

**Statement of
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House Natural Resources
Subcommittee on Oversight and Investigations**

Oversight Hearing

***“Preventing Polluters from Getting Government Contracts: Bureau of Land Management’s
Corporate Exclusions Lists”***

July 28, 2022

Thank you for the opportunity to provide testimony on the Bureau of Land Management’s (BLM) suspension, debarment, and disqualifications policies related to mineral leasing.

The Biden Administration has made it a priority to reform the Federal onshore oil and gas program to ensure that it is operating in the best interest of the American people. In one of his first actions, on January 27, 2021, President Biden signed Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*, which directed the Department of the Interior (Department) to review Federal oil and gas permitting and leasing practices. To help inform that review, the Department analyzed studies, some going back decades, of the Federal oil and gas program’s deficiencies, including from the Government Accountability Office (GAO) and the Department’s Office of the Inspector General (OIG). Following this extensive review and after conducting diverse and robust public engagement, the Department released its “Report on the Federal Oil and Gas Leasing Program” (Report) identifying necessary reforms to the fiscal terms, leasing process, and remediation requirements related to the Federal oil and gas programs.

The Department has begun implementing a number of the recommended reforms during the recent BLM oil and gas lease sales and has updated oil and gas leasing policies through the issuance of an Instruction Memorandum (IM): *Oil and Gas Leasing – Land Use Planning and Lease Parcel Reviews* (IM 2021-027). The Department has also announced that it will begin a broader regulatory update that will provide for full public participation and engagement, ensuring a transparent process and a thorough evaluation of the program’s impacts on other BLM-managed resources. Taken together, these reforms ensure that the Federal oil and gas program serves the American public, accounts for the costs of climate change, provides a fair return to taxpayers, discourages speculation, holds operators responsible for remediation, and more fully includes communities and Tribal, State, and local governments in decision-making.

Onshore Oil & Gas Leases

The BLM manages the Federal government’s onshore oil and gas program with the goals of facilitating safe and responsible energy development while providing a fair return for the American taxpayer. The BLM’s land use planning process, through the creation of Resource Management Plans (RMP), provides a standardized procedure for continued analysis of the

appropriate opportunities for multiple use of our public lands, while also ensuring that such development is done in a way that minimizes environmental impacts and considers the public interest. While the RMPs identify appropriate uses of public lands, generally it is industry that nominates lands for leasing in the form of expressions of interest (EOI). Upon receipt of an EOI, the BLM verifies that the EOI contains the required information, reviews the land status to ensure the lands are eligible for leasing per the Mineral Leasing Act and the RMP, and configures the EOI into appropriate lease parcels. The BLM holds competitive lease sales on nominated and eligible lands in accordance with applicable laws and regulations. The BLM's contractor for online lease sales (EnergyNet) determines the eligibility of bidders when they register their account for the sale.

After the competitive sale but before issuing any lease, the BLM reviews the information provided by the winning bidders. This review includes making sure the paperwork is in order and includes receipt of the administrative fees, advanced rental, and the bonus bid. Additionally, the BLM reviews qualifications of the bidder prior to issuing the lease, including a review of the Federal exclusions list in the System for Award Management (SAM.gov) or the Federal Awardee Performance and Integrity Information System (FAPIIS.gov) to verify that the Federal government has not excluded or disqualified the entity or individual. This review is an important step to ensure that the Government does not work with parties who are not "presently responsible" – i.e., those parties that have engaged in criminal or other improper conduct, or demonstrated serious poor performance of such a compelling and serious nature that it would lead one to question their honesty, ethics, or competence.

This process is consistent with the Department's Suspension and Debarment Office policy, *Pre-award Eligibility Screening Requirements* (DOI-AAAP-0039), requiring awarding officials to review the Federal exclusions list before issuing awards. The policy also required the bureaus and offices to develop "step-down" policies and procedures for awarding officials to review the Federal exclusions list for both the entity receiving the award (in BLM's case the oil and gas lease) and the named individuals on the award before selecting a final award recipient. The policy also requires awarding officials to document this review.

OIG Report (2021-CR-007)

On January 20, 2022, the OIG issued a report entitled, "*The Bureau of Land Management Did Not Review the Federal Exclusions List Before Issuing Federal Mineral Leases*" (Report No. 2021-CR-007). The OIG's inspection sought to determine if the BLM reviewed lessees for mineral leases for their presence on any Federal exclusions lists prior to issuing a lease. This inspection reviewed Federal mineral leases the BLM issued from October 1, 2016, through September 30, 2020, and the related processes for issuing the leases.

In the report, the OIG found that BLM leasing staff did not review the Federal exclusions list before issuing 5,168 Federal mineral leases to 762 lessees covering more than 5.1 million acres between October 1, 2016, through September 30, 2020. The OIG also found that the BLM did not have policies and procedures in place to require leasing staff to review the Federal exclusions list before issuing Federal mineral leases.

Additionally, the OIG identified six lessees that potentially matched names on the exclusions list, who were issued 108 leases covering 166,218 acres of Federal land. The OIG attempted to determine if the potential matches from the BLM system were, in fact, those same entities included on the Federal exclusions list, but could not definitively determine if the lessees identified were the same as those entities found on the Federal exclusions list.

Recommendations

The OIG provided four recommendations for the BLM to reduce the risk of issuing Federal mineral leases to entities that are suspended or debarred from doing business with the Federal government. The OIG recommended that the BLM: 1) immediately require leasing staff to review the Federal exclusions list before issuing, transferring, or assigning leases and to document that review in the lease file; 2) develop and implement an oversight mechanism that ensures the BLM completes and documents these reviews; 3) develop and implement policies in compliance with DOI-AAAP-0039; and 4) update its applicable manuals to detail the processes for documenting the review of the Federal exclusions list for all leasing actions.

BLM's implementation of OIG Report Recommendations

The BLM received the OIG's draft report in September 2021, and responded to the OIG in October 2021, concurring with each of the OIG's recommendations. Once the OIG's Final Report was issued in January 2022, the BLM took immediate action to implement the OIG's first three recommendations. On January 28, 2022, the BLM implemented interim guidance, via email, requiring its leasing staff to immediately review the Federal exclusions list before issuing, transferring, or assigning leases and to document that review in the lease file to ensure the entity is not Federally suspended or debarred. The verification process and checklist provided in the interim guidance fully addresses OIG's recommendations to conform with the Department's policy (DOI-AAAP-0039). On July 8, 2022, the BLM also issued an IM, *Guidance on Reviewing the Federal Exclusion List and Verifying Eligibility* (IM-2022-042), restating the required process, checklist, and data entry requirements after updates are made to the Mineral & Lands Records System (MLRS) to document this review.

Finally, the BLM completed a thorough review of the six companies that were called into question in the OIG report for acquiring leases despite potentially being on the Suspension and Debarment list. In BLM's review, the BLM researched all lessees that were awarded leases between the same time period covered by the OIG, as well as leases that were issued between October 2020 through June 2022. The BLM found that none of the lease recipients during this time period were excluded from receiving an onshore oil and gas lease.

Moving Forward

The BLM will resolve OIG's remaining recommendation (#4) as part of its efforts to update its handbooks related to these and other processes. As noted, the BLM is undergoing a rulemaking process to address requirements within E.O. 14008, as announced in the Spring 2021 Unified Agenda. After this rulemaking effort, the BLM will update leasing manuals and handbooks as appropriate to address the review of the Federal exclusions list for issuing, transferring, or assigning leases. The BLM plans to complete implementation of this recommendation in 2024.

With the BLM's updated policy requiring a checklist review and oversight of this review, the BLM believes it now has measures in place to ensure proper review of the Federal exclusions list moving forward. The BLM will utilize MLRS for the tracking and verification of eligibility, which will provide an oversight mechanism for BLM to ensure compliance with our updated policies. Further, the BLM recently held oil and gas lease sales in June 2022 and is in the process of completing these exclusions list reviews for all pending leases prior to the issuance of any new leases. Additionally, the BLM Headquarters will complete an annual oversight review of BLM's state office verification of leasing eligibility for the identified transactions. Finally, the BLM will continue to coordinate reviews with the Department's Suspending and Debarring Official when questions arise, or additional assistance is needed to determine eligibility.

Conclusion

The BLM appreciates the OIG's additional review of the Federal onshore oil and gas leasing process and its recommendations. The BLM remains committed to addressing any deficiencies in the Federal oil and gas program, and ensuring the program serves the best interests of the American people.