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Examining Deficiencies in Transparency at the Department of the Interior
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Transparency in our democracy is something everyone pays lip service to, but the standard is often not achieved. From obfuscation about targeting conservative groups in Lois Lerner's IRS to the Environmental Protection Agency's (EPA) refusal to provide the data behind the health claims for the new ozone standard, the Administration that was going to be "the most transparent in history" has actually proven to be just the opposite.

When it comes to the Department of the Interior (DOI), transparency issues may not be as high profile, but they will have profound impacts on land use policy well into the future. Transparency issues range from manipulating data in order to provide political cover and deflect criticism of policies, to ignoring data and science in order to arrive at preferred policies. I've provided some example transparency issues as they relate to the onshore oil and natural gas program in my testimony.

Western Energy Alliance represents over 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 fifteen employees. New policies and rules put in place in a less than transparent manner are affecting or will affect current and future operations of our members.

Sage Grouse

Data Quality Act (DQA) Challenge

Regulatory actions surrounding the Greater Sage-Grouse (GrSG) are failing from several transparency issues. Western Energy Alliance, along with 20 counties in Colorado, Montana, Nevada and Utah, and several industry and agriculture groups filed four Data Quality Act (DQA) challenges regarding data the U.S. Fish & Wildlife Service (FWS), the Bureau of Land Management (BLM) and the U.S. Geological Survey were using to make decisions regarding an Endangered Species Act (ESA) listing for GrSG and 68 land use plans across eleven states in the West.[1] First we had to file several FOIA requests and engage in three FOIA lawsuits and a DQA challenge before DOI released basic information that should have already been in the public domain.

[1] *Greater Sage-Grouse Data Quality Act Challenge,* March 18, 2015.

Our full DQA challenges were very comprehensive, pointing out problems with the peer review process, failure to meet basic scientific standards and the selective use of studies to support a narrative that exaggerates impacts from human activities while simply disregarding natural threats such as predation. We documented 92 relevant studies that the agencies were ignoring in order to move forward with a pre-determined narrative and arrive at policies more about controlling public lands than effective sage grouse conservation. Interior simply dismissed our comprehensive DQA challenges of hundreds of pages of detailed information with a four-page letter.

This transparency issue could be solved by strengthening the Data Quality Act so that the reviewing entity is independent of the agency that is the target of the DQA. The independence of the Inspector General in each agency provides a model.

FLPMA 202

FLPMA Section 202(e)(2) requires that the Interior Secretary report to Congress any management decision or action that totally eliminates one or more of the principal or major uses of public lands for two or more years on 100,000 acres or more. Following the Secretary's report, Congress may act within 90 days. If Congress does not act, it is deemed to have approved the Secretary's closure.

The Interior Secretary has not yet reported to Congress even though the GrSG land use plans close tens of millions of acres of public lands to several principle uses and will cause widespread economic harm to western states. This could be an attempt to delay Congressional action while the DOI proceeds with implementing the plans. Congress should act to halt the closures by first demanding the requisite report. The acreage reported closed to activities in the land use plans is as follows:

Land Use Category	**Total Acres Closed**
Oil & Gas	30,292,000
Geothermal	25,517,000
Locatable Minerals	10,270,411
Non Energy Leasables	57,578,000
Rights of Way	17,789,000
Salable Mineral Materials	58,023,000
Solar Energy	70,273,000
Trails & Travel closed	12,048,000
Wind Energy	44,690,000

We urge the Natural Resources Committee to move forward with a concurrent resolution to use FLPMA 202 to stop the withdrawals. In addition, the FLPMA 202 tool should be used by Congress every time the department issues a land use plan or other action that withdraws lands from multiple-use activities.

BLM Oil & Natural Gas Data

BLM does not have standard methods of tracking basic data about oil and natural gas leasing, development and production on federal lands, which leads to transparency issues about onshore development. States and field offices track information differently, but for political reasons, the

Washington Office reports much of the data in a standardized format in order to provide political cover for its failure to meet statutory mandates from Congress.

Leasing

BLM does not track lease nominations and deferrals in a standard way, and the lack of transparency has created a situation in which BLM fails in its Mineral Leasing Act (MLA) obligation to proceed with quarterly lease sales in every oil and gas state when there is interest. Potential lessees do not know when their nominated acreage will come up for sale, or why their nominations are deferred, and are surprised to learn after BLM's self-imposed deadlines have passed that their acreage is not being considered. BLM is not tracking or processing the backlog, and often holds anemic lease sales while millions of acres remain nominated but deferred.

Lease sales, which the MLA requires be held quarterly in each oil and gas state, have been cancelled due to "lack of interest" or because processing of parcels is taking too long. The Associated Press estimates that there is a backlog across the West of 8.1 million acres deferred just because of sage grouse.[2] BLM's own expressions of interest data indicate tens of millions more.[3] Also, there's no visibility on comprehensive historic trends in this backlog, as BLM publishes the data by calendar year but other leasing data by fiscal year, and sales data are not aggregated and presented in spreadsheet format over multiple years. BLM should transparently track data in a consistent manner across all states, including by parcel and in the aggregate, numbers of parcels and acres:

- Nominated
- Deferred, including reasons for deferral
- Included in initial leasing environmental assessments
- Noticed on initial sales list
- Protested
- Offered for sale
- Sold competitively
- Sold noncompetitively
- Issued
- Suspended, including the reasons.

These data, which could be made available from the state offices using standard templates, should be tracked on spreadsheets and available at the field office, state and national level.

Permits

Every year, BLM releases data on the number of Applications for Permits to Drill (APD) that includes the actual numbers, as is appropriate, as well as the supposed average processing time. However, no data are provided to support the processing times. FOIA requests have revealed that the aggregated number provided is not based on meaningful data, as each field office tracks data very differently.[4] We hope that

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[2] "Grouse's fate shapes energy development in the West," Matthew Brown and Mead Gruver, *The Associated Press,* December 4, 2014.
[3] Industry Interest Acres by Calendar Year, BLM.
[4] *Western Lands and Energy Newsletter,* Norton Rose Fulbright, June 26, 2013.

the new Automated Fluid Management Support System (AFMSS2) will enable tracking of APD data consistently, although there are some concerns as we see it being rolled out to the field offices.

Taking BLM at its word regarding 220 days to complete APDs, which likely is an underestimation, the average is still much slower than states, which all take well under 60 days on average. Because it takes so much longer to obtain a BLM permit, operators have no certainty and must submit many APDs well in advance of when they will be needed. Of course, some APDs take under the average 220 days, but it is not at all uncommon for APDs to take a year or more. Lack of transparency in the timing results in other distortions in the system.

After having submitted many APDs in advance in order to ensure they can stay ahead of their drill rigs, operators' circumstances may change. For example, a nearby well may indicate an area is not as prospective as originally thought, and further planned wells may not be drilled until economic conditions change, if at all. With the fall in commodity prices, many wells that were first submitted when oil was near $100 a barrel are no longer economic at $40. Operators will hold onto the permits that have been approved for the full four years, since they have paid $9,500 per APD, in the hopes that economic circumstances will change. Were the system more efficient and transparent, operators would not have to submit APDs so far in advance and there would not be a stockpiling of permits. We are hopeful that the new AFMSS 2 will be helpful in increasing processing efficiency and timeliness, and lead to more transparent data reporting.

Right-of-Way (ROW) Processing

Data about ROW processing is even less transparent than APDs. In response to Senator John Barrasso, BLM Director Neil Kornze provided a list of pending requests for oil and natural gas pipeline ROWs across federal land in January 2016. The list showed that as of August 2015 the BLM had 867 pending ROWs, nearly half of which had been pending for more than two years. This did not include pending sundry notices that are used to grant ROWs under certain conditions. This subcommittee released data along with the April 27th hearing on BLM's venting and flaring rule which seems to indicate processing occurs within the same year as submittal, so that is probably an area where more information is needed.[5] The timeframes in the data received by the subcommittee are not entirely transparent, and suffer from some of the same problems as APD processing.

The average BLM processing times by state were not the standard 60 days, but they were not as bad as APD processing times, ranging from a low in Nevada of 91 days to 184 days in New Mexico. However, as with APDs, BLM stops the clock under certain scenarios. The clock is stopped at the request of the project proponent, which is fair. But it also stops if there are delays associated with other federal processing requirements. Also, like APDs, the average times can mask frequent delays that extend into years.

Our members are constantly frustrated that they cannot get ROWs processed in a timely manner to allow them to capture associated gas from oil wells, rather than having to flare. The issue is especially acute in North Dakota, where flaring rates are higher than elsewhere because gas capture infrastructure continues to lag oil production, often because of problems obtaining ROWs. The issue isn't just slow

[5] Letter from Christopher P. Salotti, Legislative Counsel, Office of Congressional and Legislative Affairs, DOI to House Natural Resources Subcommittee on Energy and Mineral Resources Chairman Doug Lamborn, February 26, 2016.

BLM processing, although that is often the case. The Bureau of Indian Affairs appears to be a major obstacle as well. Example slowdowns have included the U.S. Forest Service's denial of easements in a bighorn sheep area, which would have reduced 3% of North Dakota's overall flaring. Another example is a pipeline for which BLM took over three years to approve the ROW, but it is now pending approval by the Army Corps of Engineers. That pipeline could reduce North Dakota's flaring rate by another 3%. Rather than just proceeding with a costly and time consuming new rule which puts all the onus on operators to reduce flaring, DOI should ensure both BIA and BLM fulfill their obligations to approve ROWs expeditiously, and also work with outside agencies to expedite ROWs.

Regulatory Economic Analyses

DOI, mainly through BLM, but also BIA and FWS, is proceeding with an overwhelming number of new regulations that cumulatively extend far beyond reasonable regulatory oversight and into mechanisms for slowing oil and natural gas production on federal lands. Yet the agencies are failing to transparently reveal the cumulative economic impacts of these rules. The situation is particularly acute with the three onshore orders that BLM is currently updating (leaving aside the venting and flaring rule, which is technically another onshore order, but by itself well over the $100 million economic impact threshold.) Combined, the three onshore orders regarding measurement are highly interrelated, with an economic impact over $100 million. A single, comprehensive analysis should be done to fully assess the overall impacts of these significant regulatory proposals. BLM is also failing its obligations under the National Environmental Policy Act (NEPA) to transparently analyze connected actions together, which these rules clearly are.

Likewise, BLM fails to conduct comprehensive socioeconomic impacts in NEPA documents ranging from Resource Management Plans (RMP), RMP amendments for sage grouse, Master Leasing Plans, planning policy changes, and new rules, never comprehensively looking at how oil and natural gas restrictions will impact local communities, states, and the national economy. A third-party, independent from the direction of BLM, and other agencies for that matter, should perform economic analyses for all new rules and land use plans to ensure the public has a comprehensive understanding of the full socio-economic impacts of regulatory actions.

FWS Sue and Settle

One of the most egregious cases of DOI's lack of transparency has been two closed-door mega settlements between FWS and two radical environmental groups and serial litigants, WildEarth Guardians (WEG) and the Center for Biological Diversity (CBD). FWS agreed to review a combined 878 species for potential ESA listing within a very aggressive six-year timeframe.[6] DOI's justification for entering into the closed-door settlement agreements that excluded elected officials, states, localities, other stakeholders and the public was to limit future listing petitions and litigation. But DOI essentially handed over policymaking to two non-representative groups and committed its resources to their priorities. Ceding that much power to one special interest in an opaque manner has placed a burden on the federal government, states, productive industries, and private landowners that is alarming.

[6] *Stipulated Settlement Agreement in the U.S. District Court for the District of Columbia, WildEarth Guardians v. Salazar,* MDL Docket No. 2165, May 10, 2011. *Stipulated Settlement Agreement in the U.S. District Court for the District of Columbia, Center for Biological Diversity v. Salazar,* MDL Docket No. 2165, July 12, 2011

We conducted a legal analysis to determine if DOI indeed met its goal.[7] Having allowed CBD and WEG to set the FWS listing agenda for six years, did DOI at least achieve its goal of reducing ESA lawsuits and new petitions? In that sense, the settlements were resounding failures. We discovered that as of June 2015:

- 53 petitions had been filed with FWS requesting listing or uplisting (from threatened to endangered) on 129 species. WEG and CBD are responsible for 38 (72%) of the petitions covering 113 (88%) of the species.

- With complete disregard for the spirit of the agreements, CBD delivered a large 53-species petition to FWS less than a year after the settlements were approved, prompting FWS Assistant Director for Endangered Species Gary Frazer to state, "We're disappointed that they filed another large, multi-species petition."

- 71 different plaintiffs have filed 43 lawsuits challenging FWS decisions on 107 different species. It's not surprising that more plaintiffs are resorting to legal action, since the settlements shut out policymakers and other stakeholders that are now left with few other options. Yet WEG and CBD remain the most prolific litigants, with 23 lawsuits (53%) involving 45 species (42%).

- 50 of the 107 species that are subjects of new lawsuits were already addressed in the settlement agreements, with CBD and WEG responsible for the lawsuits on 34 (68%) of those species. These radical environmental groups will not be satisfied unless all of their petitions result in endangered listings, whether or not such determinations are warranted.

The information was very difficult to obtain because FWS does not consistently and transparently track data to enable the public to understand the species petitions that are active, the stage they are at in the ESA process, the lawsuits associated with them, the cost of addressing the lawsuits, and the amount being reimbursed to special interest groups under the Equal Access to Justice Act (EAJA). These data should be readily available from FWS.

Western Energy Alliance supports legislation to limit the ability of groups to sue and settle behind closed doors without the involvement of elected state, local and federal official, and to limit reimbursement under EAJA.

These are just some examples of transparency issues at DOI. I appreciate the opportunity to testify, and am happy to discuss these and other examples during questioning.

[7] *Sue-and-Settle Legal Analysis*, Western Energy Alliance, August 2015.