

John Mehlhoff, Montana/Dakota State Director
Bureau of Land Management
5001 Southgate Drive.
Billings, MT 59101

Re: DOI-BLM-MT-0000-2021-0006-EA

September 7, 2021

Dear Director Mehlhoff:

We are writing in regards to the recently announced resumption of oil and gas lease sales, ending the executive pause on this program that had been in place since January 27, 2021. This letter is addressed to you as the highest-ranking BLM officer in the state of Montana and has also been submitted into the official record during the scoping stage of DOI-BLM-MT-0000-2021-0006-EA via ePlanning. This letter contains concerns as well as suggested solutions pertinent to this sale and any future sale under the currently existing laws and policies.

While we understand that BLM feels bound to begin holding lease sales again by the preliminary injunction placed on the pause by a federal district judge earlier this summer, we are concerned that the administration has not made greater progress on addressing the many long-standing problems with the leasing program. A report on the program, which is supposed to outline how the administration intends to “help restore balance on public lands and waters, create jobs, and provide a path to align the management of America’s public lands and waters with our nation’s climate, conservation, and clean energy goals,”¹ has still not been issued. As a consequence, the basic regulatory framework that has been in place for decades, which has allowed leasing to become the dominant use of public lands to the detriment of other resource values, is still in place. The Government Accountability Office (GAO) has long identified the current scheme as “high risk for fraud, waste, abuse, and mismanagement.”²

In Montana specifically, leasing of our public oil and gas resources has been a project of diminishing returns and wasted assets for many years. In recent years, leasing has plummeted on federal lands in MT. In FY01, BLM issued a total of 552,000 acres of leases for federal lands in MT³; however, between FY10 and FY20, BLM issued an average of 54,000 acres of leases per year. The total amount of leased federal lands in MT has consistently trended downward since 2008, from a total of 4.3 million acres at the end of FY08 to a total of 1.6 million acres at the end of FY20⁴ (63% decrease). And even when leases are selling, they are selling for just a few dollars an acre. For example, between 2009 and 2018, BLM leased over 262,000 acres of public lands in Montana noncompetitively in MT for just \$1.50/acre, including over 113,000 acres in FY18.⁵ At the end of FY20, 59% of industry’s leased federal acreage in MT – nearly one million acres – was not producing

¹ <https://www.doi.gov/pressreleases/fact-sheet-president-biden-take-action-uphold-commitment-restore-balance-public-lands>

² <https://www.gao.gov/assets/gao-21-138.pdf>

³ <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/oil-and-gas-statistics>

⁴ <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/oil-and-gas-statistics>

⁵ <https://www.americanprogress.org/issues/green/reports/2019/05/23/470140/backroom-deals/>

any oil or gas.⁶ Industry also continues to sit on hundreds of unused leases in Montana,⁷ calling into question the efficiency of offering even more leases. A recent report estimates that, between these unused leases and the 800 currently approved permits to drill,⁸ the oil and gas industry has 36 years of drilling potential in Montana without being issued a single new lease.⁹

We are gravely concerned that resuming leasing under the auspices of a broken system will further jeopardize the health of fish and wildlife populations, leave taxpayers with even more to shoulder in paying for the oil and gas industry's clean up costs, all while failing to fully compensate taxpayers for the development of publicly-owned lands and resources. To prevent this from happening, BLM must fully exercise its broad discretion over the leasing program at the state and field office level to prioritize the conservation of public lands and waters, fish and wildlife species, and taxpayer resources. Therefore, we recommend the Montana/Dakotas BLM office adopt the following recommendations for lease sales moving forward, all of which are within BLM's regulatory authority under current law and policy:

1. **Limit the quantity and scope of lease sales to the maximum extent possible:** Montana is not a major producer of oil and gas from federal public lands. Between 2010 and 2019, less than 1% of the total amount of oil produced in the U.S. (on all lands and waters); and 2% of the total amount of oil produced on federal lands (onshore only) throughout the country; and 13% of the total amount of oil produced on all lands within the state came from federal public lands in Montana.¹⁰ That is all despite nearly 60% of all leases in Montana covering nearly one million acres of federal estates sitting idle. There is neither a tremendous need nor demand for high potential leases in Montana. To best facilitate an efficient leasing program, balancing those interests with BLM's other multiple use mandates like managing for cultural resources, recreational opportunities, wildlife habitat, and clean air and water, the state office should develop and execute a policy of limited scale and scope of lease sales in Montana. For example, state office leadership could develop a plan to offer eligible parcels in each field office on a rotational quarterly basis such that each field office only has to prepare and execute a lease sale once a year, similar to the policy under the Obama administration. An easier option however, would be to hold one state-wide lease sale once a year rather than staggering sales multiple times a year. A once-a-year sale of eligible leases would make more efficient use of personnel time, freeing up capacity to pursue robust enforcement of these leases, as well as for BLM's other obligations towards our public lands. Staggering one sale a year across all states with eligible lands across fiscal year quarters will satisfy the Mineral Leasing Act's broad language to hold quarterly sales.
2. **Provide the maximum amount of public participation days permitted by BLM**
Instruction Memorandum (IM) 2021-027: The sale of public property rights to private

⁶ <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/oil-and-gas-statistics>

⁷ [https://web.archive.org/web/20170301152123/https://www.blm.gov/sites/blm.gov/files/oilandgas_ogstatistics_t13AAPD%20Report%20\(approved_apd_not_drilled_9_30_2014\).pdf](https://web.archive.org/web/20170301152123/https://www.blm.gov/sites/blm.gov/files/oilandgas_ogstatistics_t13AAPD%20Report%20(approved_apd_not_drilled_9_30_2014).pdf)

⁸ <https://www.blm.gov/sites/blm.gov/files/docs/2021-07/FY%202021%20APD%20Status%20Report%20June%20%28using%20APD%20ready%20to%20drill%20report%29%207.15.21%20v2.pdf>

For more information regarding the expiration of approved permits to drill, see <https://westernpriorities.org/2021/03/23/the-oil-industrys-forfeited-public-lands-stockpile/>

⁹ <https://www.conservationecon.org/newsroom>

¹⁰ <https://revenuedata.doi.gov/?tab=tab-production>

individuals or companies is a serious matter. As the ultimate beneficiaries of BLM's management of these resources, it is essential that the public be given adequate notice and information to be partners in the leasing of our minerals. Among other instructions, IM 2021-027 states: "Although not required by law or regulation, field offices will provide a 30-day public review and comment period" on both determinations of NEPA adequacy decisions as well as more site-specific environmental analyses and associated findings of no significant impact. Likewise, the memo reiterates the Mineral Leasing Act's requirement that notices of sale be available for 45 days before the actual auction. Finally, BLM must afford a 30 day public protest period beginning with the notice of the sale. These timeframes are not suggestions and state offices must comply with these directives.

3. **Curb speculation by deferring leasing on low and no potential lands and limiting opportunities for noncompetitive leasing:** Between 2009 and 2018, over 262,000 acres of public lands were leased noncompetitively in MT for just \$1.50 per acre, including over 113,000 acres in FY18.¹¹ Noncompetitively issued leases almost never result in production: 99% of these leases terminate without ever entering production. These leases also have a much higher cancellation rate. Montana has the second-highest rate of speculative leasing in the mountain west after Nevada. BLM has a duty to prevent waste and abuse by private companies speculating with our public resources. Areas that have been determined to have little to no potential for commercial development - either through a recent Reasonably Foreseeable Development Scenario analysis or similar geologic and economic evaluation - must be deferred from leasing.
4. **Require a royalty rate on production of at least 18.75% for all leases:** The current 12.5% base royalty rate established in 1920 has never been updated, despite the Secretary's reserved authority in the statute to raise the royalty rate.¹² State leadership should use the properly delegated secretarial authority to require a royalty rate for onshore production commensurate to the federal offshore royalty rate to ensure consistent returns for taxpayers across the full oil and gas leasing program.
5. **Require full-cost bonding, as a condition of lease acquisition:** The current regulatory base rate for bonds is \$10,000 for one well. However, the average cost to reclaim a well in Montana is almost \$35,000.¹³ BLM must exercise its discretion as a regulator and as the trustee of our federal resources by requiring companies to post bonds that are commensurate to the actual estimated cost of reclaiming their proposed project. Full reclamation should be treated as a cost of doing business, not an externality that will burden Montana taxpayers in the future.
6. **Limit participation by speculators and other bad actors:** The Mineral Leasing Act states that only "responsible" and "qualified" bidders may acquire leases.¹⁴ Companies that have demonstrated an inability or an unwillingness to be good stewards of the public resources they are entrusted to develop must not be allowed to participate in future lease sales. Companies with a history of environmental, labor, or fiscal violations must be excluded from

¹¹ <https://www.americanprogress.org/issues/green/reports/2019/05/23/470140/backroom-deals/>

¹² Mineral Leasing Act, 30 U.S.C. § 226(b)(1)(A)(c)

¹³ <https://iogcc.ok.gov/idle-and-orphan-wells>

¹⁴ Mineral Leasing Act, 30 U.S.C. § 226(b)(1)(A)(c)

future ability to squander public resources and public trust. For example, BLM could impose a condition on bidding that companies - including leasing agents representing companies in these auctions - must disclose violations of lease terms, federal law, and state law within the last five years and also document their ability to actually pursue development rather than simply a statement of interest. Companies with a history of violations demonstrating their lack of responsibility and qualifications must not be allowed to acquire any more interests in public resources. Similarly, companies with little to no demonstrable experience developing oil and gas, including a lack of on-hand capital to post a sufficient bond associated with their leases, should also be limited or excluded from sales at this time. Finally, to limit speculation, BLM should only issue leases to companies with a history of responsible exploration and development of federal estates: companies with a demonstrated history of acquiring leases - particularly for the minimum bid or noncompetitively - but not meaningfully pursuing development are not responsible bidders and should be excluded from upcoming auctions.

- 7. Reserve the right to impose future conditions, based on current and future efforts to reform the federal oil and gas program:** While leaseholders are entitled to security in their interests, BLM must include conditions in any leases issued under the coming lease sales that allows the agency to comply with efforts underway by the agency itself to reform the federal oil and gas program. Reserving a right to impose future stipulations based on reasonably foreseeable future conditions, including but not limited to regulatory reform, climate change scenarios, and other situations that would necessitate future activity conform with BLM's duty to manage our public resource for a sustained yield "so that they are utilized in the combination that will best meet the present and future needs of the American people."¹⁵

On behalf of the undersigned organizations and our thousands of members and supporters across Montana, thank you for your attention to these important issues.

Respectfully:

Wild Montana

Aubrey R. Bertram, staff attorney

Montana Wildlife Federation

Alec Underwood, federal conservation campaigns manager

Montana Conservation Voters Education Fund

Whitney Tawny, executive director

Friends of the Missouri Breaks Monument

Mikayla Moss, executive director

Montana Environmental Information Center

¹⁵ Federal Land Policy and Management Act, 43 U.S.C. § 1702(c).

Derf Johnson, Clean Water Program director and staff attorney

Natural Resources Defense Council

Amy McNamara, Northern Rockies director

Montana Mountain Mamas

Becky Edwards, executive director

CC:

Debra Haaland, Secretary of the Interior

Tommy Beaudreau, Deputy Secretary of the Interior

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