows industry to shift millions of dollars in clean-up costs to taxpayers and fails to protect public lands, waters, and nearby communities from the impacts of aging and abandoned infrastructure.² According to the Government Accountability Office (GAO), the BLM has collected just \$204 million in reclamation bonds from industry,³ even though reclamation costs for all of the wells on federal lands could exceed \$6 billion.⁴ GAO and DOI's Inspector General have both repeatedly advised the BLM to use its existing authority to strengthen oversight of inactive and orphaned wells by increasing bond amounts to reflect the actual costs of reclamation.⁵

Act."); Memorandum from DOI Inspector General, to Robert Abbey, Director, BLM 6 (Dec. 29, 2009) ("Kent Hoffman [Utah's Deputy State Director for Lands and Minerals] and the BLM USO Natural Resource Specialist both commented that BLM is required by law to hold a quarterly lease sale."), available at https://www.doioig.gov/sites/doioig.gov/files/BLM-Lease-Report_508.pdf. Of course, section 17(b)(1)(A) of the Mineral Leasing Act itself references quarterly lease sales only where "eligible lands are available" thus committing this to the discretion of the Secretary.

² Indeed, there is no better example of the industry shifting reclamation costs to the American public than the recently-enacted Section 40601 of the Infrastructure Investment and Jobs Act (IIJA)(Pub.L. 117-58), where in the face of inadequate financial assurances, Congress dedicated over \$4.7 billion in taxpayer funding to reclaim orphaned wells on Federal, State, Tribal and private lands. Unfortunately, that provision did not specifically address minimum bond amounts.

³ GAO, Bureau of Land Management Should Address Risks from Insufficient Bonds to Reclaim Wells (Sept. 2019), available at <https://www.gao.gov/assets/gao-19-615.pdf>.

⁴ Center for Western Priorities, Reclaiming Oil and Gas Wells on Federal Lands: Estimate of Costs (Feb. 2018), available at <https://westernpriorities.org/wp-content/uploads/2018/02/Bonding-Report.pdf>; see also National Wildlife Federation & Public Lands Solutions, Inactive Oil & Gas Wells on Federal Lands & Minerals: Potential Costs and Conflicts (Mar. 2021) (identifying over \$1 billion in reclamation costs for 8,050 long-term inactive wells on federal lands), available at https://publiclandsolutions.org/wp-content/uploads/2021/03/03-17-21_Inactive-Oil-and-Gas-Wells-on-Federal-Lands-and-Minerals-Report.pdf.

⁵ GAO, Bonding Requirements and BLM Expenditures to Reclaim Orphaned Wells (Jan. 2010), available at <https://www.gao.gov/assets/gao-10-245.pdf>; GAO, BLM Needs a Comprehensive Strategy to Better Manage Potential Oil and Gas Well Liability (Feb. 2011), available at <https://www.gao.gov/assets/gao-11-292.pdf>; DOI Office of the Inspector General, BLM Oil and Gas Bonding Procedures (Sept. 2012), available at <https://doioig.opengov.ibmcloud.com/sites/doioig.gov/files/BLM%20Oil%20and%20Gas%20Bonding%20Procedures.pdf>; DOI Office of the Inspector General, Bureau of Land Management's Idle Well Program (Jan. 2018), available at https://www.doioig.gov/sites/doioig.gov/files/FinalEvaluation_BLMIdleWells_011718.pdf; GAO, Bureau of Land Management Needs to Improve Its Data and Oversight of Potential Liabilities (May 2018), available at

Recommendation: It is essential that DOI act to increase bonding requirements to reflect the full costs required to plug and adequately reclaim modern wells. DOI's inclusion of bonding reform in its rulemaking remains critical for preventing the current orphaned well crisis from expanding in the future and for ensuring that oil and gas companies – and not taxpayers – are held responsible for the total cost of adequately plugging and fully reclaiming well sites. The BLM should amend its onshore oil and gas regulations to eliminate or minimize the use of blanket bonds and require that bonds for any wells that are drilled on current and future federal leases be based on the full costs of plugging, abandonment, and reclamation. Further, the BLM should issue new policies that streamline the Record Title holder process, increase oversight of inactive wells, and limit the ability of operators to indefinitely delay final reclamation.

3. Limit participation by speculators and bad actors that result in wasteful leasing of public lands: The BLM has broad authority to limit participation in the leasing process to “responsible qualified” bidders and cannot issue leases to companies that are violating “reclamation requirements and other standards . . . for any prior lease. . . .”⁶ Yet, the agency has historically done little to scrutinize the compliance records or development intentions and capabilities of participants in the oil and gas leasing process, which allows speculators and bad actors to obtain new leases with little to no accountability. As a result, the BLM routinely issues leases to companies that bear responsibility for inactive and idled wells that have not been promptly plugged and reclaimed on federal public lands. Additionally, the BLM consistently leases millions of acres of public resources to these private companies that are not put into production. As of FY22, oil and gas companies hold nearly 24 million acres of public lands leases, almost half of which are lying idle.⁷

Recommendation: It is critical for the BLM to ensure that industry actors with a history of violating the terms of federal leases and permits, including reclamation requirements and diligent development practices, be prevented from nominating, bidding on, or purchasing federal leases and acquiring federal drilling permits. We were encouraged to see the agency take initial steps to prevent the most egregious bad actors from receiving federal oil and gas leases with the issuance of IM 2022-042, *Guidance on Reviewing the Federal Exclusion List and Verifying Eligibility* on July 8, 2022. We urge the BLM to take further action necessary to limit or prevent participation from those companies and individuals. These parties should also be identified as not being “responsible qualified bidders.” Criteria for identifying such companies and individuals should include, at a minimum: a history of failing to make timely rental payments, operation of a significant number of inactive wells and/or leases, violation of federal or state reclamation requirements on other leases held under Record Title, operation practices that are in violation of federal or state air or water quality standards,

<https://www.gao.gov/assets/gao-18-250.pdf>; GAO, Bureau of Land Management Should Address Risks from Insufficient Bonds to Reclaim Wells (Sept. 2019).

⁶ 30 U.S.C. § 226(b)(1)(A), (g).

⁷ BLM, Oil and Gas Statistics: Acreage in Effect (Table 2) & Acreage of Producing Leases (Table 6), available at <https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics>.

and a lack of the technical or economic resources to diligently explore for and develop oil and gas resources. Additionally, to ensure accountability and transparency, the BLM should create a public registry of these identified bad actors.

4. Allow the BLM to strategically identify lands for nomination for leasing by switching to a “formal” nomination process: The BLM has existing regulatory authority to employ a “formal” lease nominations process, which would allow the BLM to strategically identify lands, if any, for nomination.⁸ Under the “informal” nominations process, which has been used since the passage of the Federal Onshore Oil and Gas Leasing Reform Act of 1987 [30 U.S.C. 226], anyone can nominate any parcel of public land for leasing, without any consideration of the land’s development potential and impacts to surrounding communities and other resources. As a consequence, over 106 million acres of public lands were nominated between 2012 and 2021,⁹ while just 10.9 million acres of leases received bids over that same period.¹⁰ With every nominated parcel having to be reviewed by BLM personnel, however, this means that BLM staff at local, state, and national levels directed significant time and resources towards lease sales where only ten percent of nominated parcels were actually leased, rather than more judiciously managing for other uses. This situation clearly underscores the speculative nature of most lease nominations and the inefficiency of the “informal” nominations process.

Recommendation: The IRA brought an important update to the lease nominations process with the new requirement of a \$5 per-acre filing fee that must be submitted with any Expression of Interest (EOI). Following this change, DOI has also stated in IM 2023-008, *Impacts of the Inflation Reduction Act of 2022 (P. L. 117-169) to the Oil and Natural Gas Leasing Program*, that the BLM will no longer accept anonymous lease nomination submissions. However, with 90 percent of federal public lands currently open to leasing¹¹ and with continued federal onshore oil and gas leasing anticipated under the provisions of the IRA, it is essential that DOI take additional steps to limit speculation in the nominations process and ensure that public lands deemed eligible and available for leasing serve the public interest. Active steps to reduce speculative nominations could also help to limit the participation of bad actors, as discussed in more detail in a previous section of these recommendations.

The Interior Secretary maintains broad discretion over the determination of public lands as being “eligible” and “available” for oil and gas leasing. In IM 2023-010, *Oil and Gas Leasing – Land Use Planning and Lease Parcel Reviews*, the BLM reiterates that the agency reserves the right to employ the formal lease nomination process already outlined in existing BLM

⁸ 43 C.F.R. § 3120.3-1.

⁹ BLM, Expressions of Interest By Calendar Year, available at <https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics>.

¹⁰ BLM, Acreage Offered at Competitive Lease Sale Auctions Since January 1, 2009, available at <https://www.blm.gov/programs-energy-and-minerals-oil-and-gas-oil-and-gas-statistics>.

¹¹ The Wilderness Society (TWS), Open for Business (and not much else): How public lands management favors the oil and gas industry (2016), available at <https://www.wilderness.org/articles/article/open-business-and-not-much-else-analysis-shows-oil-and-gas-leasing-out-whack-blm-lands>.

regulations and federal statutes. Through its rulemaking, DOI should therefore end the practice of allowing lease nominations to be submitted for any parcel of public land on a rolling basis and instead require that lease nominations (which may include EOIs) be submitted only for those lands that the agency identifies as being eligible and available for inclusion in a particular oil and gas lease sale, based on the principle of multiple use, sustained yield, conservation mandates, and taxpayer fairness goals.

If DOI continues to employ its “informal” lease nominations process, it is essential that the agency establish by regulation that the agency will first publish a List of Lands Available for Competitive Nominations before accepting EOIs; or, at minimum, consider only nominations that have been submitted since the signing of the IRA on August 16, 2022. If the evaluation of additional public land parcels is needed to be in compliance with the provision in the IRA that tethers the issuance of wind and solar rights of way to a certain degree of oil and gas leasing, DOI should ensure that BLM Offices evaluate only those lease nominations that were not submitted anonymously. With the IRA effectively having eliminated the speculative practice of submitting EOIs anonymously with the requirement of a \$5 per-acre filing fee, it is essential for the BLM to avoid evaluating such EOIs for upcoming and future lease sales so as to not employ a practice that the new law prohibits. In addition, BLM Offices should be required to demonstrate how the inclusion of parcels nominated prior to August 16, 2022, in a particular lease sale is in the best interest of the public. Lastly, the BLM should regulatorily implement a public verification process to ensure that the companies or individuals that originally nominated the parcels have a continuing interest in the parcels being made available for lease and are qualified to bid on federal onshore oil and gas leases.

5. Ensure that nominated lease parcels are adequately screened against criteria that are designed to eliminate conflicts with other uses and resources and maximize taxpayer returns: Historically, the BLM has not routinely “screened” nominated lease parcels against such criteria, even though both the Federal Land Policy and Management Act [FLPMA 43 U.S.C. §1701 et seq] and the Mineral Leasing Act of 1920 [30 U.S.C. § 181 et seq] authorize the use of screens, “to prevent unnecessary or undue degradation” and “for the safeguarding of the public welfare.”¹² We are encouraged by the leasing changes that DOI announced last year, notably the use of deferral criteria in the June, 2022 oil and gas lease sales to determine which parcels might be offered for lease, and the new requirement of lease sale preference criteria that were outlined in IM 2023-007, *Evaluating Competitive Oil and Gas Lease Sale Parcels for Future Lease Sales*.

Recommendation: Despite the IRA now tethering federal wind and solar development to a certain degree of continued federal onshore oil and gas leasing over the next nine years, the Interior Secretary still maintains, as stated above, broad discretion over the lands that may

¹² 43 U.S.C. § 1732(b); 30 U.S.C. § 187.

be made “eligible” and “available” for leasing.¹³ It is, therefore, critical that DOI establish a robust decision-making framework to determine which public lands may be offered for oil and gas leasing, based on conservation and taxpayer fairness goals. In its rulemaking, DOI should amend its leasing regulations to require the use of nationwide and state-specific screens - at the outset of the lease sale scoping process - to guide the selection of lands that may be offered for leasing and, after offering any lands in a lease sale, to guide which lands to actually lease. These screens should be reevaluated and revised on an ongoing basis to ensure the use of the most current and accurate data and information.

While the framework that the BLM outlined in IM 2023-007 includes some of the criteria that should rightfully be considered in making federal onshore leasing decisions, we are concerned with the discretion that is left to individual BLM Offices to use the criteria. We are concerned that these offices may fail to actually defer parcels from leasing that are in conflict with other important public lands values. For example, in the Draft Environmental Assessments that have been released for both the BLM New Mexico and BLM Wyoming Second Quarter 2023 Federal Oil and Gas Lease Sales, parcels determined to have “low preference” for leasing have still been moved forward for inclusion in each of the upcoming lease sales. The BLM states that these decisions have been made to “further the intent” of the IRA’s tethering requirement,¹⁴ but the offering of these specific parcels is not stated as being necessary for the agency to issue a right-of-way for wind or solar development.

Given DOI’s statutory obligations and the ambiguity created by the current Lease Parcel Preference Criteria framework outlined in IM 2023-007, we encourage DOI to establish in regulation that lands found to conflict with any of the established screening criteria are unavailable for leasing and therefore are to be excluded from a lease sale. If DOI finds that it must offer for lease at least one or more parcels to allow for the agency to issue wind or solar rights-of-way, DOI should offer the minimum amount of acreage necessary to comply with the IRA’s tethering provisions. In this instance, BLM Offices should be required to clearly demonstrate how the inclusion of these parcels in a particular lease sale is in the best interest of the public, what information the agency has considered in taking a hard look at the impacts of leasing those parcels, and how the offering of those specific parcels is required in order for the BLM to issue a right-of-way for wind or solar development.

¹³ 30 U.S.C. § 226(a), (b)(1)(A); *see also Udall v. Tallman*, 380 U.S. 1, 4 (1965) (“The Mineral Leasing Act . . . left the Secretary discretion to refuse to issue any lease at all on a given tract.”); *W. Energy Alliance v. Salazar*, 709 F.3d 1040, 1044 (10th Cir. 2013) (“The MLA, as amended by the Reform Act of 1987, continues to vest the Secretary with considerable discretion to determine which lands will be leased.”); *McDonald v. Clark*, 771 F.2d 460, 463 (10th Cir. 1985) (“It is clear that the Secretary has broad discretion in this area. While the statute gives the Secretary the authority to lease government lands under oil and gas leases, this power is discretionary rather than mandatory.”); *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1230 (9th Cir. 1988) (“We have held that the [MLA] ‘allows the Secretary to lease such lands, but does not require him to do so. . . . The Secretary has discretion to refuse to issue any lease at all on a given tract.’ Thus refusing to issue the Deep Creek [oil and gas] leases . . . would constitute a legitimate exercise of the discretion granted to the Interior Secretary under that statute.”).

¹⁴ BLM New Mexico, Draft Environmental Assessment for 2023 Second Quarter Competitive Lease Sale at 145, *available at* https://eplanning.blm.gov/public_projects/2021699/200534287/20071939/250078121/EA_PDO_May%202023_Lease_Sale_PublicDraft_508_rev.pdf.

6. Guarantee robust public participation and Tribal consultation: Public participation and Tribal consultation are essential and required components of the decision-making process for oil and gas activity on public lands. Following the Trump administration’s attempt to make public participation optional for leasing decisions, a federal court ruled that “the public involvement requirements of FLPMA and NEPA cannot be set aside in the name of expediting oil and gas lease sales.”¹⁵ We appreciate how seriously the Interior Department has taken the importance of public participation in the lease sale process over the past two years, notably with the issuance of IM 2023-010, *Oil and Gas Leasing – Land Use Planning and Lease Sale Parcel Reviews*, in which the BLM has stated that a minimum 30-day scoping period, a minimum 30-day NEPA document review and comment period, and 30-day protest period are all required components of the lease sale public participation process.

Recommendation: As DOI noted in the agency’s November, 2021, *Report on the Federal Oil and Gas Leasing Program*, the BLM’s processes and practices – specifically with regard to “recent efforts to restrict or eliminate public notice and comment periods” – have “not always been adequate, fair, or equitable, which thus perpetuates environmental injustice.” Especially with oil and gas leasing expected to continue over the course of the next nine years, it is essential for the BLM to make robust public participation and meaningful Tribal consultation mandatory – not optional – components of the decision-making process for every lease sale. In its upcoming rulemaking, we urge the Interior Department to amend its regulations to require a minimum time period for public participation in federal oil and gas lease sales of more than 90 days, including at least 30 days for the public to review and comment on the list of public land parcels being scoped for leasing, at least 30 days for the public to review and comment on draft NEPA compliance documents, and at least 30 days for the public to review and protest proposed lease parcels.

7. Ensure that the onshore program’s fiscal framework provides a fair return to taxpayers: Before the signing of the IRA into law, the onshore program’s fiscal framework had remained outdated for decades, which resulted in the onshore royalty rate, rental rates, and minimum lease bid failing to provide a fair return to taxpayers for the use and development of publicly owned resources. This also failed to discourage speculators from hoarding undeveloped leases.¹⁶ In fact, although the Interior Secretary has always been vested with the discretion to require a higher royalty rate, rental rate, and minimum lease bid for federal onshore oil and gas leases, that authority was not acted upon until just last year, when DOI announced that an increased royalty rate of 18.75% would be required for competitive leases sold in the June, 2022 lease sales.

¹⁵ *W. Watersheds Project v. Zinke*, 441 F. Supp. 3d 1042, 1076 (D. Idaho 2020).

¹⁶ The Wilderness Society, Land hoarders: Oil and gas companies are stockpiling your public lands (December 2015), available at <https://www.wilderness.org/articles/blog/land-hoarders-oil-and-gas-companies-are-stockpiling-your-public-lands>.

Recommendation: The IRA's long-overdue increases to the federal onshore oil and gas program's fiscal rates and terms will help to ensure fairer returns to taxpayers for the leasing and drilling that occurs on public lands. However, it is essential that the Interior Department take additional measures necessary to protect a fair return to taxpayers in the future. To accomplish this, DOI's rulemaking should require that specified rates and fees higher than those included in the IRA will go into effect starting on August 16, 2032. The regulations should also direct that regular reviews and updates to the federal onshore royalty rate, rental rates, and minimum lease bid take place at defined intervals of time thereafter, to ensure that they are regularly increased to align with larger economic trends. Federal rules that affirmatively require, rather than permit, regular reviews and updates of these fiscal rates and terms will help provide a continued adequate return to taxpayers as well as help to ensure the taking into consideration of the latest science and societal goals with regard to oil and gas leasing and development on federal public lands.

8. Ensure that noncompetitive leasing is fully eliminated and expressly prohibited:

For decades, noncompetitive leasing hindered the federal oil and gas program, resulting in the issuance of public land leases that were rarely developed yet still burdened other uses of such lands by limiting land use planning options and discouraging conservation designations.¹⁷ For this reason, we celebrate the IRA's elimination of this wasteful and speculative leasing practice. We thank the BLM for affirming in IM 2023-008, *Impacts of the Inflation Reduction Act of 2022 (P. L. 117-169) to the Oil and Natural Gas Leasing Program*, that the agency will reject all pending noncompetitive lease applications and no longer issue noncompetitive leases or accept noncompetitive offers.

Recommendation: Even with noncompetitive leasing already eliminated by statute, it is still crucial that the BLM update its leasing regulations to reflect the requirement that all federal oil and gas leases are to be issued only if purchased at competitive auction. Including the elimination of noncompetitive leasing as part of DOI's rulemaking is essential for ensuring that no BLM Office issues a noncompetitive oil and gas lease in error. We have already observed in the *Draft Environmental Assessment for the BLM Wyoming Second Quarter 2023 Federal Oil and Gas Lease Sale* that the BLM incorrectly states that, "If parcels do not receive the minimum competitive bid, they may be leased later as noncompetitive leases that do not generate bonus bids."¹⁸ We urge the BLM to update its regulations to clearly express that the BLM will no longer make any public lands available for noncompetitive leasing and that the agency will no longer accept any applications for noncompetitive oil and gas leases that are received.

9. Strengthen oversight of lease suspensions: There are hundreds of leases that have been suspended for over a decade and that are not generating any revenue for taxpayers. In

¹⁷ The Wilderness Society, No Exit: Fixing the BLM's Indiscriminate Energy Leasing (June 2016), available at <https://www.wilderness.org/sites/default/files/media/file/Report-No%20Exit-Fixing%20BLM%20Leasing.pdf>.

¹⁸ BLM Wyoming, Draft Environmental Assessment for 2023 Second Quarter Competitive Lease Sale at 99, available at https://eplanning.blm.gov/public_projects/2021772/200534737/20071765/250077947/WY%202023-06%20Draft%20Lease%20Sale%20EA.pdf.

many cases, the original basis for these suspensions has long since gone away, but leaseholders continue to use them to postpone drilling and production deadlines and avoid paying rentals and royalties to the federal treasury. These suspended leases also inhibit multiple-use management by saddling public lands with long-term, idle leases. Lease suspensions have been the subject of several GAO reports, Congressional inquiries and hearings, and other reports and studies which have all found that the BLM's lease suspensions process is broken and must be updated and improved to curb speculation and protect the public interest.

Recommendation: While IM 2023-012, *Suspensions of Operations and/or Production*, provided some much needed guidance on the administration of lease suspensions, the BLM's procedures and policies for reviewing and approving (or denying) requests for lease suspensions of operations and production have not been significantly updated in more than three decades. Through its rulemaking, DOI should ensure safeguards are in place that eliminate operators' use of suspensions to hold leases without payment of rentals and royalties, so as to limit situations where lease suspensions are not in the public's interest or in the interest of conservation. The agency should also provide meaningful opportunities for the public to engage in suspension approvals that relieve or eliminate leaseholders' obligation to pay rentals and royalties. Further, DOI should establish criteria to govern both the evaluation of lease suspension applications and the issuing of lease suspensions, as well as require BLM Offices to demonstrate how a suspension is in fact in the interest of conservation of natural resources and how the lessee has exercised due care and diligence. When there is no ongoing environmental analysis that would warrant any suspension of operation and production, and the timing limitation (or other stipulations) that would otherwise be in effect is no longer applicable or relevant, BLM should not maintain leases as suspensions.

10. Ensure policies governing the oil and gas unitization process protect the public interest and do not lead to speculation: Regulations and guidance governing the approval and management of federal oil and gas units are outdated and no longer adequately achieve the goals of the federal oil and gas program. In some cases, guidance related to unitization exists only in draft form and has never been finalized.¹⁹ Current policies regulating the unitization process fail to ensure proper conservation of natural resources,²⁰ fail to protect the public interest, and fail to ensure diligent development of federal oil and gas resources as required by the Mineral Leasing Act.

¹⁹ BLM's regulations and guidance concerning units are contained in 43 C.F.R. § 3180, Draft BLM Manual § 3180, and Draft BLM Handbook H-3180-1. The regulations, like the MLA itself, require that units advance the public interest and conservation of natural resources. See 43 C.F.R. § 3183.4(a).

²⁰ As numerous cases make clear, the term "conservation of natural resources" as used in the MLA is construed broadly to encompass all environmental values. See, e.g., *Hoyle v. Babbitt*, 129 F.3d 1377, 1380 (10th Cir. 1997) ("conservation of natural resources" in Mineral Leasing Act includes avoidance of environmental harms); *CopperValley Machine Works, Inc. v. Andrus*, 653 F.2d 595, 600-02 (D.C. Cir. 1981) (same).

Recommendation: As a part of its rulemaking, DOI should make necessary changes to the policies governing the oil and gas unitization process to ensure the process effectively achieves the goals of unitization. DOI should establish by rule that BLM Offices must consider impacts to sensitive public lands and other environmental harms in assessing whether a unit is in the public interest, and the unitization process should include meaningful opportunities for public participation. Further, DOI should make clear the agency's authority to deny unit proposals that are not in the public interest and do not properly conserve natural resources.