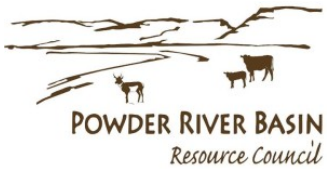

September 22, 2023

U.S. Department of the Interior, Director (630)
Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240
Attention: 1004–AE80
Submitted electronically via regulations.gov

RE: Comments on Fluid Mineral Leases and Leasing Process, BLM-2023-0005-0001

Dear Director Stone-Manning,

Thank you for the opportunity to submit comments on the Bureau of Land Management's (BLM) proposed Fluid Mineral Leases and Leasing Process rules (hereafter referred to as "rules" or "proposal"). These long overdue, much-needed reforms to BLM's onshore oil and gas program will significantly improve the lives of our members, better Western communities, and protect the American taxpayer.

We offer these comments on behalf of the members of the Western Organization of Resource Councils and our member organizations in Wyoming (Powder River Basin Resource Council), North Dakota (Dakota Resource Council), Montana (Northern Plains Resource Council), and Colorado (Western Colorado Alliance). Our 19,935 members are residents of states and tribal lands where oil and gas development has negatively impacted our landscapes, our wildlife, and our health and well-being. It is past time for the industry to meet its obligations to the American people by providing a fair return for the development of publicly-owned mineral resources and shouldering the burden of reclamation of wells and associated infrastructure.

We support the BLM's common sense, fiscally responsible proposal as discussed below. We also offer the following comments and recommendations for improving the rules.

I. Our Interest

Our members have long been concerned with the impacts to air and water quality, human health, and wildlife habitat caused by the unacceptable delay in plugging and remediation of

orphan and idle wells, particularly federal wells on both federal surface estate and split estate lands. Our members include family farmers and ranchers living above split estate minerals, including federal mineral estate and Native American mineral allottees. All of these individuals rely on federal rules to ensure the wells on their land are appropriately leased, operated, plugged, and reclaimed, and many have long suffered the consequences of active, inactive, and orphan wells on their land.

WORC is a regional network of nine grassroots community organizations with 19,935 members and 39 local chapters and affiliates in seven states, including Colorado, Idaho, Montana, North Dakota, Oregon, South Dakota, and Wyoming. WORC's members farm, ranch, and recreate on lands overlying and neighboring federal, state, and privately owned fluid mineral deposits. WORC and its member groups have a long-standing interest in federal oil and gas leasing, drilling, and oversight and for more than 40 years have actively engaged in advocacy in this area.

Powder River Basin Resource Council is a nonprofit corporation organized and operating in Wyoming. Since 1973, the Resource Council has worked to protect Wyoming's quality of life and agricultural heritage. The Resource Council organizes Wyoming citizens to protect our agricultural heritage, rural lifestyle, and our unique land, mineral, water, and clean air resources. The Resource Council has approximately 2,000 members across Wyoming, many of whom live, work, and/or recreate near and on areas with federal oil and gas development.

Northern Plains Resource Council is a statewide non-profit grassroots organization of approximately 3,500 members based in Billings, Montana. Northern Plains was formed in 1972 over the issue of federal coal leasing, when ranchers who owned private surface land over federal coal deposits in southeastern Montana and in the Bull Mountains north of Billings grew concerned about protecting their livelihoods and private property rights from coal development. Northern Plains has worked ever since to protect Montanans from the environmental and social impacts of energy development. The livelihoods of many Northern Plains members as ranchers and farmers depend entirely on clean air and water, native soils and vegetation, and lands that remain intact and productive. The consequences of irresponsible development or oversight has direct impacts on our members.

Western Colorado Alliance brings people together to build grassroots power through community organizing. Together we are working to create healthy, just and self-reliant communities across Western Colorado. We have over 2,000 members and supporters across the region and have worked for balanced and responsible use of our public lands for over 40 years.

DRC formed in 1978 in North Dakota in response to impacts to agricultural and rural residential communities from coal development. DRC works with communities across the state to organize around common goals of securing a thriving North Dakota and putting people first. Members take action to create public awareness and shape public policy in order to ensure safe and responsible development, to protect North Dakota's agricultural economy, and to establish a foundation for a just transition to a diverse energy economy.

For our entire history, our organizations have worked on behalf of our members to ensure responsible development of our public lands and mineral resources. As more fully discussed

below, we have a multi-generational commitment to this work and have long advocated for improvements to the federal onshore oil and gas program. Our interests are grounded in where our members live and our shared history of experiencing first-hand the impacts of energy development in our communities and on our landscapes, impacts worsened by BLM's currently inadequate set of regulations.[1]

II. The Need for Action

Adequate bonding serves two main functions. First, it incentivizes reclamation to occur promptly and effectively. As University of Wyoming's Department Head of the Agriculture and Applied Economics Department, Roger Coupal, has stated "Why have a bond? …the stated reason is because it gives them an incentive to clean things up. Well, if it's not big enough, it's not going to give the incentive."[2] The recent experience of the coal industry demonstrates this well. In Wyoming, coal mine operators replaced inadequate self-bonding in response to improved state regulations and regulator and public pressure. After replacing inadequate bonds, the industry carried out a record amount of reclamation, obtaining the largest bond release in the history of the federal coal program over a brief period because coal operators finally had a significant enough financial incentive to finish reclamation and obtain release of bonds.[3] Oil and gas operators should be no different – if bond amounts provide sufficient financial incentive, operators will carry out timely and effective plugging and reclamation of wells and associated oil and gas infrastructure. Unfortunately, under current rules, this is not the case.

Second, adequate bonding protects the American taxpayer from the burden of having to pay for any plugging and reclamation of wells left abandoned or orphaned by the industry. In other words, adequate bonding ensures the availability of funds for the regulator to complete remediation if the operator is unable or unwilling. For both main functions of bonding, BLM's current rules are woefully inadequate, as discussed below.

The oil and gas industry is rife with risk, as evidenced by the history of bankruptcy and the boom-bust nature of development that comes with the rise and fall of international commodity prices. Roughly 275 oil and gas operators filed for bankruptcy from 2015-2021. Including midstream operators, this number jumps to roughly 600 bankruptcies in the oil and gas industry.[4] The history of oil and gas development is played out time and time again across the country – when prices are high, drilling increases, and when prices are low, wells are left idle and orphaned or sold off so current operators can offload liabilities. Those assets are usually sold to a buyer who is less financially viable than the seller. While BLM cannot control oil and gas prices,

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[1] We are attaching a series of news stories to these comments that detail some of the myriad of problems caused by the currently in place inadequate set of regulations.

[2] Wyoming Public Media, *Regulatory agencies have weak controls for bad oil and gas operators* (Aug. 30, 2013) https://www.wyomingpublicmedia.org/open-spaces/2013-08-30/regulatory-agencies-have-weak-controls-for-bad-oil-and-gas-operators

[3] See Dustin Bleizeffer, *Mine clean-up financing may be poised for an upgrade*, WyoFile (Jan. 12, 2022) https://wyofile.com/mine-clean-up-financing-may-be-poised-for-an-upgrade/

[4] Haynes Boone Oil Patch Bankruptcy Monitor, Jan. 31, 2022, https://www.haynesboone.com/-/media/project/haynesboone/haynesboone/pdfs/energy_bankruptcy_reports/oil_patch_bankruptcy_monitor.pdf?rev=61c2606a5be547598c8d716d1a795c39&hash=97ECA4B149560404B19497FA37CB2B50 (attached).

it can control the risk and costs borne by the American taxpayer. These rules are a necessary first step in doing just that.

We appreciate and support the great level of detail in the preamble to the proposed rules. As discussed by the agency, numerous government audits from the GAO and the Department of the Interior's Office of Inspector General have long demonstrated the need for BLM to improve its financial assurance regulations. For instance:

> The BLM's current minimum bond amounts are outdated, expose the Federal Government to significant financial risks in the event of bankruptcies, and delay "complete and timely" reclamation and restoration of lease tracts, which can cause or exacerbate a range of environmental issues, including methane leaks, surface and groundwater contamination, interference with agricultural activities, and degraded wildlife habitat.[5]

BLM's current bond amounts have not kept pace with inflation or the type and depth of contemporary wells. As BLM acknowledges:

> Consequently, the BLM's current bonding requirements "may not create an incentive for operators to promptly reclaim wells after operations cease because it costs more to reclaim the wells than the operator could collect from its bond."[6]

BLM further notes:

> In the past 2 fiscal years, the BLM has spent $2.7 million annually on orphaned wells. Without an increase in bond amounts, the BLM expects to continue to incur similar annual costs to address orphaned wells. Because of inflation, the lack of increased bond amounts for almost 40 years, and the increased number of orphaned wells resulting from insufficient funds available under current bonds and associated costs ultimately borne by the American taxpayer, the revisions to the bond amounts proposed here are justified.

The bottomline is that BLM's federal onshore oil and gas program has been losing money for taxpayers and the federal government for decades. In Colorado alone, $811 million was lost in royalty revenues from 2013-2022 with the outdated royalty rates of 12.5%. In addition, there are $371 million in potential reclamation liability for currently producible wells on federal lands in Colorado.[7] This lost revenue and potential future liability to taxpayers barely scratches the surface of the clear disregard from operators and the limited oversight from BLM over the last few decades. However, the proposed rule seeks to close the loopholes to ensure that operators are paying their fair share and don't leave the mess in the hands of communities and taxpayers.

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[5] Bureau of Land Management, *Fluid Mineral Leases and Leasing Process*, 88 Fed. Reg. 47565 (July 24, 2023).
[6] *Id*., *citing* GAO, "Oil and Gas - Bureau of Land Management Should Address Risk from Insufficient Bonds to Reclaim Wells" (Sept. 2019).
[7] Taxpayers for Common Sense *Losing on Leasing II* (August 28, 2023): https://www.taxpayer.net/wp-content/uploads/2023/08/TCS_Losing-on-Leasing-II_Final.pdf

This month, the International Energy Agency (IEA) projected peak fossil fuel production will occur much sooner than previously predicted, no later than 2030, due to the accelerating transition to renewables to reduce greenhouse gas (GHG) emissions. As demand declines, oil/gas companies will experience declining revenues, increasing the risk of a tsunami of abandoned wells with the cleanup costs shifted onto taxpayers unless adequate bonds are in place.[8]

In short, BLM is justified in taking swift, effective action to move forward with this rulemaking.

III. The Need for Full Cost Bonding

While we support the BLM's proposal, more should be done to ensure American taxpayers and the federal treasury is protected from oil and gas reclamation liabilities. Along with partners at the Natural Resources Defense Council and Taxpayers for Common Sense, our organizations submitted a petition for rulemaking to the BLM last fall that laid out the case for full cost bonding. We have attached that rulemaking petition. Please consider the information contained therein incorporated by reference into these comments.

Our petition proposed bonding to be set at $15/foot and to be applied at the time of an Application for Permit to Drill (APD) on a lease. This bond amount is akin to the BLM's bond rider alternative discussed in the preamble to the rules published in the Federal Register. We understand this may be more administratively burdensome to implement in the beginning; however, the approach may actually end up being less administratively burdensome in the long-run because it will eliminate the need for bond adequacy reviews and bond adjustments going forward. Notably, setting bond amounts based on well depth addresses one of industry's main concerns with BLM's proposal – that the blanket bond numbers are a "one-size fits all" proposal that does not account for differences in plugging and reclamation costs.

As described in the rulemaking petition, full cost bonding is necessary for BLM to comply with its statutory obligations under the Mineral Leasing Act (MLA). The Mineral Leasing Act, 30 U.S.C. § 226(g), requires all those who conduct oil and gas operations on federal land to post a bond that will ensure "complete and timely plugging of wells, reclamation of lease areas, and the restoration of any lands or surface waters adversely affected by lease operations."

BLM's analysis demonstrates that while proposed minimum statewide and lease bonds cover the medium number of wells, bonds covering a greater number of wells will need to be increased to meet the MLA requirements for financial assurance that ensures reclamation of well sites and protects the federal government from plugging and reclamation liability in the case of operator defaults.[9] Rather than the cumbersome bond adjustment process after the fact, a more effective administrative system would be a bond rider at the time of APD. BLM should update its proposal to incorporate that alternative into its rules.

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[8] CNBC: *Demand for Oil and Gas will Peak in 2030…* (September 12, 2023) https://www.cnbc.com/2023/09/12/demand-for-oil-gas-coal-will-peak-by-2030-says-iea-chief.html#:~:text=TheSurgeinadoptionofpeakofoilBirolsaid

[9] *Id*. at 47579 ("the BLM would still need to review bond amounts periodically to determine whether the bond amount should be increased based upon the risk of default posed by the operator or the risk to the environment posed by the operations.")

Requiring per-well bonding will remove a great deal of administrative burden from BLM staff because the need to carry out bond adequacy reviews will be mitigated. It will also protect against a situation where it is too late to collect additional bond amounts from an operator who is in bankruptcy or otherwise financially unstable. Requiring per-well bonding up-front is the only way to guarantee bonds will adequately cover reclamation costs.

IV. Bond Adequacy Reviews & Adjustments

Should the agency continue with its current approach, and if full cost bonding is not automatically required at the time of an APD, bond adequacy reviews and bond adjustments will be critical going forward. BLM's proposal includes the authority for this process in revised Section 3104.5(b) allowing "The authorized officer [to] require an increase in the amount of any bond whenever it is determined that the operator poses a risk…or the total cost of plugging existing wells and reclaiming lands exceeds the present bond amount based on the estimates determined by the authorized officer." Nevertheless, swift and efficient implementation is key to the success of the bond adjustment process, and unfortunately in practice this has not been the case. BLM's current Instruction Memorandum (IM) 2019-014 notes that BLM secured an average of *only* 16 percent of pending bond increases during the year prior to the IM. In other words, the vast majority of bond increases were not secured, leaving the agency without adequate bonding in the case of operator defaults. We have attached a spreadsheet of bond adjustments obtained via a Freedom of Information Act (FOIA) request that details bond adjustments from 2010-2021. The spreadsheet shows that bond adjustments can take years to process and in some cases the agency does not obtain the requested amount. In order to make the bond adequacy review and adjustment process more timely and effective, and to better recognize and implement BLM authority, we have attached proposed revisions to the IM. We ask that BLM update the IM with these changes and make the IM permanent so it will be a consistent tool to be used by state offices going forward.

V. Elimination of Nationwide Bonding

We fully support the BLM's proposal to eliminate the availability of nationwide bonding. BLM has more than sufficiently justified this proposal in its analysis in support of the rule, including the discussion of how eliminating nationwide bonds will create administrative efficiency for bond adequacy reviews and adjustments since statewide bonds will be limited to a single state.

VI. Increasing Minimum Lease & Statewide Bonds

We also fully support the BLM's proposal to increase lease and statewide blanket bond amounts to the levels proposed in the draft rules. As BLM explains, these amounts were chosen to cover plugging and reclamation liability costs for the medium number of wells included in lease and statewide blanket bonds.

VII. Adjusting Minimum Blanket Bond Amounts for Inflation

In response to the BLM's request for comment on this topic, we ask BLM to add a regulatory requirement that will automatically index minimum bond amounts to adjust them for inflation. We suggest indexing to the Bureau of Economic Analysis Price Indexes for Private Fixed Investment in Structures by Type, Petroleum and Natural Gas.[10] This rate is seasonally adjusted and specific to the oil and gas industry, making it the most accurate to use in anticipating inflationary costs associated with plugging and reclamation costs. We suggest requiring an annual bond rider to be posted by the operator to cover inflationary costs. BLM could provide a guidance document, updated annually, with the amount to assist operators in this process, similar to for instance Guideline 12 of the Land Quality Division of the Wyoming Department of Environmental Quality.[11,12]

VIII. Phasing in New Bonding Requirements for Existing Bonds

We fully support the BLM's proposal to phase in replacement of current bonds with new bond amounts and types. We agree with the agency that "The phase-in period should be as short as possible to account for the large number of inadequate bonds." A short phase-in period is necessary to bring agency practices into compliance with MLA requirements. Additionally, we ask that BLM not offer any extensions for these deadlines.

IX. Need for Consistency with BIA Rules

Although it is not a part of the agency's proposal, there is a need for the Department of the Interior to work with the Bureau of Indian Affairs (BIA) to carry out a rulemaking to update its bonding requirements since BIA rules cross-reference BLM statewide and nationwide bond requirements.[13]

Given the length of time that it may require to conduct this rulemaking, BLM should consult with BIA to put in place interim guidance or policy to ensure compliance with the updated statewide bond amount, and the replacement of nationwide bonds as contemplated by the BLM's proposal.

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[10] See https://apps.bea.gov/iTable/?reqid=19&step=2&isuri=1&categories=underlying#eyJhcHBpZCI6MTksInN0ZXBzIjpbMSwyLDNdLCJkYXRhIjpbWyJjYXRlZ29yaWVzIiwiU3VydmV5Il0sWyJOSVBBX1RhYmxlX0xpc3QiLCIyMDI5Il1dfQ== (line 21)

[11] See https://drive.google.com/file/d/1yz9BuMxDnoOE0nUSVNV6aBG0bNMZTbBc/view

[12] An alternative approach would be similar to Wyoming's Oil & Gas Conservation Commission rule for idle well bonding: "The bonding level of $10 per foot will be adjusted every three (3) years based on the actual Commission orphan well plugging cost or by the percentage change in the Wyoming consumer price index."

[13] 25 C.F.R. § 211.24

X. Types of Bonds

We support BLM's removal of letters of credit and certificates of deposit for the reasons stated in the preamble to the proposed rules.[14]

We support BLM's inclusion of Treasury Circular 570 into its rules. This is particularly important as bond amounts increase and companies more heavily rely on surety bonds with the elimination of other bonding types. Treasury Circular 570 listings provide transparency about underwriting limits and also afford the public an opportunity to obtain financial information filed by a surety through the Freedom of Information Act (FOIA) process. While the Treasury Circular 570 process is the best there is, we note that it is far from perfect, especially when evaluating overall aggregate liabilities of a surety company for an entire industry or sector. We are attaching recent comments to Treasury on this topic and request BLM to work with Treasury and other sister federal agencies to ensure protection of the American taxpayer when agencies rely on the underwriting limits set by Treasury.

XI. Idle Wells

When wells go idle, it is often the first stage before wells go orphan. We appreciate the BLM's updates to its rules to increase oversight and regulation of idle wells. Consistent with the Bipartisan Infrastructure Law, we are pleased by the shortened length of time a well can be dormant before it is considered idle by the BLM. Four years is still too long, and it is much longer than the definition of idle in most state programs, but this shorter time will assist the BLM in more prompt remediation of wells and associated infrastructure and reclamation of the landscapes they occupy. We look forward to BLM creating a new inventory of idle wells in our states using this new definition, and including all non-producing wells in its data collection and reviews. Additionally, BLM should not wait until wells meet the definition of idle to take appropriate action if lessees and operators fail to pay royalties, rentals, and other fees, or miss other deadlines for wells that are non-producing; in other words, BLM should exercise all of its clear authority from other parts of the proposed rules.

While we support the agency's proposal to review idle wells and require production or closure, we are concerned that in practice this set of rules may prove less than effective unless strictly applied. We appreciate the inclusion of "Except in extraordinary circumstances" in proposed Section 3162.3-4(c), however the delay of one year increments if the operator submits a "detailed plan and timeline" in proposed Section 3162.3-4(d)(3)(iii) could become problematic. That has been the case in Wyoming, with some operators providing plans to the Wyoming Oil and Gas Conservation Commission (WOGCC) without ever having real intentions of implementing them.[15] We encourage BLM to limit delays by one year only, with no extensions offered. We also ask for transparency measures to be put in place for public review, inspection, and comment afforded on any plans and timelines and proposed BLM decisions. We ask BLM to

[14] We also note that these types of bonds may be vulnerable in bankruptcy proceedings depending on if they are viewed as assets of the bankruptcy estate.

[15] See Heather Richards, *Storm Cat reaches deal with state over more than 2,000 wells and $10 million in unpaid bonds,* (June 14, 2017). https://trib.com/business/energy/storm-cat-reaches-deal-with-state-over-more-than-2-000-wells-and-10-million/article_a680b9f3-729c-5423-98f3-0a6ef2064a8b.html

issue an IM that explains how agency staff will review the plans, what criteria will be used to evaluate the economic viability of the plans,[16] where they will be electronically posted, and how members of the public can raise concerns or comments with the agency. Additionally, we ask that surface landowner notification be a part of this process for all split estate lands, since surface landowners have often been in communication with companies about their plans and they may have information regarding unpaid surface use and damage payments or other issues. Finally, we recommend you include language similar to the WOGCC rules that: "Approved plans filed by an Operator are binding on purchasers in the event of a sale unless the authorized officer accepts an alternate plan."

If BLM truly wants to encourage operators to move forward with plugging and reclamation of idle wells, or alternatively to bring the wells back into production, then an idle well bond is the only way to create a financial incentive to do so. We ask BLM to add a subsection (iv) to proposed Section 3162.3-4(3) to require a bond at the 4 year idle well mark. We are recommending the following language, modeled after Wyoming's idle well bond rules:

> In the event an Operator has a statewide or lease bond covering federal wells, the authorized officer may require an increased bond amount up to fifteen dollars ($15.00) per foot for each idle well taking into account the existing level of bond in place. As wells are removed from idle status, up to fifteen dollars ($15.00) per foot bonding requirements will be reduced accordingly. An Operator may request the authorized officer to set a different bonding level based on an evaluation of the specific well conditions and circumstances. The Operator shall submit a written cost estimate to provide plugging, abandonment and site remediation prepared by a contractor with expertise in well plugging, abandonment and site remediation. At his or her discretion, the authorized officer may accept or reject the cost estimate when determining whether to adjust the bonding level. The idle well bond amount will be reviewed annually or upon request of the Operator.

Alternatively, if BLM does not impose an idle well bond, we suggest adding regulatory language to require a mandatory bond adequacy review by the agency at the 4 year mark when wells go idle in addition to mechanical integrity testing for all idle wells. While current BLM policy certainly allows this bond review to occur, and idle wells are prioritized in the current bond adequacy review IM, this review should be mandatory, not discretionary, in order to catch any problem companies early enough to address the situation before it is too late.

XII. Bonding at the Time of Lease Transfer

As discussed above, and as the attached news stories demonstrate, the oil and gas industry is rife with bankruptcy filings and spin-offs of liabilities to other companies. This is a story that plays out time and time again. Bigger operators who profited the most from a booming

[16] Companies in Wyoming have often touted new technology or drilling improvements that can bring wells back into production. Almost in all cases, those plans have failed and the wells have been left orphaned by bankruptcy and financial collapse. See https://trib.com/business/energy/bankupt-methane-farmers-propose-way-out-of-bind-on-wyoming-project/article_7c0ef1c9-04c7-56ed-a8a0-c6893e0c9dcd.html

oil and gas field pass along older wells to companies that are typically less financially viable and who often fail to operate in a professional and responsible manner.

We support BLM's proposal to clarify that a new operator must post bonds before lease transfer can be completed. This is similar to a requirement for the coal industry under the Surface Mining Control and Reclamation Act, and it has proved effective in preventing a shift to taxpayer liability during proposed bankruptcy sales and other transfers. That said, the proposed rule language may be seen as a problematic restriction on requiring additional bond funding at the time of a transfer. We know this is not the agency's intent since the preamble to the proposed rules includes the background information that "The BLM's practice is to ascertain the adequacy of such bond before approving the assignment." To accomplish this objective, rather than saying "to the same extent" in proposed Section 3106.60, it would be better to say "to the same extent as or greater than" to clarify that during the review of the proposed transfer, the authorized officer may require additional bonding to be supplied by the new operator.

Additionally, we support BLM's clarifications in the proposed rules that codify requirements for predecessor operators to maintain reclamation and plugging liability for wells they drilled on a lease in proposed Section 3106.72.

However, more should be done to address the risk of transfer transactions. BLM should require mandatory bond adequacy reviews at the time of lease transfer. We ask BLM to put in place regulatory language that will facilitate bond review at the time of transfer, similar to what the WOGCC has in its regulations:[17]

> The authorized officer shall be advised by the Operator of all proposed transfers of lease(s) or permit(s) at least thirty (30) days before the closing date of the transfer and the authorized officer retains the right for an additional thirty (30) days to evaluate pending transfer of lease(s) or permit(s). Notice of transfer of lease(s) or permit(s) must be accompanied by a list of all wells to be transferred that includes the well name, legal description, and well status. The purpose of the notice is to provide the authorized officer with an opportunity to evaluate the status and number of wells that may be involved in the transfer and determine the need for additional bonding by the new Lessee/Operator. The previous Operator's bond shall not be released until the new Operator provides bonding, including the additional bonding if requested. The authorized officer shall have the discretion to hold the prior bond for a period of six (6) months after the new bond has been posted to evaluate the performance and viability of the new operator. The authorized officer shall also provide thirty (30) days notice of the transfer of any lease(s) or permit(s) publicly posted on the local field office(s) website where the lease(s) or permit(s) are located.

[17] North Dakota has a similar review for bonding at the time of transfer in place in its regulations. *See* Section 43-02-03-15 of the North Dakota Administrative Code.
https://www.ndlegis.gov/information/acdata/pdf/43-02-03.pdf

XIII. Surface Owner Protection Bonds

Many of our members reside on surface lands where federal oil and gas resources are developed. Our organizations have long championed the need to adequately protect surface owners in the situation of condemnation or eminent domain access when operators and surface owners fail to reach a surface use and damage agreement. Admittedly, these situations are rare, because more often the threat of condemnation forces a landowner to accept a deal that may be less than adequate; however, the situation does occur, and landowners deserve compensation for the impacts that occur to their agricultural operations and land and water resources.

We generally support the proposal to move the surface owner protection bond requirement in the rules to clarify that it is a bonding requirement. However, unless BLM also adjusts the amount of the bond and what it covers, it will continue to be a relatively meaningless aspect of BLM's requirements. The proposed $1,000 per well is too low to provide the compensation necessary. Our organizations have long recommended that minimum individual surface owner protection bonds be set at $10,000 per well plus an additional $2,000 per acre of disturbed land to compensate for surface impacts caused by associated oil and gas infrastructure.

Additionally, by limiting the surface owner protection bond to "the reasonable and foreseeable damages to crops and tangible improvements," BLM is greatly limiting the scope of compensation the bond provides.

Perhaps more important, given the limitations of the Stock Raising Homestead Act, is a need for BLM to finally clarify in policy and practice that its surface owner protection bond requirements do not in any way preempt state policy or law requiring surface owner protection bonds (commonly called "split estate bonds"). The WOGCC and other state regulatory agencies have applied state legal requirements for surface owner protection bonds to federal wells; however, at times their authority to do so has been in doubt. We have attached some background information on this topic, and we ask that you consider it as you review our comments on this topic. We request that BLM issue a policy memorandum requiring federal permitting of oil and gas wells adhere to state laws including split estate statutes. We do not believe this requires BLM to change its regulations or implement new permitting requirements. Rather, it merely requires BLM guidance to clarify that operators developing federal minerals must adhere to all requirements of state law, as they do with environmental quality, oil and gas permitting, and other issues.

XIV. Need to Update BLM Reclamation Standards

Higher bond amounts will be effective in leading operators to pursue more timely reclamation. However, for this reclamation work to be effective in restoring surface lands, BLM's reclamation standards should be updated. Lack of clear reclamation standards has created a piecemeal approach, where standards change from land use plan to land use plan, creating inconsistent reclamation requirements on federal and split estate lands. BLM should adopt broad, uniform, performance-based standards that ensure that all wells drilled on federal and split estate lands meet acceptable and clearly defined minimum requirements for reclamation. Specifically, BLM could incorporate aspects of the Chapter 6 of Surface Operating Standards and Guidelines

for Oil and Gas Exploration and Development (aka "The Gold Book")[18] into regulation, allowing those standards to be enforceable through permitting and inspections. The Gold Book's standard that "Reclamation generally can be judged successful when a self-sustaining, vigorous, diverse, native (or otherwise approved) plant community is established on the site, with a density sufficient to control erosion and non-native plant invasion and to re-establish wildlife habitat or forage production"[19] should be a regulatory requirement. Like re-vegetation standards for the coal industry, this standard incorporates species composition and diversity requirements, as well as percent cover aspects, while excluding invasive or noxious species from meeting these requirements.

This approach would ensure operators employ their considerable resources to achieve satisfactory reclamation. It would also provide a consistent standard across field offices to promote better and more frequent reclamation, potentially reducing an operator's desire to shirk responsibilities if they find current reclamation requirements too prescriptive or rigid.

An alternative approach would be to incorporate regulatory standards similar to the U.S. Forest Service in 36 C.F.R. § 228.108(g):

> Reclamation
>
> (1) Unless otherwise provided in an approved reclamation plan, the operator shall conduct reclamation concurrently with other operations.
>
> (2) Within 1 year of completion of operations on a portion of the area of operation, the operator must reclaim that portion, unless a different period of time is approved in writing by the authorized officer.
>
> (3) The operator must:
>
> (i) Control soil erosion and landslides;
>
> (ii) Control water runoff;
>
> (iii) Remove, or control, solid wastes, toxic substances, and hazardous substances;
>
> (iv) Reshape and revegetate disturbed areas with native plant species to ensure a thriving and biodiverse ecosystem
>
> (v) Remove structures, improvements, facilities and equipment, unless otherwise authorized; and
>
> (vi) Take such other reclamation measures as specified in the approved reclamation plan.

[18] See https://www.blm.gov/sites/blm.gov/files/Chapter%206%20-%20Reclamation%20and%20Abandonment.pdf
[19] *Id*.

This approach would set minimum standards in regulation while still allowing site-specific reclamation requirements to be incorporated into reclamation plans (Section 3162.3-4 of BLM's regulations).

XV. Lease Preference Criteria

We generally support BLM's proposed lease preference criteria, recognizing it has been in place in guidance for almost a year and it has created a workable set of criteria for state offices to consider when offering lease parcels for sale. As BLM explains in the preamble to the rule, this criteria helps the agency support its multiple use objectives for public lands and minerals, including supporting thriving wildlife habitat and recreation opportunities.

However, the preference for leasing areas in "proximity to existing oil and gas development" will create greater impacts in areas already heavily developed and impacted by oil and gas wells and associated infrastructure. BLM needs to carry out extensive environmental review of all proposed lease parcels, paying careful attention to issues such as landscape impacts to wildlife habitat, degradation of air quality, quality of life impacts for residences and other occupied structures, and water depletion and contamination concerns. BLM must still consider mitigation measures associated with these impacts, even if the area ultimately is preferred to be leased since the agency has statutory and regulatory obligations to reduce impacts regardless of lease location. We further call on BLM to effectively implement existing mitigation measures, such as surface owner notification and consent policies, the ¼ mile setback contained in Lease Notice No. 1, flaring and venting rules, reclamation plan requirements, and wildlife mitigation measures associated with Resource Management Plans (RMPs).

XVI. Limiting Speculation

We support the agency's proposed rules to define expressions of interest (EOIs) and require a filing fee. We also support the proposal to have escalating rental rates for leased lands not yet being developed. These provisions will serve to limit speculative leasing, which can cloud the title of split estate surface lands among other impacts.

XVII. Providing Clarity on Lease Terms & BLM Authority

How lands are nominated and made available for leasing is an essential component of the leasing process and it is crucial for BLM to clarify their authority in administering that process, so that it is done in an efficient manner while carefully considering the impacts to communities and the environment. We hereby incorporate by reference the comments from Earthjustice, et al., endorsed by our organizations, that outline the steps we believe BLM should take to ensure that the leasing of our public lands and minerals is done in an equitable manner.

XVIII. Qualified Bidders & Lessees

We support the agency's proposal to ensure that companies and individuals with controlling interests in companies that are in non-compliance with section 17(g) of the MLA are

not qualified to hold a lease, either from a lease sale or later transferred. This is an important update to the regulatory framework to protect taxpayers and hold bad actors accountable.

A recent report done by Center for American Progress found that more than 50% of the top oil and gas companies have exhibited one or more bad-actor behaviors such as abandoning wells, shedding liabilities, dodging royalty payments or committing environmental or labor violations.[20] One egregious example of this bad-actor behavior is that in 2022 alone, there were at least 2,449 spills, totaling more than 7.5 million gallons, just in Colorado, Wyoming, and New Mexico.[21]

To ensure that all bad actors are held accountable, BLM should expand the criteria in proposed Section 3102.51 to include all state and federal fines and violations, including EPA, state oil and gas commissions, state revenue agencies, and any ongoing litigation. BLM could adapt language from the Surface Mining Control & Reclamation Act (SMCRA) and state coal mine laws that require coal mine permit applicants to demonstrate that: all operations currently owned or controlled by the applicant are currently in compliance with this act, and any law, rule or regulation of the United States, or of any department or agency in the United States pertaining to air or water environmental protection or that any violation has been or is in the process of being corrected to the satisfaction of the authority, department or agency which has jurisdiction over the violation.[22]

XIX. Increased Royalties

We have long supported increasing royalties paid on federal oil and gas leases to bring these rates into better alignment with state and private royalty rates to ensure a fair return to the American taxpayer for the development of our publicly owned mineral resources. We support the agency's prompt implementation of the Inflation Reduction Act (IRA) provisions to this effect.

We further ask BLM to require a minimum royalty amount in the case of royalty rate reductions, and we ask BLM to remove waive and suspend language in the regulations.

XX. Need to Pause Lease Sales Until Rules Are in Place

The BLM should defer lease sales until these rules are effective. Otherwise, BLM will be leasing oil and gas parcels in violation of the MLA's provisions that require all oil and gas operators to post a bond that will ensure "complete and timely plugging of wells, reclamation of lease areas, and the restoration of any lands or surface waters adversely affected by lease operations." If BLM leases new resources with minimum blanket bonding of current regulatory amounts, then BLM will be in violation of its statutory obligations to require a bond that is sufficient to achieve reclamation of the wells and associated infrastructure developed within that lease, along with reclamation of surface land.

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[20]See Campaign for American Progress: https://www.americanprogress.org/article/how-the-federal-government-can-hold-the-oil-and-gas-industry-accountable/

[21] See Center for Western Priorities: https://westernpriorities.org/resource/2022-spills-tracker/

[22] Wyo. Stat. § 35-11-406 (adapted from 406(n) and 406(b).

XXI. Reducing Greenhouse Gas Emissions

We appreciate BLM's request for comment on addressing greenhouse gas emissions (GHG) during the oil and gas decision-making process. We know that this rule has the potential to reduce GHG emissions in a myriad of ways, including through adequate bond amounts that will hopefully speed up the timelines for well closures and through better oversight of idle wells, which are known to leak methane and volatile organic compounds (VOCs) into the atmosphere, which consequently deteriorate human health and impact our planet's climate. We hereby incorporate by reference the comments from Earthjustice, et al., endorsed by our organizations, that outline the steps we believe BLM should take to ensure that GHG emissions are considered during the federal onshore oil and gas leasing, drilling, plugging, and reclamation process.

XXII. Conclusion

Bonding and reclamation issues have been of great concern to our organizations and our members for decades. They have also been of great concern to the agency, Congress, and other stakeholders. As you know, time is of the essence and this issue has lingered for far too long. We look forward to swift and effective agency action. Thank you for your proposal and we look forward to working with you to incorporate the improvements suggested herein into the final regulations.

Sincerely,

Robert LeResche
WORC Board Chair

Andreya Krieves
Western Colorado Alliance Board Chair

Joanie Kresich
Northern Plains Resource Council Board Chair

David Romtvedt
Powder River Basin Resource Council Board Chair

Curtis Stofferahn
Dakota Resource Council Board Chair