

OIRA SHOULD REQUIRE CHANGES TO NPR-A PROPOSED RULE (RIN 1004-AE95)

DISCLAIMER: This document and the content included is meant for the purpose of facilitating discussion for this meeting between the American Petroleum Institute (API), multiple oil and natural gas industry association trade associations and The Office of Information and Regulatory Affairs. It is not an exhaustive list of the concerns, feedback, and information API has provided on the Bureau of Land Management Proposed Rule on Management and Protection of the National Petroleum Reserve Alaska (RIN 1004-AE95). API's full comments are available at: <https://www.api.org/news-policy-and-issues/news/2023/12/07/api-calls-on-administration-to-remove-barriers-to-energy-production-in-alaska>

Category	Details
Introductions	<ul style="list-style-type: none"> • This call includes many of the companies currently operating in or near NPR-A. Of the groups attending this call, API, Western Energy Alliance, ConocoPhillips, Santos, and Armstrong Oil and Gas submitted their own comments to the docket for this proposal. • Many of the other entities attending the OIRA call do not have members in Alaska; however, they operate in jurisdictions reliant on the predictable development of leases on federal lands. They are here to express concerns about uncertainties created by several aspects of this rulemaking. First, BLM should not be able to create a presumption against development in a Congressionally-designated petroleum reserve, or against the infrastructure companies need to develop future leases. Second, any changes should be made only after the statutorily required economic analysis as well as the similarly required consultations with Native Communities. Third, changes instituted by an IAP process should not serve as no-cost baselines for larger changes to an underlying governing statute that requires a formal rulemaking for amendment. • Additionally, we share many concerns with comments in the docket from the Alaska Oil and Gas Association as well as the native Alaskan communities conducting independent OIRA meetings. We also agree with comments filed by the State of Alaska, and the Resolution of Disapproval against the NPR-A Proposed Rule passed by the Alaskan State Legislature on March 15, 2024. (See e.g., https://www.akleg.gov/basis/Bill/Detail/33?Root=HJR%2020#tab1_4 and https://www.sullivan.senate.gov/newsroom/press-releases/alaska-legislature-overwhelmingly-passes-resolution-opposing-blms-proposed-npr-a-rule).
Introductory remarks	<ul style="list-style-type: none"> • The Proposed Rule contravenes the existing NPR-A policy, which favors leasing and production. The history of Congressional direction as encapsulated in the Naval Petroleum Reserves Production Act of 1976 (as amended) and subsequent actions is for petroleum production. (See <i>API Comments</i>, pp. 6-8). • Neither the 2022 Petroleum Reserve IAP ROD nor the government's analysis account for losses to likely recoverable oil, and that this Proposed Rule would be <u>decreasing</u> rather than <u>increasing</u> oil recovered from a Congressionally designated Petroleum Reserve. By creating a presumption against future development and precluding development in Special Areas, the Proposed Rule is essentially foreclosing access to at least 2.6 billion barrels of oil¹ - although some operators estimate a total as high as 20 billion barrels of recoverable oil. (See <i>Armstrong Comments</i>, p. 5, available at: https://www.regulations.gov/comment/BLM-2023-0006-88964). • Some Alaskan oil is refined in Alaska and delivered to Alaska-based constituents, including strategically significant military bases and ports. Due to the remote nature of Alaska, alternative energy sources may not be readily substitutable. This item merits

¹ See e.g., 2020 IAP/EIS at B-12, Section B.8.3.

	considerably closer examination and analysis by the government, including under Executive Order 13211.
<p>The Proposed Rule was incorrectly described to the public multiple times.</p>	<ul style="list-style-type: none"> • BLM incorrectly characterized the Proposed Rule as procedural and administrative rather than substantive. The Proposed Rule would fundamentally and substantively change management of the NPR-A contrary to Congressionally codified policy for the NPR-A. (See <i>API Comments</i>, pp. 24 – 28). • The scope of the proposed rule appears to apply to existing leases. The public is entitled to a proposal in which the preamble, economic analysis, and codified language all agree on this point.² (See <i>API Comments</i>, pp. 24 – 25). • The OIRA dashboard incorrectly presented the Proposed Rule as an action under <u>Section 610</u> of the Regulatory Flexibility Act (“RFA”), rather than <u>Section 601</u>. Therefore, stakeholders did not request pre-proposal meetings to outline NPR-A’s statutory directives. (See <i>API Comments</i>, pp. 37 – 38).
<p>The economic analysis for the Proposed Rule was glaringly deficient.</p>	<ul style="list-style-type: none"> • This rule is economically significant. This conclusion is reached by even a rudimentary break-even analysis when based on actual production data from existing NPR-A developments is considered. Assuming a per barrel price of \$73,³ the Proposed Rule only needs to preclude the production of about 7,600 barrels per day for one year for it to generate the necessary \$200 million in lost revenue. The 7,600 barrels per day is a modest amount given that the most recently permitted and producing well site in the NPR-A (Greater Mooses Tooth Two) produces nearly twice this amount on an annual average daily basis after having only been in production for two years.⁴ (See <i>API Comments</i>, pp. 33- 34). • If the presumption of no surface infrastructure in a Special Area prevents a site from coming online or substantially limits the number of wells producing on a site, then the Proposed Rule would quickly impose significant economic costs. For example, if the rule stops the development of a project similar to the one previously mentioned, then it would take just over 6 months to generate \$200 million in economic damages from lost production alone. Given that the lifespan of the average well site is about 30 years, some of these production impacts would be ongoing. (See <i>API Comments</i>, pp. 33-34). • BLM’s analysis rests on an incomplete assessment of impacts to 8 existing lessees (which is odd, since the preamble claimed they would not be impacted). Yet in the analysis, BLM concluded that “some” (with no further quantification”) lessees would be impacted. Even only 2 is a potentially significant 25% of 8. (See <i>API Comments</i>, pp. 34-35). • BLM selected the wrong baseline. It artificially lowered impacts by selecting a baseline from the IAP rather than from the existing regulations that the Proposed Rule would replace. (See

² “Existing paragraph (e)(1) provides that “the authorized officer may limit, restrict, or prohibit use of and access to lands within the Reserve, including special areas.” The existing rule conditions that authority by requiring it to be exercised “consistent with the requirements of the Act and after consultation with appropriate Federal, State, and local agencies and Native organizations.” The proposed rule would specify that the authorized officer has that authority “regardless of any existing authorization.” That added language would clarify that existing authorizations would not prevent the BLM from limiting, restricting, or prohibiting access to the NPR-A consistent with the requirements of the Act.” 88 Fed. Reg. at 62,033.

³ Energy Information Administration. 2023. Alaska North Slope First Purchase Price. The \$73 per barrel estimate is based on the monthly-average Alaska North Slope first purchase price between January and April 2023. During the same period the monthly-average spot price of WTI was \$78 per barrel.

⁴ Greater Mooses Tooth Two produced an annual daily average of 14,637 barrels in 2022 and so far in 2023 is averaging 15,149 barrels per day. Source: Alaska Conservation Commission: Production – Data Miner (state.ak.us).

	<p><i>API Comments, pp. 35-36).</i></p> <ul style="list-style-type: none"> • BLM did not address treatment of new surface infrastructure to serve existing leases. <i>(See API Comments, pp. 35 – 37).</i> • BLM did not consider the economic impacts of the new presumption against infrastructure and leasing in Special Areas. Instead, it incorrectly dismissed the economic impacts of Special Area designations as “de minimis.” <i>(See API Comments, pp. 26-29 and 37).</i> • BLM omitted supply chain impacts to small entities contracted for services for lease development. <i>(See API Comments, pp. 34-35).</i> • BLM did not evaluate impacts to qualifying small governmental entities, which receive substantial royalties through the NPR-A Impact Mitigation Fund. These include the North Slope Borough and the municipal governments of four villages located within the Petroleum Reserve (Utqiagvik, Wainwright, Atkasuk, and Nuiqsut), the federally recognized tribes for each of those villages, and the Iñupiat Community of the Arctic Slope (the regional federally recognized tribe). <i>(See API Comments, pp. 34-35).</i> • Additionally, BLM did not count the economic impacts of lost revenue from taxation to and impacts to the delivery of services provided by Alaska Native communities and municipal governments. <i>(See API Comments, pp. 34-35).</i> • Finally, BLM did not consider the impacts to the federal and state governments that would be responsible for providing alternatives for those services.
<p>The Proposed Rule does not comply with other laws as well.</p>	<ul style="list-style-type: none"> • A NEPA analysis should have been conducted. <i>(See API Comments, pp. 10-14 and 31-32).</i> • This rule is problematic under Executive Order 13211 because a Statement of Energy Effects is missing. This rule is a significant action under Executive Order 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy; therefore, BLM should have prepared a Statement of Energy Effects (SEE) for inclusion in the proposed and final rule-making notices published by the agency. A Statement of Energy Effects includes information on any adverse effects on any energy supply, distribution, or use, including increased dependence of foreign energy and reasonable alternatives to the action, along with expected effects of such alternatives on energy supply, distribution, or use. • In the Federal Register, OIRA deemed this rule as “significant”.⁵ OIRA therefore should provide additional clarity by designating this rule a significant energy action and require a SEE. • In this case, a SEE is appropriate for many reasons, including the impacts of the shift in NPR-A requirements to impacted local communities’ access to affordable energy, as well as potential impacts to refined product needs of strategically significant Alaskan military bases and ports. For example, the Proposed Rule sidesteps how it may impact obtaining the energy necessary to realize the expanded military capabilities and new infrastructure development (including ports and transportation methodologies for critical mineral development) described in the 2022 National Strategy for the Arctic Region (see, e.g., https://www.whitehouse.gov/wp-content/uploads/2022/10/National-Strategy-for-the-Arctic-Region.pdf) • To this end, it is also unclear whether all impacted government stakeholders have even been consulted given that neither the Department of Defense nor Health and Human Services have been present at recent OIRA meetings.
<p>BLM did not</p>	<ul style="list-style-type: none"> • BLM did not consult with the North Slope Borough, contrary to Executive Orders 13563 and

⁵ BLM, *Management and Protection of the National Petroleum Reserve in Alaska*, 88 Fed. Reg. 62,025 (Sept. 8, 2023) at 62037.

<p>conduct legally required stakeholder engagement procedures for the Proposed Rule, even though the rule would alter the underlying purpose of NPR-A</p>	<p>13132. <i>(See API Comments, pp. 8-10).</i></p> <ul style="list-style-type: none"> • BLM failed to satisfy consultation obligations to the nine federally recognized tribes and the nine Alaska Native corporations in the North Slope region, as required by Executive Order 13175, Congressional direction, and by Interior Department Policy. <i>(See API Comments, pp. 8-10).</i> • BLM’s own NPR-A Working Group was also not consulted and was told by BLM staff on the record in a Working Group meeting that processes were time-constrained because of the Congressional Review Act. <i>(See API Comments, pp. 8-10).</i> • BLM tried to “double count” past voluntary outreach surrounding an Integrated Activity Plan (IAP). <i>(See API comments, pp. 8-10).</i> • Logistically, the comment period coincided with the fall whaling season and elections – busy times for the North Slope. It was extended in successive short durations (which complicated stakeholder planning) and overlapped with another critical BLM Alaskan comment opportunity (further limiting resources). A more realistic comment period is required for a matter this important. <i>(See API Comments, pp. 8-10).</i> • Short-notice BLM meetings were announced only AFTER the proposal was released and were often suddenly cancelled or rescheduled - and then structured to address only a filtered version of stakeholder concerns. More genuine engagement with stakeholders is required. <i>(See API Comments, pp. 8-10).</i>
<p>Conclusions</p>	<ul style="list-style-type: none"> • Before further consideration of this Proposed Rule, OIRA should require substantial changes and more rigorous analyses. • Due to the scope of the necessary changes, BLM should either revise and repropose the rule or withdraw it consistent with the Alaska State Legislature’s Resolution of Disapproval.