September 22, 2023

Via Regulations.gov

Tracy Stone-Manning, Director (630)
U.S. Department of the Interior
Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240

Re: Oil and Natural Gas Associations' Comments on BLM's Proposed Rule, Fluid Mineral Leases and Leasing Process, 88 Fed. Reg. 47,562 (July 24, 2023), RIN 1004-AE80, Docket ID: BLM-2023-0005-0003 ("Proposed Rule")

Dear Ms. Stone-Manning:

The American Petroleum Institute ("API"), Alaska Oil and Gas Association ("AOGA"), American Exploration and Production Council ("AXPC"), Colorado Oil & Gas Association ("COGA"), West Slope Colorado Oil and Gas Association ("WSCOGA"), Independent Petroleum Association of America ("IPAA"), Montana Petroleum Association ("MPA"), New

Mexico Oil and Gas Association ("NMOGA"), North Dakota Petroleum Council ("NDPC"), Petroleum Alliance of Oklahoma, Permian Basin Petroleum Association ("PBPA"), Utah Petroleum Association ("UPA"), Western States Petroleum Alliance ("WSPA"), and Petroleum Alliance of Wyoming ("PAW") (collectively "the Associations") appreciate the opportunity to submit comments on the above-referenced Bureau of Land Management ("BLM") Proposed Rule.

The Associations support BLM's goal of ensuring fair returns for the American public from activities on federal lands, but we are concerned that BLM's approach with this rule overreaches its statutory authority and could have a damaging impact on U.S. energy security and the economy. First, these changes disregard Congress' and multiple courts' rejection of the Administration's recent attempts to dramatically curtail federal oil and natural gas leases.[1] Second, these changes reject existing robust planning and environmental review processes. Instead, they enhance BLM discretion to constrain onshore access—both procedurally and on a case-by-case basis. Third, these changes may compromise the Administration's environmental goals by creating greater dependence on foreign sources for American energy needs. While the demand for oil and natural gas persists—which the Administration has repeatedly acknowledged will be true for the foreseeable future—it is often preferable to have that production occurring domestically and on federally-managed lands rather than from other locations or energy sources that have a more significant environmental footprint. Therefore, BLM should abandon several aspects of this Proposed Rule, or at a minimum, substantially revise and re-propose them to reflect functional and effective regulations prior to issuing any final rule.

THE ASSOCIATIONS' INTERESTS

API is the only national trade association representing all facets of the oil and natural gas industry, which supports more than 10 million U.S. jobs and nearly 8 percent of the U.S. economy. API's nearly 600 members include large integrated companies, as well as exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms. They provide most of the nation's energy and are backed by a growing grassroots movement of Americans. Many API members have a keen interest in the Proposed Rule because they currently hold interests in or operate federal onshore oil and gas leases throughout the United States.

AOGA is a non-profit trade association located in Anchorage, Alaska. AOGA's member companies account for the majority of oil and gas exploration, development, production, transportation, refining, and marketing activities in Alaska. AOGA and its members are longstanding supporters of federal lands use, conservation, management, and research in the Arctic.

AXPC is a national trade association representing 34 leading independent oil and natural gas exploration and production companies in the United States. AXPC companies support millions of Americans in high-paying jobs and invest a wealth of resources in our communities.

[1] *See, e.g.*, Inflation Reduction Act of 2022, Pub. Law No. 117-169; *State of North Dakota v. U.S. Dep't of Interior, et al.*, No, 21-148, ECF No. 98 (D.N.D. Mar. 27, 2023) (slip. op.); *Louisiana v. Biden*, 622 F. Supp. 3d 267 (W.D. La. 2022).

Dedicated to safety, stewardship, and technological advancement, AXPC's members strive to deliver affordable, reliable energy to consumers while positively impacting the economy and the communities in which we live and operate. As part of this mission, AXPC members understand and promote the importance of advancing positive environmental and public-welfare outcomes and responsible stewardship of the nation's natural resources. AXPC's members are committed to being good stewards of federal and Indian resources and operating in compliance with all federal requirements. AXPC member companies produce more than half of U.S. onshore production each year.

COGA is a non-profit trade organization that represents over 200 companies throughout the state of Colorado. For nearly 40 years, COGA has sought to create a thriving, innovative and respected oil and natural gas industry in Colorado that embodies the values of our communities, prioritizes the protection of our environment, and provides the natural resources that advance our society. COGA provides a positive, unified, and proactive voice for the oil and natural gas industry in Colorado.

As a membership association representing oil and gas exploration, production, and midstream companies, **WSCOGA** members will be directly impacted by the results of this rulemaking and has a significant interest in ensuring clarity, consistency, and fairness in the further development of oil and gas regulations. WSCOGA provides a unified political and regulatory voice for the oil and natural gas industry in the Piceance Basin and the rest of Western Colorado. WSCOGA's represents over 90 member companies and its mission is to produce natural gas products for the benefit of society.

IPAA is a national upstream trade association representing thousands of independent oil and natural gas producers and service companies across the United States. Independent producers develop 91 percent of the nation's oil and natural gas wells. These companies account for 83 percent of America's oil production, 90 percent of its natural gas and natural gas liquids (NGL) production, and support over 4.5 million American jobs.

MPA is a Montana-based trade association representing over 150 member-companies involved in all aspects of the oil and natural gas industry. MPA's members include producers, refiners, suppliers, pipeline operators, transporters, and mineral owners as well as service and supply companies that support all segments of the industry and employ a substantial number of hard-working Montanans.

NMOGA is a coalition of oil and natural gas companies, individuals, and stakeholders dedicated to promoting the safe and environmentally responsible development of oil and natural gas resources in New Mexico. Representing over 1,000 members, NMOGA works with elected officials, community leaders, industry experts, and the general public, to advocate for responsible oil and natural gas policies and increase public understanding of industry operations and contributions to the state. New Mexico's oil and natural gas activity is concentrated in two areas: the Permian Basin in the southeast and the San Juan Basin in the northwest. New Mexico is one of the United States' leading producers, ranking 2nd in annual oil production and 9th in annual natural gas production. New Mexico is attracting interest and attention from around the globe, as the Permian Basin undergoes a resurgence of production and investment activity.

Established in 1952, **NDPC** is the trade association and primary voice for the oil and gas industry in North Dakota. NDPC represents more than 550 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline development and operation, transportation, mineral leasing, consulting, legal work, and oil field service activities in North Dakota, South Dakota, and the Rocky Mountain Region. The mission of NDPC is to promote opportunities for open discussion, lawful interchange of information, and education concerning the petroleum industry; to monitor and influence legislative and regulatory activities on the state and national level; and to accumulate and disseminate information concerning the petroleum industry to foster the best interests of the public and industry.

The **Petroleum Alliance of Oklahoma** represents more than 1,400 individuals and member companies and their tens of thousands of employees in the upstream, midstream, and downstream sectors and ventures ranging from small, family-owned businesses to large, publicly traded corporations. Its members produce, transport, process and refine the bulk of Oklahoma's crude oil and natural gas.

PBPA is the largest regional oil and gas association in the United States. We represent the men and women who work in the oil and gas industry in the Permian Basin of West Texas and southeastern New Mexico. The Permian Basin is the largest inland oil and gas reservoir and the largest oil and gas producing region in the world. PBPA consists of the largest producers as well as the smallest operators in the Permian Basin. Part of PBPA's mission is to promote environmentally conscious operations and sustainable economic profitability among all our members, large and small.

UPA is a statewide oil and gas trade association established in 1958 representing companies involved in all aspects of Utah's oil and gas industry. UPA members range from independent producers to midstream and service providers, to major oil and natural gas companies widely recognized as industry leaders responsible for driving technology advancement resulting in environmental and efficiency gains. UPA members operate extensively on federal lands and have a long history of stewardship and conservation.

WSPA is a non-profit trade association that represents companies that account for the bulk of petroleum exploration, production, refining, transportation and marketing in the five western states of Arizona, California, Nevada, Oregon, and Washington. WSPA members operate in upstream, midstream, and downstream segments of the oil and natural gas industry.

PAW represents companies involved in all aspects of responsible oil and natural gas development in Wyoming, including upstream production, oilfield services, midstream processing, pipeline transportation and essential work such as legal services, accounting, consulting and more. PAW advocates for oil and gas development that supports sustainable production of Wyoming's abundant resources; fosters mutually beneficial relationships with Wyoming's landowners, businesses, and communities; and upholds the values of science-based, environmental stewardship. Eighty-five percent of the oil and gas companies operating in Wyoming are classified as small businesses.

GENERAL COMMENTS

The Associations generally support BLM's effort to update and clarify the federal onshore oil and natural gas leasing and lease management regulations. The Associations support the proposed changes that implement the Inflation Reduction Act ("IRA") as well as those that reduce and streamline filing and recordkeeping requirements. However, the Associations have multiple concerns with the rule. Among other shortcomings, it contravenes BLM's statutory authority and does not reflect the foundational concepts of the Federal Land Policy and Management Act ("FLPMA") and BLM's mission. The Associations' comments and concerns about the Proposed Rule reflect certain foundational concepts that should shape any BLM regulation:

1. Onshore federal fluid minerals should remain a viable and attractive investment option with a balanced, predictable, and equitable leasing and lease management process.

2. The Associations disagree that the existing regulations governing BLM's discretionary functions are inadequate to protect the fiscal interests of the American public, which include not only direct proceeds from leasing, but also affordable, abundant, domestic energy that lowers prices at the pump and broadens foreign policy options.

3. The Associations disagree that the existing regulations fail to promote leasing practices that are consistent with diligent development requirements and multiple-use and sustained-yield principles. BLM should not limit areas available for leasing by directing leasing to what BLM subjectively considers "appropriate" locations, either under its informal expression of interest ("EOI") process or its proposed formal nomination process. Regional planning, National Environmental Policy Act ("NEPA") reviews, and other processes already conduct the requisite balancing in identifying suitable areas for leasing.

4. BLM cannot adopt new leasing procedures that sidestep or dilute its statutory obligation to conduct quarterly lease sales in each state.

5. BLM cannot adopt regulatory changes that unduly constrain opportunities for development and operations on already-issued leases or that breach or otherwise unduly impair rights conferred under those leases.

6. BLM cannot confer undue authority on other Department of the Interior ("DOI") bureaus, and other surface managing agencies, to constrain leasing and development of oil and natural gas leases on federally-managed lands.

7. BLM should not impose undue bonding and additional financial burdens on the oil and natural gas industry beyond new statutory requirements under the IRA.

8. BLM should not "streamline" disqualification of entities from existing or new leases, akin to suspension and debarment but without corresponding due process.

The likely impacts of this Proposed Rule appear to exacerbate challenges created by other recent proposals and efforts by BLM and other federal agencies, thereby decreasing domestic energy supplies and undermining energy security. The Associations refer BLM to, and incorporate by reference, their submitted comments on those regulatory proposals.[2]

A. Federal Onshore Oil and Natural Gas Leasing Is Critical to the United States' Global Leadership in Energy Production.

The U.S. is a global leader in both emissions reductions[3] and energy production.[4] Oil and natural gas exploration and development on federal lands and waters provide enormous benefits to our nation and its citizens—for our economy, our environment, and our national security. Because of the vital importance of energy production on public lands, overreaching land management regulations place our domestic energy supply at risk. Reduced production on federal lands also harms local communities that depend upon the jobs and revenues generated by lawful energy development. To the extent BLM's Proposed Rule reduces opportunities for oil and gas development on public lands, the U.S. and its allies will likely import more oil and natural gas from countries that may have lower environmental standards and could revert to coal for power generation, resulting in higher emissions domestically and internationally—precisely the opposite of the Administration's overriding policy objectives.[5]

The U.S. oil and natural gas industry produces and delivers nearly 70% of the energy our country uses. Our nation and the world will continue to need reliable, affordable oil and natural gas - energy that will serve as the foundation for broader opportunities for decades to come. Oil and natural gas production on public lands is a crucial part of the nation's program for energy security and economic strength. Likewise, the oil and natural gas industry is essential to supporting a modern standard of living by providing communities with access to affordable, reliable, and cleaner energy. The industry's top priority remains public health and safety, and our member companies have well-established policies in place for proactive community engagement and feedback aimed at fostering a culture of trust, inclusivity, and transparency.

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[2] *See, e.g.*, BLM, Waste Prevention, Production Subject to Royalties, and Resource Conservation, 87 Fed. Reg. 73,588 (Nov. 30, 2022); BLM, Conservation and Landscape Health Proposed Rule, 88 Fed. Reg. 19,583 (April 3, 2023); Council on Environmental Quality ("CEQ"), National Environmental Policy Act Implementing Regulations Revisions Phase 2, 88 Fed. Reg. 49,924 (July 31, 2023).

[3] According to EPA, "Between 1970 and 2020, the combined emissions of the six common pollutants (PM2.5 and PM10, SO2, NOx, VOCs, CO and Pb) dropped by 78 percent. This progress occurred while U.S. economic indicators remain strong." EPA, *Progress Cleaning the Air and Improving People's Health* (May 1, 2023), https://www.epa.gov/clean-air-act-overview/progress-cleaning-air-and-improving-peoples-health#pollution.

[4] According to the Energy Information Administration, the United States is ranked first globally in total energy production from both natural gas and from petroleum and other liquids. U.S. Energy Info. Admin., *Total Energy Production from Natural Gas*, https://www.eia.gov/international/rankings/world?.pa=287&u=2&f=A&v=none&y=01%2F01%2F2021.

[5] The International Energy Agency reports that coal consumption rose 3.3% in 2022. https://www.iea.org/news/global-coal-demand-set-to-remain-at-record-levels-in-2023.

The Associations and their members believe that all people should be treated fairly, regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. In this regard, it is crucial to bear in mind that oil and natural gas development on federal lands promotes investment in rural areas where state and local economies depend on the industry for jobs, continued economic prosperity, and revenue generated from state severance taxes and local taxes generated from these projects.

Just as importantly, the Associations' members support the health and sustainability of public lands and resources. The oil and natural gas industry employs technology and strategies as part of its support for environmental stewardship—taking measures to prioritize protecting public health and the environment, while working to deliver plentiful energy. Measures for the protection of species, habitats, and groundwater are all part of the Associations' members' approach to oil and natural gas development, and projects are designed, managed, and operated to identify and address potential environmental impacts associated with activities ranging from initial exploration to eventual closure. The Associations' members make unparalleled efforts to improve the compatibility of their operations with the environment while responsibly and economically developing energy resources and supplying high quality products and services to consumers. Indeed, across these varied operations, the Associations' members are working continually to minimize and reduce impacts to air, water, and land resources, including to protected species and habitats. At the same time, the Associations' members implement and improve innovative practices and technology while continuing to bolster research that looks for new ways to further enhance environmental performance.

In addition, the Associations and their members monitor, compile and report emissions data per government regulations and on a voluntary basis as appropriate, conduct studies with academic institutions, and work closely with state and federal regulators. This type of collaboration has resulted in improved habitat and species health. For example, modern energy production methods and technologies have resulted in a 70% reduction in surface disturbance when compared to historical practices.[6] The industry also works with many stakeholder groups to understand wildlife migration patterns and routes in areas where operations occur. In particular, oil and natural gas production on BLM lands provides immense value for the nation. BLM manages approximately 245 million acres of surface estate on public lands in the United States (more than any other federal agency).[7] BLM also manages the federal government's onshore subsurface mineral estate (approximately 700 million acres).[8]

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[6] *See* David H. Applegate & Nicholas Owens, *Oil and Gas Impacts on Wyoming's Sagegrouse: Summarizing the Past and Predicting the Foreseeable Future*, 8 HUMAN–WILDLIFE INTERACTIONS 284, 289–90 (2014), https://www.researchgate.net/publication/267765279_Oil_and_Gas_Impacts_on_Wyoming%27s_Sagegrouse_Summarizing_the_Past_and_Predicting_the_Foreseeable_Future.

[7] The White House, *Department of the Interior*, *in* THE BUDGET FOR FISCAL YEAR 2024 (2023), https://www.whitehouse.gov/wp-content/uploads/2023/03/int_fy2024.pdf.

[8] BLM, *About the BLM Oil and Gas Program*, https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/about#:~:text=The%20BLM%20manages%20the%20Federal,benefit%20of%20the%20American%20public.

The Congressional Research Service ("CRS") recently explained the enormous importance of oil and natural production on federal lands to the federal government, the states, local communities, and the nation as a whole.[9] Production of oil and natural gas from onshore federal lands represents almost 10% of total domestic production of crude oil and natural gas. CRS found that total revenues from oil and natural gas leases on onshore federal lands exceeded $4.2 billion in fiscal year 2019. This substantial return for the taxpayer is comprised of royalty and interest payments, bonuses, rentals, and other sources. In turn, these funds were disbursed to states (more than $2 billion), the Reclamation Fund (more than $1.5 billion), and the U.S. Treasury ($444 million), among other recipients.[10]

More recent data published by DOI's Office of Natural Resources Revenue ("ONRR") shows that, for fiscal year 2022, federal leases generated more than $7.6 billion in revenues (from bonus bids, royalties, rents, and other sources).[11] For fiscal year 2022, ONRR disbursed over $4.3 billion in funds collected from leasing activities on federal lands and waters to 33 states.[12] As stated by CRS, "[f]ederal revenues from oil and natural gas leases provide income streams that support a range of federal and state policies and programs."

Relevant benefits also extend beyond direct proceeds from BLM onshore oil and gas leases. The Associations refer BLM to and incorporate by reference the attached analysis of "Economic Benefits of Onshore Federal Oil and Natural Gas Leasing." Based on reliable modeling, in fiscal year 2022, onshore federal oil and natural gas development supported nearly 250,000 jobs, generated $19.4 billion in labor income, and contributed $36.7 billion to U.S. Gross Domestic Product ("GDP"). More broadly, between fiscal year 2013 and fiscal year 2022, onshore federal oil and natural gas leasing supported an average of 190,000 jobs, generated $13.4 billion in labor income, and contributed $24.2 billion to GDP each year.

The many added costs and burdens in the Proposed Rule needlessly place these substantial economic returns at risk. This concern is heightened for marginal properties for which the Proposed Rule's new bonding and other burdens could accelerate termination and thereby result in waste of federal oil and natural gas. Moreover, the Proposed Rule could undercut its stated environmental justice aims by reducing good jobs and economic benefits for otherwise disadvantaged communities that stem from onshore federal oil and gas activities.

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[9] BRANDON S. TRACY, CONG. RES. SERV., R46537, REVENUES AND DISBURSEMENTS FROM OIL AND NATURAL GAS PRODUCTION ON FEDERAL LANDS (2020), https://crsreports.congress.gov/product/pdf/R/R46537.

[10] *Id.*

[11] DOI, *Interior Department Announces $21.53 Billion in Fiscal Year 2022 Energy Revenue, Highest-Ever Disbursements from Clean Energy from Federal Lands and Waters* (Nov. 4, 2022) [*hereinafter FY 2022 Announcement*], https://www.onrr.gov/press-releases/FY2022.Disbursements.Press.Release.pdf.

[12] *Id.*

B. The Proposed Rule Inappropriately Stifles Critical Domestic Energy.

Though purporting to principally implement statutory changes enacted in the IRA, the Proposed Rule includes other significant changes that could dramatically and inappropriately curtail oil and natural gas leasing and corresponding production. Several proposed provisions introduce new uncertainty into BLM's leasing process. In doing so, contrary to its preamble's assertions, the Proposed Rule contradicts directives to BLM for "improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends." 88 Fed. Reg. at 47,608 (citing Executive Order 13563).

Perhaps of greatest concern is the Proposed Rule's creation and implementation of new "preference criteria" that are opaque and subjective. Emblematic of the Proposed Rule's flawed approach is its assertion that "this approach would provide stakeholders with greater certainty, as it would be understood at the outset of the leasing process that the preference criteria would guide the BLM's decision-making." *Id.* at 47,566-67. But the only such added certainty appears to be substantially less oil and natural gas leasing, as BLM's non-"preference" of certain areas would likely amount to their indefinite exclusion from leasing. That is, the Proposed Rule would repeatedly defer the leasing of promising oil and natural gas prospects, instead "directing leasing toward areas that do not have" what BLM perceives to be "any sensitive cultural, wildlife, and recreation resources." *Id.* at 47,566. It is disconcerting that BLM would attempt to shift toward subjective judgments rather than rely on already-existing intensive planning efforts, NEPA reviews, and other environmental safeguards making such onshore areas suitable for oil and natural gas leasing.

If implemented as written, the Proposed Rule could essentially eliminate the opportunity for exploration or the expansion of newly discovered producing areas, constrain future oil and natural gas development to areas where it already exists, and shrink such areas even further, thereby discouraging further innovation, new discoveries, and ultimately domestic production. Even after accepting nominations and holding lease sales, BLM would reserve the ability to impose new conditions and ultimately deny leases. Additionally, despite BLM only nominally offering acreage for leasing or itself nominating tracts in which industry has indicated no interest, BLM could nonetheless unduly count such acreage against its IRA minimums for onshore oil and natural gas leasing to enable BLM to issue rights-of-way for wind and solar energy development on federal lands.

Vague rules and standards create substantial uncertainty, undermine investor confidence, and reduce the value and reliability of partnerships with federal agencies on shared efforts to responsibly operate on and around federal lands and resources. Through statutes like FLPMA, longstanding agency regulations and policies, and judicial decisions, the concepts of "multiple use" and "sustained yield" have become well understood. Yet a variety of provisions in the Proposed Rule, employing many undefined or ill-defined key terms, would create uncertainty about implementation of this existing framework, while also adding a host of other new policies and tools that will further exacerbate that uncertainty. Such problematic provisions include, but are not limited to: (1) novel and undefined "preference criteria"; (2) broad and summary disqualification of persons from bidding on and receiving leases; (3) unnecessarily added steps and opportunities for BLM to further restrict lease terms or otherwise deter leasing during the leasing process; (4) open-ended operational restrictions announced within and even after lease sales; (5) needless tying up of capital via substantially greater bonding requirements; and (6) impermissible creation of veto authority in other agencies that has no statutory foundation.

The results of such uncertainty in the Proposed Rule would be the following: create, (rather than obviate) conflict among key stakeholders and uses; reduce the regulatory certainty that is essential to support investment in economically productive uses; and hinder the ability of BLM to achieve the congressional mandates set forth in FLPMA and the Mineral Leasing Act ("MLA"). Therefore, BLM should revise and re-propose its Proposed Rule to properly manage federal lands for energy production among other statutory purposes and to ensure companies have a clear understanding of what they are bidding on and the lease terms that will govern their property rights. Ultimately, BLM and industry should work in concert to provide responsible and reliable domestic energy leasing and production that benefits the U.S. public.

The Proposed Rule is particularly concerning for the western states, which contain 99% of all lands managed by BLM. The MLA provides that "lease sales shall be held for each State where eligible lands are available at least quarterly and more frequently if the Secretary of the Interior determines such sales are necessary." 30 U.S.C. § 226. The MLA further provides that, as a general matter, 50% of money received from sales, bonuses, royalties, and rentals is distributed to the states where the leased lands are located. As noted above, for fiscal year 2022, federal leases generated over $7.6 billion in revenues (from bonus bids, royalties, rents, etc.). For fiscal year 2022, the ONRR disbursed over $4.3 billion in funds collected from leasing activities on federal lands and waters to 33 states.[13]

According to revenue data published by ONRR,[14] during fiscal year 2022, more than $8.8 billion was distributed to federal and local governments and Native American tribes as a result of federal *onshore* production alone (the majority of which comes from oil and natural gas production on federal lands). During that same period, almost 440 million barrels of oil and almost 3.5 trillion cubic feet of natural gas were produced from federal onshore lands. For New Mexico alone, disbursements from onshore energy production resulted in over $2.7 billion in disbursements to state and local governments in fiscal year 2022. In the same period, Wyoming received over $785 million in disbursements for onshore production. Additional funds are distributed to states via the Reclamation Fund, which supports critical infrastructure in local communities; the Land and Water Conservation Fund, which supports state and local efforts to conserve areas; and the Historic Preservation Fund, which supports efforts to preserve historical and cultural resources through state and local grants.

As previously noted, CRS has explained that "[f]ederal revenues from oil and natural gas leases provide income streams that support a range of federal and state policies and programs."[15] States and local governments use these funds to support a variety of needs,

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[13] DOI, *FY 2022 Announcement*, *supra*.

[14] DOI, *Natural Resources Revenue Data* (May 26, 2023), https://revenuedata.doi.gov/.

[15] TRACY, *supra*. According to the Western Governors Association, "The federal government has codified several historic agreements and programs to compensate western states for reduced revenue associated with the presence of tax-exempt federal lands within their borders. Western Governors call upon the federal government to honor its statutory obligations to share royalty

including funding for schools, social services, and infrastructure. Because of the direct connection between energy leasing and production and state and local revenues, the Proposed Rule risks cuts to these revenues and, hence, direct harm to these states and communities.

Another consideration, not analyzed in the Proposed Rule, is that due to the checkerboard nature of federal tracts in some states, state and private mineral interests adjacent to BLM lands could be adversely impacted by the Proposed Rule. *Cf. Wyoming v. DOI*, 493 F. Supp. 1046, 1083 ("BLM's implementing regulations have historically maintained this distinction between its general regulatory authority over Federal leases and its more limited authority with respect to the private and State leases that may be pooled with Federal interests."). This could result in delays or complete exclusion of such non-federal minerals in addition to the previously-mentioned loss in federal bonuses and royalties. BLM thus should further engage directly with the states where BLM lands are situated to ensure that new BLM policies and rulemakings do not result in unjustified impacts on these areas.

C. The Proposed Rule Imposes Unreasonable New Financial Burdens on Lessees and Operators.

The cumulative effect of the additional costs BLM is proposing to add, coupled with the already increased costs required by the IRA, is to impose potentially stifling financial burdens on federal oil and gas lessees and operators. The consequence will be that many existing lessees and operators may no longer be able to continue operating their federal leases, and the number of potential lessees willing to bid for new federal lease interests in future competitive lease sales may decline as well.

The IRA imposes mandatory increased fees on lessees and operators that BLM is implementing through the Proposed Rule. The minimum royalty rate for new oil and gas leases is increasing from 12 ½ percent to 16 2/3 percent. Royalty rates for reinstated leases also are increasing from 16 2/3 percent to 20 percent. The IRA increases the minimum bid amount from $2 per acre to $20 per acre. Rental rates are increased from $1.50 per acre to $3 per acre the first two years of the lease (100 percent increase), $1.50 per acre to $5 per acre the next three years (233 percent increase), $2 per acre to $5 per acre for years six through eight (150 percent increase), and $2 per acre to $15 per acre the last two lease years (650 percent increase). Rental rates for reinstated leases similarly are increased from $10 per acre to $20 per acre (100 percent increase). The IRA also imposes a new $5 per acre fee (indexed to inflation) for any person that submits an expression of interest in leasing federal lands.

The cumulative impact of these congressionally-mandated increased rates and fees on federal lessees and operators without doubt will be extraordinarily burdensome. Yet BLM is proposing to simultaneously exacerbate those burdens via the Proposed Rule that would impose

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and lease payments with states and counties. States, as recipients of revenues from these programs and agreements, should be provided meaningful and substantial opportunities for consultation in the development of federal policy affecting those revenues." W. Governor's Ass'n, *WGA Policy Resolution 2023-02* (Dec. 7, 2022), https://westgov.org/resolutions/article/wga-policy-resolution-2023-02-states-share-of-royalties-and-leasing-revenues-from-federal-lands-and-minerals.

other substantial cost increases, some that even Congress was unwilling to impose at the same time as the broad increases described above. While Congress declined to do so, BLM is proposing to increase the lease bond that an operator must provide to BLM from $10,000 to $150,000 (1,500 percent increase), and the state-wide bond from $25,000 to $500,000 (2,000 percent increase). BLM also is proposing to eliminate nationwide bonds entirely, depriving lessees and operators of a financial tool currently available to mitigate bonding costs by spreading them over a larger universe of leases. BLM also is proposing to increase a range of processing and filing fees by several hundred percent, including raising the fee for an Application for Permit to Drill to $11,805, a large increase over the current fee.

The detrimental effect of these staggering cumulative rate and fee increases will fall disproportionately on smaller lessees and operators who operate the marginal properties that constitute a substantial percentage of production from federal leases. The negative economic impacts likely will cause some operators to cease operations on these marginal properties, permanently stranding and thereby wasting federal oil and gas resources inconsistent with long-standing statutory federal mineral leasing principles. The increased costs to operate on federal leases also will deter smaller operators from participating in future lease sales, constraining competition and likely causing an overall reduction in future bonus bids.

It is serious error for BLM to assume that oil and natural gas lessees and operators will be able to absorb these cumulative cost increases and continue business as usual on federal lands. Indeed, the Proposed Rule does not meaningfully evaluate its economic effects in the real-world context of contemporaneous IRA-based cost increases. Where BLM does quantify costs of certain proposed provisions codifying the IRA, BLM appears to understate them. For example, based on the last five years of National Fluids Lease Sale System data, annual EOI fees increases appear to be about 145 percent higher (approximately $9.3 million) than BLM estimates (approximately $3.8 million). Nor does the Proposed Rule assess its economic effects aggregated with other BLM and Administration initiatives placing even more costs on federal oil and gas lessees and operators.

To the contrary, the Proposed Rule inappropriately downplays its economic impacts on the regulated community, particularly small businesses. For example, with respect to BLM's proposed new bonding costs, BLM's RFA analysis states that "the annual cost to secure a bond would not be material," suggesting the increased bonding might have some limited impact on small businesses. *Id.* at 47,609. That is because BLM claims that buying a bond is only 1 to 3.5 percent of the bond value on an annual basis. That simplistic metric provides an incomplete picture. For example, even premiums comprising a small percentage of the Proposed Rule's sharply increased bonding requirements may impose a significant burden on the bottom line of a small business, particularly if those premiums must be paid each year of the lease. The Proposed Rule also presumes equal access to bonding. Moreover, certain industry experts anticipate that small companies may need to self-bond the entire amount in some instances. Thus, BLM must adopt a more holistic and pragmatic economic analysis before proceeding to any final rule.

SECTION-BY-SECTION COMMENTS

BLM is proposing changes simultaneously to a large number of existing regulations. For ease of reference, the Associations' comments below follow the same organization of sections as in the Proposed Rule. Many of the modifications to sections in the Proposed Rule include only grammatical or similar minor modifications to reflect an updated style, and do not include any substantive changes to BLM's existing regulations. The Associations are not providing any comment on those sections, and generally support those modifications.

The Associations offer comments on several sections with proposed substantive changes to the Proposed Rule's regulatory text. For clarity, throughout these comments, the Associations provide suggested regulatory text revisions in redline format to facilitate BLM's consideration:

- Recommended language for removal is indicated in ~~strikethrough text~~, except where the Associations recommend deletion of a provision of the Proposed Rule in its entirety.
- Recommended language for addition is indicated in <u>underlined text.</u>

References herein to existing regulatory sections are to title 43 of the Code of Federal Regulations unless specified otherwise.

I. PART 3000

A. § 3000.5 Definitions.

The Associations generally support BLM's efforts to clarify, simplify, and contemporize the definitions section for part 3000. However, BLM should not create a new definition of "person." It instead should use the definition of that term in the Federal Oil and Gas Royalty Management Act, 30 U.S.C. § 1702, that already applies to BLM. Creating a new regulatory definition could cause inconsistency and unnecessary confusion.

Recommended Revision:

> <u>*Person* means any individual, firm, corporation, association, partnership, consortium, or joint venture or entity, including a partnership, association, State, political subdivision of a State or territory, or a private, public, or municipal corporation.</u>

The proposed changes to the term "surface managing agency" are also problematic. The existing definition in § 3000.0-5 limits the definition to "any Federal agency *outside of the Department of the Interior* with jurisdiction over the surface overlying federally-owned minerals" (emphasis added). The proposed definition would expand the referenced federal entities to include "any Federal agency, other than the BLM, having management responsibility for the surface resources that overlay federally owned minerals." This would now include other DOI bureaus, for example, the U.S. Fish & Wildlife Service ("FWS") and the Bureau of Reclamation ("BOR"). Therefore, a legal problem with this definition is that it improperly expands the surface managing agency consent provisions of the Mineral Leasing Act for Acquired Lands ("MLAAL"), 30 U.S.C. § 352, which provides that "[n]o mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit . . . ." The FWS Director and the BOR Director are not heads of an executive department. Thus, BLM does not have the authority to delegate the MLAAL surface management responsibility for acquired lands to a DOI bureau official subordinate to the Secretary of the Interior (who is the head of the executive department) through this definitional change or otherwise.

Also, as explained below in relation to the changes to proposed § 3101.52, this proposed definitional change would improperly grant the FWS, BOR or other DOI bureau Director authority to block a Secretarial decision to lease federally-managed minerals. BLM therefore should not adopt the proposed change to the definition of "surface managing agency" in any final rule.

The Associations also refer to BLM to the comments below on proposed § 3120.42 utilizing the newly defined terms "acreage for which expressions of interest have been submitted" and "acres offered for lease."

B. § 3000.40 Appeals.

This proposed section would retain the provisions of existing § 3000.4 with minor revisions. However, this existing provision allowing adversely affected parties to appeal BLM leasing-related decisions to the Interior Board of Land Appeals ("IBLA") practically provides no appeal right because IBLA review generally takes several years.[16] The result is that the decision of the "authorized officer," defined in proposed § 3000.5 as "*any BLM employee* authorized to perform the duties prescribed in parts 3000 and 3100" (emphasis added), effectively becomes the final decision of the agency because by the time a leasing-related decision would reach the point for an IBLA determination, the issue in many instances could be moot. That is because within that multi-year IBLA appeal period, absent a stay granted by the IBLA, an appellant likely would need to comply with the challenged order or make other investments in its lease, and its primary lease term would continue to run. Therefore, as part of this regulatory update, BLM should utilize this opportunity to adopt a provision for State Director review similar to existing 43 C.F.R. § 3165.3(b) that allows adversely affected parties to promptly obtain BLM management level review from a decision of the "authorized officer." An adverse State Director decision then would be appealable to IBLA.

Recommended Revision:

> Except as provided in 43 CFR 3000.120, 3000.130, 3101.53(b), 3165.4, and 3427.2, any party adversely affected by a decision of

[16] IBLA publishes a list of its pending appeals, https://www.doi.gov/oha/organization/ibla/IBLA-Pending-Appeals (as of July 31, 2023). There currently are several hundreds of pending appeals, many of which were filed in 2017, confirming that at the current rate it may take as long as seven years from when an appeal is filed with IBLA to receive a decision. Even if IBLA were able to cut its processing time for decisions by half, waiting that length of time effectively neutralizes any benefit to a prevailing appellant because later events may overtake an extant leasing dispute.

> the authorized officer made pursuant to the provisions of 43 CFR parts 3000 or 3100 has a right of appeal ~~pursuant to 43 CFR part 4~~. <u>Any adversely affected party that contests an order or decision of the authorized officer issued under the regulations in parts 3000 and 3100 may request an administrative review before the State Director, either with or without oral presentation. Such request, including all supporting documentation, must be filed in writing with the appropriate State Director within 20 business days of the date such order or decision was received or considered to have been received and must be filed with the appropriate State Director. Upon request and showing of good cause, an extension for submitting supporting data may be granted by the State Director. Such review will include all factors or circumstances relevant to the particular case. Any party who is adversely affected by the State Director's decision may appeal that decision to the Interior Board of Land Appeals as provided in 43 C.F.R. part 4.</u>

C. § 3000.60 Filing of Documents.

The Associations support BLM's proposal to allow for e-filing of necessary documents. However, to ensure that the appropriate official receives the e-filing, and to avoid any risk of default as a result of e-filing with the wrong person in a BLM office, or as a result of circumstances where a BLM employee may no longer be employed in that office, the final rule should require each BLM office to designate an email address for filing. An e-filing should be deemed timely if it is received by 11:59 pm local time in the appropriate BLM office. BLM should also ensure that its electronic systems are well-maintained and BLM provides sufficient training to operators utilizing electronic reporting. Some members of the Associations have experienced that BLM's electronic system frequently goes down, requires frequent changing of passwords, and presents other challenges.

Recommended Revision:

> All necessary documents must be filed in the proper BLM office. Documents may be submitted to the BLM using hard-copy delivery services, in-person delivery, or by electronic filing. A document will be considered filed when it is received in the proper BLM office. When using hard-copy delivery services or in-person delivery, the document will be considered filed only when received during regular business hours. See 43 CFR part 1820, subpart 1822. <u>Each BLM office will establish an email address for acceptance of electronic filing that will be published on BLM's website, and electronic filing will be considered filed only when received by 11:59 pm local time in that BLM office.</u>

D. § 3000.100 Fees in general.

For the reasons discussed below for proposed § 3000.120(a), BLM should revise proposed § 3000.100(c) to include the opportunity for notice and comment for adjustments to fixed fees established under this subchapter.

Recommended Revision:

> (c) Periodic adjustment. The BLM will periodically adjust fees established in this subchapter according to changes in the Implicit Price Deflator for Gross Domestic Product, which is published quarterly by the U.S. Department of Commerce. ~~Because the fee recalculations are simply based on a mathematical formula, t~~The BLM will change the fees in final rules ~~without~~ with the opportunity for notice and comment.

E. § 3000.120 Fee schedule for fixed fees.

This proposed section would add new fixed fees and increase existing fees for the listed processing and filing fees. The Associations generally support expansion of BLM's use of fixed fees as opposed to fees determined on a case-by-case basis. One exception is the $3,100 fee for a competitive lease application. BLM explains in the preamble that this fee was established as including the costs for BLM to undertake any necessary NEPA reviews. However, contrary to the preamble, nothing in CEQ regulations—existing or proposed—prohibits an applicant from preparing or assisting with the preparation of any BLM NEPA document, which would reduce BLM's costs. Therefore, the Associations suggest that the cost for a competitive lease application should be determined case-by-case under § 3000.110, or alternatively that the cost would be fixed at $3,100 but the applicant would have the option to request a case-by-case fee determination to establish a fee for a particular lease application. Such a situation would be, for example, where the NEPA or other costs to BLM would not support the $3,100 fee because the applicant will incur some or all of those costs separately.

Subsection (a) also would adjust the fixed fees annually "according to the change in the Implicit Price Deflator for Gross Domestic Product." The automatic inflation provision is contrary to the requirements for establishing these fees and should be removed. As BLM explains in the preamble, establishing these fees is a multi-factor process taking into account BLM's actual costs and other factors such as the monetary value of the right or privilege, the monetary value to the applicant, the efficiency factor, the public benefit factor, and the public service factor. BLM nowhere explains its authority to assume that any or all of these factors would justify an automatic annual adjustment based solely on inflation. Instead, to adjust a fixed fee, BLM must re-apply all of the factors, make a new determination as to whether the fee warrants an adjustment, and similarly codify that determination via rulemaking. Nor does BLM reference any other authority to impose this annual inflation adjustment.

In this subsection, BLM also states that it only would publish any fixed fee adjustment on BLM's website. As an initial matter, this is inconsistent with the provisions of proposed § 3000.100(c) which provide that for "fees established in this subchapter . . . BLM will change the fees in final rules . . . ." Additionally, because the fixed fees initially would be set by regulation, BLM must correspondingly amend any fixed fee through a regulatory change for it to have legal effect. BLM also should adopt any fixed fee adjustments through notice and comment rulemaking because the public should have the opportunity to address BLM's application of the above-described factors in adjusting any fixed fee. Therefore, BLM should modify both §§ 3000.120(b) and 3000.100(c) to require notice and comment rulemaking to adjust any fixed fees in this subchapter of the regulations. For consistency and the convenience of the regulated community, BLM also should publish the updated fixed fees annually on its website.

The list of fees in Table 1 for § 3000.120 includes the "Expression of interest fee per acre or fraction thereof." Section 50262(d) of the IRA amended the MLA to add a new 30 U.S.C. § 226(q) establishing a $5 per acre fee for expressions of interest in leasing available lands for exploration and development of oil and natural gas. New subsection 226(q)(2)(B) expressly authorizes the Secretary to adjust the $5 per acre fee "by regulation, not less frequently than every 4 years . . . to reflect the change in inflation." Therefore, Congress requires that any adjustment to this fee be accomplished through regulation. BLM has no discretion to include a provision in proposed § 3000.120 allowing for an inflation adjustment for those fees through a website notification.

Recommended Revision:

> (a) The table in this section shows the fixed fees that must be paid to the BLM for the services listed for FY 2024. These fees are nonrefundable and must be included with documents filed under this chapter. BLM may adjust these fees periodically by final rule with the opportunity for notice and comment, and adjusted f~~F~~ees will ~~be adjusted annually according to the change in the Implicit Price Deflator for Gross Domestic Product since the previous adjustment and will subsequently~~ be posted on the BLM website (*https://www.blm.gov*) before October 1 each year. Revised fees are effective each year on October 1.

F. § 3000.130 Fiscal terms of new leases.

This section would establish per acre rental and bonus bid amounts. The fees established in the proposed rule are based on changes to the MLA required by the IRA, and the Associations agree that BLM has no discretion as to their adoption in this rulemaking. However, BLM also would provide in this section that the established rental rates and bonus bid amounts "will be adjusted annually according to the change in the Implicit Price Deflator for Gross Domestic Product since the previous adjustment and will subsequently be posted on the BLM website . . . before October 1 each year." BLM does not have the authority to require these annual inflation adjustments. Section 50262(b)(1) of the IRA amends the MLA, 30 U.S.C. § 226(b)(1)(B), to set a minimum bonus bid of "$10 per acre during the 10-year period beginning on the date of enactment of the Inflation Reduction Act of 2022." Nothing in the IRA authorizes an adjustment of the $10 minimum bid amount during that 10-year period, for inflation or otherwise. Under the MLA, "thereafter" the Secretary may establish by regulation a higher minimum bonus bid but only on certain specified grounds, namely when such increases are "necessary (i) to enhance financial returns to the United States; and (ii) to promote more efficient management of oil and natural gas resources on Federal lands." 30 U.S.C. § 226(b)(1)(B).

Similarly, Section 50262(c)(1) of the IRA amends the MLA, 30 U.S.C. § 226(d), to set per acre rental rates at prescribed levels for the 10-year primary term of the lease for leases issued after the IRA's effective date (August 16, 2022). Again, nothing in the IRA authorizes an adjustment of these rental rates for any reason, including for inflation, during the 10-year period.

Congress knows how to require inflation adjustments when it wants to, but did not do so here. As explained above, IRA Section 50262(d) amended the MLA to add a new 30 U.S.C. § 226(q) establishing a $5 per acre fee for expressions of interest in leasing available lands for exploration and development of oil and natural gas. New 30 U.S.C. § 226(q)(2)(B) expressly authorizes the Secretary to adjust the $5 per acre fee by regulation "to reflect the change in inflation." Also contrast the Federal Civil Penalties Inflation Adjustment Act of 2015, Public Law 114-74, sec. 701, in which Congress provided for inflation-based adjustments in civil penalty amounts. Thus, Congress knows how to provide for inflation adjustments when it so chooses, and it affirmatively chose not to allow inflation adjustments for the minimum bid and rental rates.

The Proposed Rule references no other authority that would support annual inflation adjustments for the rental and bonus fees. Indeed, even BLM acknowledged in the preamble that "[t]he IRA precludes the adjustment of these fiscal terms until after August 16, 2032." BLM thus has no discretion to include a provision in proposed § 3000.130 allowing for an annual inflation adjustment.

Recommended Revision:

> The table in this section shows the fiscal terms for new leases. ~~Terms will be adjusted annually according to the change in the Implicit Price Deflator for Gross Domestic Product since the previous adjustment and will subsequently be posted on the BLM website (*https://www.blm.gov*) before October 1 each year. Revised fees are effective each year on October 1.~~

II. PART 3100

A. § 3100.5 Definitions.

This section of the Proposed Rule would add several new definitions. The Associations agree with most of the revised definitions, but there are a few that BLM should change in any final rule.

BLM would define the term "modification" as "a change to the provisions of a lease stipulation for some or all sites within the leasehold and either temporarily or for the term of the lease." However, BLM uses the term in other contexts of the Proposed Rule. For example, § 3101.12 Surface use rights, provides (emphasis added):

> A lessee will have the right to use only so much of the leased lands as is necessary to explore for, drill for, mine, extract, remove and dispose of all the leased resource in a leasehold subject to applicable requirements, including stipulations attached to the lease, restrictions deriving from specific, nondiscretionary statutes, and such reasonable measures as may be required and detailed by the authorized officer to avoid, minimize, or mitigate adverse impacts to other resource values, land uses or users, federally recognized Tribes, and underserved communities. Such reasonable measures may include, but are not limited to, relocation or *modification* to siting or design of facilities, timing of operations, specification of interim and final reclamation measures, and specification of rates of development and production in the public interest. *Modifications* that are consistent with lease rights include, but are not limited to, requiring relocation of proposed operations by more than 800 meters and prohibiting new surface disturbing operations for a period of up to 90 days in any lease year.

In addition, subsection (b) of § 3140.23 Application requirements, provides (emphasis added):

> (b) A plan of operations may be *modified* or amended before or after conversion of a lease or valid claim to reflect changes in technology, slippages in schedule beyond the control of the lessee, new information about the resource or the economic or environmental aspects of its development, changes to or initiation of applicable unit agreements or for other purposes. To obtain approval of a *modification* or amended plan, the applicant must submit a written statement of the proposed changes or supplements and the justification for the changes proposed. Any *modifications* will be in accordance with 43 CFR 3592.1(c). The approval of the *modification* or amendment is the responsibility of the authorized officer. Changes or *modification* to the plan of operations will have no effect on the primary term of the lease. The authorized officer will, prior to approving any amendment or *modification*, review the *modification* or amendment with the appropriate surface management agency. For leases within units of the National Park System, no amendment or *modification* will be approved without the consent of the Regional Director of the National Park Service in accordance with § 3140.70.

Finally, § 3141.22 Exploration licenses, provides in subsection (c)(2) (emphasis added) that "[t]he authorized officer may require *modification* of the original exploration plan to accommodate the legitimate exploration needs of the person(s) seeking to participate and to avoid the duplication of exploration activities in the same area, or that the person(s) should file a separate application for an exploration license." Subsection (e)(8) further provides that (emphasis added):

> The licensee may submit a request for *modification* of the exploration plan to the authorized officer. Any *modification* will be subject to the regulations in this section and the terms and conditions of the license. The authorized officer may approve the *modification* after any necessary adjustments to the terms and conditions of the license that are accepted in writing by the licensee.

Because the regulations in part 3100 use the term "modification" in contexts other than changes to lease stipulations, to avoid confusion BLM should remove the proposed definition.

BLM should modify the proposed definition of "Oil and gas agreement" because an agreement may in some instances include unleased lands. In those circumstances, the operator typically may place the production proceeds into an interest-bearing escrow account until the lands are leased.

Recommended Revision:

> *Oil and gas agreement* means an agreement between lessees and the BLM to govern the development and allocation of production for existing leases <u>and unleased lands</u>, including, but not limited to, communitization agreements, unit agreements, secondary recovery agreements, and gas storage agreements.

BLM is proposing to add new definitions for the terms "responsible bidder" and "responsible lessee." Each of these terms would exclude a person who has a "history of noncompliance" with applicable regulations and lease terms. These terms are used in proposed § 3102.51 Compliance, which provides that "[o]nly responsible and qualified bidders may own, hold, or control an interest in a lease or prospective lease." The Associations have substantial concerns with these definitions because it is unclear what a "history of noncompliance" means. It could be construed broadly to mean that if a person ever was found to have been in noncompliance with its federal oil and gas lease terms, or applicable BLM regulations or ONRR royalty reporting and valuation regulations in 30 C.F.R. part 1206, it could be precluded from obtaining future federal lease interests, even if it corrected the alleged noncompliance after notice from the regulatory agency. Similarly, it is unclear how these definitions would be applied to extant claimed noncompliance with regulations or lease terms that are under appeal to the agency or the IBLA and are either subject or not subject to a stay under 43 C.F.R. § 4.21 or other applicable regulations. Under the Proposed Rule, those persons too could be disqualified from obtaining future federal oil and gas lease interests. Nor does the preamble provide any explanation of what BLM intends by the phrase "history of noncompliance."

BLM also proposes to add a new definition of "qualified lessee" as a "person in compliance with the laws and regulations governing the BLM issued leases held by that person." The Associations have the same concerns with this definition, as well as with the related definition of "qualified bidder," because they again are unclear whether any regulatory or lease noncompliance (or allegation thereof), even a minor one, could render a person unqualified to hold federal onshore leases. Moreover, the definition of "qualified bidder" does not account for the involvement of brokers or non-operating partners when bidding on leases, and could substantially impede bidding if it were to mandate established bonding in place prior to bidding or similar other requirements.

Please also see the Associations' comments on proposed § 3102.51 and its scope of "responsible and qualified bidders and lessees." To allay these concerns, BLM should clarify in this proposed definitions section and in proposed § 3102.51 that it will continue to adhere only to the factors in MLA Section 17(g), 30 U.S.C. § 226(g), in determining who may hold a lease.

BLM is proposing to add definitions of the terms "assignment" and "transfer" that would have corresponding, but different, meanings. BLM's sister bureau, the Bureau of Ocean Energy Management ("BOEM"), recently issued a proposed rule stating that the terms "transfer" and "assignment" are "interchangeable." Risk Management and Financial Assurance for OCS Lease and Grant Obligations, 88 Fed. Reg 42,136, 42,149, 42,151, 42,169 (June 29, 2023). BLM should ensure consistency and clarity in use of these terms between the two bureaus regulating federal oil and gas leasing onshore and on the Outer Continental Shelf.

B. § 3100.22 Drilling and production or payment of compensatory royalty.

This section is unchanged from the corresponding existing section. BLM should consider using this rulemaking opportunity to amend this section to also address circumstances involving two federal leases with different fund distribution codes. For example, such a situation may involve a MLA lease with a royalty revenue distribution governed by 30 U.S.C. § 191(a) being drained by a well on an MLAAL lease with a different royalty revenue distribution that allocates a higher proportion of funds to non-federal recipients based on the provisions of the statute pursuant to which the lands were acquired. This regulation also should reference the lessee's opportunity to create a federally-approved agreement for sharing of production among the affected leases.

Recommended Revision:

> Where lands in any leases are being drained of their oil or gas content by wells either on a Federal lease issued at a lower rate of royalty or on non-Federal lands, <u>or by a lease with a different royalty revenue funds distribution requirement</u>, the lessee must both drill and produce all wells necessary to protect the leased lands from drainage. In lieu of drilling necessary wells, the lessee may, with the consent of the authorized officer, pay compensatory royalty in the amount determined in accordance with 43 CFR 3162.2–4<u>, or under an oil and gas agreement among the affected leases and tracts</u>.

C. § 3100.40 Public availability of information.

In the preamble, BLM states that it is considering making publicly available names and addresses of the nominator, lessees, operating rights holders and operators through BLM's automated system, and that such information is already publicly available. BLM provides no justification for publishing information on all entities registered to bid during a lease sale, rather than only information regarding issued leases.

D. § 3101.12 Surface use rights.

The proposed changes to this section are extremely concerning to the Associations and their members because they improperly broaden BLM's authority to impose limitations on the exercise of lease rights. It is well-established that the issuance of a federal onshore oil and gas lease entitles the lessee to develop its lease subject to only limited, reasonable restrictions. *Conner v. Burford,* 848 F.2d 1441 (9th Cir. 1988). That is, consistent with the MLA, BLM cannot wholly prevent lessees from engaging in all surface-disturbing activities necessary for mineral development, except where the lease it issues states otherwise, principally in a no-surface-occupancy provision. Consistently, courts typically find that onshore federal leasing is the point that results in an irretrievable commitment of resources for oil and gas development, effectively eliminating the no action alternative and generally requiring more detailed environmental review prior to lease issuance onshore compared to earlier stages onshore or leasing offshore.[17]

Yet, the Proposed Rule risks precluding development of existing leases at odds with rights already conferred under those contracts. That is because the proposed new limitations on the lessee's ability to exercise its lease rights would be so restrictive that the development rights which a MLA or MLAAL federal oil and gas lease has historically granted could be rendered effectively illusory. The redrafted section would subject use of leasehold lands for oil and gas operations to "applicable requirements" that would include "such reasonable measures as may be required by the authorized officer to avoid, minimize, or mitigate adverse impacts to other resource values, land uses or users, federally recognized Tribes, and underserved communities." The terms "avoid" and "mitigate" are newly-added and undefined limitations. These rights reserved to BLM are so broad, vague, and subjective that they could empower BLM to significantly constrain or entirely prevent operations on the leasehold. If the lessee objects, its

[17] *See, e.g., id.* at 1451; *New Mexico ex rel. Richardson v. Bureau of Land Mgmt.*, 565 F.3d 683, 718 (10th Cir. 2009) (lessee "cannot be prohibited from surface use of the leased parcel once its [non-no surface occupancy ("NSO")] lease is final"); *see also Pennaco Energy, Inc. v. U.S. Dep't of the Interior*, 377 F.3d 1147, 1160 (10th Cir. 2004) (the lease provided lessees with certain rights and did not give the federal government the authority to deny drilling activity); *Sierra Club v. Peterson*, 717 F.2d 1409, 1412, 1415 (D.C. Cir. 1983) (BLM must either prepare an Environmental Impact Statement before leasing or "retain the authority to preclude surface disturbing activities until an appropriate environmental analysis is completed"); *Ctr. for Biological Diversity v. BLM*, 937 F. Supp. 2d 1140, 1153 (N.D. Cal. 2013) (non-NSO leases required environmental analysis prior to issuance even though they contained provisions allowing BLM to deny all surface disturbing activities if threatened or endangered species are found); Bureau of Land Mgmt., U.S. Dep't of the Interior, BLM Manual H-1624-1 Planning for Fluid Mineral Resources, at I-2 (1990), https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_Handbook_H_1624_1.pdf ("By law, these impacts must be analyzed before the agency makes an irreversible commitment. In the fluid minerals program, this commitment occurs at the point of lease issuance.").

only recourse under the rules would be to challenge the BLM decision through an administrative appeal—with no certainty that its lease term would be suspended in the interim. And unless BLM amends the appeal regulation as the Associations suggest to first allow for State Director review, that appeal process would inexorably last several years.

BLM asserts in the preamble that these authorities inserted into this section are consistent with the standard BLM lease form since 2008. However, as BLM further explains in the preamble, "[t]he standard lease form authorizes the BLM to require 'reasonable measures' to the extent such measures would be consistent with the lessee's rights." The BLM lease form also does not subordinate the oil and gas lessee's rights to any subsequently issued right for other uses or users; rather, it does the opposite. *See* BLM Form 3100-11 (March 2023), ¶ 6 ("Lessor reserves the right to continue existing uses and to authorize future uses upon or in the leased lands, including the approval of easements or rights-of-way. Such uses must be conditioned so as to prevent unnecessary or unreasonable interference with rights of lessee."). BLM references no lease provision that grants the agency the proposed new broad authority to severely constrain or deny lease operations to the extent set forth in the Proposed Rule.

Under this section, BLM also proposes to allow altering the location of a well by "more than 800 meters." That means there would be no limit to how far BLM may require relocation of a well on a lease, and BLM has provided no data or other scientific justification to support what relocation distance is appropriate. In fact, though BLM's preamble summarily asserts "changes in technology" to support the proposed changes, it provides no technical justification.

The existing rule provides that BLM may not require relocation of a well by more than 200 meters.[18] 43 C.F.R. § 3101.1-2. Thus, the Proposed Rule arbitrarily replaces a maximum provision with an unlimited provision. Moreover, it could very well prohibit on-lease surface use and require surface activities, like drilling, to occur at an off-lease surface location (e.g., the Proposed Rule would unreasonably delete the existing regulatory prohibition on BLM requiring that "operations be sited off the leasehold"). *Id.* Precluding on-lease surface use impermissibly deprives a lessee of a vested right to develop its minerals, potentially constituting a taking of a lessee's property right. Additionally, well placement is typically based on geology, topography, and surface owner requirements (including wildlife, cultural, wetland, and similar issues that inform the well placement). BLM also fails to explain what rights BLM or a lessee may have to locate wells or facilities off-lease, particularly when other tracts may be held by different entities.

Accordingly, the Proposed Rule should be modified to establish a *maximum* allowable relocation distance based on scientific data justifying the decision, and to prohibit relocation to an off-lease location without the lessee's prior consent. Also, at a minimum, BLM's ability to move a well location must not result in a loss of maximum efficient recovery of oil or natural gas; add significant costs; or materially change access routes, surface disturbance, or availability of utilities or infrastructure compared to a lessee's chosen surface location. BLM regulations

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[18] BLM claims that despite the existing regulations' clear 200 meter maximum, the IBLA held in *Yates Petroleum,* 176 IBLA 144, 156 (2008), that BLM may impose greater restrictions. But *Yates* did not confer on BLM the unbounded authority reflected in the Proposed Rule, or bless any BLM-imposed limitation, including based on the Proposed Rule's plethora of novel and subjective criteria, as "reasonable" or "consistent with lease rights."

should not support waste of oil and gas resources, nor should they provide a basis for BLM to contravene the lease contract.

Moreover, BLM is proposing to change the annual period for which it may prohibit new surface disturbing operations from 60 days to 90 days, with no justification for that proposed change. This extension is too long and is unwarranted. For example, depending on how BLM applies these prohibition windows, they may result in even longer inoperative periods due to weather conditions, wildlife considerations, natural processes, and economic factors during the remaining calendar year. BLM should not adopt this modification to the existing rule.

To the extent BLM would seek to apply the regulatory changes it is proposing to allow the agency to constrain or prevent operations on existing leases, it presents a material breach of contract or a regulatory taking, potentially subjecting the United States to substantial contract damages or payment of just compensation.[19] Breach and takings concerns for existing leases are especially salient given the development rights conferred by onshore federal oil and gas leases under the MLA and interpretive case law, as discussed above. The Proposed Rule would significantly alter standards in place at the time existing leases were bargained for, by imposing substantial costs and burdens on lessees, or even precluding or terminating production.[20] At a minimum, proposed § 3101.12 and other Proposed Rule provisions purporting to materially curtail existing lease rights would do so. The Proposed Rule's language does not even limit the timing for imposing surface use restrictions under this section. For example, it could be read to allow imposition of such conditions during or after construction of wells or facilities on a lease. Or it could be interpreted to require later drilled wells to utilize different, more distant facilities than earlier APDs approved without such setbacks or other conditions. Accordingly, BLM is incorrect in determining "that the rule would not cause a taking of private property or require further discussion of takings implications under Executive Order 12630." BLM should not adopt proposed provisions that would allow for such potential breach or takings, and must provide a more complete analysis of why its final rule would not do so.

E. § 3101.13 Stipulations and information notices.

The Associations are again very concerned about the proposed changes to the existing regulations in this section. Proposed new subsection (a) would give BLM broad authority to "consider the sensitivity and importance of potentially affected resources," and any "uncertainty concerning the present or future condition of those resources," and then based on this highly subjective and amorphous standard, consider "whether a resource is adequately protected by stipulation *without regard for the restrictiveness of the stipulation on operations*" (emphasis added). This subsection would allow BLM to offer for lease lands that are eligible and available

[19] *See Mobil Oil Prod. Southeast, Inc. v. U.S.*, 530 U.S. 604 (2000); *Amber Res. Co. v. U.S.*, 68 Fed. Cl. 535 (2005).
[20] *See Marathon Oil Co. v. Andrus*, 452 F. Supp. 548, 551 (D. Wyo. 1978) (invalidating BLM's former NTL-4, and finding: "This Court cannot lose sight of the general rule that, when the executive department charged with the execution of a statute gives a construction to it and acts upon that construction for many years, the Court looks with disfavor upon a change whereby parties who have contracted in good faith under the old construction may be injured by a different interpretation.").

for leasing, but then subject the offered leases to additional stipulations that could restrict operations to the point that they are uneconomic or infeasible to undertake.

Providing BLM with unfettered discretion to impose lease stipulations that constrain or effectively prevent operations would severely undermine the value of those leases and discourage entities from bidding on those leases due to the resulting investment uncertainty. Yet, per BLM, the acreage purportedly offered for lease would contribute to fulfilling the IRA's minimum acreage criteria to allow BLM to issue rights-of-way for wind and solar energy development on federal lands. Thus, the addition of this subsection provides an avenue for BLM to technically meet the oil and gas acreage offered for lease required by IRA Section 50265 as necessary for BLM to issue wind and solar rights-of-way, while from a practical standpoint potentially discouraging leasing or constraining opportunities to develop minerals on federal lands. This new proposed subsection (a), together with the proposed changes in § 3101.12, make federal oil and gas lease development rights far less predictable, reliable, and practical, and therefore would significantly undermine the value to operators. Thus, in any final rule, BLM should remove subsection (a) in its entirety. At a minimum, BLM should remove the final clause of subsection (a) ("without regard for the restrictiveness of the stipulation on operations")—and instead require that all stipulations applicable to specific leases/parcels be disclosed prior to a lease sale, and appropriately circumscribe BLM's discretion to impose lease stipulations to not frustrate efficient and orderly federal leasing or development of leasehold rights.

F. § 3101.14 Modification, waiver, or exception.

Subsection (b) presents potential disruption to the competitive lease sale process. Under these new provisions, if following a lease sale, but prior to lease issuance, BLM determines it needs to add an additional restrictive stipulation, the winning bidder is given an opportunity to refuse the stipulation and the BLM may reject the bid. Also, if after a lease sale is concluded BLM adds or modifies a stipulation that increases the value of the parcel, BLM will reject the bid and include the parcel in the next competitive lease sale. These provisions inject uncertainty into the competitive leasing process and inappropriately allow BLM to "reopen" the lease conditions in a manner that may very well impact the value of the lease to the winning bidder. Again, at a minimum, all lease conditions or stipulations must be disclosed prior to a lease sale. Once a competitive lease sale is held, and competitors to the winning bidder are aware of the per acre amount the winning bidder was willing to pay to obtain a lease tract, allowing BLM to "undo" the lease sale and re-bid the tracts is anticompetitive and unfair to the winning bidder. BLM also could improperly use this provision as a tool to undo a lease sale where it is dissatisfied with the result of the competitive sale by unilaterally imposing a new stipulation with no opportunity for public involvement, which is inconsistent with subsection (a)'s requirement that BLM involve the public in any change to a lease term or stipulation. BLM's only support for these new provisions is a preamble assertion that they purportedly are consistent with existing "policy," but BLM does not identify the source of that policy or how it has been applied.

BLM also is proposing to remove the language from existing § 3101.1-4 that allows BLM to grant waivers, modifications, or exceptions if "proposed operations would not cause unacceptable impacts." BLM asserts this provision has been overused and resulted in adverse impacts. Yet, the Proposed Rule does not recognize the host of reasonable circumstances where flexibility under the existing provision does not result in unacceptable impacts (see below paragraph). BLM should not remove this flexibility available to BLM field offices without providing evidence of these purported adverse impacts and then establishing appropriate limits on this flexibility if necessary to narrowly address those specific adverse impacts. Nor can BLM in its preamble credibly dismiss this existing standard as "very subjective" when its Proposed Rule would introduce a bevy of more subjective standards.

Moreover, BLM's proposed narrowing of § 3101.14 will be very detrimental to real-time operations and could cause serious health, safety, and environmental consequences. The kinds of actions that warrant waivers, modifications, or exceptions usually are time sensitive and require real-time data that is evaluated by qualified individuals, such as immediate downhole drilling changes or wildlife stipulation relief based on a 2-week window of field nest evaluations. Other waivers, modifications, or exceptions are needed due to technological advances (e.g., flexhose and Coriolis meters). Thus, BLM should preserve the flexibility in the existing regulation.

G. § 3101.21 Public domain lands.

The text of subsection (a) should reference that the acreage limit in this section is only for federal leases on public domain lands. BLM should not rely only on the section title.

Recommended Revision:

> No person may take, hold, own or control more than 246,080 acres of Federal oil and gas leases <u>on public domain lands</u> in any one State at any one time. No more than 200,000 acres of such acres may be held under option.

H. § 3101.22 Acquired lands

The text of subsection (a) should reference that the acreage limit in this section is for federal leases on acquired lands. BLM should not rely only on the section title.

Recommended Revision:

> (a) No person may take, hold, own or control more than 246,080 acres of Federal oil and gas leases <u>on acquired lands</u> in any one State at any one time. No more than 200,000 acres of such acres may be held under option.

I. § 3101.51 General Requirements.

This proposed section would provide that "[p]ublic domain and acquired lands will be leased only with the consent of the surface managing agency . . . ." The Associations have significant concerns with the proposed changes to this section.

BLM explains in the preamble that this proposed section would combine subsections (a), (b), and (c) of existing § 3101.7-1 applicable to acquired lands, public domain lands, and National Forest System lands, respectively. However, this proposed section would grant surface managing agencies expanded authority beyond that which is provided under applicable statutes and the existing rules to veto acreage for federal oil and gas lease sales. It also would expand the scope of federal entities that would be authorized to exercise that "veto" authority because of BLM's proposed revision to the definition of "surface managing agency" in § 3000.5 improperly expanding that term to include DOI bureaus.

Only part of this proposed regulation is consistent with applicable requirements. Surface management agency consent is statutorily required for BLM to lease oil and gas beneath acquired lands under the MLAAL (30 U.S.C. § 352, requiring consent of "the head of the executive department . . . and subject to such conditions as that official may prescribe . . . ."). Thus, for example, if the minerals beneath a National Forest are acquired minerals, BLM may not lease the oil and gas without the consent of the Secretary of Agriculture.

However, there is no corresponding general statutory consent provision under the MLA for leasing oil and gas on public domain lands other than national forests (*see* 30 U.S.C. § 226(f)), and current regulations do not grant such expansive authority. Recognizing this non-existent statutory consent authority for public domain lands, existing § 3101.7-1(b) provides that BLM may not lease public domain lands unless it has "consulted" with the surface managing agency (defined in existing § 3000.0-5(m) as "any Federal agency *outside* of the Department of the Interior with jurisdiction over the surface overlying federally-owned minerals"), and the surface managing agency has "reported its *recommendations* to lease with stipulations, if any, or not to lease to the authorized officer" (emphasis added). Existing § 3101.7-1(b) provides that BLM may proceed to lease unless "consent or lack of objection of the surface managing agency is required by statute." Thus, the consultation/recommendation standard under the existing rules does not equate to an absolute consent role. In the absence of general statutory consent authority, which the Proposed Rule nowhere identifies, BLM does not have the authority to delegate to another federal agency the Secretary's authority to decide which public domain lands should be offered for lease.

Also concerning to the Associations and their members regarding implementation of this proposed section is that, as explained above, proposed § 3000.5 would expand the definition of "surface managing agency" to include not only federal Departments, but also DOI bureaus. Read together, proposed §§ 3101.51 and 3000.5 would grant FWS, BOR or other DOI bureaus authority to prevent leasing of acquired minerals beneath lands they administer even though they are not an "executive department" under the MLAAL. Proposed § 3101.51 also would provide DOI bureaus veto authority for public domain lands leasable under the MLA—even if BLM, or the Secretary, wanted to lease the parcels. While the Secretary oversees subordinate DOI agencies, it is well-established that all DOI agency officials, including the Secretary, would be bound by a duly promulgated regulatory provision diminishing the Secretary's ultimate leasing authority. *Vitarelli v. Seaton*, 359 U.S. 535, 539-40 (1959); *United States v. Nixon*, 418 U.S. 683, 696 (1974). BLM therefore should remove this proposed section purporting to convey to DOI bureaus this expanded authority to prevent leasing of federal minerals.

Recommended Revision:

> ~~Public domain and a~~Acquired lands will be leased only with the consent of the surface managing agency [with amended definition in § 3000.5 to include only non-DOI agencies]~~,~~. ~~which,~~ BLM will

> require the consent of the surface managing agency for public domain lands only if there is a statutory requirement for such consent. ~~u~~Upon the surface managing agency's receipt of a description of the lands from the authorized officer, it will report to the authorized officer that it consents to leasing with stipulations, if any, or withholds consent or objects to leasing.

J. § 3101.52 Action by the Bureau of Land Management.

The Associations have the same concerns with this section of the Proposed Rule as with its immediately preceding section. Proposed § 3101.52(b) provides that "[t]he authorized officer will not issue a lease on lands to which the surface managing agency objects or withholds consent." Like § 3101.51, this subsection means that regardless of whether the lands are acquired or public domain lands, the BLM will not lease lands when a surface management agency objects to leasing or withholds its consent. This is an improperly broad veto authority granted to surface managing agencies for public domain lands, and like the previous section suffers from the excessively broad definition of the term "surface managing agency" for acquired lands. BLM should not extend this authority to preclude leasing of public domain lands except for circumstances where the surface managing agency has statutory consent authority.

Recommended Revision:

> (b) The authorized officer will not issue a lease on acquired lands, or for other lands for which the surface managing agency has statutory authority to consent to leasing, to which the surface managing agency objects or withholds consent. In all other instances, the Secretary has the final authority and discretion to decide to issue a lease.

K. § 3101.53 Appeals.

As explained above regarding proposed § 3000.40, this existing provision providing adversely affected parties an appeal to the IBLA from BLM decisions relating to rejection of offers to lease, or to issue a lease with stipulations recommended by the surface managing agency, effectively eviscerates any appeal right because IBLA review generally takes several years. Therefore, as part of this regulatory update, BLM should amend this section to include State Director review, with the option to further appeal to IBLA.

Recommended Revision:

> ~~The~~ Any person adversely affected by a decision of the authorized officer to reject an offer to lease or to issue a lease with stipulations recommended by the surface managing agency, may request an administrative review before the State Director, either with or without oral presentation. Such request, including all supporting documentation, must be filed in writing with the appropriate State Director within 20 business days of the date such order or decision was received or considered to have been received and must be filed with the appropriate State Director. Upon request and showing of good cause, an extension for submitting supporting data may be granted by the State Director. Such

review will include all factors or circumstances relevant to the particular case. Any party who is adversely affected by the State Director's decision may appeal that decision ~~may be appealed~~ to the Interior Board of Land Appeals under 43 CFR part 4.

L. § 3102.51 Compliance.

Under this section, "[o]nly responsible and qualified bidders and lessees may own, hold, or control an interest in a lease or prospective lease." The Associations explained their concerns with the definitions of these terms in their comments above on proposed § 3100.5. The Associations have further concerns with this section because it requires that the person be in compliance with multiple subsections that, in turn, reference other statutory and regulatory provisions. In particular, subsection (f) of this section appears to unreasonably disqualify persons from holding federal lease interests, and to unlawfully subject existing leases to cancellation.

Under this subsection (f), adopted to implement 30 U.S.C. § 226(g), a signature on an offer, lease, assignment, or transfer constitutes evidence of compliance that the signatory and any of its affiliates has not failed to comply with reclamation requirements with respect to all leases and operations on those leases in which such person has an interest. The proposed subsection would modify the existing regulations by providing that BLM may find persons noncompliant when they purportedly fail to comply with reclamation obligations in the time specified in a "notice from the BLM," rather than after BLM takes additional enforcement steps such as issuing a written order, an Incident of Noncompliance ("INC"), or a civil penalty. Despite eliminating from the existing subsection the need for BLM to take these additional enforcement steps, the proposed subsection would carry over the provision from the existing rule that "any such person in violation of this paragraph (f) will be subject to the cancellation provisions of 43 CFR 3108.30, notwithstanding any administrative or judicial appeals that may be pending with respect to violations or penalties assessed for failure to comply with the prescribed reclamation standards on any lease holdings." The effect of this new provision is that if you receive notice from BLM asserting that you or any of your affiliates has an unfulfilled reclamation obligation (regardless of accuracy of the assertion) for any federal oil and gas lease, and you in good faith challenge that determination administratively, BLM may proceed to cancel your leases while the appeal is pending unless you fulfill the claimed reclamation deficiency. This is unreasonable restructuring of the existing subsection and will result in a denial of due process by effectively mooting any appeal opportunity.

Moreover, the newly proposed sentence in subsection (f) would expand the scope of this subsection from only "reclamation" requirements to also encompass "other standards established under 30 U.S.C. 226." Indeed, the other sentences of subsection (f) would continue to refer only to "reclamation." This unwarranted expansion would only exacerbate the lease cancellation concerns discussed above.

BLM should not adopt the proposed changes to this section in the final rule, and instead adhere to the terms of existing 43 C.F.R. § 3102.5–1.

Subpart 3103.

In its preamble, BLM asks for comment on whether it should adopt a 5-year diligent development requirement, and a rental increase if diligent development requirements are not met. BLM should not. These new diligent development terms would impose large cost increases on a substantial number of leases. They also would not allow the operator flexibility to properly evaluate and commence operations in a responsible developmental situation and economic manner consistent with lease requirements. Federal leases include terms, such as the recently increased rental fees, that already incentivize prudent development or lease surrender.

New diligent development requirements also are unnecessary because in the IRA Congress amended the MLA to establish new escalating minimum rental requirements to spur diligent development of federal leases. First, IRA Section 50262(c) amends 30 U.S.C. § 226(d) to permanently increase the prior minimum rental rate from $1.50 per acre per year for the first through fifth years, and not less than $2 per acre per year thereafter, to "$3 per acre per year during the 2-year period beginning on the date the lease begins for new leases, and after the end of that 2-year period, $5 per acre per year for the following 6-year period, and not less than $15 per acre per year thereafter. . . ." That section then provides that "in the case of a lease issued during the 10-year period beginning on the date of enactment of the Inflation Reduction Act of 2022, $3 per acre per year during the 2-year period beginning on the date the lease begins, and after the end of that 2-year period, $5 per acre per year for the following 6-year period, and $15 per acre per year thereafter." Consequently, until 2032, Congress has considered the diligent development issue and increased rental rates as prescribed in IRA Section 50162, and BLM has no discretion to alter those rates by rule. For the period beginning in 2032, it is premature for BLM to consider whether to escalate what would then become the same level of prescribed minimum rental rates, which already are much higher than pre-IRA rates. Instead, BLM should wait to assess the status of the federal oil and gas leasing regime and related market dynamics until closer to 2032.

The Proposed Rule also ignores the obstacles often placed by regulatory agencies and others that have the consequence of delaying development for reasons beyond the lessee's control after a lease is issued. As a result, it would not be appropriate for BLM to impose any other diligent development requirements at this time.

M. § 3103.31 Royalty on production.

This section properly recognizes that the royalty rate increases prescribed in IRA Section 50262(a)(1) do not apply to existing leases with lower royalty rates. The Associations note that BLM thus must be prepared to respond to increased requests for surface commingling approvals and other consequences of neighboring leases with disparate royalty rates.

N. § 3103.42 Suspension of operations ["SOO"] and/or production ["SOP"]; § 3165.1 Relief from operating and/or producing requirements.

The Proposed Rule, like existing 43 C.F.R. § 3103.4–4(a), would allow a suspension "of all operations and production" "only in the interest of conservation of natural resources," and would require a "SOO only" or a "SOP only" request to show "*force majeure.*" BLM should take the opportunity in this rulemaking to instead broaden eligible circumstances for an SOO or SOP beyond *force majeure*, or at a minimum should acknowledge that BLM's own delays constitute such *force majeure* for purposes of an SOO or SOP. Doing so would afford flexibility regarding suspensions, where warranted, based on individual circumstances. The Proposed Rule fails to explain the existing limitations, or to cite to or harmonize BLM's recent IM 2023-012 addressing the grounds and process for a lease SOO or SOP.[21] BLM also must reconcile the proposed new § 3165.1(c) and IM 2023-012—both of which would newly foreclose suspensions based on an APD filed less than 90 days before lease expiration—with agency policy against premature suspensions, and with the reality of BLM's own delays in processing APDs and suspensions, so that lessees can clearly understand the appropriate timing for submitting and adjudicating APDs and requests for suspensions.

O. § 3104.10 Bond Obligations

BLM should retain Certificates of Deposit ("CDs") and Letters of Credit ("LOCs") as forms of security for personal bonds. The Proposed Rule's stated rationale for removing these options is that CDs are difficult to manage and it is difficult for banks to include BLM's requirements in a LOC. However, BLM provides no information on how often this occurs, what type of operators (small or large) use CDs and LOCs, and other similar details on the issue. At a minimum, BLM should provide an analysis of this issue for review and comment before removing such options. As a general matter, and as further explained in the Associations' comments below on proposed § 3104.50, BLM should afford greater—rather than less—flexibility to operators regarding forms of security, particularly given the Proposed Rule's drastically higher minimum and additional bond amounts.

P. § 3104.20 Lease bond.; § 3104.30 Statewide bonds.

The Associations support the principle that existing lease interest owners and their operator should be responsible for fulfilling all lease obligations, including decommissioning. This is not a burden that should be placed on predecessor interest owners that may have assigned away their lease interest years, or even decades, ago. Nor is it a burden that should fall on the American taxpayer when there is no predecessor in interest. However, BLM should ensure that its financial assurance requirements for existing interest owners and operators are applied sensibly and fairly.

The Proposed Rule's increases in bonding amounts for lease ($150,000) and statewide ($500,000) bonds are excessive, and likely will result in premature termination of operations and corresponding waste of federal resources. While the Proposed Rule's preamble cites draft bills that led to the IRA in proposing corresponding minimum bonding amounts, Congress ultimately did *not* enact those minimums. *See* 88 Fed. Reg. at 47,581. BLM's economic justification fails to account for circumstances of individual leases that have been in effect for years if not decades. This is particularly concerning for leases nearing the end of their productive life, because BLM's imposition of 15-to-20 fold increases of lease and statewide bonding obligations on such leases could be expected to result in premature shut-in and abandonment, leaving otherwise producible oil and gas resources in the ground. These bonding changes will be particularly impactful to

[21] https://www.blm.gov/policy/im-2023-012.

smaller operators with less financial wherewithal to obtain such increased bonding or pay associated premiums. Therefore, BLM should consider reducing the proposed minimum bond amounts, or alternately providing for accommodations to existing leases unable to feasibly satisfy the dramatically increased minimum bond amounts.

BLM should modify § 3104.20 of the Proposed Rule because it is inconsistent with other sections of the Proposed Rule and is confusing. For example, under proposed § 3104.10, before any surface disturbing activities, the lessee, operating rights owner *or* operator would have to submit a surety bond or personal bond for the amounts required in subpart 3104. However, proposed § 3104.20 then inconsistently limits what is permitted under proposed § 3104.10 by providing that "[t]he operator must be covered by a bond in its own name as principal or obligor in an amount of not less than $150,000 for each lease . . . ." BLM claims in the preamble that this change is intended to simplify bonding requirements among the operator, lessee, and operating rights holder. However, BLM fails to appreciate that as a result of the substantial minimum bond amount increases that now would be incorporated into this section, this new operator bonding requirement would put a large financial burden on operators of multiple leases, particularly if they are operating on federal leases in several different states. For example, for an operator with 10 federal leases each in a different state, this proposed change would increase the bond obligation from $100,000 under the existing rules to $1.5 million as a result of the per lease bond amount increase required under this Proposed Rule. BLM's primary concern should be that at least one person must post the required financial assurance for a lease, and should leave it to the operator, lessee, and operating rights owner to determine among themselves who will provide the required bonding for a particular lease.

This proposed section further would provide that "[a]dditional bonding may be posted by a lessee, or owner of operating rights," with no further clarification in the regulatory language or the preamble as to what additional bonding obligation this section is referring to. If BLM is referring to supplemental bonding under § 3104.50(b), then it should clarify the rule accordingly. However, if it is a reference to supplemental bonding, then BLM is creating a potential problem if the operator fails to comply with a lease obligation. It would be uncertain whether BLM must first make a claim against the operator's security, or whether BLM could choose instead to make an initial claim against the supplemental financial assurance posted by the lessee or sublessee. These are financial issues that are better left to the lease interest owners and the operators to allocate and not for BLM to dictate through rulemaking. Again, BLM's primary concern should be that it is provided with adequate financial assurance to meet the lease obligations, and not which person provides the base bonding or the supplemental bonding.

The last sentence of this proposed section provides that "[w]here two or more principals have interests in different formations or portions of the lease, separate bonds may be posted." First, "principals" is an undefined term. If BLM means lessee or sublessee, it should use the understood terminology in the Proposed Rule. Second, it is unclear what BLM means by "separate bonds may be posted." BLM should clarify if it means separate bonds are a requirement, although if a single well is producing from multiple zones the interests in which are held by different sets of persons, a single bond meeting the requirements for a lease is sufficient to ensure decommissioning of that well.

Additionally, BLM should abandon its proposal to eliminate the option for a nationwide bond authorized under existing § 3104.3(b). BLM asserts in the preamble that nationwide bonds are "administratively inefficient" because they call upon BLM to manage risks nationwide. It further states that the proposed increases in the minimum lease and statewide bond "would allow the agency to ensure improved bonding." These vague justifications that BLM proffers do not outweigh the producing industry's need for a continued nationwide bond to achieve efficiencies and continue providing affordable energy to the U.S. public. The 15-fold increase in the minimum lease bond amount and the 20-fold increase in the minimum statewide bond amount will impose considerable new financial burdens on smaller operators, particularly those with operations across multiple states; a reasonable nationwide bonding option ameliorates those burdens. Also, significant increases and reduced flexibility in bonding requirements may cause smaller operators to prematurely cease operations, thereby increasing risks of bankruptcies and orphan wells. BLM also does not account for the fact that nationwide bonds favorably reduce overall risk by spreading it over a larger geographical area. Further, the elimination of a nationwide bond would create more inefficiencies for BLM by eliminating the ability to cover de minimis acreage positions across multiple states. As a placeholder, the recommended revisions below include the $2 million nationwide bonding level contained in draft bills that resulted in the IRA; as indicated above, however, BLM should reduce that amount as appropriate.

Recommended Revision:

§ 3104.20 Lease bond.

The operator, a lessee, or an owner of operating rights (sublessee) must ~~be covered by~~ provide a bond in its own name as principal or obligor in an amount of not less than $150,000 [or lower amount per comments above] for each lease conditioned upon compliance with all of the terms of the lease. ~~Additional bonding may be posted by a lessee, or owner of operating rights (sublessee), as they are ultimately responsible under § 3106.72.~~ Where two or more ~~principals~~ lease interest holders have interests in different formations or portions of the lease, separate bonds may be posted.

§ 3104.30 Statewide and nationwide bonds.

In lieu of lease bonds, lessees, owners of operating rights (sublessees), or operators may furnish a bond in an amount of not less than $500,000 [or lower amount per comments above] covering all leases and operations in any one State, or in an amount of not less than $2,000,000 [or lower amount per comments above] covering all leases and operations nationwide.

Q. § 3104.40 Surface owner protection bond.

This proposed section conflicts with several state requirements involving split estate and access/surface owner bonding. While BLM must evaluate through NEPA analysis any significant impacts to the surface environment as a result of its approvals or other actions, BLM should not duplicate state requirements for the protection of non-federal surface owners through operator bonding. BLM therefore should add a new subsection (a) acknowledging state requirements where they apply. In addition, BLM should make clear that this section applies only where the surface is not federally owned, consistent with existing 43 C.F.R. § 3171.19(b)(2). BLM also should address the interplay between existing § 3171.19(b)(2), which this Proposed Rule would not modify, and proposed § 3104.40 which may be duplicative or inconsistent. Namely, § 3171.19(b)(2) allows for an "agreement" with the surface owner in lieu of bonding, and such an agreement does not necessarily require payment of "compensatory damages" as proposed in § 3104.40. BLM should also clarify that such bonds are not intended to cover reclamation, but rather only compensation for inadvertent "reasonable and foreseeable damages to crops and tangible improvements" as stated in the Proposed Rule.

Recommended Revision:

<u>(a) This section applies only if:</u>

<u>(i) the relevant state does not have regulations or procedures that provide for surface owner protection bonds; and</u>

<u>(ii) the surface is not federally owned.</u>

R. § 3104.50 Increased amount of bonds.

This section is the same as existing § 3104.5 with only minor changes. However, BLM should use this rulemaking as an opportunity to modify this section to address its longstanding shortcomings. One of the Associations' concerns is that subsection (b) provides that the authorized officer may raise bond amounts if the operator has a "history of previous violations" or otherwise "poses a risk" due to factors such as uncollected royalties due, or decommissioning costs that exceed the present bond amount. First, the reference to "uncollected royalties due" is unclear as to what it includes. It should include only amounts that have been finally determined to be due and owing but that remain unpaid, and not amounts demanded but subject to administrative appeal, payment of which is stayed pending appeal under 30 C.F.R. § 1243.8.

Second, the concept of royalties owed as being a lease obligation is an anachronism due to the treatment since 1996 of federal oil and gas lease royalty obligations under the Federal Oil and Gas Royalty Management Act, as amended by the Royalty Simplification and Fairness Act. Under that statute, royalty obligations are not a general lease obligation, but are proportionate among the lease interest owners. 30 U.S.C. § 1712. Therefore, it no longer is legally proper for BLM to require that any one lease interest owner guarantee payment of the royalty obligations of its co-interest owners in the lease. In addition, any BLM requirement to provide supplemental financial assurance for royalty disputes is duplicative and unnecessary. Under 30 C.F.R. §§ 1243.4 and 1243.8, if you dispute an ONRR royalty payment demand on production from an onshore federal lease and appeal that demand to the ONRR Director or the Interior Board of

Land Appeals, those regulations properly address the need to provide any financial assurance to obtain a stay of the payment demand pending resolution of the appeal.

The reference to "history of violations" also is vague and requires parameters as to the seriousness of the violations, age of the violations, and whether the violations BLM may have asserted are subject to administrative or judicial review. It also is unclear if an operator's violations must have occurred on the same lease or on any federal lease that it operates. It is entirely inappropriate for lease interest owners on a lease to have to provide supplemental financial assurance for violations that occurred on another lease. Alleged noncompliance with BLM operating regulations also should not trigger a need for additional financial assurance if those violations were unrelated to decommissioning or similar significant lease-related financial obligations. For example, a missing seal on an oil tank does not provide a reasoned basis for BLM to demand supplemental financial assurance. To the extent there exist outstanding financial obligations, BLM has adequate enforcement tools to pursue and collect those amounts and should not use supplemental bonding to address that extant alleged noncompliance.

Additionally, for the same reasons explained above for other appeals sections, the regulations should provide that an operator or lease interest owner may seek State Director review of the authorized officer's demand for supplemental financial assurance. IBLA review of the State Director's decision also should be permitted.

Finally, in view of the significant bonding increases under proposed § 3104.50, BLM should afford flexibility in the forms of acceptable financial assurance instruments to satisfy a BLM demand for increased bond amounts. BLM's sister agency BOEM provides for such flexibility in financial assurance for operators on the Outer Continental Shelf. *See, e.g.*, 30 C.F.R. § 556.900(g). Therefore, in addition to traditional bonds, BLM should be able to consider third-party guarantees, abandonment accounts, or other forms of adequate financial security proposed by an operator and acceptable to BLM.

Recommended Revision:

> (b) The authorized officer may require an increase in the amount of any bond whenever it is determined that the operator poses a risk due to a history of failing to perform reclamation on BLM-managed leases or ~~factors, including, but not limited to, a history of previous violations, a notice from the ONRR that there are uncollected royalties due,~~ due to the total cost of plugging existing wells and reclaiming lands exceed~~s~~ing the present bond amount based on the estimates determined by the authorized officer. The increase in bond amount may be to any level specified by the authorized officer, but in no circumstances will it exceed the total of the estimated costs of plugging and reclamation, ~~the amount of uncollected royalties due to the ONRR,~~ plus the amount of money owed to the lessor due to previous violations remaining outstanding. An operator may satisfy a demand for increased bonding by providing another form of security that BLM determines protects the interests of the United States to the same

extent as a bond. Any person aggrieved by a decision of the authorized officer to increase bond amounts is subject to State Director review, and review by the Interior Board of Land Appeals, in accordance with 43 C.F.R. § 3165.3.

S. § 3104.70 Default.

Subsection (b)(2) adds new disqualification language for those persons who do not cure bonding defaults. Under this new subsection, if you fail to cure your bonding defaults, BLM may prevent you from acquiring new federal lease interests. The Associations object to this additional subsection because it effectuates the equivalent of suspension or debarment even if BLM does not pursue that route under paragraph (b)(3) with its corresponding due process protections. Accordingly, BLM should remove proposed subsection (b)(2).

T. § 3104.90 Bonds held prior to [EFFECTIVE DATE OF THE FINAL RULE].

Because the Proposed Rule's new minimum lease bond requirements are such a significant increase over the minimum bonding levels in existing regulations, BLM also should uniformly allow for a five-year phase-in period to meet all of the different bonding requirements for existing leases, including in proposed §§ 3104.20 and 3104.30, and should modify proposed § 3104.90 accordingly. This modified phase-in would avoid potentially disruptive financial impacts to lessees and to the financial marketplace that lessees and operators rely upon for securing financial assurance for their federal oil and gas lease operations. Moreover, as discussed above, BLM should remove proposed subsection (c) and preserve nationwide bonding.

U. § 3106.42 Transfers of other interests, including royalty interests and production payments.

BLM is updating this section to ensure that transfers of overriding royalty interests, payments out of production, and similar transfers are reported to BLM. BLM should clarify that BLM approval is not required for these transfers.

V. § 3106.60 Bond requirements.

This section requires an assignee of record title or transferee of operating rights to furnish bonding to replace bonding maintained by the assignor or transferor. But proposed § 3104.20 would place the principal bonding obligation for a lease on the operator. BLM should harmonize the two sections consistent with changes recommended to these sections provided above.

W. § 3107.10 Extension by drilling.

BLM is proposing in subsection (c) that when a BLM-approved directional or horizontal well is drilled from an off-lease location, BLM will consider drilling to have commenced on the lease area when drilling begins at the off-lease location. The Associations support this change as reflecting the realities of advanced drilling technologies.

X. § 3107.21 Continuation by production.

Consistent with the change BLM is proposing for § 3107.10(c), BLM should add the following sentence to this section: "When a BLM-approved directional or horizontal well is completed within multiple leased areas, BLM will consider production to have commenced from each of those leased areas." This will confirm that a lease is held by production from the directional or horizontal well.

Y. § 3120.11 Lands available for competitive leasing.

The Proposed Rule amends the introductory sentence of this section from "[a]ll lands available for leasing *shall* be offered for competitive bidding" to "[a]ll lands *eligible and* available for leasing *may* be offered for competitive auction" (emphasis added). The preamble states that addition of the term "eligible" is to better conform to the MLA, 30 U.S.C. § 226(a) and (b), and "better reflect Interior's statutory discretion to identify lands available for oil and gas leasing." But the changed regulatory language would make the decision to lease more flexible for BLM than the statute allows, including making quarterly leasing in each state appear voluntary, by changing "shall" to "may," contrary to recent court decisions in the wake of EO 14008 Section 208. *See State of North Dakota v. DOI*, No, 21-148, ECF No. 98 (D.N.D. Mar. 27, 2023) (slip. op.); *Louisiana v. Biden*, 622 F. Supp. 3d 267, 293-94 (W.D. La. Aug. 18, 2022); *see also W. Energy All. v. Jewell,* No. 16-912, 2017 WL 3600740, at *8 (D.N.M. Jan. 13, 2017). The Associations view this proposed provision as another opportunity to inappropriately limit federal leasing. At a minimum, any change to the existing regulation should mirror the precise language of the statute: "Lease sales shall be held for each State where eligible lands are available at least quarterly and more frequently if the Secretary of the Interior determines such sales are necessary."

Z. § 3120.12 Requirements.

BLM is proposing to amend subsection (a) to provide that "[e]ach BLM State Office will hold sales at least quarterly if eligible lands are available for competitive leasing." This is a significant change from existing § 3120.1-1 which provides that "[a]ll lands available for leasing shall be offered for competitive bidding under this subpart . . . . ", with the latter providing less discretion to remove acreage otherwise available for lease. BLM again states in the preamble that "[t]he proposed rule would update paragraph (a) to conform this section with the language of 30 U.S.C. 226(a) and (b)." However, like proposed § 3120.11 above, the proposed language appears to imbue BLM with more discretion than the statute (30 U.S.C. § 226(b)) does. That statute provides: "Lease sales shall be held for each State where eligible lands are available at least quarterly and more frequently if the Secretary of the Interior determines such sales are necessary." BLM's proposed provision here, particularly coupled with BLM's proposed new "preference criteria" in this Proposed Rule and with BLM's separately proposed "conservation and landscape health" rule, appears to reduce acreage for leasing by relying on other, subsequent determinations that lands available under applicable Resource Management Plans should not be "eligible" for leasing due to BLM's later assertion of potential resource "conflicts." Again, at a minimum, any change to the existing regulation should mirror the precise language of the statute quoted above.

AA. § 3120.30—3120.34 Nomination process.

The preamble to the Proposed Rule asks for comment on whether BLM should reinvigorate the "formal" nomination process for parcels to be included in a competitive auction, which to date BLM has largely eschewed in favor of informal expressions of interest ("EOIs"). BLM explains that "[a]side from a few test sales following the enactment of FOOGLRA, the BLM has never employed the formal nomination process." It is unclear how this proposal would function differently than existing EOIs, except to afford BLM another "mechanism" to limit lease areas under its newly expressed criteria. It also is unclear what BLM means when it states that "[t]he proposed rule would update the following sections [§§ 3120.31-.33] for the formal nomination process with the intent to make these nominations *nonbinding* . . . ." Moreover, BLM does not harmonize the BLM Policy Manual on Communitization (at 10), which states that unleased federal lands within communitization agreements "should be offered for competitive leasing as soon as possible." Such federal lands should not be subject to nomination limitations or EOI criteria set forth in the Proposed Rule.

The Proposed Rule further leaves several relevant questions unanswered for this formal nomination process. For example, would BLM go through the same EOI process to track submissions though the system and allow the public to see what the BLM has nominated? How will BLM confirm industry interest in such acreage? Under what criteria would BLM nominate parcels? Will BLM-nominated parcels be counted in the IRA's acreage calculations for onshore solar and wind rights-of-way? On this last point, BLM should not count all such BLM-nominated acreage for IRA purposes as much of that acreage may never be offered or leased or even attract industry interest in a lease sale. Indeed, BLM need only look to the results of recent offerings for onshore solar and Gulf of Mexico offshore wind to observe the disconnect between government and industry perceptions of attractive areas for energy development.

BB. § 3120.33 Parcels receiving nominations.

BLM is amending existing § 3120.3-5 to no longer mandate that BLM include nominated parcels in a competitive lease sale. Instead, BLM would provide that it "may" include such parcels. That is nonsensical. Proposed § 3120.32 provides that nominations are filed in response to a "List of Lands Available for Competitive Nominations." Thus, BLM has already determined that the lands are available to include in a competitive lease sale. BLM should not get another opportunity to exclude parcels on that list from a competitive sale once they are duly nominated.

CC. § 3120.41 Process.

As discussed in the Associations' general comments above, this proposed provision is among the most problematic in the Proposed Rule. At the outset, BLM fails to explain how the process for EOIs is different from the formal nomination process outlined in the Proposed Rule's preceding sections. Considering BLM's acknowledgement that to date it has leased solely based on the EOI process, BLM should fully delineate the respective workings of the two processes, to avoid potentially misapplying the formal process as an opportunity to constrain access to federal oil and gas while claiming credit toward IRA offered acreage targets.

More critically, subsection (f) introduces "preference criteria" for BLM to utilize in selecting lands to offer in onshore lease sales in response to EOIs. Again, the subjectivity and uncertainty of these criteria contradict BLM's professed rejection of "subjective" criteria and embrace of "certainty." 88 Fed. Reg. at 47,574, 47,565. Also, these preference criteria are ill-defined or undefined. For example, "important fish and wildlife habitats or connectivity areas" is a very broad concept. It potentially captures far more than an Area of Critical Environmental Concern ("ACEC"), which is already subject to existing defined criteria, procedures, reporting, and mitigation.[22] Existing laws such as FLPMA, the Clean Water Act, and the Endangered Species Act already balance multiple uses and protect water bodies and species on BLM lands, and refusing to lease in an area with "important" habitat is unclear and unnecessary. To the extent that the "important" area is already covered by another existing law, the preference criteria would be duplicative. And to the extent the preference criteria are used to exclude additional areas from leasing, the Proposed Rule fails to follow the appropriate procedures for area designation or acreage withdrawal, including a public comment process.[23] The same is true for "historic properties" under the National Historic Preservation Act and laws protecting specific cultural lands. The MLA clearly does not vest BLM with jurisdiction to achieve the same ends as these other statutes.

What is more, BLM purports to set forth only "minimum" criteria in this subsection, and states that it "would consider additional criteria and factors." 88 Fed. Reg. at 47,590. BLM then invites inclusion of additional factors such as "environmental justice concerns" and "greenhouse gas emissions," and does so without appropriate parameters for their consideration. *Id.* at 47,566, 47,590. The Associations are concerned that BLM could wield such additional criteria to simply reduce federal oil and gas leasing—whether or not those criteria are expressly adopted in a final rule. This proposed subsection (f) could be used to functionally freeze oil and gas activities to already existing areas and eliminate new *exploratory* oil and gas development on federal lands. *E.g., id.* at 47,591 ("The BLM would implement this EOI preference process to conserve certain public lands . . . ."); *id.* ("For example, offering leases where current infrastructure exists should reduce the overall footprint of energy development and limit wildlife impacts and habitat fragmentation."); § 3120.41(f)(1) (BLM will consider "[p]roximity to oil and gas development existing at the time of the BLM's evaluation, giving preference to lands upon which a prudent operator would seek to expand existing operations").

The Associations and their member companies share the same commitment as BLM to ensuring that environmental justice concerns are addressed. We support the core principles that uphold environmental justice policy and practice: fair treatment and meaningful engagement, and the industry strives to ensure safe and responsible operations, respecting the communities and the environment where the industry operates. The industry is deeply committed to working with local communities and policymakers to promote these principles across the energy sector. However, BLM should not develop additional criteria in this rulemaking, but instead work with the ongoing CEQ efforts, including on environmental justice, to ensure an aligned and streamlined regulatory process. Specifically, on July 31, 2023, CEQ proposed Phase 2 revisions to its regulations implementing the NEPA, 40 C.F.R. parts 1500-1508. Environmental justice has long been a part of NEPA analysis; however, for the first time, the Proposed Rule would

[22] *See* 43 U.S.C. § 1712(c)(3); 43 C.F.R. § 1610.7-2; BLM IM 2023-013.
[23] *See id.*; 43 U.S.C. § 1714.

codify a definition of "environmental justice" for NEPA purposes. BLM's proposal to prematurely implement additional criteria could lead to inconsistencies across regulatory programs, resulting in uncertainty and delays. Also, adding criteria that could potentially duplicate NEPA and efforts by other agencies creates redundancy and administrative complexity.

Furthermore, at the leasing stage, neither BLM nor an operator can forecast with certainty what specific mitigation efforts the operator may undertake to address environmental or environmental justice considerations. BLM should not prejudge how operations on the tract will be conducted in determining whether to exclude the lands entirely from leasing. For example, some operators are voluntarily undertaking extensive programs aiming to achieve or approach carbon net zero operations in basins.

Overall, BLM fails to explain why the preference criteria are needed in the first place. The Proposed Rule suggests that the preference criteria are separate from and precede NEPA review. *Id.* ("The preference criteria generally would be applied before the NEPA analysis is completed."). It is unclear what this means, or how this would avoid improper predetermination of the NEPA process that is specifically intended to analyze such criteria. Furthermore, the preference criteria are likely unnecessary given the greatly reduced surface impacts associated with today's well drilling and completion technology. Lessees may now elect where practicable (as opposed to being compelled by BLM under the Proposed Rule) to horizontally drill well laterals from many miles away while avoiding impacts to any sensitive resources located on a BLM lease. Lessees also operate pursuant to well-developed state programs, such as the Wyoming Executive Order on Greater Sage Grouse, that demonstrate oil and gas development's successful coexistence with wildlife conservation.

Accordingly, BLM should remove subsection (f) from this section of the Proposed Rule. BLM also should not adopt additional potential criteria such as those contemplated in its preamble. Doing so, particularly when coupled with other surface use restrictions in the Proposed Rule, would only detract from the predictability and functionality of BLM federal oil and gas leasing.

DD. § 3120.42 Agency inventory of leasing.

Section 50265(b)(1) of the IRA provides that during the 10-year period following enactment, BLM may not issue a right-of-way for wind or solar energy development on public domain or acquired lands unless BLM has held an onshore oil and gas lease sale in the 120 days preceding the right-of-way issuance, and during the 1-year period preceding the right-of-way issuance BLM has held oil and gas lease sales the total acres of which exceed the lesser of 2,000,000 acres or 50 percent of the acreage for which expressions of interest were submitted for lease sales during that 1-year period. BLM issued IM 2023-006 to establish a process for counting the acreage offered to implement this statutory prerequisite.

Proposed § 3120.42 provides that BLM will periodically calculate the "acreage for which expressions of interest have been submitted" and total "acres offered for lease," both of which are newly defined terms in proposed § 3000.5. Yet proposed § 3120.42 provides no calculation method. This problem is compounded by proposed § 3000.5's exclusion of expressions of interest acreage that previously was "proposed for leasing" in "any pending sale" or in any "other expression of interest pending BLM disposition." For the record, BLM should not rely upon IM 2023-006 or other aspects of the Proposed Rule that are inconsistent with the requirements of the IRA by improperly inflating acreage totals nominated or offered for federal onshore oil and gas leasing, or by improperly decreasing the number of acres included in the determination of acreage for which EOIs were submitted. Indeed, BLM has not explained why the agency finds it necessary to itself nominate lands if prospective operators have not expressed interest in those lands and they thus are unlikely to be successfully bid or produced.

EE. § 3120.63 Award of Lease.

Under the last sentence of subsection (e) of this proposed section, "[i]f the BLM cannot issue the lease within 60 days, the BLM may reject the offer." BLM should not adopt this proposed sentence, which sets up possibly routine rejection by BLM of winning lease offers after a competitive sale is held. The corresponding preamble text merely points to delays from the existence of protests and legal challenges to lease sales, and BLM "policy" to allow the high bidder to await resolution or decline the lease. It nowhere justifies BLM unilaterally rejecting a lease offer. Indeed, the last sentence of subsection (e) is incompatible with the rest of this proposed section and the existing regulation foreclosing a high bidder from withdrawing its bid. Nor should BLM's preamble anticipate that "[t]hese protests and challenges may require the BLM to complete a corrective environmental analysis to reach resolution." Rather, BLM should stand behind its NEPA and other analyses.

III. PART 3150

A. § 3151.30 Collection and submission of data.

The Associations have concerns with this new proposed section of the regulations requiring submission to BLM, and possibly public release, of results of geophysical exploration activities nationwide. BLM provides no basis for this requirement or discussion as to why BLM needs this information, how it will be used, or with whom it will be shared. Operators have spent significant funds to conduct these explorative surveys, and the resulting data is highly confidential business information ("CBI"). At a minimum, if BLM requires the submittal of this information, BLM should treat it as presumptively CBI and accordingly not disclose it to the public or competitors under 43 C.F.R. part 2.

IV. PART 3160

A. § 3162.3-4 Well abandonment.

The Associations oppose subsection (c)'s imposition of a maximum four-year period "except in extraordinary circumstances" to permanently abandon wells that the Proposed Rule defines as temporarily abandoned. In some fields, an operator may not know within four years whether it will need that well, including for secondary recovery operations, water injections, or other purposes. The Associations are concerned that BLM may not consider such circumstances as "extraordinary" to extend the proposed four-year maximum period. It would be wasteful and more environmentally impactful to inflexibly require an operator to permanently abandon a well and later have to drill a replacement well. Rather, the maximum period to permanently abandon temporarily abandoned wells should be the same as for shut-in wells in subsection (d), allowing for additional one-year periods where warranted.

BLM also should delete proposed paragraph (d)(1) in this section. Shut-in wells should not require separate notices to the BLM within 90 days of shutting in a well. Wells are required to be reported on the ONRR Form-4054 ("OGOR") beginning with the last month of drilling and continuing until the well is abandoned. Thus, shut-in wells already are reported (Well Status codes 12 (OSI) and 13 (GSI)). This reporting requirement should suffice, and BLM can track these wells through monthly OGOR reports. If it is BLM's intention to track wells that are shut in for extended periods, i.e., up to the 3 years noted in paragraph (d)(2), then the rule should make it clear that it does not apply to wells that are shut in only for short periods of time. In particular, this circumstance would include wells that are shut in periodically but have actual production each month (in which instance the OGOR would show the wells as producing wells).

V. PART 3170

A. § 3171.14 Valid Period of Approved APD.

The Associations support BLM's goal to reduce administrative burdens associated with APD extension requests. However, there is often good cause for such extensions, and as the Proposed Rule's preamble points out, nearly all wells were spud within four years of approved APDs. Accordingly, the most efficient and equitable method to achieve BLM's goal is to establish a uniform four-year term for an APD, rather than two or three years as BLM proposed. A four-year APD term also more closely correlates with NEPA review accompanying an APD approval, given that NEPA review typically remains valid for at least a five-year period (absent significantly changed circumstances). BLM also should clarify that any new time limitation would apply only prospectively to APDs issued after the effective of a final rule. Moreover, BLM needs to provide a procedure for an operator to obtain an approved sundry notice that its APD remains valid in circumstances covered by proposed § 3171.14(b).

VI. MISCELLANEOUS

Beyond the above comments, the Associations offer a few final overarching comments regarding the Proposed Rule's preamble and discussion of "procedural matters." First, despite its preamble's broad statement, it is not for BLM to determine that every provision in the proposed rule is "severable." 88 Fed. Reg. at 47,566. Rather, that determination is for a court in any legal challenge to the Proposed Rule in part or in whole. In any event, BLM's revision of its Proposed Rule as recommended in these comments should help obviate this issue.

Second, BLM cannot rely on the "public welfare" clause in 30 U.S.C. § 187 (MLA) to support widespread curtailment of leasing. *Id.* at 47,565, 47,573. This provision speaks to terms to be included in leases, and the specific clause (following the final semicolon) addresses economic terms for reasonable wages and prices for federal mineral production. Moreover, the Proposed Rule fails to link its proposals to any aspect or measure of the public welfare. As discussed above, existing regulations are already sufficiently protective of public resources. Furthermore, the Proposed Rule nowhere accounts for the fact that sharp curtailment of federal oil and gas activities would injure the public welfare via lost jobs and diminished economic support for reliant or disadvantaged communities and states.

Finally, BLM makes a counterfactual assumption that the Proposed Rule will have no substantial effects on energy supply. *Id.* at 47,613. That appears to be impossible if BLM is actually significantly curtailing future federal onshore oil and gas leasing via this Proposed Rule, as BLM elsewhere indicates should occur. *Id.* at 47,591, 47,613-14. Moreover, BLM offers no evidence for its presumption that lessees can freely rededicate resources from federal to non-federal lands. BLM's conclusion also ignores significant cumulative cost impacts on oil and natural gas operators stemming from BLM's full suite of proposed rulemakings, such as the proposed Waste Prevention Rule (cited *supra*) and forthcoming Site Security and Measurement rules.

* * *

Thank you for the opportunity to provide these comments. The Associations and their members remain committed to working with BLM on the subject matter of the Proposed Rule. Please do not hesitate to contact us if you have any questions.

Sincerely,

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Economic Benefits of Onshore Federal Oil and Natural Gas Leasing from FY 2013 – 2022

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Executive Summary

The development of oil and natural gas resources on federal lands yields significant economic benefits. The oil and natural gas industry generates direct benefits via production on federal lands and revenue sharing in which approximately 50 percent of bonuses, rents, and royalties are shared with the state where they occur. These benefits bolster local government services like education and healthcare. Additionally, the oil and natural gas industry also generates indirect economic benefits that arise from the industry's purchases of goods and services, along with induced benefits that result from direct and indirect labor spending the income they earn from the industry.

To analyze these impacts, we utilize the IMPLAN model. This model relies on publicly available "input-output" tables from the US Bureau of Economic Analysis which establishes connections between industries' purchases and their corresponding output. In this study we examine the benefits of onshore federal leasing generated between FY 2013 and FY 2022 with a specific focus on development in New Mexico, Wyoming, North Dakota, Colorado, and Utah. We find that in FY 2022, onshore federal oil and natural gas development supported nearly 250 thousand jobs, generated $19.4 billion in labor income, and contributed $36.7 billion to GDP. Between FY 2013 and FY 2022, we estimate that onshore federal oil and natural gas leasing supported an average of 190 thousand jobs, generated $13.4 billion in labor income, and contributed $24.2 billion to GDP each year.

Economic Benefits of Federal Leasing, FY 2013 – FY 2022

Completion Cost Estimates

Wells Spud

Based on Bureau of Land Management (BLM) data, five states represented 95.5 percent of the 2,063 well bores started on federal lands in FY 2022—New Mexico (59.3 percent), Wyoming (14.5 percent), North Dakota (8.0 percent), Colorado (8.0 percent), and Utah (5.6 percent). Between FY 2013 and FY 2022, 92.2 percent of wells spud were located in the five aforementioned states—see Figure 1. Given that New Mexico, Wyoming, North Dakota, Colorado, and Utah account for the majority of wells spud as well as oil and natural gas production on federal lands, we focus on these five states and combine all other states.

Figure 1. Wells Spud by State and Period

State	Wells Spud, FY 2022	Percent	Well Spud, FY 2013 - FY 2022	Percent
New Mexico	1,223	59.3	7,037	39.2
Wyoming	300	14.5	4,419	24.6
North Dakota	166	8.0	1,771	9.9
Colorado	165	8.0	1,900	10.6
Utah	116	5.6	1,411	7.9
Other	93	4.5	1,408	7.8
Total	2,063	100	17,946	100

Source: Bureau of Land Management.

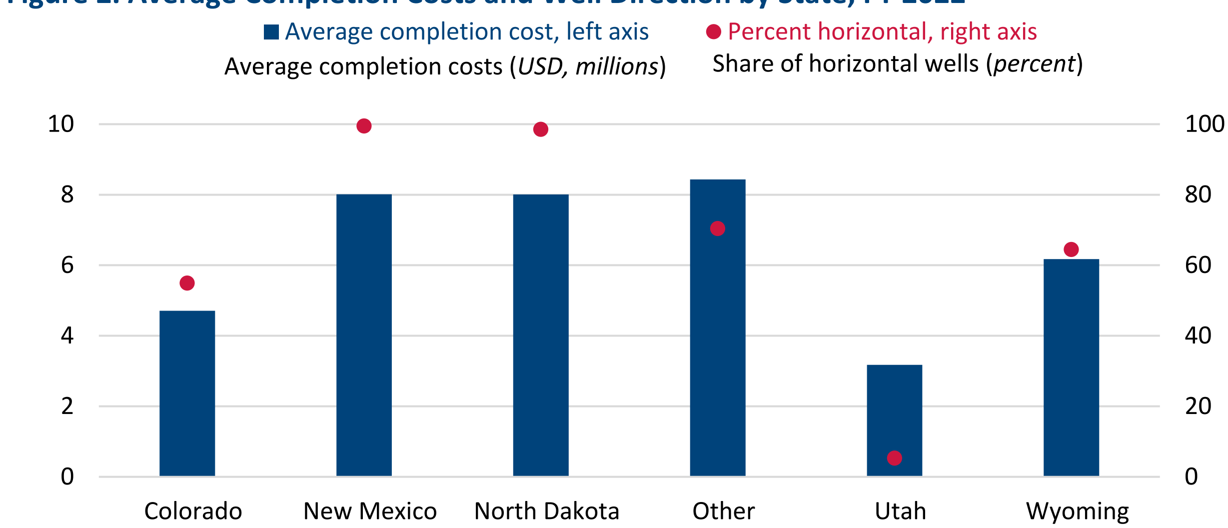
Note: This figure does not include “Indian leases.”

Average Completion Costs per Well Bore

Rystad Energy collects and estimates completion costs for over 500 thousand wells and separates these costs into ten categories—drilling services, facilities, fuel and power, oil country tubular goods, other completion costs, other drilling costs, proppant, rig, stimulation, and water. We restrict the wells in our sample to those drilled between FY 2013 and FY 2022, that had a BLM lease and were not on Indian land. These restrictions reduce the number of wells spud between FY 2013 and FY 2022 to 16,200, roughly matching BLM's well spud estimates. As in the BLM data the top five federal oil and natural gas producing states, in Rystad's data, represent roughly 95.0 percent of wells spud on federal land between FY 2013 and FY 2022.

We generate average completion costs by state and fiscal year, using Rystad's cost data based on the well's spud date. In FY 2022, the average cost of a completed well on federal lands was $7.0 million. State well completion costs ranged from $3.2 (Utah) to $8.0 (North Dakota) million—see Figure 2. These cost differences are partly explained by well direction. For example, whereas 94.7 percent of wells spud on federal lands in Utah were either directional or vertical, in North Dakota 98.5 percent of wells spud on federal lands were horizontal. Relative to directional or vertical wells, horizontal wells have higher completion costs. In FY 2022, 82.6 percent of wells spud on federal lands were horizontal. Compared to FY 2013, the percentage of wells spud that are horizontal (34.6 percent) has increased 48 percentage points. While horizontal wells, typically, have higher completion costs than vertical wells, they are generally more productive and reduce oil and natural gas well's surface footprint.

Figure 2. Average Completion Costs and Well Direction by State, FY 2022

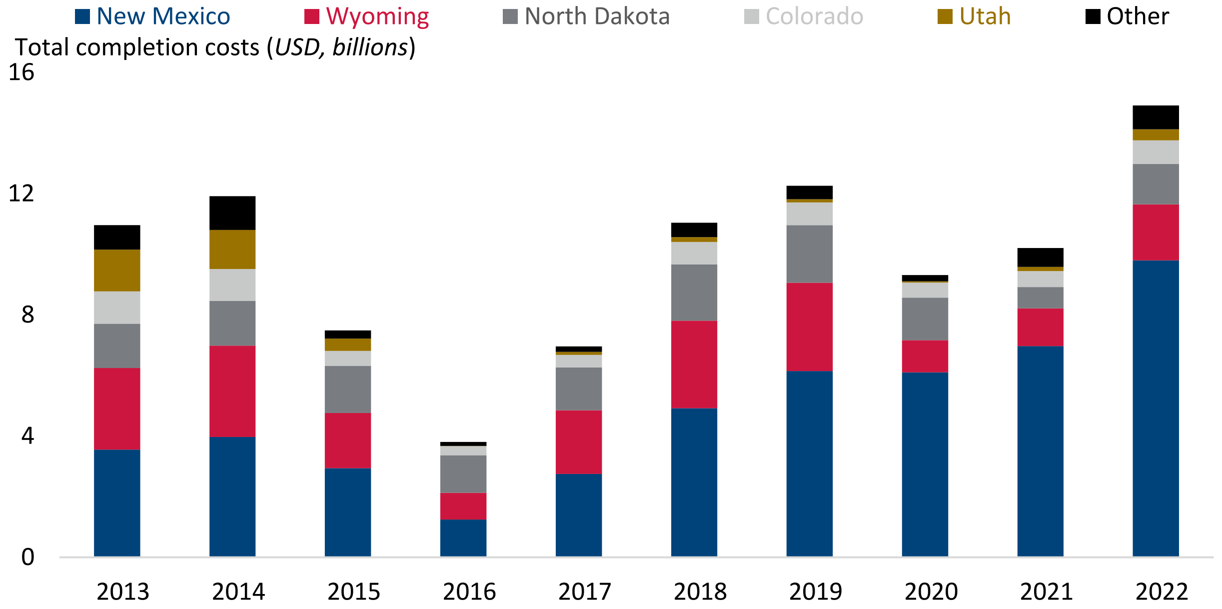


Sources: Rystad Energy; API calculations.

Total Federal Onshore Completion Costs

Having determined average completion costs by state, we estimate total completion costs by multiplying Rystad's well completion cost data by BLM's well spud data. This procedure generates total completion costs by state and fiscal year—see Figure 3. Between FY 2013 and FY 2022, firms spent $98.8 billion on onshore federal well completions or about $9.9 billion per year. Completion costs in New Mexico (49 percent), Wyoming (21 percent), and North Dakota (15 percent) represented 84 percent of total onshore federal well completion expenditures. In FY 2020, completion costs dropped 24 percent year over year but have rebounded thereafter. In FY 2022, total completion costs were roughly $15 billion and were up 46 percent year over year.

Figure 3. Total Well Completion Costs by State, FY 2013 - 2022



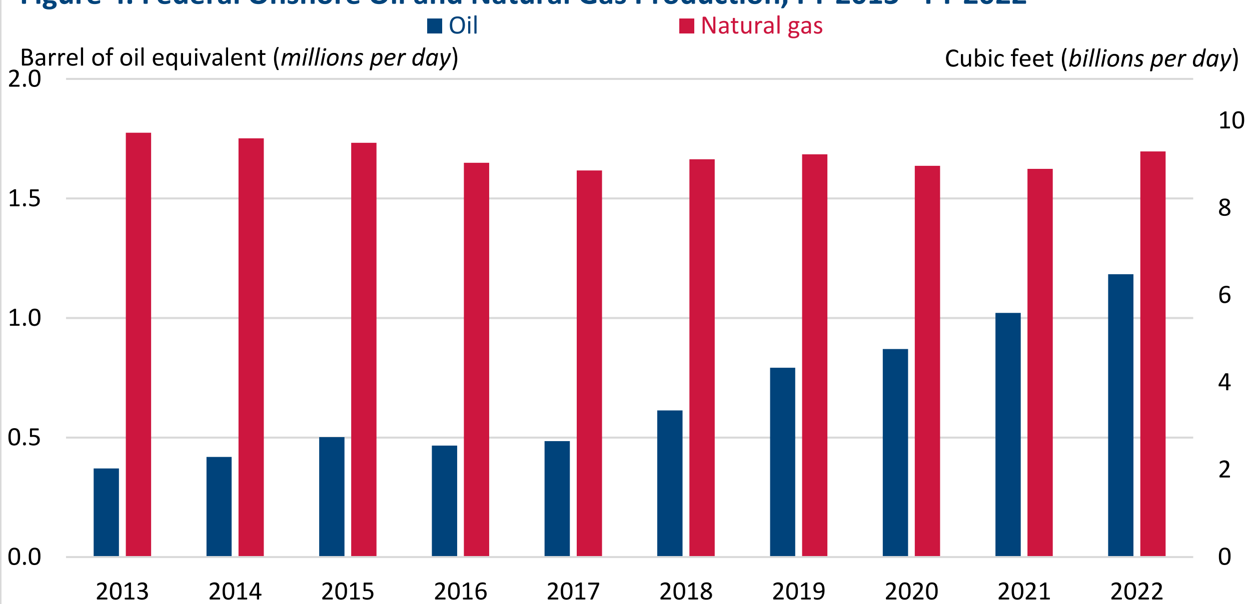
Sources: Rystad Energy; Bureau of Land Management; API calculations.

Production Estimates

Federal Production Estimates

We estimate production expenditures by state and fiscal year using Rystad's per barrel of oil equivalent (BOE) cost estimates and the Office of Natural Resources Revenue's (ONNR) production data. First, we use ONNR's production data to determine onshore federal natural gas and oil production[1] in BOE[2] terms. Between FY 2013 and FY 2022, federal lands produced roughly 1.7 million BOE of natural gas per day and about 672 thousand barrels per day of oil. Over the ten year period, federal lands produced 8.6 billion BOEs of natural gas (6.1 billion) and oil (2.5 billion)—Figure 4. While natural gas production has declined by 4.4 percent between FY 2013 and FY 2022, oil production has tripled. Over the same period, ninety-five percent of production occurred in Wyoming (36 percent), New Mexico (33 percent), Colorado (16 percent), Utah (6 percent), and North Dakota (5 percent).

Figure 4. Federal Onshore Oil and Natural Gas Production, FY 2013 - FY 2022



Sources: Office of Natural Resources Revenue; API calculations.
Notes: Production estimates do not land classes designated as "mixed exploratory" or "Native American."

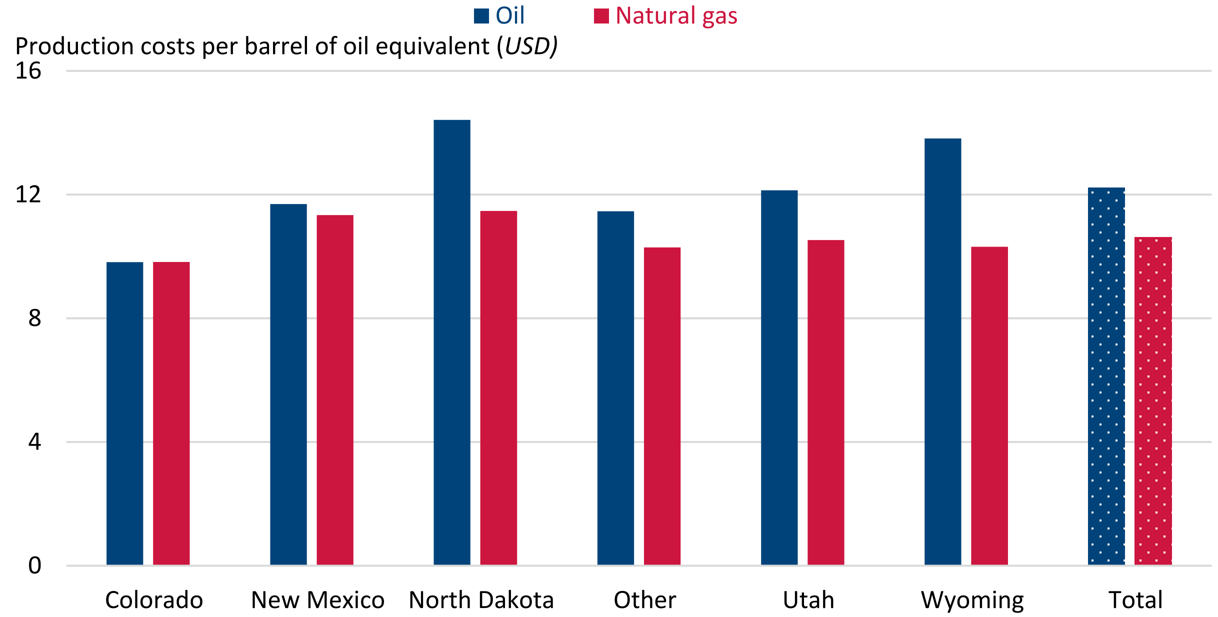
[1] We only include production on the land classes designated "federal" which excludes "mixed exploratory" and "Native American" land classes.
[2] We convert natural gas thousand cubic feet (MCF) to barrel of oil equivalents using a conversion factor of 5.478.

Production Cost Estimates Per Barrel of Oil Equivalent

Rystad estimates production cost per BOE by product type—i.e., oil and natural gas—and includes costs associated with taxes; selling, general and administrative expenses; transportation; production; and abandonment. Rystad presents their production cost estimates by state and calendar year. Their data does not allow us to derive production cost estimates, specifically, for federal lands as Rystad's per barrel production estimates include all onshore production. However, we believe that the composition of private and federal wells is likely similar and that their production costs do not vary substantially excluding federal royalties which we discuss in the following section.

We find that the average unweighted production cost associated with a barrel of oil is roughly $12 and that the average unweighted production cost associated with a BOE of natural gas is about $11. However, we find that average production costs vary by state—see Figure 5. For example, in California the average production cost per barrel of oil was $22, over the period, which is about 1.6 times higher than the US average unweighted production cost per barrel of oil. Similarly, in California the average natural gas production cost per barrel of oil equivalent was $16, over the period, which is about 1.4 times higher than the national unweighted average production cost per barrel of oil equivalent.

Figure 5. Average Production Costs per Barrel of Oil Equivalent, 2013 - 2022

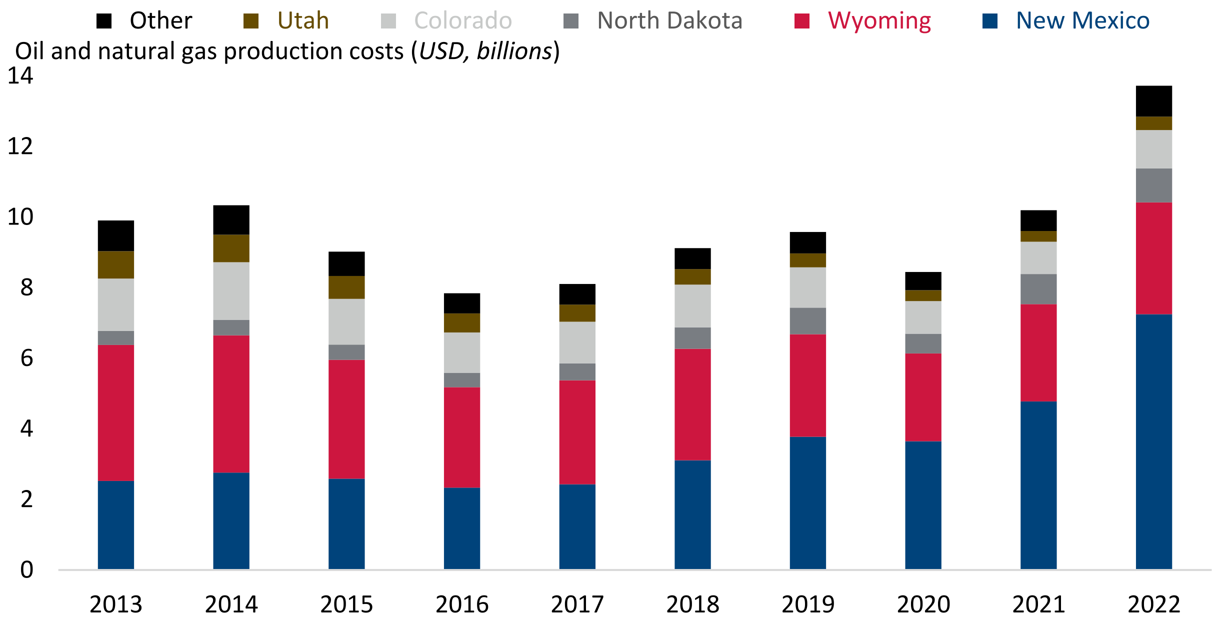


Sources: Rystad Energy; API calculations.

Total Production Costs

We generate total production costs by state and fiscal year, using Rystad's per barrel of oil equivalent production cost data in combination with ONNR's production data.[3] Multiplying Rystad's, respective, per barrel production costs by ONNR's, corresponding, production data generates our total production cost estimates—see Figure 6. We estimate that, between FY 2013 and FY 2022, firms spent $92 billion on production costs, roughly $9.2 billion each year. Production costs were primarily located in Wyoming (35 percent), New Mexico (33 percent), and Colorado (13 percent) representing 82 percent of total expenditures.

Figure 6. Total Federal Land Production Expenditures by State, FY 2013 - 2022



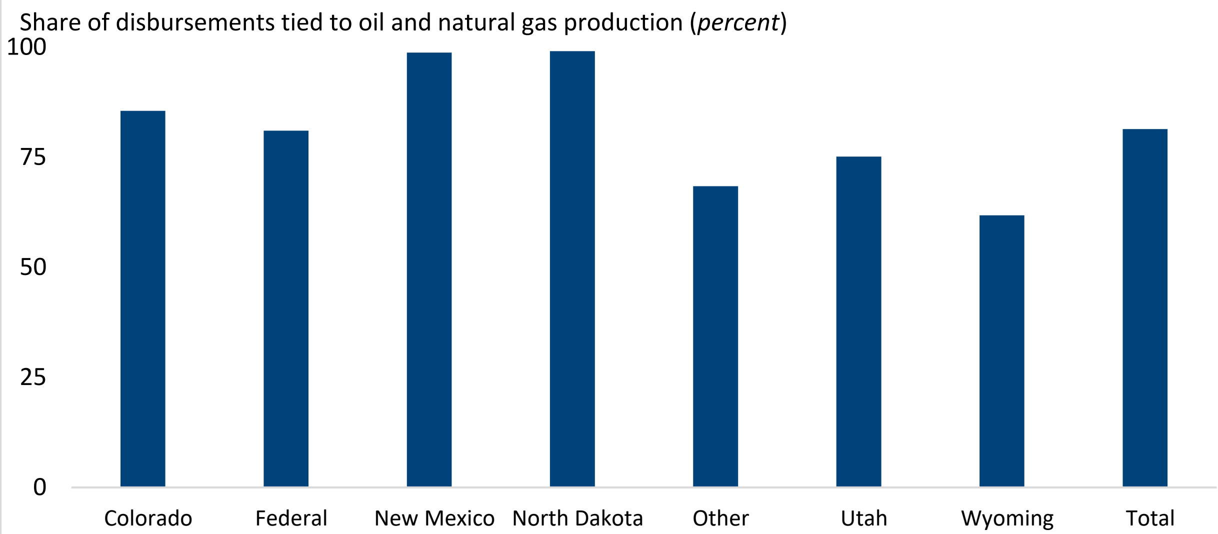
Sources: Rystad Energy; Office of Natural Resources Revenue; API calculations.

[3] Because Rystad presents their data in calendar years and the rest of our study is in fiscal years, we match the nearest calendar year in Rystad's production cost data to the nearest fiscal year in ONNR's production data.

Oil and Natural Gas Disbursements

We estimate disbursements generated by federal onshore oil and natural gas production using ONNR disbursement data.[4] ONNR only offers disbursement data by commodity as of FY 2017. Prior to FY 2017, ONNR did not distinguish disbursements by commodity. We estimate disbursements by commodity between FY 2013 and FY 2016 as follows. First, we use ONNR's FY 2017 – FY 2022 data excluding disbursements tied to offshore production and fund types designated as Native American Tribes & Allottees. Second, we group disbursements into two categories 1) oil and natural gas[5] and 2) other such as wind, sulfur, etc. Finally, we determine the percent of disbursements that were tied to oil and natural gas production by recipient and fiscal year.[6] Between FY 2017 and FY 2022, the percentage of disbursements that were tied to oil and gas production varied by recipient—see Figure 7. For example, in New Mexico and North Dakota almost all disbursements were tied to onshore oil and natural gas production, while in "other" states only 66 percent of disbursements were tied to onshore oil and natural gas production.

Figure 7. Average Share of Onshore Disbursements Tied to Oil and Natural Gas Production by Recipient, FY 2017 - FY 2022

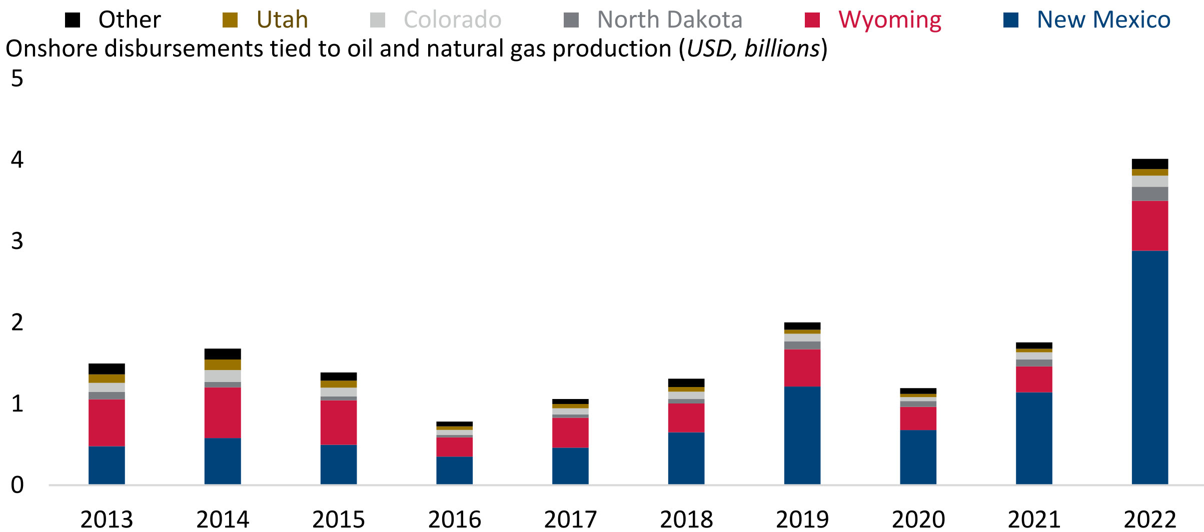


Sources: Office of Natural Resources Revenue; API calculations.
Notes: In New Mexico and North Dakota, the proportion of disbursements allocated to oil and gas, ocassionally, exceeded a 100 percent. We capped disbursements at 100 percent.

[4] We rely on disbursement data instead of revenue data because it allows us to identify the recipient of the disbursement which is required for our IMPLAN calculations.
[5] Oil and natural gas include commodities identified as oil & gas (pre-production), oil, and gas.
[6] In New Mexico and North Dakota, the proportion of disbursements allocated to oil and gas exceeded a 100 percent. We capped disbursements at a 100 percent.

We then apply our ratios of onshore disbursements between FY 2017 and FY 2022 by recipient to ONNR's FY 2013 and FY 2016 disbursement data[7], to approximate the share of disbursements that were likely tied to oil and natural gas production on federal lands—see Figure 8. We find that, between FY 2013 and FY 2022, recipients received a total of $35 billion in oil and natural gas disbursements equal to roughly $3.6 billion a year. Fifty-three percent ($19 billion) of disbursements went to the federal government or programs, while state and local governments received the remaining 47 percent. Of the 47 percent of disbursements that went to state and local governments, New Mexico and Wyoming received 80 percent (roughly $13 billion).

Figure 8. Onshore Disbursements Tied to Oil and Natural Gas Production by Recipient, FY 2013 - FY 2022



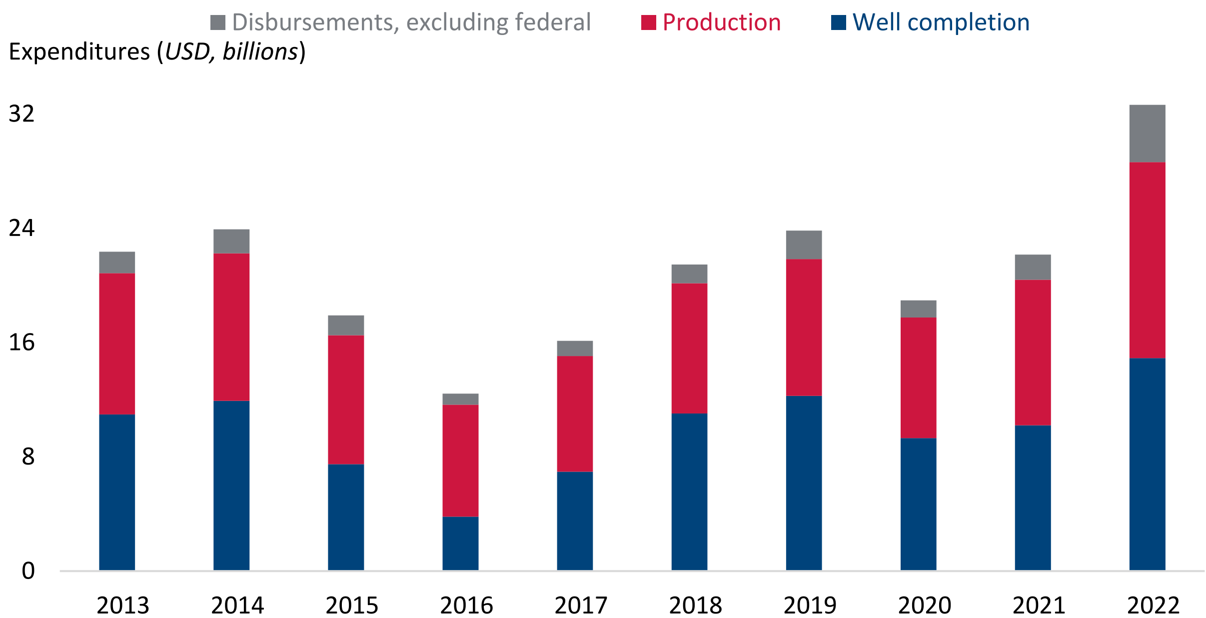
Sources: Office of Natural Resources Revenue; API calculations.
Notes: We estimate FY 2012 to FY 2016 disbursements based on the share of oil and natural gas disbursements between FY 2017 - 2021. This figure does not include disbursements to the federal government or federal programs.

[7] We remove disbursements that are not identified as onshore or that are tied to "Native American tribes and individuals" fund types. These changes align ONNR's FY 2012 – FY 2016 data, with ONNR's FY 2017 – FY 2022 data.

Total Expenditures and Disbursements

Between FY 2013 and FY 2022, firms spent roughly $212 billion on federal onshore oil and natural gas production—disbursements, excluding federal ($16.7 billion), production ($96.2 billion), and well completion ($98.8 billion). Over the period, average expenditures were roughly $21.2 billion per year. Total expenditures were clustered regionally, New Mexico (44 percent), Wyoming (27 percent), North Dakota (10 percent), and Utah (10 percent). To determine these expenditures impact on employment and economic growth we use IMPLAN and allocate total expenditures to impact categories that correspond to the specific expenditures and state where they occurred.[8] We do not include oil and natural gas disbursements received by the federal government in our economic modelling—see Figure 9.

Figure 9. Total Expenditures by Category, FY 2013 - FY 2021



Sources: Bureau of Land Management; Rystad Energy; Office of Natural Resources Revenue; API calculations.

[8] The IMPLAN categories we use for well completion costs are 29 (sand and gravel mining), 35 (drilling oil and gas wells), 36 (support activities for oil and gas operations), 49 (water, sewage and other systems), 216 (Iron, steel pipe and tube manufacturing from purchased steel), 264 (oil and gas field machinery and equipment manufacturing), and 399 (wholesale, petroleum and petroleum products). We group all production expenditures into the IMPLAN category 20 (oil and natural gas extraction). We distribute oil and natural gas disbursements between four IMPLAN categories—539 (state education), 540 (health services), 541 (other state) and 542 (local education)—based on IMPLAN's state level estimates of payroll expenditures. In all cases, we allocate the expenditures to the states that they accrue expect for OCTG costs which we assign to "other" states as little OCTG expenditures occur in the five states where the lion share of oil and natural gas production occurs.

Employment and Economic Benefits

Using the IMPLAN model we find that in FY 2022, onshore federal oil and natural gas development supported nearly 250 thousand jobs, generated $19.4 billion in labor income, and contributed $36.7 billion to GDP—see Figure 10. Notably, drilling and development contributed the most to total jobs and labor income, while extraction resulted in the highest total GDP. While direct benefits primarily accrue to five states with the most federal oil and natural gas development the indirect and induced impacts reach the entire US economy—see Figure 11. The "other" category experiences the highest indirect and induced economic effects, reflecting the widespread influence of supply chain purchases and general induced spending. New Mexico currently leads with the largest economic impact, accounting for approximately 40 percent of the total US impact.

Figure 10. Economic Benefits of Federal Oil & Natural Gas Leasing, Fiscal Year 2022

Source	Employment (*thousands*)			Labor Income (*billions, USD*)			GDP Contributions		
	Direct	Indirect & induced	Total	Direct	Indirect & induced	Total	Direct	Indirect & induced	Total
Extraction	12.1	58.8	71.0	1.5	4.8	6.3	8.6	7.4	16.0
Drilling & Development	35.6	76.9	112.6	3.6	5.2	8.8	6.2	9.0	15.1
Revenue Sharing	48.1	15.8	63.9	3.5	0.8	4.3	4.0	1.5	5.6
Total	95.8	151.6	247.4	8.6	10.8	19.4	18.8	17.9	36.7

Sources: Bureau of Land Management; Rystad Energy; IMPLAN; API calculations.
Notes: US impacts only.

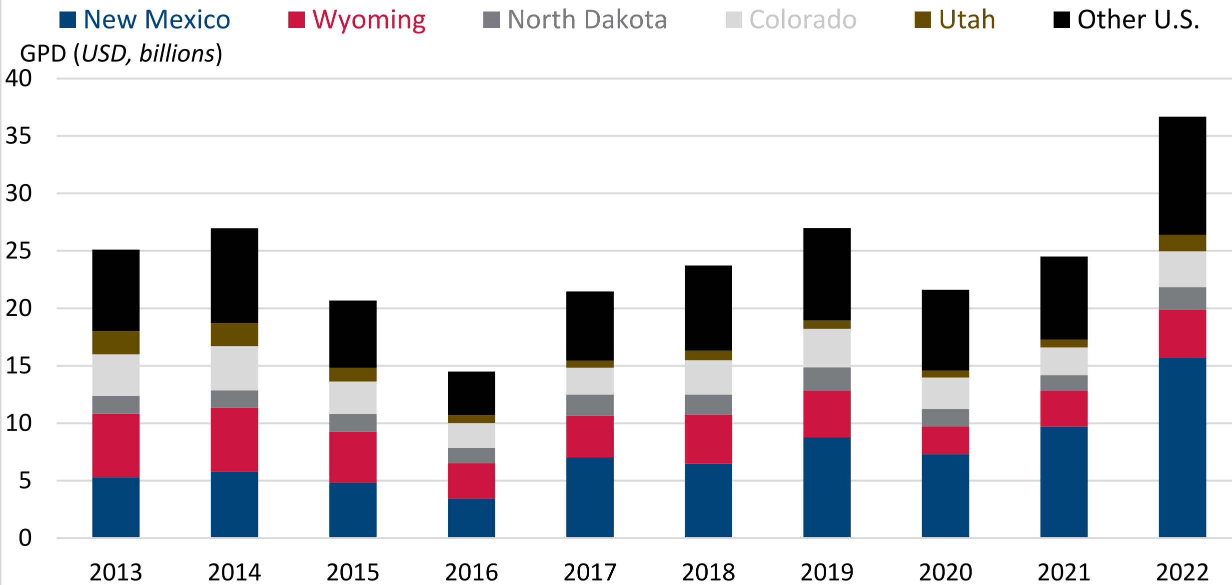
Figure 11. Economic Benefits of Federal Oil & Natural Gas Leasing by State, FY 2022

Source	Employment (*thousands*)			Labor Income (*billions, USD*)			GDP Contributions		
	Direct	Indirect & induced	Total	Direct	Indirect & induced	Total	Direct	Indirect & induced	Total
Colorado	4.4	16.6	21.0	0.9	1.4	2.3	1.1	2.1	3.1
New Mexico	64.0	41.3	105.3	5.2	2.2	7.4	11.5	4.2	15.7
North Dakota	5.5	4.5	10.0	0.5	0.3	0.8	1.5	0.5	2.0
Utah	3.0	8.1	11.2	0.2	0.6	0.8	0.6	0.9	1.4
Wyoming	15.1	9.3	24.4	1.3	0.5	1.8	3.2	0.9	4.2
Other	3.8	71.7	75.5	0.5	5.8	6.3	1.0	9.4	10.3
Total	95.8	151.6	247.4	8.6	10.8	19.4	18.8	17.9	36.7

Sources: Bureau of Land Management; Rystad Energy; IMPLAN; API calculations.
Notes: US impacts only.

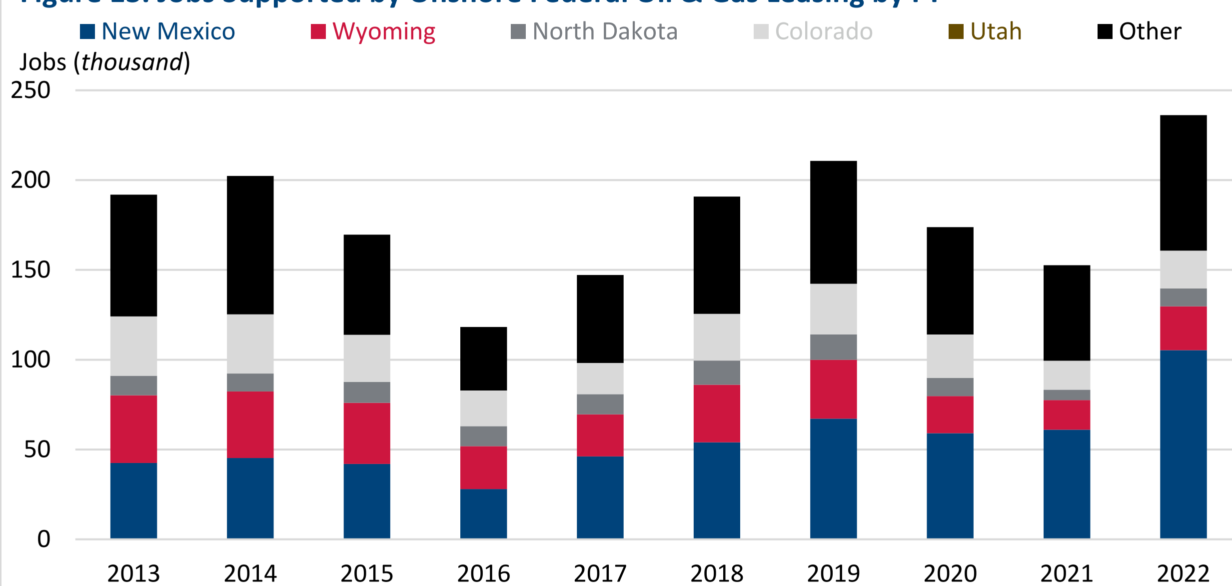
Examining ten-year trends of employment labor income, and GDP—see Figure 12 and 13—FY 2022 stands out as the year with the most substantial economic impact, largely driven by the growing impacts of the New Mexico portion of the Permian Basin. Colorado, Utah, and Wyoming have generally shown declining economic impacts from federal Leasing over the last decade, with a minor post-COVID-19 economic rebound in 2022. Conversely, North Dakota's economic impacts have exhibited variations over the years, without showing a definitive upward or downward trend. We find that between FY 2013 and FY 2022, onshore federal oil and natural gas leasing supported an average of 190 thousand jobs, generated $13.4 billion in labor income, and contributed $24.2 billion to GDP each year.

Figure 12. GDP Supported by Onshore Federal Oil & Natural Gas Leasing by FY



Sources: Bureau of Land Manegement; Rystad; IMPLAN; API calculations.
Notes: Includes benefits from production, drilling and development, and Federal revenue sharing. Revenue sharing supports state and local governments.

Figure 13. Jobs Supported by Onshore Federal Oil & Gas Leasing by FY



Source: BLM, Rystad, IMPLAN, API Calculatoins
Notes: Includes benefits from production, drilling and development, and Federal revenue sharing. Revenue sharing supports state and local govenments.

Conclusion

The development of oil and natural gas resources on onshore federal lands yields significant economic benefits. We find that in FY 2022, onshore federal oil and natural gas development supported nearly 250 thousand jobs, generated $19.4 billion in labor income, and contributed $36.7 billion to GDP. Between FY 2013 and FY 2022, we estimate that onshore federal oil and natural gas leasing supported an average of 190 thousand jobs, generated $13.4 billion in labor income, and contributed $24.2 billion to GDP each year.