



October 23, 2014

Mary L. Kendall
Deputy Inspector General
U.S. Department of the Interior
Mail Stop 4428 MIB
1849 C Street, N.W.
Washington, D.C. 20240

Re: DOI IG Report No. CR-IS-BLM-0004-2014 Bureau of Land Management: Federal Onshore Oil & Gas Trespass and Drilling Without Approval (DWOA)

Dear Ms. Kendall:

I am writing on behalf of Western Energy Alliance to express my concern with the Office of Inspector General IG report *Bureau of Land Management: Federal Onshore Oil & Gas Trespass and Drilling Without Approval*. The report unfairly criticizes BLM for not managing trespass and DWOA without adequately examining the processes BLM already have in place to do so. Also, the report fails to provide any perspective on the miniscule scale of the problem, which represents an extremely small rounding error when compared to the amount of revenues returned to the federal government by industry through BLM's oil and natural gas program.

Western Energy Alliance represents over 480 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. The Alliance represents independents, the majority of which are small businesses with an average of fifteen employees. Our members operate in North Dakota and throughout the West on federal lands.

Scale of the Problem

The report clearly is dealing not with cases of willful intent to drill without proper federal authorization, but rather mistakes due to the complexity of fragmented mineral ownership. In North Dakota for example, there are many areas where federal minerals are intermingled with private and state minerals, with or without federal surface. With the laterals from horizontal drilling continuing to increase, the possibility arises that a well from private or state lands accidentally penetrates a zone of federal minerals.

We argue, as supported by the extremely small number of cases found in North Dakota in your report, that these instances are rare but understandable given the complex mineral ownership. We contend that the vast majority of these small number of incidents are honest accidents that are cleared up through the processes elaborated below but completely missing from your report.

However, taking the data reported from the report, it is clear that the scale of the problem is extremely small. The report states that “in the past several years” BLM has identified ten cases of potential trespass and 70 cases of DWOA in North Dakota. What is several years? Three, five, seven? Certainly “several” is more than a “few” which would be two years. The report is silent on that, both in the body of the report and in the methodology discussion, a key oversight for anyone trying to use the report to draw any useful conclusions or policy implications.

Taking the low range of “several” at three years, we find from ONRR data for 2011-2013 that \$579 million were collected in federal royalties from North Dakota. Comparing that to the \$530,000 in lost royalties cited in the report indicates an error rate of .0009%. Obviously, if “several” means more years, that number becomes even more infinitesimal. Contrast that with the \$94.8 million DOI paid to employees for doing nothing while on administrative leave from 2011-2013 for further perspective.¹

Certainly BLM could be served by implementing a few common-sense measures to enter DWOAs into their database, but spending significant resources on new policies and procedures is likely to have diminishing returns, as BLM already struggles to meet its current obligations. Rather than worrying about a very small number of cases, BLM could be ensuring more timely permitting and project approvals, which would lead to many more *millions* of dollars in return to the treasury rather than chasing a scant \$500,000. But as discussed below, BLM is already providing oversight to ensure the chance of DWOA is low, which was not even considered by the report.

Failure to Recognize Current BLM Safeguards

The report fails to consider BLM processes that are already in place to safeguard against trespass of federal minerals. There is no discussion at all about BLM’s land process. The directorate of minerals and realty management is staffed with career personnel experienced in land and title management. BLM databases are some of the most clear when it comes to determining mineral ownership. While again, nothing is ever perfect, especially when dealing with 700 million acres of federal mineral estate, federal minerals databases are generally very good, and obtaining federal title is often easier than it is when determining private owners. Companies spend considerable resources conducting title research with land brokers and attorneys to assure that title is cleared. Likewise, BLM realty staff provide oversight, and BLM databases make that process clear when it comes to federal minerals.

Another area of oversight not discussed in the report is the communitization process. When federal units are formed or pooling agreements are entered into for state and private lands, the ownership is clearly established in the agreements. BLM fluid minerals staff are highly engaged in the process, and their .0009% error rate speaks highly to that. Further, errors in royalty reporting are detected by the Office of Natural Resources Revenue through the extensive auditing process.

¹ [Federal Paid Administrative Leave: Additional Guidance Needed to Improve OPM Data](#), Government Accountability Office GAO-15-79.

Proposed Solution

The report concludes with the recommendation that BLM needs more national policies and procedures to deter trespass. Given the scale of the problem—a rounding error—and the fact that BLM is attempting to implement so many new policies and rules, from landscape level planning to onshore order updates while updating 68 Resource Management Plans for Greater Sage Grouse , to name just a few, it hardly seems that such effort would be productive given resource constraints and a workload that BLM struggles to complete.

In addition, the report recommends formal agreements with state oil and gas conservation commissions to obtain pertinent information that BLM can use to identify potential trespass or DWOA. We believe that statement contains the kernel of the real solution to trespass and other challenges faced by BLM. Western Energy Alliance recommends greater delegation to states for many issues of regulating oil and natural gas on federal lands.

Companies already obtain state permits and comply with all state laws for federal wells in addition to obtaining BLM's approval on Applications for Permit to Drill (APD). BLM's permit is redundant with the downhole regulation by the states, and many of those functions could be delegated to states, saving BLM resources for surface management, planning, monitoring, and compliance. The report points out that states already provide downhole surveys, and recommends BLM use that information. Why not simply delegate that function entirely to the states? The Environmental Protection Agency already provides a model of federal delegation to the states through the Clean Air and Clean Water Acts.

Unfortunately, BLM is going in the opposite direction, and attempting to implement new hydraulic fracturing rules that will create further redundancies with the states. Although there is no case of contamination of underground sources of drinking water on federal lands from the fracking process, and regardless of the fact that 99% or more of all federal permits are in states that have stringent wellbore integrity and hydraulic fracturing rules, BLM is proceeding forward with a regulation for which it lacks personnel and resources. Again, this is an area that should remain with the states.

Western Energy Alliance will continue to vigorously advocate for more delegation to state oil and gas commissions to reduce redundancies and direct federal resources more appropriately to surface management. We also oppose use of this latest report for DOI to argue that it needs more money from industry for inspections and enforcement. Companies already return \$54.12 in royalties and lease revenue for every taxpayer dollar spent by BLM administering the entire federal onshore program, from planning and permitting through to inspection and enforcement and general administrative overhead. By returning over 54 times the cost of the program, industry has already provided ample funds to the government, and the misallocation of that funding does not then become our responsibility. But again, states already are out in the field inspecting; why not also delegate I&E for federal wells to the states?

Thank you for considering our input on the trespass report. We believe it does not adequately credit BLM for the oversight it provides, which is clearly manifested in the over 99.999% success rate demonstrated, but not highlighted, by the report. With that success rate, BLM is better served directing its efforts at ensuring leasing, environmental analysis and permitting of oil and natural gas projects moves forward, which will return vastly many more millions of dollars to the American taxpayer than will chasing a scant few hundred thousand dollars. Better yet, DOI should seriously consider delegating more oil and natural gas permitting and inspection to states, which have demonstrated their competence for decades.

For further conversation, please contact me or Kathleen Sgamma, Western Energy Alliance Vice President (303)623-0987.

Sincerely,



Jack Ekstrom
Whiting Petroleum
Chairman, Western Energy Alliance

Cc: Governor and Congressional Delegation of North Dakota
Sally Jewell, Secretary of the Interior
Neal Kornze, Director, BLM
Jamie Connell, Montana/Dakotas State Director, BLM
Mike Nedd, Assistant Director, Minerals and Realty Management, BLM
Lynn Helms, Director, Department of Mineral Resources, North Dakota Industrial Commission
U.S. Senate Energy and Natural Resources Committee
U.S. House Natural Resources Committee