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Subcommittee on Energy and Mineral Resources

Hearing Entitled
Fossil Fuel Development: Protecting Taxpayers and Eliminating Individual Giveaways
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Chairman Lowenthal, Ranking Member Gosar, and Committee Members, thank you for the opportunity to testify today. In direct contradiction to this hearing's title, the bills proposed would harm taxpayers by reducing production and hence revenue from federal oil and natural gas resources while reversing gains made to improve the competitiveness of federal lands and enhance their potential to return yet more revenue. Furthermore, characterizing the $9.2 billion that industry *returns* in royalties to the taxpayer as a *giveaway* is just not accurate.

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, lacking 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. I will discuss the three bills dealing with oil and natural gas methane, bonding and royalties.

Before addressing the main points in the bills, I'd like to point out that I'm proud of the oil and natural gas industry. We've increased production using horizontal drilling and advanced hydraulic fracturing to the point that the United States is the number one global producer of oil and natural gas, and is poised to become the number one exporter of oil. The American producer has cushioned the shock from the largest disruption to global oil supply in history–the recent strikes on half of Saudi Arabia's oil infrastructure–sparing consumers from feeling the impact at the pump.

We've done that while meeting every legitimate environmental challenge. We've reduced our air emissions, water use, footprint on the land and impact to wildlife. The abundant, affordable, clean-burning natural gas we provide has reduced emissions of air pollutants from the electricity sector, leading to better public health outcomes. We continue a four-decade-long trend of reducing methane emissions by 14% even as production has skyrocketed over 50% for natural gas and 80% for oil. Our emissions are going down as an absolute number as well as per unit of production.

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. My industry supports 10.3 million jobs and $1.3 trillion in economic activity across the country over multiple sectors of the economy, not just in direct industry jobs. Good, high-paying jobs lead to better health and environmental outcomes. We're helping the

United States achieve one of the strongest economies with the lowest unemployment rates in years and even decades.

Yet we hear presidential candidates call us criminal for producing oil and natural gas, even though we've done more than the wind and solar energy industries combined to reduce overall U.S. greenhouse gas emissions. Because the consumption of our products indeed does generate greenhouse gases, we're vilified, yet our products provide overwhelming benefits that outweigh the impact. Oil and natural gas are used to: heat homes in the winter and cool them in the summer; provide mobility to get people to work, school, vacation, the emergency room, or anywhere they need to go; power all facets of the economy, from manufacturing the products to clothe and shelter us, to growing and putting food on the table and bringing clean water to the home. Oil and natural gas provide the raw materials for medicines, medical devices, computer chips, electronic devices, and a multitude of other products too numerous to list. We'd be criminal not to produce the energy sources that do all those life-giving and life-saving things.

Now Congress is considering legislation designed to decrease American production, not consumption, of oil and natural gas by adding more cost and red tape onto federal lands. Adding more cost has the same effect as taxes: if you want less of something, tax it more. These bills collectively would add more cost directly through higher taxes, i.e., the royalty, bid and rental rates; bonding requirements; civil penalties; and duplicative regulatory red tape. The effect would be to further erode the competitiveness of federal public lands, causing production to shift to nonfederal areas where possible, and disadvantaging states like New Mexico, Wyoming and Utah, and many rural communities throughout the West. And of course the federal treasury would receive depressed revenue from industry. That doesn't sound like protection of the taxpayer to me.

I'll just identify a few problems with each bill, since the details are too numerous to go into at this time. The fatal flaw of the methane bill, besides that it ignores actual, tangible industry success limiting venting, flaring, methane emissions, is that it repeats the weaknesses of the Obama-era rules it attempts to reinstitute. The Environmental Protection Agency (EPA) is going through deliberative processes to fix the impracticalities of the 2016 rules and their convolutions of the Clean Air Act. Even with the proposed changes, most of the basic provisions in the methane bill are already covered by EPA's New Source Performance Standards (NSPS) OOOOa rule.

Despite existing EPA regulation of methane, the bill repeats the fatal flaw of the 2016 Bureau of Land Management (BLM) rule in requiring a public land management agency to suddenly become an air quality regulator, despite its lack of expertise. Why would Congress want to give BLM redundant powers to regulate air quality that is already granted to EPA and the states through the Clean Air Act? EPA rules are applicable on public lands, of course, so why the inefficient duplication? The answer can only be that the bill is following the example of the Obama Administration in doing an end-run around the Clean Air Act and its processes for regulating existing sources properly. Such an approach would leave 112 million barrels of oil from marginal wells in the ground, and cost federal and state governments $114 million in annual tax revenue.

The bonding bill suffers from the flawed assumption that bonds are the only source of funding available to reclaim, plug and abandon wells. Companies are under obligation for the full cost of plugging and abandoning wells and reclaiming well sites, and are not released from liability until BLM has determined they have properly done so. Companies assume the obligation when they acquire another company's assets. Struggling companies are often acquired, so at-risk wells, as identified in the Government Accountability Office (GAO) report, do not necessarily become orphaned wells. Bankruptcies almost always result in continuous liability for the assets, whether through restructuring or sale of the assets.

If bond levels are raised too high, as they are in the bill, it ties up significant amounts of capital in an unproductive capacity, adding another cost that, in combination with all the other costs of operating on federal lands, leads to less production. The bill would raise costs unnecessarily for the vast majority of companies who are responsible and fulfill their reclamation obligations. The real issue is of course, fly-by-night operators, but the issues are being or have been addressed by BLM with policies that give it the flexibility to set higher bond amounts for at-risk companies; more stringent interim and final reclamation requirements; additional bonding reviews and others. BLM has rightly been much more aggressive on orphan wells in the last couple of years, but could do a better job, as GAO points out.

And while we all wish that there were never an orphaned well, the number of orphaned wells identified by GAO in the 2019 report is extremely low. Of the 96,199 wells on federal lands, GAO identifies 296 wells that BLM is currently dealing with, only 0.3%. Additionally, GAO estimates that annually BLM spends about $267,600 on reclamation. A number like that, a rounding error (0.01%) compared to the $2.7 billion in 2018 royalties from the onshore program, doesn't usually attract the attention of Congress, and certainly doesn't seem to be high enough to justify yet another cost that, in combination with many others, can upset the balance of federal lands development. Industry already returns enough money to cover BLM's entire budget and reclamation costs for all outstanding orphaned wells. Companies return 19-fold what BLM spends administering the entire onshore O&G program.[1] Surely a portion of that could be used to clean up the small number of orphaned wells that exist. Congress should give BLM more flexibility in taking funds already provided by industry through fees and royalties and direct them into orphaned wells.

GAO's 2018 report accepts BLM's estimation of $46.2 million in potential reclamation costs for orphaned or inactive wells, while at the same time revealing that BLM does not really have the data to correctly identify how many inactive wells there are. The report contains extensive information on how BLM doesn't have the data to properly monitor and handle at-risk wells. Due to lack of good data, the numbers in the GAO report are likely inflated, as many at-risk wells, such as those considered to be inactive over 25 years, may actually just be incorrectly recorded in the system. GAO even cites an example where an inactive well was known to have been reclaimed decades ago. How many more examples like that are in the data? The 2019 report contains a similar $46 million estimate, but it's still based on the same faulty systems. Most of the 2,294 inactive wells that go into that $46 million estimation will likely not become orphaned, and companies will pay the vast majority of that

[1] This is a ratio Western Energy Alliance computes every year based on the total royalties, rents and bonus revenue for the fiscal year divided by the budget for BLM's onshore program. The number for FY2018 is $19.17 returned by industry for each dollar spent administering the onshore program.

reclamation cost. History supports my assessment, given the current and historic amounts BLM spends on orphaned wells.[2] Like the bully who causes the whole class to sit in for recess, does the vast majority of responsible operators have to have their costs raised because of a few bad actors?

Yet GAO's bottom-line recommendation of raising bond levels is so narrow as to miss a large part of the problem. GAO has identified the need for better data management and processes, but BLM struggles to meet those data tracking, reporting and management obligations. Rather than just looking at raising bonding levels, why not look at more innovative solutions such as outsourcing the data collection, monitoring, bond adequacy review, liability assessment, and notification processes that BLM struggles to perform? A contractor could be tasked with tracking and monitoring the data, presenting it to BLM in a robust manner using the best information technology, assessing higher bond requirements for at-risk companies, and tracking them down if they don't respond. Just as private companies outsource their collections function, so could a contractor track at-risk wells more aggressively and go after those few bad actors. Congress should consider better solutions than this bonding bill.

Finally, the royalty bill suffers from the assumption that raising royalty rates and a whole host of other costs will actually lead to more revenue returned. Raising royalty rates on federal lands will make them even less competitive with adjacent non-federal lands because the federal government, through acts of Congress and Executive Branch policies, has already determined that it would rather extract more in regulatory costs than it can garner in direct royalty revenue. Therefore, federal lands cannot command the higher royalty, bonus and rental rates proposed in this bill without becoming cost uncompetitive with other state and private lands, which command higher royalty rates.

These three bills are fundamentally flawed from a larger policy perspective. I urge this committee not to advance these bills. Thank you for allowing me to testify.

[2] The [2010 GAO report]() shows an approximate annual average spend of $173,000 from 1988 – 2009.