



Summary: As a result of new technology and a favorable regulatory climate, American natural gas producers have dramatically increased reserves and production of natural gas in recent years. Because natural gas emits about half the carbon dioxide of coal, expanded use of natural gas is the most obvious and cost-effective way, immediately and over the long term, to reduce greenhouse gas emissions. The members of the Independent Petroleum Association of Mountain States (IPAMS) are playing an important role in helping to achieve the Department of the Interior's (DOI) stated goals of utilizing public lands to create jobs and build a clean energy economy, but are concerned that recent DOI actions limiting access to federal lands will make achieving these goals difficult. In spite of statements by the Obama administration touting the benefits of natural gas, conflicting decisions by DOI, which are not supported by law, are hindering producers' efforts to develop the vast amounts of clean, domestic natural gas that lie beneath Western public lands. Access to federal lands that contain energy is vital to ensuring Interior Secretary Salazar's goals of developing clean energy resources while also powering the American economy and increasing energy security.

Secretary Salazar has made several decisions that are making it increasingly difficult for producers to supply the natural gas necessary to reduce greenhouse gas emissions and increase energy security. Secretary Salazar has repeatedly stated that the Obama Administration is not "anti-oil and gas," yet when it comes to Interior's onshore natural gas and oil program, the record suggests otherwise. A series of Interior decisions has created uncertainty in the management of the onshore program, threatening the supply of domestic energy. Irregularities and policy uncertainty have severely impacted project environmental analyses, permitting, and lease issuance in some states. Major reforms to the onshore natural gas and oil program are being considered by DOI that could gut the laws governing the program, including the Mineral Leasing Act, Federal Land Policy and Management Act (FLPMA), and National Environmental Policy Act (NEPA).

This position paper outlines some of the irregularities in the federal onshore natural gas and oil program.

- \$100 million worth of unissued leases in Colorado, Utah and Wyoming
- Reduced lease sales, deferred leases and withdrawn leases
- Permitting backlogs
- Failure to issue permits using categorical exclusions, in violation of the Energy Policy Act of 2005
- Indefinite holds on project-level environmental analysis.

Efforts to constrain the federal natural gas and oil program put at risk 15% of the nation's natural gas supply. Less leasing, permitting and project approvals mean less American energy, less economic activity and fewer jobs for Intermountain West states, many of which are struggling with high unemployment and budget shortfalls in a tough economy. Production of natural gas and oil in the Intermountain West sustains hundreds of thousands of jobs and generates billions of dollars of revenue for the federal, state, and local governments. These jobs are put at risk when government artificially restrains development on public lands.

Many environmental groups present natural gas and oil development as an "either/or choice" with respect to the environment. IPAMS believes this is a false choice: we can and are responsibly

developing our energy resources and protecting the environment at the same time. With only 0.07% of the 700 million acres of federal mineral estate occupied by activity, natural gas and oil development has a small and temporary impact on the land. Reclamation efforts are so successful that many areas with existing and prior natural gas and oil activity are included in wilderness legislation before Congress.

Details: Below are several examples of specific irregularities in Interior's management of the federal onshore oil and gas program contrary to well established laws and procedures.

Unissued Leases

Irregularity: The terms of the Mineral Leasing Act, as amended by the Federal Onshore Oil and Gas Leasing Reform Act, unequivocally require BLM to issue leases within sixty days following the date a successful bidder makes the required lease payments for a federal natural gas and oil lease. DOI is clearly in violation of that unambiguous law. DOI is holding approximately \$100 million worth of unissued and suspended leases in Colorado, Utah and Wyoming because of unresolved lease protests filed by environmental organizations opposed to any natural gas and oil development. DOI refuses to issue these leases even though BLM authorized the leases in its management plans and analyzed the impacts of leases in environmental analyses.

Bureaucratic Delay: At a time of severe economic contraction and unemployment over 10%, significant company capital is being held in an unproductive capacity by the government rather than being deployed by the private sector to develop energy and maintain employment. Members of industry have sought to engage DOI on this issue without success. BLM has taken the companies' money, but is left waiting for guidance and direction from DOI before it can move forward and issue leases legitimately won in public auctions. No other bidding system, from eBay to livestock auctions, allows a seller to withhold goods from a sale after someone has fairly won the bidding process.

Outcome: Independent producers in the Intermountain West are hindered in their efforts to find and produce American natural gas and oil, create jobs, and provide economic stimulus to rural communities. Western states are struggling with budgetary shortfalls in a down economy, yet this stranded investment, 49% of which is due to the states, will not be disbursed until the leases are issued.

Reduced Lease Sales

Irregularity: Due to arbitrary decision making, extensive lease deferrals and a failure to follow well-established procedure, DOI has reduced the amount of acreage made available at auction. Even of the lease acreage sold, only a relatively small amount has actually been issued in some states. Irregularities at lease sales are also a problem. At the June Utah sale, it was suddenly announced that BLM would honor protests submitted after the well-understood and publicly announced filing deadline. Since environmental groups protest 100% of the lease sales in the Intermountain West, IPAMS is left wondering why DOI would invite even more obstructionism. We are left to surmise that normal procedure is being circumvented to benefit singular conservation interests without regard to negative economic impact or the energy needs of the nation. Creating unnecessary uncertainty in the federal natural gas and oil leasing program when we are trying to expand the nation's energy supply and address climate change makes no sense.

Bureaucratic Delay: IPAMS is concerned that DOI is planning comprehensive reforms to the natural gas and oil program that will further restrict lease sales by requiring additional, redundant review prior to leasing. The present leasing system facilitates efficient exploration and development by broadly offering leases and following with site-specific environmental analyses if operators propose exploration and development projects. Recommendations to offer fewer leases and conduct extensive pre-leasing analysis suggest a scenario whereby the government dictates where natural gas and oil development is to occur, rather than highly trained and experienced professionals responding to market conditions. DOI is contemplating a bureaucratic command and control system rather than the current Mineral Leasing Act process, which allows companies with the knowledge and means to explore for and develop energy resources to nominate parcels within the areas identified in Resource Management Plans (RMP) as suitable for leasing.

Examples abound where industry has assumed the risk and applied new technologies to develop natural gas and oil reserves previously thought unrecoverable. The potential of the Bakken Shale in North Dakota has only been fully realized within the last three years. Other shales throughout the United States have just started to be exploited within the last five years. Ten years ago, the unconventional tight sands of the Pinedale Anticline were just beginning to be tapped, and today it is the fourth largest natural gas field in the US. These are all examples of what happens when industry operating in a free enterprise market system is able to apply geological and technical know-how to produce domestic energy. Clamping down on natural gas and oil development at the leasing stage is contrary to the efficient development of American energy resources on federal lands. Instead, Interior should encourage leasing in a manner that responds to ever-changing technology and market demand by utilizing companies' knowledge and expertise.

Outcome: Below are data from five of the producing states in the Intermountain West with the leasing statistics for 2009 compared to prior years. The numbers show fewer leases and less acreage offered than prior years.¹ Compared to the first year of the Clinton Administration, the Obama Administration has issued 1,934 fewer leases and 1,146,949 fewer acres in the Intermountain West, 32% and 46% reductions respectively.

¹ Utah is the outlier, with an increase from Fiscal Year 2008 to 2009 of 1.6 fold. However, 2008 seems to be an outlier year, with leasing constrained significantly while waiting for the completion of six RMPs. In comparison to FY 2007, leased acreage was down 37%.

State Leasing Statistics, 2006 – 2009

| COLORADO | | | | |
|---------------------|--------------|--------------|---------------|--------------|
| | 2006 | 2007 | 2008 | 2009 |
| New leases sold | 491 | 335 | 224 | 127 |
| New leases issued | 363 | 464 | 320 | 102 |
| New leased acreage | 481,784 | 246,953 | 211,001 | 80,850 |
| Total Lease Revenue | \$37,263,950 | \$22,670,024 | \$131,516,156 | \$7,098,032 |
| State share | \$18,631,975 | \$11,335,012 | \$64,442,916 | \$3,478,036 |
| MONTANA | | | | |
| | 2006 | 2007 | 2008 | 2009 |
| New leases sold | 221 | 199 | 251 | 127 |
| New leases issued | 220 | 203 | 211 | 127 |
| New leased acreage | 200,161 | 222,192 | 235,354 | 91,221 |
| Total Lease Revenue | \$800,963 | \$1,675,017 | \$2,408,036 | \$957,465 |
| State share | \$400,482 | \$837,509 | \$1,179,938 | \$469,158 |
| NEW MEXICO | | | | |
| | 2006 | 2007 | 2008 | 2009 |
| New leases sold | 215 | 207 | 208 | 156 |
| New leases issued | 214 | 207 | 159 | 156 |
| New leased acreage | 162,320 | 168,339 | 178,760 | 104,442 |
| Total Lease Revenue | \$70,433,918 | \$44,119,194 | \$66,053,241 | \$20,596,604 |
| State share | \$35,216,959 | \$22,059,597 | \$32,179,096 | \$10,092,336 |
| UTAH | | | | |
| | 2006 | 2007 | 2008 | 2009 |
| New leases sold | 560 | 310 | 109 | 275 |
| New leases issued | 430 | 303 | 67 | 154 |
| New leased acreage | 654,484 | 402,913 | 94,569 | 151,297 |
| Total Lease Revenue | \$73,689,421 | \$26,704,961 | \$8,577,875 | \$10,684,989 |
| State share | \$36,844,711 | \$13,352,481 | \$4,203,159 | \$5,235,645 |
| WYOMING | | | | |
| | 2006 | 2007 | 2008 | 2009 |
| New leases sold | 1,041 | 932 | 1,089 | 739 |
| New leases issued | 1,244 | 834 | 783 | 382 |
| New leased acreage | 1,069,680 | 775,707 | 807,846 | 548,163 |
| Total Lease Revenue | \$41,128,000 | \$58,811,000 | \$96,589,837 | \$16,866,113 |
| State share | \$20,564,000 | \$29,405,500 | \$47,329,020 | \$8,264,395 |

| State | Percent Decrease in Acreage, FY08 to FY09 |
|--------------|--|
| Colorado | 38% |
| Montana | 39% |
| New Mexico | 58% |
| Utah | (150%) |
| Wyoming | 68% |

Lease Deferrals

Irregularity: DOI is deferring parcels for extra-procedural reasons throughout the Intermountain West in contradiction of established leasing procedures. Parcels in areas approved for leasing in existing RMPs are being left out of lease sales for reasons that are not supported by established law. By doing so, Interior circumvents the public participation and cooperating agency provisions of NEPA and the FLPMA planning provisions. For example, parcels are being screened from lease sales based on wilderness legislation that has not been passed by Congress, which is in violation of FLPMA, BLM regulations and guidance.

- Parcels near the McInnis Canyons National Conservation Area have been deferred from the November 2009 Colorado sale. BLM announced they will wait for completion of the Little Snake and Grand Junction RMPs before issuing parcels.
 - **Irregularity:** Land use management decisions, including leasing, are made according to current RMPs, and should not be held indefinitely in anticipation of plan updates or potential future policy decisions. The suggestion that BLM continuously defer these lands for leasing runs afoul of BLM guidance in BLM IM 2004-110, which discourages deferring lands for more than one year when adequate NEPA analysis exists. BLM reasoned that, “a decision not to lease that extends beyond . . . one year could be considered a change in land use allocation outside of the planning process that effectively removes large parcels of land from mineral development without following appropriate planning procedures.”
 - **Bureaucratic Delay:** RMPs routinely take over five years and sometimes as long as a decade to complete, and rarely remain on schedule. Given the recent history of delays on the Little Snake RMP, it is very feasible that the RMPs will not meet their 2010 and 2011 deadlines.
 - **Outcome:** 7,750 acres and potentially adjacent areas prospective for natural gas and oil are postponed indefinitely.

- Parcels seven miles from the proposed Organ Mountains and Desert Peaks wilderness area have been deferred from the October 2009 New Mexico sale.
 - **Irregularity:** Proximity to a proposed wilderness area is not grounds for eliminating other multiple uses in adjacent lands that an existing RMP has identified as suitable for oil and gas leasing. The area has not been designated by Congress as a wilderness area, and even if it were, a wilderness area does not include an implied buffer area. Boundaries are set for a reason, and the designation of wilderness does not emanate out to the surrounding area, and certainly not as far as seven miles.
 - **Outcome:** 7,300 acres prospective for natural gas and oil are postponed indefinitely.

- Parcels in areas proposed for wilderness designation in the Red Rocks Wilderness Act were deferred from the March and June 2009 Utah sales.
 - **Irregularity:** The Act has not passed Congress in over two decades of reintroduction and enjoys no support from Utah's bipartisan congressional delegation, yet DOI is treating the lands as de facto wilderness. BLM has found that some of the lands included in the Act actually lack wilderness character, and has included protective stipulations for others that do. Nevertheless, DOI's removal of

these parcels from lease sales are de facto withdrawals of federal land from multiple use management and therefore contrary to law.

- **Bureaucratic Delay:** Red Rocks Wilderness lands have been analyzed as citizen proposed wilderness characteristics areas as part of the RMP process. In fact, two RMPs were delayed by two years while conducting additional wilderness review. The RMPs designated wilderness-like protections for some of the areas, and determined that others fail to meet the criteria for wilderness protection.
 - **Outcome:** Despite extensive analysis and designations balancing wilderness with other uses, DOI continues to treat vast areas in Utah as wilderness. DOI has implemented an unapproved, unofficial screen for proposed wilderness areas, so it is impossible to say how much total land has been deferred. IPAMS is aware of at least 7,194 acres.
- Parcels in proximity to the Adobe Town Wilderness Study Area (WSA) have been deferred from the December 2009 Wyoming lease sale.
 - **Irregularity:** Proximity to a WSA is not grounds for eliminating other multiple uses in adjacent lands. WSAs do not include a built-in buffer area.
 - **Bureaucratic Delay:** Nine of the fifteen deferred parcels are anywhere from one to ten miles away from the existing WSA. Some of the deferred parcels are within or adjacent to an active natural gas field that was the subject of a recent environmental impact statement.
 - **Outcome:** 14,842 acres prospective for natural gas and oil are postponed indefinitely, including parcels quite far from the WSA.

Withdrawn Leases

Irregularity - 77 Utah Leases: Seventy-seven leases legitimately won at the December 2008 public auction were withdrawn by Interior Secretary Salazar seven weeks later. This decision demonstrates a disregard for established natural gas and oil leasing procedures and three Utah RMPs. In the RMPs, BLM authorized issuance of all seventy-seven leases. The RMPs are the result of a \$35 million, seven-year democratic process where all voices were heard, including federal, state, tribal, and local governments, special interest groups, and the general public. In the extensive planning process, BLM ensured critical environmental protections for air, water, wildlife, cultural, and other resources were put in place. No new acreage was opened to leasing that was not available before under the Clinton Administration, and no lands have fewer environmental protections than before. The RMPs represent a balanced approach to multiple-use of Utah's public lands, protection of resources, and economic development, rather than a singular focus on conservation.

Bureaucratic Delay: DOI recently released a report (the Stiles Report) from an eleven-person team of DOI and USDA Forest Service officials regarding their review of the withdrawn Utah lease parcels. The report was based on a nine-day field visit, yet none of the team members was directly involved in the seven-year resource management planning process which was the basis for the lease sale, or has recent on-the-ground Utah experience. Based on the team's recommendations, Secretary Salazar announced that not a single lease will be reinstated to the companies who legitimately purchased those leases from the December sale. Only 17 parcels will be leased in their

current form at some future lease sale, while 8 parcels will be completely withdrawn from leasing and 52 parcels will be “deferred indefinitely.”

Outcome: Rather than relying on land managers with years of on-the-ground Utah experience, DOI is making decisions by a select few officials in an extra-procedural review that second-guesses seven years of effort by the State of Utah and the Utah BLM. The Stiles Report makes erroneous recommendations for lease stipulations and land management that are a result of the team's lack of Utah experience and the short duration of their analysis. Furthermore, the Stiles team reached its recommendations without any public input and nothing in the Stiles Report suggests that the public will have an opportunity to provide meaningful input on its recommendations in the future.

Irregularity - Bridger-Teton National Forest Leases: BLM announced in September that it was rescinding 23 leases on 24,000 acres in the Bridger-Teton National Forest. The decision is contrary to the Wyoming Range Legacy Act which was passed by Congress and supported by Wyoming's senators.

Bureaucratic Delay: The Wyoming Range Legacy Act prohibits future leasing but specifically did not affect existing leases except where companies voluntarily agree to relinquish their leases.

Outcome: This was another arbitrary decision that sows uncertainty among independent operators that the time, effort and resources they spend conducting geologic studies, nominating leases, and participating in lease sales will yield economic benefit or energy resources.

Permitting

Irregularity: While obtaining an approved Application for Permit to Drill (APD) on a federal lease has always been a long, time-consuming and expensive process compared to state permits, the ‘slow-walk’ on permitting seen in FY 2009 is another example of DOI inaction that is hampering the development of American natural gas and oil. Long APD processing timeframes are in violation of specific permitting deadlines enacted by Congress in Section 366 of the Energy Policy Act of 2005.

Bureaucratic Delay: Depending on the field office, many permits have been taking over a year to process. The slow-down and uncertainty in the leasing process is especially egregious given the recent 62% increase in the APD fee to \$6,500, despite the fact that for every dollar spent by BLM administering the federal natural gas and oil program, companies return \$46 in royalties, rents and bonus.

Outcome: Independents are left with high processing costs, delay, and uncertainty that they can continue their drilling programs.

Categorical Exclusions

Irregularity: Under Section 390 of the Energy Policy Act of 2005, Congress directed BLM to use categorical exclusions (CX) to expedite energy supplies by avoiding the too frequent occurrence of redundant analysis and unnecessary red tape that accompany the permitting process. IPAMS is deeply concerned about potential actions from DOI that would eliminate or severely limit the use of CXs by requiring review for extraordinary circumstances. There is nothing in the statutory language that even mentions extraordinary circumstances. Rather, the language is straightforward in mandating the use of CXs. For DOI to review CXs for extraordinary circumstances is an overreach of the intent of the law.

CXs are one of the success stories of the Energy Policy Act, and their use in energy permitting has resulted in more time available for field staff to increase environmental inspections and make progress in decreasing the backlog of applications for permits to drill (APD). According to a study from the Western Organization of Resource Councils (WORC), an environmental advocacy group, the number of environmental inspections performed by BLM generally increased over the last decade until 2006 to 2008, when inspections more than doubled. It's no coincidence that the dramatic increase in BLM inspections corresponds with full implementation of CXs in 2006. Yet DOI appears set to implement policy contrary to the law.

Bureaucratic Delay: Congress mandated the use of CXs to enable energy development where the environmental impact is minimal, and where drilling was previously analyzed in an environmental document. CXs simply eliminate redundant environmental analysis and encourage companies to minimize surface impacts. BLM already is violating the law by frequently refusing to use CXs when companies meet the criteria, or applying additional restrictions not contemplated in the law.

Categorical exclusions are appropriate NEPA compliance and particularly so when Congress has directed their use. IPAMS would like to point out that the American Recovery and Reinvestment Act of 2009, which like EAct 2005 directed expedited NEPA, is heavily dependent on the use of categorical exclusions. 134,000 categorical exclusions out of 139,000 NEPA reviews have been used to distribute stimulus funds according to the Council of Environmental Quality.²

Outcome: Delays in project NEPA (see below) coupled with the inability to use CXs would prevent more companies from obtaining permits in a timely manner, and from executing their business plans to provide American energy to consumers.

² See CEQ November 2, 2009 Report to Congress at www.nepa.gov/nepa/nepanet.htm

Project NEPA Documents

Irregularity: For the last several years, independent energy producers have seen the government take longer and longer to process project level environmental analysis in accordance with NEPA.

Bureaucratic Delay: The government routinely takes over two years to complete small project Environmental Assessments (EA), and four to seven years for larger project Environmental Impact Statements (EIS). Despite that ongoing frustration with a process that was originally envisioned by the Council of Environmental Quality (CEQ) to take three months to two years, the halt to projects under the current leadership at DOI is quite another level of delay.

The need to conduct more extensive air quality analysis has been cited as a reason to hold up project NEPA, which is one reason IPAMS commissioned an air modeling study of the Uinta Basin in Utah. The Uinta Basin Air Quality Study shows no exceedance of any criteria pollutant, including ozone, at least through 2012. IPAMS believes projects should be able to advance forward in Utah, now that the comprehensive, regional air modeling has been complete, yet we have seen no tangible progress.

Outcome: Small projects such as the Tumbleweed EA with just nine proposed wells continue to be delayed after two years, and larger projects such as the West Tavaputs EIS are on indefinite hold, despite four years and more of environmental analysis and extensive mitigation efforts.