

Position Paper
Interior's Proposed Changes to the Federal Onshore
Natural Gas and Oil Program

January 2010



At a time when the Obama administration should be embracing policies to increase employment, stimulate the economy, and increase production of American clean energy, Interior continues to make decisions that increase uncertainty and put at risk jobs and economic development tied to the production of natural gas and oil in the West. Rockies producers have achieved balanced energy development by providing 27% of America's natural gas while occupying only 0.07% of public lands.

It is impossible to stand by silently while these job-killing proposals further hinder our efforts toward energy independence and have devastating effects on families and small businesses across the nation.

Moreover, the revenue you are impeding from oil and gas leasing is the largest contributor to the national treasury after income tax. To stifle the growth of this industry in the midst of record-setting national deficit and unemployment levels is not only outrageous but irresponsible.

Congressman Dan Boren (D-OK)

January 7, 2010

- Interior Secretary Ken Salazar's proposed changes to the federal onshore oil and gas program, announced in early January, create additional layers of red tape and ignore the Energy Policy Act of 2005, which passed Congress with bipartisan support, including then Senators Barack Obama and Ken Salazar.
- The changes constitute a bureaucratic command-and-control system in which government bureaucrats—rather than scientists and engineers with expertise in natural gas and oil development—dictate where energy development should occur. The market-based system has worked well for decades, allowing government land managers to specify what lands are appropriate for leasing and leaving it to the geologists and engineers to do the exploration and nominate projects based on geologic and market conditions, with ultimate approval by Interior.
- Wyoming's Democratic Governor Dave Freudenthal says it best:

Unfortunately, the proposed changes potentially hand significant control over oil and gas exploration, development and production to the whims of those that profess a 'nowhere, not ever' philosophy to surface disturbance of any kind.

With specific regard to the proposed changes, it seems as though the Department contemplates adding up to three additional layers of analysis into the existing leasing process. To my point, these reviews will be made irrespective of (actually completely devoid of in most instances) substantive seismic, exploration, or other subsurface data. Functionally, it seems that we are putting on two additional belts and two additional pairs of suspenders without even knowing if we are going to wear pants.

The proposed changes are in addition to the existing leasing program, which already contemplates a land use plan, consultation with the states and their agencies of jurisdiction regarding leasing decisions, project specific NEPA, an application for permit to drill and compliance with state wildlife, air, water and land quality protections. I question the need for so many reviews, especially when leasing is such a small part of the development equation.

- Secretary Salazar claims the changes will increase certainty and reduce legal challenges. Again, Governor Freudenthal:

One of the points of justification for the policy is the potential to reduce the number of challenges and protests and, ultimately, the amount of litigation emanating from these objections. With rational players, this expectation and rationale makes sense. In reality, though, the new technical and procedural reviews merely offer more opportunities for challenge. Even the most perfect review will be challenged by someone or some group – to assume otherwise is simply naïve given the realities of the citizen suit provisions...and the ever present ‘not in my backyard’ interests.

- Every step of the federal development process has opportunity for citizen input, but that hasn’t stopped 100% of lease sales, Resource Management Plans (RMP), and most natural gas and oil development projects from being challenged legally. Recent examples are the Utah RMPs, with over seven years of community and public input; and the Roan Plateau RMP which had unprecedented cooperation with the Colorado Division of Wildlife, Department of Natural Resources, counties and the public, and resulted in the most protective phased-development plan in history. In both cases, extensive legal challenges resulted.

Details on the Proposed Changes

Several Additional Layers of Analysis

- Despite the announcement, specific policies have not been formalized, and an “Energy Reform Team” led by Assistant Secretary Wilma Lewis will review additional aspects of the onshore program. IPAMS stands ready to mobilize the expertise of 260,000 employees in the Intermountain West as input to the review process, including petroleum engineers, geologists, landmen, environmental consultants, and other professionals with actual expertise in natural gas and oil development.
- Since Interior has released very little information on the changes, it is difficult to analyze the full impact of the policy changes. From the scant information released, these changes will add years to the already lengthy process of developing energy on public lands.
- Because of the myriad delays already inherent in federal leasing, it often takes several years and several lease sales until companies can put together sufficient leaseholds to begin exploration and development work. Interior’s reforms will add a minimum of three years to the process from nomination to lease sale for any given parcel, creating further delays and more uncertainty for companies trying to develop American energy.
- The changes will mean a lower percentage of leased acreage will be in a producing status. Industry is often criticized for only developing on 27% of leased acreage, but that statistic doesn’t account for acreage where background permitting and environmental work is ongoing.
- Under the current onshore system, environmental analysis is conducted at the resource management planning, leasing, and project stages. The public already has the opportunity to comment and participate at each stage. In addition, companies must conduct cultural and wildlife surveys, and comply with thousands of federal, state and county environmental regulations.

- Despite all these environmental protections, Interior is proposing several additional layers of analysis – Master Leasing and Development Plans (MLDP), additional “interdisciplinary team” review at the leasing stage, another environmental review document, and an additional mitigation measures document.
- The duplicative analysis would attempt to identify the impacts of development before any exploratory work is done. The site-specific analysis required in the MLDP is speculative, since it’s impossible to know the impact of development before exploratory work reveals if there are quantities of natural gas or oil available, how many wells would be necessary, and whether market, infrastructure, technical and other factors indicate development is worthwhile.

Extraordinary Circumstances Review Added to Statutory Categorical Exclusions Processing

- Under the Energy Policy Act of 2005, Congress directed BLM to use categorical exclusions (CX) under Section 390 to encourage energy development when one of five criteria are met. CXs eliminate redundant environmental analysis and enable companies to minimize surface impacts. DOI’s announced policy to severely limit the use of categorical exclusions by requiring “extraordinary circumstances” review is illegal.
- DOI cannot pick and choose which laws to follow. Congress, including then Senators Barack Obama and Ken Salazar, mandated the use of CXs where the environmental impact is minimal or where environmental analysis has already been completed; it did not provide Interior with discretion in their use. The law clearly mandates the use of CXs when the criteria are met.

Unissued Leases

- Secretary Salazar’s policy announcement did not address the \$100 million worth of unissued leases that Interior continues to hold in a non-productive capacity.
- It appears that Interior may be attempting to apply new policies to leases, some of which date back to 2003, that were legitimately won in prior sales conducted according to policies compliant with the Mineral Leasing Act. Retroactive application of policies is clearly contrary to well-established law, and seriously calls into question the good faith of the government.
- No other bidding system, from eBay to a livestock or art auction, allows a seller to withdraw goods from a sale after someone has fairly won the bidding process. Interior’s actions shatter the integrity of the leasing system, and have dampened future interest in federal leases.

Public Lands Statistics

- Intermountain West producers provide 27% of American natural gas while occupying only 0.07% of federal lands.
- 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.
- The Obama Administration leased fewer onshore acres in 2009 than any other year on record.
- The US Treasury took in a more than ten times the leasing revenue in 2008 than in 2009, \$10 billion compared to \$931 million.