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on Indian and Alaska Native Affairs

"Bureau of Land Management's Hydraulic Fracturing Rule's Impacts on Indian Tribal Energy Development"

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Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to discuss the Bureau of Land Management's (BLM) development of hydraulic fracturing rules and their application on Federal, Tribal, and individual Indian Trust lands.

The BLM, an agency of the U.S. Department of the Interior (Department), is responsible for protecting the resources and managing the uses of our nation's public lands, which are located primarily in 12 western states, including Alaska. The BLM administers more land – over 245 million surface acres – than any other Federal agency. The BLM manages approximately 700 million acres of onshore Federal mineral estate throughout the Nation, including the subsurface estate overlain by properties of other Federal agencies such as the Department of Defense and the U.S. Forest Service. The BLM, together with the Bureau of Indian Affairs (BIA), also provides permitting and oversight services under the Indian Mineral Leasing Act of 1938 on approximately 56 million acres of land held in trust by the federal government on behalf of tribes and individual Indian owners. The BLM works closely with surface management agencies, including the BIA and Tribal governments, in the management of the subsurface mineral estate. We are mindful of the agency's responsibility for stewardship of public land resources and the public and Indian trust oil and gas assets that generate substantial revenue for the U.S. Treasury, the states, and Tribal governments and individuals.

Background

The Obama administration is committed to promoting safe, responsible, and environmentally sustainable domestic oil and gas production as part of a broad energy strategy that will protect consumers, human health, and the environment, and reduce our dependence on foreign oil. Secretary Salazar has made clear that as we move toward the new energy frontier, the development of conventional energy resources from BLM-managed lands will continue to play a critical role in meeting the Nation's energy needs and fueling our Nation's economy. In Fiscal Year (FY) 2011, onshore Federal oil and gas royalties exceeded $2.7 billion, approximately half of which were paid directly to states in which the development occurred. In FY 2011, Tribal oil and gas royalties exceeded $400 million with 100% of those revenues paid to the tribes and individual Indians owners of the land on which the development occurred.

The BLM is working diligently to fulfill its part in securing America's energy future. Combined onshore oil production from public and Indian lands has increased every year since 2008. Production of oil from Indian lands has increased by more than 95% since 2008. Production of gas from public and Indian lands has remained nearly stable despite increasing industry interest in development of natural gas on private lands in the eastern United States. In 2011, conventional energy development from public and Indian lands produced 14 percent of the Nation's natural gas, and 6 percent of its domestically-produced oil.

Gas production from shale formations scattered across the United States has grown from a negligible amount just a few years ago to represent a significant share of the total U.S. natural gas production, and this share is expected to increase further in the coming decades. There has also been a significant and growing increase in oil production from shale formations. Significant factors contributing to these increases include technological advances in hydraulic fracturing and horizontal drilling.

One example of this rise in production and advances in technology is dramatically evident on the Fort Berthold Indian Reservation which lies in the heart of the Bakken oil and gas region in North Dakota. At Fort Berthold, applications for permit to drill have increased from zero in 2007 to 175 in 2011. Royalty payments from production from trust minerals have increased from $4.5 million in 2009 to approximately $117 million last year. The BLM works closely with the BIA to help ensure that drilling and oil and gas production activities on Fort Berthold are permitted efficiently and conducted in a safe and responsible manner. BIA completes NEPA compliance, cultural and biological surveys, and development of surface mitigation measures.

Notably, on April 3, 2012, at Fort Berthold, Secretary Salazar unveiled initiatives to expedite safe and responsible leasing and development of domestic energy resources on U.S. public and Indian trust lands. As part of the BLM's ongoing efforts to ensure efficient processing of oil and gas permit applications on both Indian trust and public lands, the agency will implement a new automated tracking system across the Bureau that could reduce the review period for drilling permits by up to two-thirds. The new system will track permit applications through the entire review process, quickly flagging missing or incomplete information, and greatly reducing the back-and-forth between the BLM and industry applicants, which is currently needed to ensure that applications processed by the BLM are complete. This initiative comes as part of the Department's efforts to continually meet increased demands for oil and gas development on public and Indian lands across the country.

Hydraulic Fracturing Technology

Recent technology and operational improvements in extracting hydrocarbon resources, particularly shale gas, have increased oil and gas drilling activities nationally and led to significantly higher natural gas production estimates for the coming decades. Hydraulic Fracturing, or "fracking," is a common technique that has been used in oil and gas production operations for decades. Fracking involves the injection of fluid under high pressure to create or enlarge fractures in the rocks containing oil and gas so that the fluids can flow more freely into the well bore and thus increase production. However, the increasing use of hydraulic fracturing has raised concerns about the potential impacts on water availability and quality, including concerns about the chemical composition of fluids used in fracturing.

The number of wells on BLM-managed public lands and on Indian lands, as well as on private lands, that are stimulated by hydraulic fracturing techniques has increased steadily in recent years as oil and gas producers are developing geologic formations that are less permeable than those drilled in the past. The BLM estimates that approximately 90 percent of the wells drilled on public and Indian lands are stimulated by hydraulic fracturing techniques.

Hydraulic Fracturing Rulemaking

In November 2010, Secretary Salazar hosted a forum, including major stakeholders, on hydraulic fracturing on public and Indian lands to examine best practices to ensure that natural gas on public and Indian lands is developed in a safe and environmentally sustainable manner. Subsequently, the BLM hosted a series of regional public meetings in North Dakota, Arkansas, and Colorado – states that have experienced significant increases in oil and natural gas development on Federal and Indian lands – to discuss the use of hydraulic fracturing on the Nation's public lands.

During the Secretary's forum and the BLM's public meetings, members of the public expressed a strong interest in obtaining more information about hydraulic fracturing operations being conducted on public and Tribal lands. Questions about the composition of the fluids that are being used were highlighted frequently as were concerns about these fluids potentially leaking into aquifers or causing spills on the surface. Additionally, the BLM recognized through review of its rules that existing regulations on well stimulation operations on public and Indian lands (last updated in 1982) needed to be updated to reflect significant technological advances in hydraulic fracturing in recent years and the tremendous increase in its use.

The BLM recognizes that some, but not all, states have recently taken action to address hydraulic fracturing in their own regulations. The BLM's proposed rulemaking is not intended to duplicate various state or any applicable Federal requirements, but rather to provide consistent protection of the important Federal and Indian resource values that may be affected by the use of hydraulic fracturing. Although the proposed rule is currently under OMB review and is subject to an ongoing deliberative interagency review process, the BLM expects to propose a rule with three key provisions:

- Disclosure of the chemicals used in hydraulic fracturing operations, with appropriate protections for trade secrets. The agency is evaluating how best to provide this information to the public and has been in touch with organizations, including the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission, that run the website FracFocus.org.
- Assurance of wellbore integrity. The BLM is looking at wellbore integrity as a means to minimize the risk of fracturing fluids or other contaminants leaking into nearby aquifers.
- Water management requirements that would apply to the fluids that flow back to the surface after hydraulic fracturing has taken place. This is frequently referred to as "flowback."

Tribal Outreach and Next Steps for the Consultation Process

In January 2012, the BLM began initial outreach, communication, and information-sharing with Tribal communities on the proposed rule. The agency conducted a series of meetings in the oil and gas producing regions of the West where there is significant development of Indian oil and gas resources. Nearly 180 Tribal leaders from all Tribes that are currently receiving oil and gas royalties and all Tribes that may have had ancestral surface use were invited to attend these meetings, which were held in Tulsa, Oklahoma; Billings, Montana; Salt Lake City, Utah; and Farmington, New Mexico.

In these initial meetings Tribal representatives were given a draft of the hydraulic fracturing rule to serve as a basis for discussion and substantive dialogue about the hydraulic fracturing rulemaking process. The BLM asked the Tribal leaders for their views on how a hydraulic fracturing rule proposal might affect Indian activities, practices, or beliefs if it were to be applied to particular locations on Indian and public lands. A variety of issues were discussed, including applicability of Tribal laws, validating water sources, Inspection and Enforcement, wellbore integrity, and water management, among others.

The development of this hydraulic fracturing rule will include proactive Tribal consultation under the Department's newly-formalized Tribal Consultation Policy. This policy, announced on December 1, 2011, emphasizes trust, respect and shared responsibility in providing Tribal governments an expanded role in informing Federal policy that impacts Indian lands. Under this policy, consultation is an open, transparent, and deliberative process.

The agency will continue to consult with Tribal leaders throughout the rulemaking process. Responses from Tribal representatives will inform the agency's actions in defining the scope of acceptable hydraulic fracturing rule options.

Conclusion

The BLM will continue to encourage responsible energy development on public and Indian trust lands and ensure a fair return for the use of these resources. Following internal Administration review and continuing Tribal consultations, a draft rule incorporating the feedback received will be released to the public as part of a formal comment period. At that time, the BLM will be pleased to receive detailed feedback from industry, state, local, and Tribal governments, individual citizens and all other interested parties. Consultation with Tribes will continue throughout this process. I am glad to answer any questions you may have.