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**Testimony Before the House Committee on Natural Resources,  
Subcommittee on Energy and Mineral Resources**

**Hearing Entitled  
*Oil and Gas Development: Restoring Community Input  
and Public Participation in Leasing Decisions*  
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Chairman Lowenthal, Ranking Member Gosar, and Committee Members, thank you for the opportunity to testify today. Contrary to its name, H.R. 3225 is not about restoring community input and public participation, which already exists at multiple points in the federal onshore oil and gas program. Rather, this bill is about tying up the process in so much red tape that it will become nearly impossible for BLM to administer it and undesirable for companies to operate on federal lands. Since companies develop the energy that all Americans own on their behalf, the effect of this bill would be less leasing and royalty revenue back to them. With all the extra red tape and regulatory overreach, the bill should instead be named the Keep It in the Ground Act.

Western Energy Alliance represents 300 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. Alliance members are independents, the majority of which are small businesses with an average of fourteen employees. Because the West is predominated by federal lands, and lacks any oil and natural gas production areas that do not contain federal mineral estate, we are the leading trade association that handles public lands issues for the upstream industry.

Communities and the public already have multiple opportunities to comment on leasing and development. First, there are usually three or more comment periods during the Resource Management Planning (RMP) process, during which lands are designated as open or closed to leasing. Then at the leasing stage, there is at least one opportunity for public comment, usually two. Once lands are leased and a company decides to move forward with a project, there is at least one round of environmental analysis under the National Environmental Policy Act (NEPA). With larger projects, there are at least two rounds of NEPA analysis, sometimes more. Each round involves one or two comment periods for public participation. To say that public participation needs to be “restored” is simply untrue. The only thing that would be restored is the redundant Master Leasing Plan (MLP) policy wisely overturned by the Trump Administration. MLPs added yet another round of redundant NEPA onto the process, with yet more opportunity to Keep It in the Ground.

This bill would upend the balance that Congress has already established in the Mineral Leasing Act (MLA) when it comes to split-estate lands where federal minerals underlay private surface. The MLA enables the American people to access the energy resources they own, while protecting and compensating the surface owner. It would overturn the well-established legal precedent of the dominance of the federal mineral estate. And why is the federal mineral estate dominant? Because access to federal oil and natural gas would otherwise be vetoed by the surface owner, who has no interest in allowing surface disturbance on his or her land. For that reason, federal and virtually all state

law protects the property rights of the mineral owner while providing compensation to the landowner for impacts to the surface. Likewise, the Bureau of Land Management (BLM) has procedures and policies that ensure the landowner is protected but does not have the ability to trump access through endless accommodation and process.

By enabling landowners to be involved in the day-to-day management of virtually every aspect of the leasing and development process, something for which they lack the technical, financial, or legal knowledge to do, the bill would tie up federal split-estate leases in even more red-tape and legal challenges. Requiring notice any time a lease modification is made or a waiver, exception or modification of any lease stipulation granted would involve landowners in the minutia of administering leases. Rather, surface owner involvement in the process should be limited to protecting their interests, not becoming involved in any sundry notice, technical permitting change, wildlife stipulation, or whatever other particulars are involved with the leases. BLM would need to vastly expand its oil and natural gas staff to administer this bill, an unlikely occurrence given limited resources, resulting in less energy and royalty revenues returned to the American people.

Finally, this Keep-It-in-the-Ground bill seeks to upend the market-based system of developing on federal lands. Prior to the Federal Onshore Oil and Gas Leasing Reform Act of 1987, the government determined the fair market value of onshore leases and where to develop from a geological perspective. Congress recognized in 1987 that the old system was resulting in noncompetitive auctions with highly prospective parcels being sold for minimum amounts, less return to the federal government, and less innovation on federal lands. Besides the inherent oxymoron of the government determining fair market value rather than the actual market, why upend the current leasing system which better applies the latest geological knowledge and has resulted in record leasing revenue? Since the Obama Administration just instituted internet bidding to increase auction participation and competitiveness, why would Congress try to turn back the clock to an antiquated system?

The current system is in place because it's a symbiotic relationship between the private and the public sectors. The federal government oversees all aspects of the program, but enables industry to do what it does best—find and develop oil and natural gas resources. The government simply isn't equipped, staffed or optimized to do what industry does. And we've proven how effective we are at doing so. Through technological innovation, we've dramatically increased oil and natural gas production, enabling the United States to overtake Saudi Arabia and Russia as the number one oil and natural gas producing country in the world. We've met every legitimate environmental challenge, producing energy in a safer and more environmentally protective manner than just about any other country.

Because we've provided an abundant, affordable supply of natural gas, we've enabled fuel switching in the electricity sector. Increased natural gas power generation is the [number one reason](#) the United States has reduced more greenhouse gas emissions than any other country. Through greater oil production, we've kept [\\$350 billion](#) from going overseas to unfriendly countries, enabling that wealth to create hundreds of thousands of new jobs in the United States. We're helping the United States achieve one of the strongest economies with the lowest unemployment rates in years and even decades.

So why on earth would Congress want to Keep It in the Ground and import that energy from overseas instead of producing it here? The bill is simply fundamentally flawed from a larger policy perspective. I urge this committee not to advance this bill.

## Problematic Provisions

Below are non-exhaustive comments on particular provisions of the bill not otherwise addressed above. It is not intended to be a complete analysis of the bill, but merely highlights certain problem areas.

### Section 2

- (a) Fair Market Value for federal leases should be the value a lease commands on the market, i.e., a lease sale, not an arbitrary number the government decides after auction
- (b) (A) (i) The sealed bidding system already has been shown to result in less competition and less return for onshore lands and was therefore jettisoned in the Federal Onshore Oil and Gas Leasing Reform Act of 1987.
- (b) (A) (iii) Limiting lease sales to three times a year on a rotating basis merely prolongs the leasing process by an extra year, resulting in lease sales with no interest while federal lands in high interest areas take even longer and are less competitive than nonfederal leases
- (b) (A) (iv) The 12.5% onshore royalty rate reflects the higher regulatory cost of federal lands. An 18.75% royalty rate would make federal lands even less competitive than nonfederal lands, leading to less overall revenue returned to the American people.
- (b) (A) (v) Changing the language from “shall issue” leases to “decide whether to accept a bid and issue” is a huge change that will sow considerable uncertainty into the leasing process and increase the arbitrary nature of leasing decisions.
- (b) (A) (v) There is no reason to extend the time for lease issuance by another thirty days. It’s just one of several ways to prolong the process needlessly, even after multiple rounds of NEPA and public input, thereby making federal leases less competitive.
- (b) (A) (vi) Arbitrary rejection of bids at the whim of bureaucrats attempting to determine fair market value outside of the actual marketplace would further deter leasing and development on federal lands.
- (c) and (d) Raising the minimum bid and rental rates further reduces the competitiveness of federal lands, which already lag behind nonfederal lands. Companies return \$16.14 in leasing and royalty revenues for every dollar spent administering the entire oil and natural gas program, paying for all costs of administration sixteen times over. The cost increases would decrease interest in exploratory areas.
- (c) and (d) Using the Consumer Price Index for All Urban Consumers is inapplicable for the bonus bids, which are a reflection of actual market value, as well as to rental rates. Likewise, the language to arbitrarily increase the rates “at any time” and for “enhanc[ing] financial returns” is problematic and open to political abuse. Congress should not cede this authority to the Executive Branch.
- (d) Increasing the rental rate after two years for nonproducing acreage is just punitive, especially with all the other red-tape provisions in this bill that would ensure that many leases won’t be able to produce for many more years after lease acquisition.
- (e) Elimination of noncompetitive leasing would stifle exploration in what are today considered low potential areas, but could be the next major production area with the application of geophysical exploration and today’s advanced drilling and completion technology.
- (f) Shortening the lease term to five years from ten isn’t workable when the federal process can take well over five years in many situations. The length of time required to get through all the federal regulatory and permitting obstacles would only increase with this bill, making this provision impractical.
- (g) (7) This provision is much too broad, arbitrary, and open-ended, and could restrict entrance to the market by lease brokers, small businesses, and the independent producers that develop the vast majority of wells in the United States. There are literally thousands of capable explorers

and producers, and it would burden BLM to vet them all. This provision could deny access to many small businesses, which are generally nimble, innovative and more likely to be minority- and women-owned than the large companies that would be advantaged by this provision.

### Section 3

- (a) (3) Expressions of Interest usually reflect geological analysis and cost to the nominating company, and therefore should be protected as competitive business information not requiring disclosure until after sale.
- (b) (1) (B) Notice Requirements. The surface owner notification requirements would be a large administrative burden for BLM at the leasing stage. Figuring out all current surface owners of record and their addresses at the leasing stage is not a simple task, and the “in the area” language is too open-ended. The notice requirements open the door to an undiscovered surface owner having legal standing if notice is not provided, and does not provide constraints on the geographic scope of the notice requirement. Currently, there is plenty of public information about lease sales. Under current BLM procedures, whenever a split-estate parcel is included in a Notice of Competitive Lease Sale, BLM sends a courtesy letter to surface owners.
- (b) (1) (C) Requiring notice to all recreation and special-use permits holders also creates confusion and a huge drain on BLM resources. Often times special use permits are applied for on an event-by-event basis, and BLM would to develop a detailed tracking system which again opens the door for delays and bootstrapping legal standing to entities that do not otherwise have it. Lands open to oil and gas leasing and development are identified in the applicable Resource Management Plan, and third-party entities have full access to these documents to identify whether the lands they seek to use are open to leasing and development.
- (c) (1) (B) Addressed above.
- (c) (1) (C) (i) An impractical extension of the time to negotiate a surface use agreement.
- (c) (1) (C) (ii) Instituting a new arbitration system would create interminable delays and burden the federal government’s right to use the surface to develop the mineral estate. This provision not only creates delays and adds an inappropriate extra-judicial arbitration process, but also significantly derogates federal lessee rights to access surface to develop their leases. Under BLM Onshore Order No. 1, in the event an agreement cannot be reached with the surface owner, there is a well-established bonding system, whereby the federal lessee must post a bond that sufficiently compensates the surface owner in an amount established by the original land patent or statute authorizing the patent. A Secretary’s list of approved arbitrators is also open to political abuse.
- (c) (1) (D) The provisions encourage landowners to engage in litigation to tie up the surface use agreement with the expectation that the company will cover all costs.
- (c) (2) The surface owner participation provisions allowing a surface owner to comment on plans of operations, participate in determining bond amounts, etc. is too much interference in the subsurface rights by the surface owner.
- (c) (2) The bonding and financial guarantee provisions are seeking to re-invent the wheel, and make it much more difficult for federal lessees and BLM. There are existing regulations that cover bonding, along with Onshore Order No. 1. The proposed language elevates a surface owner, without technical expertise, to render judgments on the adequacy of BLM reclamation and revegetation standards, as well as what is deemed as surface damage for the ordinary course of oil and gas construction and operations, which are already governed by regulations and BLM’s Gold Book. This authority needs to remain with BLM as the subject matter experts, rather than opening the door to subjective interpretation by surface owners and extensive litigation.

**Section 5**

Master Leasing Plans are an unnecessary redundant layer of NEPA on the existing multiple-layered approach which already involves four or more rounds of extensive, time-consuming NEPA.

**Section 6**

The leasing policies from 2010-117 increased significantly leasing timelines, and should not be re-enacted.

**Section 7**

This section seeks to undermine the benefits of federal units and communitization agreements (CA) where leases in units or CAs do not count against the total cap on federal lease acreage that one company may hold. Current statute promotes the use of federal units that enable orderly and more efficient development, which translates to less surface disturbance and less potential environmental impacts. By removing this benefit, there is less incentive to unitize, and absent unitization, lessees must develop their leases individually, which means more well locations, more facilities and more surface disturbance.

**Section 10**

BLM has most of this information in its LR2000 database, but going back retroactively and filling it in for all existing leases would be extremely burdensome. At some point however, having all the data on suspensions available publicly gets into too much transactional administrative detail of questionable value to the public, and raises questions about the balance of information that can reasonable be maintained with limited staff and resources.

**Section 11**

This section would allow the arbitrary determination after the fact of improper lease issuance. It is subject to political abuse and violates due process. If the lease is issued, it should not be cancelable administratively without some real demonstration of unacceptable error along with takings damages.

**Section 12**

This section is too open-ended, ill-defined and arbitrary. Congress should not cede this authority to the Executive Branch.