

WRITTEN STATEMENT OF TOM KROPATSCH, STATE OIL AND GAS SUPERVISOR ON BEHALF OF THE
WYOMING OIL AND GAS CONSERVATION COMMISSION
BEFORE
THE HOUSE NATURAL RESOURCES COMMITTEE SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
LEGISLATIVE HEARING ON:
Discussion draft of H.R. (Rep. Boebert) "Restoring American Energy Dominance"
October 25, 2023

Good afternoon Chairman Stauber, Ranking Member Ocasio-Cortez, and members of the House Subcommittee on Energy and Mineral Resources, my name is Tom Kropatsch and I am the State Oil and Gas Supervisor for the Wyoming Oil and Gas Conservation Commission (WOGCC). Thank you for inviting the State of Wyoming to this hearing on the Discussion Draft of Restoring American Energy Dominance and to share how the Bureau of Land Management's (BLM) proposed Fluid Mineral Leasing and Leasing Process rule will impact the oil and gas industry, private and state mineral owners, state and local governments, and the citizens of Wyoming. To be straightforward, this proposed rule actively discourages development and by BLM's own admission, will force oil and gas production off federal lands.

Wyoming routinely ranks 2nd in the nation in oil production and 1st in the nation in natural gas production from onshore federal lands. There are approximately 47,000 total wells in Wyoming with about 27,000 of those being federal wells. 65 percent of oil production and 79 percent of natural gas production in Wyoming is from federal lands.

As evidenced by these numbers, any regulatory or management changes on federal lands will have a consequential impact on Wyoming. It is not only the significant amount of federal lands, but also the land ownership pattern that contributes to impacts from federal decisions. Federal, state, and private lands are intermingled throughout the state. Horizontal wells paired with the land ownership pattern results in wells that are a mix of mineral types, with most having federal minerals mixed with private and/or state.

Avoiding federal lands when drilling these horizontal wells is very difficult to impossible. Therefore, the impacts from any federal action are felt by the state and private mineral owners. When BLM admits that a rule will force production off federal lands it should be recognized that in Wyoming, the federal rule is also forcing production off state and private lands. Accordingly, this proposed rule will result in oil and gas production being forced out of Wyoming.

Multiple provisions of this proposed rule contribute to forcing production off federal lands, such as BLM deferring the leasing of even more parcels only because they feel it has low potential for production, increased fees and royalties, and impossibly burdensome bonding requirements. BLM states these proposed changes are necessary because the existing onshore oil and gas regulatory framework does not adequately protect fiscal interests of the American public. Yet, the onshore oil and gas program has generated over \$12.6 billion for the American public the last two years according to Natural Resources Revenue Data.

The oil and gas industry also provides significant revenue and jobs for the citizens of Wyoming. In 2020, the oil and gas industry contributed \$1.23 billion to Wyoming through taxes and royalties. The industry

also directly employed over 19,000 people in the state in 2019 with over \$1 billion in wages paid, and it generates 1.9 additional jobs in related industries for every person directly employed.

Any production that is forced off federal lands and subsequently out of Wyoming will result in reduced fiscal benefits and reduced jobs to the American public and Wyoming citizens.

BLM states the onshore program historically exposed the Federal Government to significant reclamation related liabilities and believes increased bond amounts and elimination of nationwide bonding would help ensure reclamation responsibilities reside primarily with oil and gas lessees and operators and not the American public. Unfortunately, as proposed, the bonding provisions will impact hundreds of small businesses in Wyoming, resulting in lost royalties, taxes, and other revenues to local and state government, and likely will create orphan wells, not protect against them.

BLM's analysis shows the orphan well program is expected to cost the agency \$1.4 to \$3.8 million per year and that only 15 federal orphan wells needed plugged in 2021 and only 24 for 2022. Out of the approximately 96,000 wells managed by BLM only 0.025% were orphan. Similarly, the average expected cost is only 0.068% of the approximately \$8.6 billion in revenue that the onshore program generated last year. The BLM process for dealing with oil and gas wells with a non-responsive operator is to hold any previous record title owner (RTO) or operating rights holder (ORH) responsible to plug and reclaim the wells. Only after determining that no other RTO or ORH can be held responsible is a well declared orphan by BLM.

To address the very small risks in terms of number of orphan wells and costs, BLM has designed a one-size fits all bonding approach that will be inappropriately forced on all operators and all wells, without consideration of the well depth, condition, status, or other factors which impact the cost to plug. BLM is proposing to increase the minimum lease bond to \$150,000 for up to two wells, the minimum statewide bond to \$500,000 for up to seven wells, and to eliminate nationwide bonding. Based on Wyoming's orphan well program for the past 30 years, these minimum bond amounts are far greater than the typical cost to plug and reclaim a well in Wyoming. As an example, there is a small business operator in Wyoming who has five federal leases, each with one coalbed methane well. Under the proposed rule, this operator would be required to post a minimum statewide bond of \$500,000. Based on historical plugging costs in the state, these five wells would likely cost only \$25,000 to \$35,000 to plug and reclaim, total for all five wells. The proposed minimum bond overburdens this small operator with unnecessary bonding and could easily cause them to go out of business which risks creating orphan wells.

It should be noted that these are minimum bond amounts, and in the preamble, BLM states they will increase the lease bond amount for operators with more than two wells on the lease. They will also increase the statewide bond amount for operators with more than seven wells tied to the bond. If BLM were to follow this bonding plan, a conservative projection for the required bonding for the 27,000 federal wells in the state is over \$1.9 billion. This is to address BLM's stated nationwide costs of \$1.4 to \$3.8 million.

BLM also intends to disallow certificates of deposit and letters of credit as bond instruments, instead requiring surety bonds. BLM states this will only cost operators an annual fee of 1% to 3.5% of the bond value. What BLM fails to recognize is most small operators cannot obtain a surety bond without significant collateral, typically 100% cash collateral. In our review, we have determined that the

minimum bond amount would exceed the gross annual revenue of more than 25% of the companies operating on federal lands in Wyoming.

I briefly mentioned other provisions of this rule that will result in forcing production off federal minerals and out of Wyoming. For further details on these issues, attached to this written statement you will find a copy of the WOGCC comments that were submitted to BLM during the public comment period.

Thank you for allowing the WOGCC to participate in this hearing and provide its perspective on these matters.



Governor Mark Gordon, Chairman | Tom Kropatsch, State Oil & Gas Supervisor
Commissioners Jenifer Scoggin | Erin Campbell | Jimmy E. Goolsby | Ken Hendricks

September 22, 2023

U.S. Department of the Interior
Director
Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240

Attn: 1004-AE80

Re: Fluid Mineral Leasing and Leasing Process

Submitted via Regulations.gov

Dear Director:

The Wyoming Oil and Gas Conservation Commission (WOGCC) hereby respectfully submits the following comments in response to the Bureau of Land Management's (BLM) proposed Fluid Mineral Leasing and Leasing Process rule, Docket No. RIN 1004-AE80, published in the Federal Register on July 24, 2023.

Wyoming routinely ranks first in the nation for gas production from onshore federal minerals and second in the nation for oil production from onshore federal minerals. Wyoming ranks eighth in the nation in total oil production and ninth in the nation in total gas production in 2021 according to the Energy Information Administration (EIA). Production from federal leases and federal minerals comprises a significant portion of the total oil and gas production in Wyoming. Approximately 65% of the total oil production and 79% of the total gas production in Wyoming is produced from federal minerals. BLM's proposed changes to the federal leasing and leasing process in this proposed rule will result in severe impacts to oil and gas operators, private and state mineral owners, local governments, and the state of Wyoming.

The WOGCC respectfully requests that BLM withdraw this proposed rule based on its significant impacts to oil and gas operators who produce from federal leases, hundreds in Wyoming who are small businesses, and impacts to local and state government. As detailed further in the following comments, BLM did not conduct an appropriate evaluation of the impacts of this rule on small businesses or local and state government. This rule will force many oil and gas operators in Wyoming out of business and will force oil and gas operators of all sizes off federal leases, will limit the future leasing of federal minerals, and will result in loss of revenue to the general public and to state and local government. These impacts are ignored by BLM in this rule proposal and it should therefore be withdrawn and an appropriate Regulatory Impact Analysis (RIA) be conducted with any subsequent rule. In support of the request to withdraw, the WOGCC offers the following comments on the rule. BLM states that the existing onshore oil and gas regulatory framework does not adequately protect the fiscal interests of the American public. Unfortunately for the American public, this rule results in a double whammy to their

fiscal interests. As proposed by the BLM, this rule will do nothing but reduce the significant fiscal benefits that the federal onshore oil and gas program currently provides to the American public. These revenues totaled over \$4 billion in 2019, according to the Congressional Research Service (Congressional Research Service, *Revenues and Disbursements from Oil and Natural Gas Production on Federal Lands*, September 22, 2020). As BLM admits, this rule will result in production moving off federal minerals onto state or private minerals, which will result in less revenue generated from federal leases for the American public. In addition, due to the land ownership pattern in much of Wyoming, it will also eliminate the opportunity to develop and produce oil and gas from the state and private minerals. This will force operators to leave the state of Wyoming, going to states with less federal minerals or to other countries. This will reduce the supply of oil and gas and will increase energy costs for the American public, once again hitting the American public in their pocketbook.

BLM also states that they are required to avoid permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output. BLM is admitting with this statement that this rule results in a lesser economic return, but they are justifying reduced fiscal benefits by claiming an avoidance of environmental impacts. However, this proposed rule will not only have a detrimental impact to fiscal benefits it will also have an overall detrimental impact on the environment.

In this proposed rule, the American public loses twice. They lose fiscally and they lose environmentally. Forcing production off of federal leases can only result in two outcomes. Either oil and gas prices will increase due to elimination of a portion of the supply or the loss in supply will be made up from production in other places. Either scenario results in a negative impact for the American public. The American public will lose the benefits of lease bonuses, royalties, taxes, and jobs when production is forced off of federal leases. The American public will lose by incurring increased prices for fueling their vehicles, heating their homes, purchasing food or other goods, and all other items that they use on a daily basis that increased fossil fuel prices impact. The American public loses by paying higher costs or it loses because of the detrimental environmental impact of shifting production to other areas that do not produce as cleanly and efficiently as the U.S. and incurs further environmental impacts in the transportation of the foreign oil/gas to the U.S. In fact, the Institute for Energy Research (IER) reported on the environmental impact of producing oil and gas outside of the U.S. IER (Kreutzer, David W. PhD & Lambermont, Paige; *The Environmental Quality Index Environmental Quality Weighted Oil and Gas Production*, Institute for Energy Research, February 2023) utilized the Environmental Performance Index produced by Yale University to show that as a matter of environmental protection, replacing U.S. domestic production with foreign supply would be an overwhelmingly negative tradeoff. It is likely that at least a portion of any lost production from federal lands will be replaced by a foreign supply. According to IER, the average barrel of non-U.S. produced oil is produced in a country with an environmental score that is 23.6% lower than that of the U.S.

BLM has stated two main purposes for this rule are to protect the fiscal interests of the American public and to protect the productivity of the land and quality of the environment when leasing. As shown above, based on simple supply and demand it the rule will accomplish neither of these purposes. The rule will actually do the exact opposite, providing less fiscal benefits of production from federal leases and likely increasing energy costs and negative impacts to the environment at the same time. For several reasons, this rule will have a disproportionate effect on the people of Wyoming. The land ownership patterns in Wyoming, high percentage of production from federal lands, and large number of

local Wyoming small business oil and gas operators combined with certain requirements in this rule to create a looming disaster for Wyoming, its small businesses producing oil and gas from federal lands, and local governments.

BLM admits that this rule will force production off of federal lands (pg. 47609) and onto state or private lands. Multiple aspects of this rule contribute to this exodus from federal lands such as BLM deferring even more parcels if they do not feel that they have high potential for production, increased fees and royalties, or the impossibly burdensome bonding requirements. In doing so, BLM is violating its statutory requirements to prevent waste. This is also a violation of Wyoming statutes to prevent waste and to protect correlative rights, which will be enforced by the WOGCC. Due to the land ownership patterns in Wyoming, especially in the Powder River Basin and the checkerboard along the southern tier of the state, the elimination of the ability to produce from federal lands will also eliminate the ability for operators to produce from the adjacent state and private lands. The Powder River Basin in northeast Wyoming is the focus of most of Wyoming's horizontal play, with 15 of the 24 rigs operating in Wyoming (week of 08/21/2023) targeting the Powder River Basin. Likewise, horizontal drilling activity is also becoming common in the checkerboard area of southern Wyoming.

Most of the wells drilled in these areas are two mile lateral horizontal wells, with some laterals now being three miles long. Most of these horizontal wells encounter multiple mineral types in each of the laterals – a mix of federal, private, and/or state minerals. By forcing production off federal lands, many of these horizontal wells will no longer be able to be drilled. If BLM will not lease it will not issue an APD, without which the operator cannot drill through the federal minerals. If those federal minerals are encountered anywhere but the toe of the lateral and the operator cannot drill through the federal minerals it becomes physically impossible to drill and produce from the private and state minerals. In some cases, an operator could drill the well from a different direction and access the private and/or state minerals without needing to cross the federal lease, but this would be rare. Even if the private and state parcels could be accessed it would leave the federal lease stranded, as it would never be drilled in the future which creates waste.

One of the contributing factors to the BLM forcing operators off federal lands is the proposal to direct oil and gas leasing to appropriate locations (pg. 47565). BLM states, "even when parcels sell at or above the minimum bid, they are rarely developed or generate royalties for the Federal Government." Yet, the federal onshore oil and gas program generated over \$4 billion for the Federal Government in 2019 and an average of over \$8 billion the last two years according to Natural Resources Revenue Data. BLM also states over 50% of the current lands under lease (pg. 47564) are producing oil and/or gas. Oil and gas exploration is a risky business and exploratory drilling is just that – exploratory. There are no guarantees, yet some operators are willing to take the risk associated with this type of work in the chance that they gain a big reward in finding economical quantities of oil or gas. Many areas of Wyoming fall into this exploratory category. Even in areas well known for oil and gas production, such as the Powder River Basin, there are formations and areas that are step outs from known productive areas or formations, which are exploratory. These areas can take time to drill and complete and test and learn and revise the process and come back again. Limiting these exploratory leases will harm these operators, the local governments, and the state of Wyoming.

In the BLM referenced GAO report (pg. 47565), it was found that out of the 87 million acres nominated for leasing between 2009 and 2019, BLM only offered 18 million acres for auction, which is only 20 percent of what was nominated. The additional burdens that BLM places on these lands before operators are allowed to begin development are the largest factor in delays to production and a major contributor as to why only 7 percent of leases produce in their primary term. In addition, in its report GAO made 4 recommendations. Not one of the GAO recommendations was for BLM to direct oil and gas leasing towards areas that are more likely to produce.

It is unlikely that BLM employs anyone who is an expert in understanding which leases may be more likely to produce. Industry employs petroleum geologists and engineers whose careers have been spent evaluating prospects for their potential to produce. BLM employs petroleum engineers and geologists who implement regulations, not staff who are experts in evaluating prospects and exploring for oil and gas. BLM will only be able to evaluate whether there is any production nearby to determine if the lease has any potential for oil and gas production. Unfortunately, BLM has also shown that even parcels that are surrounded by existing leased federal parcels will be deferred and remain unleased even though they would have a high probability of producing. There are multiple instances in Wyoming where federal parcels with no unique characteristics that would lead to a deferral are in fact repeatedly deferred, with no available appeals process for review of the deferral decision. These deferrals impact the state and private minerals because they hold up or eliminate the potential for horizontal wells to be drilled until such time that BLM includes them in a lease sale. In addition, horizontal drilling and new completion technologies continue to unlock more acreage for production in areas where conventional/vertical wells would not have been successful. Using proximity to existing production as the only or even the main criteria to lease is inappropriate.

If BLM chooses to evaluate the impact to greenhouse gases (GHG) (pg. 47566) as part of the rule or as part of leasing, it should do so in a holistic manner. As previously mentioned, not leasing a parcel of federal lands will not impact GHG emissions. It can only do two things, drive up the cost of oil and gas and/or move the production of oil and gas to another area. Not leasing a parcel of federal minerals will do nothing to eliminate the demand for oil and gas, which is what would be necessary to reduce the GHG emissions. Moving the production of oil and gas off of the federal parcel would likely increase the environmental impact of the oil and gas production, as previously mentioned related to the IER report. If BLM analyzes the GHG impact of the production from federal lands it should also analyze the GHG impact of producing that same amount of oil and gas from other sources so that a full picture of the actual emissions is understood. In fact, since the elimination of production from federal leases will do nothing to lessen the demand for oil and gas, the GHG emissions either will stay the same or will increase due to the elimination of the federal lease.

BLM is proposing to increase the distance it can require for relocation of proposed operations from 200 to 800 meters, saying that due to horizontal and directional drilling this distance can be accommodated. It should be recognized by BLM that not all drilling is horizontal or directional and that consideration should be given for vertical wells, where the relocation of up to ½ mile may move the well out of the productive area. In general, moving a horizontal or direction well surface location up to 800 meters may not cause irreparable harm to the operator, but it likely will cause harm to the operator of a vertical well and a lesser distance or other methods of mitigating an impact must be considered by BLM so that the vertical well can still be drilled.

BLM is proposing to modify the rule related to compliance issues and when it determines non-compliance to have occurred. BLM should include in any of these changes the opportunity for an appeals process to occur. There is the potential for BLM staff to issue an incident of noncompliance (INC) for issues that may not arise to the level of an INC or may be due to other misunderstandings. To immediately blacklist the operator is not appropriate without some option for an appeal.

BLM is proposing modifying certain aspects of the APD, including the term of the permit. BLM is requesting comments on extending the term to 3 years and not allowing any extensions or keeping the term at 2 years but allowing for a 1-year extension. In evaluating these alternatives, it would be helpful to know factors contributing to time it takes to begin drilling an approved APD. If the factors weight heavily towards delays out of an operator's control, such as delays with NEPA, leasing, lawsuits, or other BLM caused issues, then providing more time for the operator to drill would be warranted. BLM also states there is a loophole in the APD process that allows an operator to spud a well but not fully complete drilling prior to expiration of the APD. This is not a loophole. Once a well is spud, the APD is no longer a permit to drill. It is now a drilled permit and will never expire because it is now a valid, completed permit existing until the well is plugged. If drilling operations pause at a certain point, such as after setting conductor or surface casing, there are processes in place to handle the pause. Shut in or temporary abandon (TA) notices are filed, detailing the operator's plans and seeking authorization to pause the process for a given amount of time. This is now a well, even if at the time it consists only of conductor or surface casing, and the APD associated with the well cannot expire as it is a drilled permit. BLM should not attempt to change decades long practices that match how states also handle these situations only for the intent of stopping drilling activity and yet claiming they are doing so in order to pursue diligent development of leased lands.

BLM proposes adding a diligent development requirement to its leases. While the WOGCC applauds the BLM in seeking to ensure the lessee drills wells or conducts other work towards producing oil and gas from the lease, BLM must consider the significant time certain federal process can take. For example, NEPA analysis commonly takes up to 10 years to complete, not to mention lawsuits following the NEPA process. Consideration of these timeframes must be given by BLM so as not to punish an operator who is willing and able to pursue development, only to be waiting on BLM for NEPA or an APD, on the court system due to lawsuit, or on other delays out of their control.

BLM is proposing to update the royalty rate to 16.67%. The rate is updated based on requirements of the Inflation Reduction Act (IRA), which set the rate for a period of 10 years. Following this timeframe, BLM is proposing the 16.67% royalty rate becomes the minimum. Although the next 10 years of rates are set by IRA, following the expiration of the IRA, BLM should not set this to be the minimum rate. The cost of operating on federal lands is significantly higher than operations on state or private lands. These higher costs are both direct costs, such as significantly higher permit fees and indirect costs, such as significantly longer waiting times for securing permits or other authorization from BLM. Taken together, the higher royalty rates and higher other costs will make it uneconomic to operate on most federal lands. BLM should recognize these facts and not overburden the oil and gas operators with 16.67% royalty rates as the minimum. Mineral owners of private or state lands command higher royalty rates because permit fees from the WOGCC are lower (e.g. \$500 for an APD versus \$10,900 for a BLM APD), and APDs and other permits are approved in a much lesser amount of time. Adding in these other costs of doing business to the increased royalty rate will further act to push operators off of federal lands harming small business, local governments, and the state.

September 22, 2023

The BLM states that the onshore program, historically, has exposed the Federal Government to significant reclamation-related liabilities; lacked adequate cost recovery mechanisms; and encouraged wasteful development practices. The BLM believes increased bond amounts and elimination of nationwide bonding would help ensure that reclamation responsibilities reside primarily with oil and gas lessees and operators and not the American public. Unfortunately, as proposed, the bonding revisions will impact hundreds of small businesses in Wyoming, resulting in lost royalties, taxes, and other revenue to local government and the state, and create orphan wells, not eliminate them.

The BLM discusses how the orphan well issue is expected to cost the agency \$1.4 million to \$3.8 million per year but fails to compare that to the associated revenue for onshore oil and gas which averaged \$8.6 billion in the last two years according to the DOI's Natural Resources Revenue Data. BLM also points to GAO 19-615 stating that bonds were insufficient to plug and reclaim wells when they become orphan. The GAO report states that in the year previous to the report 89 wells had become orphan and also states that BLM managed 96,000 wells at the time. This means only 0.01% of the wells were orphaned in a given year. The current BLM analysis shows that only 15 orphan wells needed plugged in 2021 and there were 24 for 2022 (Economic Analysis, page 34).

As demonstrated throughout WOGCC's comments and as with most of the other aspects of this proposed rule, the fiscal impact to the American public from the bonding portion of this rule is vastly negative and unnecessary. What amounts to a default rate of less than 0.1% is nothing more than an attempt to justify the elimination of small business participation in oil and gas production and a foreshadowing of a bond every well policy designed to end oil and gas production on federal lands. This intention is in strict contradiction with the objective of oil and gas onshore operations regulations (43 CFR 3160.4) to "promote the orderly and efficient exploration, development, and production of oil and gas."

BLM's minimum bond proposal is a one-size fits all approach inappropriately forced onto all operators and all wells, no matter the well depth, condition, status, or other factors which impact the cost to plug the wells. Orphan well plugging costs vary significantly from well to well depending on many factors. Under the existing bonding requirements an operator with a single well that is 1000 feet deep on a single federal lease would post a \$10,000 bond. Under the BLM's proposed rule, the bond would increase to \$150,000. Based on the WOGCC's orphan well program over the last 30 years, this proposed bond amount is far greater than the costs to plug the well and reclaim the location. This is not a hypothetical scenario. As one example, there is an operator in Wyoming, a small business, with five federal leases, with one coalbed methane well on each lease. Under the proposed rule, this operator would be required to increase their bond to a statewide minimum bond of \$500,000. Based on WOGCC historical costs, these five wells would likely cost \$5,000-\$7,000 to plug and reclaim for a total cost to plug all five wells of \$25,000 to \$35,000. The BLM proposed rule requires a minimum bond of \$500,000, overburdening the small business operator with unnecessary bonding. There are many of these examples in Wyoming. One size fits all bonding, which results in bonds significantly in excess of what is necessary to plug and reclaim an operator's wells, is unreasonable. BLM could and should design bonding requirements that are protective for their actual risk without overburdening the operators and that account for the multiple factors that contribute to the costs to plug and reclaim a well.

BLM asserts that orphaned wells could be plugged 240 days sooner if the rule were implemented because the BLM would not have to expend effort finding responsible parties (ES-2). However, BLM's

own guidance contradicts this statement. IM-2021-039 defines an orphaned well as “a well with 1) no legally responsible or liable party to perform permanent well plugging, abandonment and reclamation, and 2) no adequate financial assurance...” Therefore, a well cannot be orphaned until after the BLM has determined there is no responsible party. This would not change under the proposed rule because there are likely differing RTOs and ORHs across a non-responsive operator’s leases. It is unavoidable that the BLM would need to determine which parties may be responsible for which wells and only after that process is complete the assessment of whether the bond forfeited would cover the wells left to plug and reclaim. BLM would generally not be able to plug the wells any faster than the current process and therefore the entire discussion about potential benefits from shortened timing is irrelevant and should not be included in the final analysis.

BLM may argue that the proposed bonding rule would provide for enough bond to cover all wells and may be able to forgo the search for a responsible party in the future. This argument does not hold water either, and was not analyzed in the proposed rule. The economic analysis is based on companies posting minimum bonds for leases and statewide bonds. On page 27 of the Economic Analysis BLM states there are an average of four wells per lease in Wyoming. This means that on average the lease would not be bonded sufficient to cover the cost. The same is true for statewide bonds of that cover approximately five wells. According to the Economic analysis the average operator holds 7.7 leases in Wyoming which translates to approximately 31 wells, far more than the five wells the statewide bond allegedly covers.

BLM failed to consider the capital required by operators to comply with the proposed rule. The BLM made the assertion that surety bonds are easy to acquire and the only cost is 1%-3.5% of the bond value. The WOGCC has significant experience working with operators on bonding. Many operators, particularly small operators, must provide significant collateral to obtain a surety bond, many times 100% of the bond amount. They would then be required to pay the annual fee of 1%-3.5% on top of the collateral. Many operators could not post this amount of capital for bonding in the timeframe proposed in the rule. This puts these operators at risk and would likely result in the wells being prematurely plugged or even orphaned. The BLM’s lack of understanding on the surety bond market is surprising or BLM’s omission of the full cost of securing a surety bond is intentional in order to understate the actual economic impact. Either way, BLM must fully report and analyze the economic impact of bonding on operators.

BLM failed to look at the negative revenue effects of the rule on taxpayers, states, and counties. This rule would cause premature plugging of wells or orphaning of wells that are currently producing. The premature plugging of wells or orphaning of wells will result in lost royalties to BLM, the state, the American public and lost taxes to states and local governments. BLM failed to even discuss this likelihood. WOGCC has determined through publicly available data that the amount of bond required in this proposed rule exceeds the gross annual revenue (assuming prices used by BLM in the RFA less 12.5% BLM royalty and 12.5% severance/ad valorem taxes) for more than 25% of the companies operating on federal lands in Wyoming. Based on the WOGCC’s knowledge of the bonding market, most or all of these operators would be required to provide full or nearly full collateral in order to obtain a surety bond. These small businesses will either prematurely plug the wells or go bankrupt as a direct result of the proposed bond amounts exceeding their gross revenue. In any event, they are likely to cease operations due to the proposed rule. If additional expenses to the operator are considered, such as the direct lease operating expenses, then the percent of operators likely to go out of business due

only to the bonding requirements of this proposed rule reach up to 50%. This does not even consider other expenses such as labor cost. The 2022 production from the wells of only the 25% at risk operators on federal lands represents over \$3 million per year in production related taxes and royalties for the state and local governments. The lost revenue and cost to BLM due to creation of additional orphan wells is a likely outcome that the must be evaluated.

Any discouraging of leasing on federal land affects adjacent state and private lands. The BLM acknowledges the proposed rule will result in a reduction of leasing federal lands, but fails to acknowledge the effect that has on adjacent lands and subsequently the affects to small businesses and local and state government. Most drilling in Wyoming consists of 2 mile long horizontal laterals with some laterals now being 3 miles long. Most of these laterals will encounter a mix of mineral types including federal, private, and/or state. If the federal lands are unavailable for leasing, have leases deferred, or have other delays, this affects all the lands along the path of the horizontal lateral. Unleased, deferred, or federal lands otherwise off-limits to drilling will likely eliminate the ability for the operator to drill the horizontal well, which eliminates the potential for development of the state and private minerals. This reduces or eliminates any value of the state and private minerals and reduces the royalties and taxes collected by state and local government.

The bonding provisions in the rule not only disproportionately affect small businesses it actually targets them. The significant effects of the bonding provisions in the proposed rule nearly exclusively impact small businesses. Larger operators are typically able to secure surety bonds with little to no collateral or will be less impacted by the collateral requirements due to generating more revenue. Based on its own experience and bonding regulations, the WOGCC is knowledgeable about the surety bond market and knows that smaller businesses do not have the ability to access the surety market unless they post collateral at or near 100% of the bond amount. Often this collateral is required to be in cash, tying up a significant portion of a small business's capital. Approximately 36% of Operators bonded with the Commission are using a certificate of deposit (CD), letter of credit (LOC), or cash. BLM is proposing elimination of CDs or LOCs posted to satisfy the bonding requirement, which places another significant burden on the operators, especially those who are small businesses. BLM's reasons for proposing this is that they are difficult to manage or that the banks have a hard time including BLM's requirements. The WOGCC accepts both CDs and LOCs to satisfy bond requirements. The WOGCC generally has no trouble with state requirements being included on the bond instruments, managing these bond instruments, or when necessary, calling these bond instruments when there is reason to forfeit the bond. The WOGCC manages a bonding program for several hundred operators with one staff member, so it is not difficult to implement and manage. The Wyoming state office managing lease or statewide bonding would not have a significantly larger number of operators or bonds than what is managed by the WOGCC. With such significant increases in bond amounts proposed by BLM, there should be more options to post the bonds and not less.

BLM should clarify its process for releasing wells from bonding. As it stands, the bonding mechanism that BLM has set up requires an operator, especially small businesses, to post collateral for the bond, and to save enough capital to plug and reclaim a well. If bond is not released until BLM field staff sign off on final reclamation of the well location, this could tie up all of this capital for several years beyond the plugging of the well. In many areas of Wyoming reclamation takes years to establish. The rule appears to hold the bond until reclamation is considered complete by BLM staff. Therefore, an operator may

spend the capital to plug a well and reclaim the site, but not be able to get the bonds back for years afterward causing the operator to carry double the amount of capital required to plug and reclaim even where the bond matched the cost of plugging and reclamation.

The WOGCC is concerned that small operators may not be aware of this proposed rule, even though it affects them disproportionately. The BLM should have direct mailed the affected small businesses as suggested by Section 609(a)(3) of the Regulatory Flexibility Act because it was definable, reasonable, and likely the only way many companies would find out about the rule. The rule would place at least 25% of operators at risk of going out of business which is a significant economic impact on a substantial number of small businesses. The WOGCC works with over 400 operators across the Wyoming and is aware that the smaller operators are not generally members of industry associations that might alert them to new rules and are often not aware of proposed BLM rule changes. It is clear that this proposed rule will have a larger negative affect on smaller operators. It is reasonable that BLM should provide direct notice to these small businesses to ensure they are provided an opportunity to comment. For most of these companies, the first time they will hear about this rule change is when BLM sends them a demand to increase their minimum bond by a factor of 15. The BLM has all the necessary data to identify how many leases each operator holds and has contact information for the operators. Since BLM already has all the information, it would be a small administrative burden to direct mail each of those operators informing them of the proposed rule and how to submit comments.

The proposed rule disproportionately affects small business and BLM did not consider alternatives as required by RFA 603(c). In reality, BLM is actually targeting small businesses using these bonding rules. The significant effects of the bonding portions of the rule are nearly exclusively on small businesses, particularly the very small businesses. The BLM must consider alternatives to the increased bonding in the proposed rule.

An example of an alternative to increasing the bonding as proposed in this rule is the conservation tax implemented by the WOGCC on wells in Wyoming. The WOGCC imposes a small mill levy on oil and gas sales from wells in Wyoming, which funds the plugging and reclamation of orphan wells for which the costs have exceeded the available bonding. The mill levy is set through the rulemaking process and adjusted to accommodate funding levels required to complete orphan well work in the state. Since this funding is paid on all sales, each operator pays a very small amount so it does not unduly impact each operator. Based on the projections by BLM in this proposed rule of the cost to operate an orphan well program of \$1.4 million to \$3.8 million annually, a similar levy on oil and gas sales from federal lands would so miniscule as to be almost unnoticeable by most operators. Yet, this miniscule levy would remove any risk of having the American public cover the cost of plugging and reclaiming orphan wells. The imposition of a small levy on sales would not have a disproportionate impact on small business as this proposed rule would. If BLM is interested in a solution to the risk of \$1.4 million to \$3.8 million cost to the agency from orphan wells, then it must consider this alternative that protects the BLM, the American public, and the small businesses in the industry.

The rule is not purely administrative in nature and would have direct and indirect environmental effects. Due to the BLM's inadequate economic analysis, the creation of a large number of additional orphan wells was not identified. Given BLM's stated timeline of approximately one year to go through the process to get the well to orphan status and then added time for BLM to get contracts in place and actually plug the well, there is potential for a significant environmental effect that must be analyzed.

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The bonding section refers to issues that are not in the proposed rule. The bonding section of the Categorical Exclusion states that BLM is going to require full plugging and reclamation bond on all wells. The proposed rule language, preamble, and economic analysis all referred to and analyzed only the increase of bonding to the minimums and any increases done in the current bond adequacy review process. The current bond adequacy review considers things like idle wells and operator compliance history, it does not contemplate increases in bonding for simply have less bond than the amount necessary for full plugging and reclamation costs of every well on federal lands. If the intent of BLM is to require full bonding for every federal well, this scenario should be proposed and fully evaluated in this rulemaking process.

Requiring full plugging and reclamation bonding on every federal well in Wyoming would effectively eliminate all legacy oil and gas operations on federal lands in Wyoming. This would create massive amounts waste from premature plugging, untold numbers of orphan wells, and devastation of local economies. The cost to the local and state government and to the American public would be severe.

BLM states that the proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630. BLM claims the proposed rule would have impacts on future leases on Federal land, but would not impact current leases. This is untrue, as the incredibly burdensome bonding requirements of this proposed rule intend to be implemented on all federal leases, existing and future. Many operators, most of whom are small businesses would be forced to prematurely plug their wells or would be forced into bankruptcy by the bonding requirements as proposed and as previously documented in these comments. BLM must complete a full analysis of the takings requirements of Executive Order 12630.

BLM also asserts that the proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. BLM claims the proposed rule would not have a substantial direct effect on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the levels of government. This again is untrue, the proposed rule would have significant direct impacts on the states. As detailed in this comment letter, by limiting future leasing to lands with high likelihood of production BLM is limiting or eliminating the potential for the state to lease its own lands for oil and gas production. Horizontal wells almost always encounter a mix a federal, private, and/or state minerals in the lateral. BLM choosing not to lease lands for no valid reason makes it impossible to drill horizontal wells in these areas. If operators are unable to secure federal leases and federal APDs they will pay little to nothing for a state lease that is rendered undrillable due to BLM decisions. This proposed rule most certainly has direct effects on the states.

Thank you for the opportunity to comment and thank you in advance for your consideration of revisions to the proposed rule as suggested herein. For the reasons stated in these comments, the WOGCC again respectfully requests that this proposed rule be withdrawn.

Sincerely,



Thomas A. Kropatsch
State Oil and Gas Supervisor