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A HEALTHY COMMUNITY, EARTHWORKS, FRIENDS OF THE
EARTH, PHYSICIANS FOR SOCIAL RESPONSIBILITY, SAN JUAN
COLLOABORATIVE FOR HEALTH EQUITY, SIERRA CLUB,
WATERKEEPER ALLIANCE, WESTERN ENVIRONMENTAL LAW
CENTER, WESTERN WATERSHEDS PROJECT, WILDEARTH
GUARDIANS**

June 10TH, 2021

The Honorable Debra Haaland
Secretary of Interior
U.S. Department of the Interior
1849 C St. NW
Washington, D.C. 20240

Re: Interim Actions Relating to the Federal Fossil Fuel Programs

Dear Secretary Haaland,

We are grateful for your efforts to implement Executive Order 14008 of January 27, 2021 and to chart a new course for the U.S. Department of the Interior’s federal fossil fuels program, including through your April 16, 2021 actions to address the climate emergency and deliver on environmental justice. *See* Sec. Or. 3998 (April 16, 3998), Sec. Or. 3999 (April 16, 2021). We write to recommend interim actions within your existing authority relating to the federal fossil fuel programs. These actions should be taken immediately, pending completion of Interior’s comprehensive review of the federal fossil fuels programs.

While we welcome the comprehensive review and the associated pause on new fossil fuels leasing, substantial new and expanded development may continue in the interim under stockpiled and newly-approved federal exploration, drilling, and infrastructure approvals. Such unabated development risks grave harm to the climate, public lands, and communities, while also increasing the stock of “stranded assets” in dead-end fossil fuel projects and diverting resources from clean energy investment. It risks locking in fossil fuel production levels incompatible with measures to limit warming to 1.5 Celsius, including the Biden administration’s Nationally Determined Contribution “to achieve a 50-52 percent reduction from 2005 levels in economy-wide net greenhouse gas pollution in 2030”¹ and equity-based emissions reductions of 70 percent by 2030 and to near zero by 2040.²

¹ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/22/fact-sheet-president-biden-sets-2030-greenhouse-gas-pollution-reduction-target-aimed-at-creating-good-paying-union-jobs-and-securing-u-s-leadership-on-clean-energy-technologies/>.

² <https://usfairshare.org/backgrounder/>

Notably, the International Energy Agency's new report *Net Zero by 2050: A roadmap for the global energy system* articulates a pathway for the global energy sector to reach net zero emission by 2050.³ Even with reliance on unproven future emissions reduction technologies, it cites the incompatibility of new fossil fuel supply projects with the goal of limiting warming to 1.5 Celsius. It states:

Beyond projects already committed as of 2021, there are no new oil and gas fields approved for development in our pathway, and no new coal mines or mine extensions are required.

At 21. In the context of the Interior Department's EO 14008 review, *Net Zero by 2050* shows, like many earlier analyses⁴ and reports⁵, that there is simply no room left in the global carbon budget for new federal fossil fuel leasing. Importantly, *Net Zero by 2050*'s pathway starts now. To show leadership and reduce emissions, the U.S. must act now *where we have the ability to do so*. Given the Secretary of Interior's authority over the federal fossil fuel estate, this is the place to start.

The interim actions we recommend below would ameliorate adverse harms pending completion of the comprehensive review, ensure fair, just, and meaningful public participation, and preserve Interior's ability to consider and choose from a full range of options once that review is completed. We must take action, now, to wind down the production and use of fossil fuels for the sake of the climate, public lands, and communities.

I. TAKE IMMEDIATE ACTION TO SUPPORT AND ADVANCE A JUST AND EQUITABLE FOSSIL FUEL TRANSITION

Action to reduce climate pollution must be matched with action to foster a just and equitable transition for frontline, fenceline, and energy-dependent communities. We urge Interior to harness ongoing planning and decision-making processes as a mechanism to immediately support and participate in transition planning and action in areas that have shouldered the weight and impacts of fossil fuel exploitation.

Interior can play a key role in helping communities secure transition funding, direct resources to support conservation, economic diversification, and research projects in or near communities, and encourage appropriate renewable energy development. Some states are embracing, if slowly, that transition. For example, with New Mexico's passage of Senate Bill 112, just signed into law this year, the state has taken an important step forward by committing to the development of a strategic plan that could help transition New Mexico's economy away from its current overreliance on oil and gas production.

³ International Energy Agency. 2001. *Net Zero by 2050: A roadmap for the global energy system*. Available at: <https://iea.blob.core.windows.net/assets/4719e321-6d3d-41a2-bd6b-461ad2f850a8/NetZeroBy2050-ARoadmapfortheGlobalEnergySector.pdf>

⁴ Oil Change International. 2016. *Sky's the Limit: Why the Paris climate goals require a managed decline of fossil fuel production*. Available at: http://priceofoil.org/content/uploads/2016/09/OCI_the_skys_limit_2016_FINAL_2.pdf

⁵ SEI, IISD, ODI, E3G, and UNEP. 2020. *The Production Gap Report: 2020 Special Report*. Available at: <http://productiongap.org/2020report>

With 31,000 existing federal oil and gas wells in New Mexico, Interior should assess opportunities to contribute to this and other state-led efforts where there is a significant presence of federal public lands oil and gas development. In doing so, Interior would build trust and respect with communities and state political leadership, ensuring that federal action to align the federal fossil fuels programs with climate realities is carried out in light of important state-level political and economic dynamics.

II. RECOMMENDED INTERIM ACTIONS REGARDING THE FEDERAL ONSHORE OIL AND GAS PROGRAM

A. Subject Records of Decision for Pending RMP Revisions to Completion of a PEIS Pursuant to E.O. 14008

Interior should not issue records of decision for resource management plan revisions until completion of a programmatic environmental impact statement (PEIS) pursuant to the administration's E.O. 14008 review of federal fossil fuel programs. This allows BLM the ability to ensure that RMP revisions are consistent with, and if appropriate can implement, findings and actions resulting from that PEIS and associated rulemakings that are necessary to align the federal fossil fuel programs with U.S. climate goals. Because BLM has not otherwise demonstrated that emissions associated with new federal fossil fuel leasing and development would be compatible with U.S. climate goals and would not result in unnecessary and undue degradation or other statutory mandates provided by FLPMA, we urge the administration to analyze in each pending RMP revision the reasonable alternative of withdrawing federal fossil fuels or otherwise making federal fossil fuels ineligible for new leasing and development.

B. Impose a Nation-Wide Pause On New Exploration, Drilling, and Infrastructure Approvals

We urge you to pause new Bureau of Land Management (BLM) oil and gas exploration, drilling, and infrastructure approvals, including seismic operations and rights-of-ways, on public lands and waters. Interior holds existing authority and discretion to take such action. *See* 43 U.S.C. §§ 1701(a)(8), 1702(c), 1732(b); 43 C.F.R. § 3101.1-2. Such action would complement the pause on new leasing, which should be continued at least through the completion of the comprehensive review (which should include preparation of a programmatic environmental impact statement). We base this request on two primary factors:

First, oil and gas exploration, drilling, and infrastructure approval processes are generally driven by whatever a particular lessee or operator deems is prudent. It is not driven by a reasoned, informed, and clear determination of what is in the public interest, as mandated by the Federal Land Policy and Management Act of 1976 (FLPMA), nor by what is prudent in particular regard to the climate crisis. In this moment of megadrought, raging wildfires, and other climate-driven harm to ecological values and communities, there is simply no replacement for BLM exercising its full and expansive authority to further the public interest through robust action pending the completion of the comprehensive review. Specifically, BLM should leverage its authority—and, indeed, responsibility—to pause new fossil fuel development approvals in order to:

- Protect public land values including air and atmospheric, water resource, ecological, environmental, and scenic values, and to preserve and protect “certain public lands in their natural condition,” and “food and habitat for fish and wildlife” (43 U.S.C. § 1701(a)(8));
- Account for “the long-term needs of future generations” (43 U.S.C. § 1702(c));
- Prevent “permanent impairment of the productivity of the land and quality of the environment” (43 U.S.C. § 1702(c)); and
- “[T]ake any action necessary to prevent unnecessary or undue degradation of the lands.” 43 U.S.C. § 1732(b).

Second, the oil and gas industry holds an immense stockpile of oil and gas drilling and infrastructure permits approved by the prior administration,⁶ which underscores the need for Interior to exercise considerable restraint before adding to that stockpile. Further, in response to the pandemic, oil oversupply, and a resultant collapse in oil prices, industry shut-in thousands of oil and gas wells in 2020, many of which still remain shut in. For example, in New Mexico, emergency shut-in approvals are still in effect for 4,392 oil and gas wells.⁷ An additional 4,188 oil and gas wells have been idle and not producing oil or gas for more than 15 months and are therefore presumptively out of compliance with state-level rules. *See, e.g.*, 19.15.5.9 NMAC, 19.15.25 NMAC. Of those totals, 283 wells on federal public lands have been orphaned and an additional 1506 wells are idle and producing no oil or gas.

Analogous dynamics very likely exist in other Western states with federal public lands oil and gas resources. This pool of wells provides lessees and operators with spare capacity to restore production, if they desire, without building new infrastructure. Moreover, they suggest a critical need Interior must address: action to ensure that operators retire and reclaim idle, non-producing oil and gas infrastructure, which would reduce the risk of stranded assets, prevent the orphaning of wells that impose costs on taxpayers, and reduce the prospect of oil and gas oversupply that contributed, with the pandemic, to the collapse in oil market prices. Companies should not be entitled to drill new wells if they have yet to retire and reclaim idle, non-producing wells.

Regardless, additional oil and gas exploration, development, and infrastructure development on public lands threatens to cause significant degradation to the climate, public lands, and communities. Pausing new approvals pending the comprehensive review conforms to FLPMA’s substantive public interest mandates, providing time for the future of the federal public lands oil and gas program to be considered through reasoned and informed planning and action.

⁶ Magill, B., “Oil, gas industry stockpiled drilling leases before Biden ‘pause’,” *Bloomberg Law* (Jan. 28, 2021), available at <https://news.bloomberglaw.com/environment-and-energy/oil-gas-industry-stockpiled-drilling-leases-before-biden-pause>.

⁷ Per Western Environmental Law Center analysis of New Mexico Oil Conservation Division data (May 2021).

C. Consider Localized Pauses and Action to Avoid, Mitigate, or Compensate for Adverse Exploration, Drilling, and Infrastructure Impacts If a Nation-Wide Pause Is Not Imposed

To the degree that Interior does not impose a nation-wide pause on oil and gas permitting and infrastructure approvals, we urge localized pauses pending completion of the comprehensive review where:

- Proposed infrastructure projects risk a lock-in of a significant magnitude of greenhouse gas pollution;
- Resource management planning processes are pending and there is a risk that development approvals would limit the choice of alternatives;
- There are significant conflicts with or uncertainties regarding other multiple uses or communities, including relative to public health and environmental justice; or
- Oil and gas companies enjoy a stockpile of existing permits or either shut in or idle wells.

If neither a nation-wide nor local pause is imposed, we urge you to carefully scrutinize proposed development projects through site-specific National Environmental Policy Act (NEPA) reviews and to ensure compliance with FLPMA's protective mandates, summarized above.

Necessarily, when presented with a proposed development project, Interior should audit the chain of NEPA analyses prepared for the relevant resource management plan and the separate decision to issue the lease for which development is proposed. Many if not most of these planning and lease-level NEPA analyses either lack the requisite site-specific analysis to justify on-the-ground lease development or expressly deferred site-specific analysis to the exploration, drilling, and infrastructure approval phase. Further, it is often entirely unclear how site-specific analysis is rationally connected to Interior's determination, whether implied or express, that an approved action complies with FLPMA's protective mandates. Typically, that determination, if it is even made, is entirely conclusory. This must change.

On the basis of site-specific NEPA reviews rationally connected to FLPMA's protective mandates, Interior should wield its full and reserved authority to impose constraints on new approvals to protect and advance the public interest. *See* Bruce. M Pendery, *BLM's Retained Rights: How Requiring Environmental Protection Fulfills Oil and Gas Lease Obligations*, 40 *Env'tl. L.* 599 (2010). This includes the robust use by BLM of conditions of approval to, in sequenced priority, avoid, mitigate, or compensate for climate, public lands, or community impacts. *See* 43 U.S.C. §§ 1701(a)(8), 1702(c), 1732(b); 43 C.F.R. § 3101.1-2; *Yates Petroleum Inc.*, 176 I.B.L.A. 144, 154 (2008) (upholding conditions of approval more stringent than provisions contained in the overarching resource management plan).

Such conditions to address these impacts, would, where appropriate, either forbid proposed development, mitigate impacts through controls on the timing, place, location, and manner of development (including the rate of development and production), or direct the project proponent

to compensate for impacts. For example, where development is proposed near a school, home, or business, Interior would, as a condition of approval, require a setback established at a sufficient distance, identified through the NEPA process, to protect human health and safety.

D. Initiate Comprehensive Withdrawals of Important, High Value Public Lands from Availability for Oil and Gas Leasing

Simultaneously with the nationwide review, Interior should immediately propose to withdraw, in accord with FLPMA, 43 U.S.C. § 1714(b), key categories of ecologically and culturally sensitive lands from availability for fluid mineral leasing, with those lands segregated from operation of the public land laws for a period of two years, or until the Secretary completes with withdrawal.

FLPMA allows the Interior Secretary to withdraw federal lands from extractive uses such as mineral leasing for up to 20 years. 43 U.S.C. § 1714(c). This provision contains no acreage cap, and there is precedent for very large withdrawals under FLPMA and other federal authority. *See, e.g.,* Public Land Order No. 5653, 43 Fed. Reg. 59,756 (Dec. 21, 1978) (emergency withdrawal of virtually all public lands in Alaska, totaling approximately 110 million acres); *Andrus v Utah*, 446 U.S. 500, 513-19 (1980) (discussing pre-FLPMA withdrawal of all unreserved lands in 12 western states “pending a determination of the best use of the land”). FLPMA’s withdrawal authority can be applied to lands managed by any federal agency or department with the consent of the other agency, not just those managed by Interior. 43 U.S.C. § 1714(i); 43 C.F.R. § 2310.1-2(c)(3).

We specifically recommend that Interior propose to withdraw from fluid mineral leasing the following categories of public land (including, with consent, lands where the surface is managed by other federal agencies), and identify additional categories through public outreach and government-to-government consultation:

- All lands identified, following suitable Tribal outreach and government-to-government consultation, as supporting significant cultural, religious, spiritual, historic, or other values incompatible with oil and gas development.
- All lands identified by the U.S. Geological Survey, BLM, state wildlife agencies, and/or other high-quality scientific information as Sagebrush Focal Areas, Priority Habitat Management Areas, “core” habitat, winter habitat, or other habitats important to the survival and recovery of the Greater Sage-Grouse.
- Designated or proposed critical habitats for all species listed or proposed under the Endangered Species Act.
- All lands located within ten miles of National Parks, National Monuments, National Wildlife Refuges, Wild and Scenic Rivers, designated Wilderness or wilderness study areas, and state and/or Tribal parks and monuments.
- All lands located within two miles of permanent, seasonal, or intermittent surface waters and wetlands.

- All BLM Areas of Critical Environmental Concern.
- All lands previously identified or designated as potentially eligible or suitable for oil shale or tar sands extraction.
- Wildlife migration corridors and crucial winter habitat for species such as pronghorn, mule deer, etc.
- All BLM lands in areas that have already warmed 1.5 Celsius

E. Void Trump Era Oil and Gas Leases That Contravene Federal Law or the Public Interest

In accord with the Trump administration’s now revoked and wrong-headed “energy dominance” agenda, numerous oil and gas leases were sold in contravention of federal environmental laws, science, and the public interest. In many cases, leases were remanded by federal courts, or BLM voluntarily remanded leases in response to litigation. Many additional leases are subject to pending litigation with similar factual and legal underpinnings.

We urge you to determine—and at least consider whether—leases remanded or otherwise rejected by federal courts are void *ab initio*, and cancel them accordingly. For leases now subject to litigation, we urge you to review the leases at issue and determine whether they should also be deemed void *ab initio* as well. We expect such action will conserve Interior’s limited resources to complete necessary environmental reviews on remand and maximize Interior’s flexibility given the comprehensive review now underway.

F. Cease the Routine Suspension of Oil and Gas Leases

BLM’s framework for suspending lease operations—which effectively extend the life of oil and gas leases indefinitely and undercut management of public lands for other multiple uses—is broken. *See* GAO Report to Congressional Requesters, Oil and Gas Lease Management, BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures, GAO 18-411 (June 2018). BLM should therefore cease the routine suspension of oil and gas leases pending completion of the comprehensive review and reform of BLM lease suspension policies and procedures. At the very least, given the documented problems with BLM’s suspension framework, the agency should subject any requests for lease suspensions to a NEPA process consisting of at least an environmental assessment that provides for public participation.

Similarly, oil and gas unitization provisions are being manipulated by industry to allow for widespread lease speculation, allowing companies to stockpile leases beyond the primary term without complying with individual lease drilling obligations. Late-term unit requests are often paired with suspension requests to hold leases that have not been diligently developed. In particular, while unit regulations were designed to ensure orderly and efficient development of pooled resources, these regulations are not well-tailored to contemporary, unconventional oil and

gas development in widely dispersed rock and tight sand formations which often underlie vast areas that are bigger than any federal unit.

To approve a unit agreement, BLM must determine the unit agreement is “necessary or advisable in the public interest.” 30 U.S.C. § 226(m); 43 C.F.R. § 3183.4(a). Moreover, BLM’s unitization decision is discretionary. In exercising that discretion, BLM may refuse to approve the agreement or impose conditions to protect sensitive public lands. *See* SUWA, 127 IBLA 331, 355-56 (1993); *see also*, *Getty Oil Co. v. Clark*, 614 F. Supp. 904 (D. Wyo. 1985) (BLM can condition lease suspension on requirement that agency be allowed to deny all drilling). BLM should pause the approval of any additional unit requests during the pendency of its comprehensive review, allowing for further evaluation and reform of unitization rules and regulations to align with U.S. climate goals and the best practices.

G. Decline to Issue Leases Offered for Sale Through 11th Hour Trump-Era Lease Sales

In the last days of the Trump administration, Interior held several 11th hour oil and gas lease sales. These sales include the January 14, 2021 New Mexico lease sale, the December 17, 2020 Colorado lease sale, the December 15, 2020 Wyoming lease sale, the December 17, 2020 Eastern States lease sale, the December 10, 2020 California lease sale, and the December 8, 2020 Utah lease sale. Although these sales may have generated bids, BLM has yet to issue most, if not all, of the leases that received bids. To the extent BLM may have received bids on leases, but not yet issued the leases, we urge you to decline to issue those leases, as consistent with Executive Order 14008’s pause on oil and gas leasing pending a comprehensive review. To the extent BLM has issued leases associated with these 11th hour sales, we urge you to cancel them for the same reason.

H. Issue an Order Establishing Emergency Bonding Procedures for Onshore and Offshore Oil and Gas

We urge you to issue an emergency order directing the BLM to: (1) temporarily end blanket reclamation bonding; (2) assess the sufficiency of current bond amounts for existing wells and leases; and (3) increase bond amounts to reflect the full costs of plugging, abandonment, and reclamation at the point of asset transfer. Reclamation bonding rates do not accurately reflect the true, present-day cost of reclamation, particularly in relation to hydraulically fracked wells. For onshore oil and gas operations, bond amounts were last updated in 1988 and current onshore reclamation bonding requirements are demonstrably inadequate.⁸ In light of the current decline of industry and numerous bankruptcy filings by companies, as well as the large stockpile of either shut in or idle, non-producing oil and gas wells, BLM must act quickly to ensure that companies, not taxpayers, shoulder the full commitment of environmental liabilities.

III. RECOMMENDED INTERIM ACTIONS REGARDING THE FEDERAL COAL PROGRAM

A. Pause Coal Leasing and Mining Plan Approvals

We urge you to pause new coal leasing by BLM, including the issuance of new leases that may have recently been approved, and to halt new mining plan review approvals by the U.S. Office of Surface Mining Reclamation and Enforcement (OSM). Although Secretarial Order 3398 rescinded Secretarial Order 3348, which had lifted the pause on federal coal leasing by revoking Secretarial Order 3338, it is not entirely clear that the pause on leasing is now in effect pursuant to Order 3338. We urge you to provide clarity and make clear the pause on federal leasing is in effect. The need for clarity is critical given several pending coal leasing applications at Interior.

BLM, for example, is now weighing whether to approve numerous new coal leases, including but not limited to the Williams Draw coal lease by application, which a bankrupt coal company is seeking for its Lila Canyon mine in Utah.⁹ In early January, BLM also approved a new lease modification for the Lila Canyon mine in Utah.¹⁰ Further, on January 15, 2021, BLM held a lease sale in North Dakota, although the lease has yet to issue.¹¹

The need to pause mining plan approvals is also critical given that OSM is reviewing several proposals.¹² A pause on the approval of new mining plans and mining plan modifications is necessary to allow for a meaningful and comprehensive review of the federal coal management program.

B. Suspend Self-bonding

Where mines are extracting coal from federal leases, we urge the Office of Surface Mining Reclamation and Enforcement (OSMRE) to direct states to suspend self-bonding programs and to require the posting of a legitimate reclamation bond. Given the structural decline of the coal industry, with coal companies continuing to file for bankruptcy or sliding closer to bankruptcy, it is critical that Interior take immediate steps to protect American taxpayers and suspend its approval of any self-bonding for the mining of federal coal. OSMRE is empowered to exercise oversight with regards to the mining of federal coal, even where states have delegated authority. This oversight authority must be exercised to secure actual surety bonds or other real reclamation guarantees.

C. Deny Pending and Pause New Royalty Rate Reductions

Numerous requests for royalty rate reductions are currently pending before the BLM, including for the West Elk coal mine in western Colorado. Royalty rate reductions amount to direct fossil

⁹ Maffly, B., "Utah coal mine seeks to expand its operations. Critics question why feds would allow it," *The Salt Lake Tribune* (April 28, 2020), available at <https://www.sltrib.com/news/environment/2020/04/28/utah-coal-mine-seeks/>.

¹⁰ Maffly, B., "Utah's most productive coal mine get a life line from Trump's federal land managers," *The Salt Lake Tribune* (Jan. 25, 2021), available at <https://www.sltrib.com/news/environment/2021/01/25/utahs-most-productive/>.

¹¹ Bureau of Land Management, "BLM North Dakota Coal Lease Sale Jan. 15," website at <https://www.blm.gov/press-release/blm-north-dakota-coal-lease-sale-jan-15>.

¹² See Office of Surface Mining Reclamation and Enforcement Projects webpage, <https://www.osmre.gov/LRG/projects.shtm>.

fuel subsidies, which President Biden has directed be eliminated to the extent allowed by federal law. Royalty rate reduction approvals are discretionary actions, meaning the BLM has absolute authority to reject requests. We urge you to direct the BLM to deny all pending requests for royalty rate reductions and to pause the review of any newly submitted royalty rate reduction requests.

IV. CONCLUSION

We appreciate your attention to our concerns and our requests. Above all, as Interior moves to assess the future of federal fossil fuel management programs, it is critical that irreversible commitments of resources are not made that foreclose options for achieving environmental justice, protecting our health, safeguarding communities, defending public lands, revitalizing the economy, and assuring a just and equitable transition. We look forward to engaging further as the comprehensive review unfolds.

Sincerely,



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