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Congress of the United States

U.S. House of Representatives

Committee on Small Business

2361 Rayburn House Office Building
Washington, DC 20515-6315

Memorandum

To: Members, Subcommittee on Investigations, Oversight and Regulations

From: Committee Staff

Date: March 6, 2012

Re: Hearing: "Powering Down: Are Government Regulations Impeding Small Business Energy Producers and Harming Energy Security?"

On Thursday, March 8, 2012 at 10:00 a.m. the Subcommittee on Investigations, Oversight and Regulations of the Committee on Small Business will meet to discuss issues affecting small oil and gas producers operating on federal lands. The hearing will take place in Room 2360 of the Rayburn House Office Building, Washington, DC.

In recent years, a number of small energy producers and their trade associations have identified new regulatory barriers and hurdles to oil and gas development on federal lands. These new requirements limit access, increase costs and generate uncertainty for producers relying on federal lands to extract oil and gas. The hearing will focus on the decision making process used by the United States Department of Interior's (DOI) Bureau of Land Management (BLM). Representatives from small oil and gas producers will testify.

I. Small Oil and Gas Producers

The United States Small Business Administration classifies an oil or gas producer as a small business if it employs 500 or fewer persons.[1] Of the estimated 7,568 firms involved in crude oil and natural gas production, approximately 6,710 are classified by the SBA as small businesses.[2] While there is no federal data on the percentage of domestic oil and gas these small businesses produce, a recent study by the firm IHS Global Insight estimated that onshore[3] independent oil and gas producers account for approximately 65% of domestic natural gas production and 45% of total domestic oil production.[4]

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[1] UNITED STATES SMALL BUSINESS ADMINISTRATION, OFFICE OF ADVOCACY, TABLE OF SMALL BUSINESS SIZE STANDARDS MATCHED TO NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM CODES 3 (2010), *available at* http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf.

[2] UNITED STATES SMALL BUSINESS ADMINISTRATION, OFFICE OF ADVOCACY, U.S. STATIC DATA, U.S. DATA, STATISTICS OF U.S. BUSINESSES, FIRM SIZE DATA (2009), *available at* http://www.sba.gov/advocacy/849/12162 (NAICS Codes 21111,21112).

[3] Given the costs of producing oil and gas on the continental shelf, there are no small offshore producers.

[4] IHS GLOBAL INSIGHT, THE ECONOMIC CONTRIBUTIONS OF ONSHORE INDEPENDENT OIL AND NATURAL GAS PRODUCERS IN THE U.S. ECONOMY, 1 (2010), *available at* http://ipaa.org/news/docs/IHSFinalReport.pdf. The IHS study classifies independent producers as those with upstream activities, i.e. extraction of oil and gas. Vertically-integrated producers, in addition to extraction, also may transport, refine and retail oil and gas products. However, being an independent does not necessarily connote that it is a small oil and gas producer as defined by SBA.

Small oil and gas producers play an important role in energy markets in terms of the total number of firms, the amount of domestic resources they control, their willingness to adopt new technologies, and the risks they assume that do not interest major oil producers. As small businesses, they are early adopters of new technology, such as horizontal drilling and hydraulic fracturing.[5] In turn, these technologies have increased the amounts of recoverable oil and gas from unconventional sources such as shale formations. These unconventional sources are expected to play a growing role in our nation's energy mix, especially as output from existing on-shore conventional fields continues to decline.

For example, the total resource base for natural gas is estimated at 2,170 trillion cubic feet (Tcf), of which more than one-third, or 827 (Tcf), is unconventional shale gas.[6] A great deal of this resource is located on lands owned by the federal government. Approximately 30 billion barrels of oil and 231 (Tcf) of undiscovered technically recoverable natural gas reserves[7] are located on federal lands.[8] Access to these resources, both conventional and unconventional, is important to small businesses given the competitive nature of the oil and gas production business and the geologic dynamics of oil and gas production that requires the acquisition of new reserves.[9]

The next portions of this memorandum will discuss federal land management issues and the challenges these pose to small business energy producers. In particular, it will focus on BLM's oil and gas leasing policies and how these interact with additional requirements regulating oil and gas production on federal lands.

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[5] UNIVERSITY OF TEXAS PETROLEUM EXTENSION SERVICES, FUNDAMENTALS OF PETROLEUM 224 (5th ed. 2011). Conventional fields are those in which the rocks containing oil and gas are porous and permeable enough to allow the oil and gas to flow through the rock and into the wellbore where it is brought to the surface. Unconventional fields generally have insufficient permeability to allow fluid flow and have traditionally not been considered commercial sources of oil or natural gas. However, horizontal drilling (sometimes known as directional drilling) allows companies to drill wells into a broader swath of the field's production zone. Producers combine this drilling technique with hydraulic fracturing, which produces fractures in the rock that artificially increases its permeability, thus allowing oil and gas to flow into the wellbore. *Id.*

[6] DOI, UNITED STATES DEP'T OF AGRICULTURE & U.S. DEP'T OF ENERGY, INVENTORY OF ONSHORE FEDERAL OIL AND NATURAL GAS RESOURCES AND RESTRICTIONS TO THEIR DEVELOPMENT, PHASE III INVENTORY-ONSHORE UNITED STATES viii (2008) (hereinafter "Inventory Report"), *available at* http://www.blm.gov/pgdata/etc/medialib/blm/wo/MINERALS__REALTY__AND_RESOURCE_PROTECTION_/energy/EPCA_Text_PDF.Par.18155.File.dat/Executive%20Summary%20text.pdf.

[7] For an explanation of these terms, please contact the Committee Staff.

[8] This figure represents total resource estimates. According to the Inventory Report, approximately 60% of federal lands are inaccessible for oil and gas drilling, and these lands contain an estimated 61% of oil and 41% of gas reserves. Approximately 23% of lands are accessible for oil and gas production with restrictions, and contain 30% of oil and 49% of gas reserves. The remaining 17% of lands are accessible under standard lease terms and contain approximately 8% of oil and 10% of gas reserves.

[9] Like other businesses, the financial health of an oil and gas production company can often be measured not only on current financial performance, but expectations of future performance. This is where the geological dynamics of oil and gas production comes into play. The production of hydrocarbons from geologic formations typically follows a bell-shaped curve during which production from the field reaches a peak rate and then begins to decline, often referred to as depletion. While the use of enhanced recovery technologies can help coax additional amounts of hydrocarbons from the reservoir, it cannot return it to its peak. Therefore, these firms strive to acquire new reserves to compensate for declining reserves from developed wells and fields. *See* F. VANEK & ALBRIGHT, ENERGY SYSTEM'S ENGINEERING 111 (2008).

II. Federal Land Management in the West: Multiple-Use-Sustained-Yield

The history of federal ownership of land began during the period of the American War of Independence and proceeded through successive acquisitions of lands during the nation's western expansion.[10] Today, significant portions of lands in the western United States are owned by the federal government[11] and these lands contain significant quantities of economically-valuable surface and subsurface resources. Many of the lands were, and still are, of interest to private persons and businesses that wish to access these surface and subsurface resources. In addition, other individuals want access to federal lands that have been unaltered by human activity for the purposes of recreation.

Addressing these two seemingly diametrically opposite goals gave rise to a new resource management principle commonly referred to as multiple-use-sustained-yield. Under this doctrine, the goal of federal land management should be not to favor one activity over another, but to manage the land in a way that maximizes the present and future value of the land as a public good.[12] Generally speaking, these principles mean that no one use is considered to be superior to other proposed uses; that planning decisions should be made on what provides the greatest good to the greatest number of people.

These principles were first applied to forest lands managed by the United States Forest Service as part of the Multiple-Use-Sustained-Yield Act of 1960 (MUSYA).[13] While MUSYA only initially applied to Forest Service lands, the rise of interest in maintaining other lands led to additional efforts by Congress to apply the principles to all federal lands, including those managed by BLM. This was accomplished with passage of the Federal Land Policy and Management Act of 1976 (FLPMA).[14] FLPMA's implementation had and continues to have a significant impact on access to subsurface oil and gas resources on lands controlled by BLM.

III. Oil and Gas Production on Federal Lands

As discussed above, the FLPMA applies a multiple-use-sustained-yield approach to land management. In order to carry out these goals, the law charges BLM with developing land use plans on parcels it controls or proposes to lease.[15] A RMP describes allowable uses, goals for future conditions of the land, and site-specific next steps.[16] Developing a RMP involves multiple steps that include cross-agency coordination,

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[10] A more detailed exegesis on the acquisition and disposal of federal land from the Articles of Confederation in the 1780s to the end of the 20th Century is available from the Committee's Chief Counsel should anyone be interested in this subject.
[11] BUREAU OF LAND MANAGEMENT, PUBLIC LAND STATISTICS, *at* Table 1-4, *available at* http://www.blm.gov/public_land_statistics/pls10/pls10_combined.pdf.
[12] The statutory definition of multiple-use and sustained-yield can be found at 43 U.S.C. §§ 1702 (c), (h) respectively.
[13] 16 U.S.C. §§ 528-31.
[14] 43 U.S.C. §§ 1701-82.
[15] *Id.* at § 1712(a). These plans are denominated as Resource Management Plans (RMPs) by BLM. 43 C.F.R. § 1601.0-5(n).
[16] *Id.*

public input,[17] and the completion of an Environmental Impact Statement (EIS) as required by the National Environmental Policy Act (NEPA).[18]

A. The RMP Process

The development of a RMP is a multistep, interdisciplinary process[19] that begins with BLM field directors identifying what lands are available for what uses. The new RMP itself may be an amendment to an existing RMP document and may be major or minor in scope. Irrespective of the types of amendment, BLM is guided by the precepts of multiple-use-sustained-yield.[20]

BLM field director posts a notice in the Federal Register that it intends to prepare a RMP.[21] The notice identifies the geographic locations of these lands, the issues[22] the RMP should cover -- such as whether the land should be made available for oil and gas drilling, or should be preserved in pristine state -- that will be used as part of the RMP planning criteria.[23] Members of the public are invited to participate in the planning process, and may submit their own list of issues the RMP should address.[24]

When analyzing the issues and developing the RMP, BLM is supposed to consider, among other factors, the types of uses authorized by the FLPMA and other statutes, resource demand forecasts, and the estimated sustained levels of uses the lands can support.[25] The law also requires the RMP team to consider a list of alternative uses, along with an analysis of the effects of these alternatives.[26] These findings are included in a draft RMP which the BLM field director submits to the BLM state director.[27] A NEPA analysis typically accompanies the draft RMP. This analysis will not only include estimates of the plan's potential environmental effects, but also include estimates on possible economic and social outcomes.[28] The findings of the NEPA analysis plays as significant role in determining whether to make lands available for oil and gas drilling and what stipulations should accompany those activities.

Just as in the planning stage, the public is invited to comment on the draft RMP. The state director may approve the plan, select an alternative, or require the field manager to make changes to the plan before granting final approval.[29] If members of the public oppose the state director's decision to finalize the RMP,

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[17] *Id.* at §§ 1610.1-.2.
[18] *Id.* at § 1601.0-6. BLM regulations deem completion of a RMP to be a major federal action significantly affecting the environment. *Id.* Major federal actions affecting the environment require the preparation of an environmental impact statement. 42 U.S.C. § 4332(c).
[19] 43 U.S.C. § 1712(c)(2). The interdisciplinary approach seeks to integrate the consideration of all physical, biological, economic and other sciences issues into the plan. To achieve this goal, the BLM often works in collaboration with other government entities and interested stakeholders in the preparation and development of the RMP.
[20] 43 U.S.C. § 1712(c)(1).
[21] 43 C.F.R. § 1610.2(c).
[22] *Id.* at. § 1610.4-1.
[23] *Id.* at § 1610.4-2.
[24] *Id.* at § 1610.2.
[25] *Id.* at § 1610.4-4(a), (c), (d) respectively.
[26] *Id.* at § 1610.4-5, 4-6 respectively.
[27] *Id.* at § 1610.5-1.
[28] 40 C.F.R. 1508.8.
[29] 43 C.F.R. § 1610.5-1(a).

it is provided a 30-day period to protest and challenge the RMP either administratively to the state director,[30] or through litigation in the courts.

If all pending protests have been properly adjudicated, and no further significant changes to the RMP have been made, the state director approves the plan enters a record of decision, as required by regulations implementing NEPA.[31] At this point, the RMP has been finalized and BLM may begin the next step of making lands available for lease, including those available for oil and gas drilling.

More detailed and site specific land use decisions, such as whether to issue an oil or gas lease, must be consistent with the RMP for the area. This requires the site-specific assessment to which we now turn.

B. Federal Oil and Gas Leases: Site Specific Assessment

The leasing process begins when BLM issues a public "Notice of Competitive Lease Sale" that identifies eligible parcels for bid.[32] Just as before, the public is provided a 30-day period during which it may protest the proposed lease sale to the state director.[33] Like the formulation of the RMP, a decision to make lands available for lease for site specific uses, like oil and gas drilling, can require a NEPA analysis.[34] If the state director determines the protest is without merit, they may dispose of the protest and proceed with the sale, withdraw the proposed sale if it finds merit, or continue with the proposed sale and resolve the issue before a lease is issued.[35]

The lease sale itself is a public auction, with leases sold to the highest bidder, and is regulated separately under the Mineral Leasing Act of 1920 (MLA).[36] The lessee receives the right to develop and produce oil and gas resources within a specified time frame. Companies that successfully obtain a lease pay rent on the parcels until they begin to produce oil and gas, at which time they pay royalties on the oil and gas produced or until the lease expires.

Generally speaking, the MLA requires the Secretary of the Interior to issue an oil or gas lease within 60 days of payment of the bonus bid, which is defined as the amount paid for a lease, not including rents and royalties.[37] However, as will be discussed later in this memorandum, this is rarely the case. One of the primary causes for such delays involves the necessity of examining the environmental impact on the site-specific decision to lease a parcel or parcels for oil or gas extraction. It is to the requirements of NEPA on a site-specific basis that we now turn.

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[30] *Id.* at § 1610.5-2.
[31] 40 C.F.R. § 1505.2.
[32] 43 C.F.R. § 3120.4-1.
[33] GOVERNMENT ACCOUNTABILITY OFFICE, OIL AND GAS DEVELOPMENT, CHALLENGES TO AGENCY DECISIONS AND OPPORTUNITIES FOR BLM TO STANDARDIZE DATA COLLECTION 13 (November 2004) (GAO-05-124) *available at* http://www.gao.gov/assets/250/244900.pdf. If the State Director rules against the protest of the proposed lease sale, the protest parties may appeal to the DOI's Interior Board of Land Appeals, or they may litigate in federal court.
[34] *Pennaco Energy Co. v. United States Dep't of Interior*, 377 F.3d 1147,1151 (10th Cir. 2004).
[35] GOVERNMENT ACCOUNTABILITY OFFICE, ONSHORE OIL AND GAS, BLM'S MANAGEMENT OF PUBLIC PROTESTS TO ITS LEASE SALES NEEDS IMPROVEMENT, 6 (JULY 2010), *available at* http://www.gao.gov/assets/310/308276.pdf.
[36] 30 U.S.C. §§ 221-42.
[37] 30 U.S.C. § 226(b)(1).

C. NEPA and its Effect on Oil and Gas Production

As previously mentioned, oil and gas drilling on federal lands are subject to a variety of separate federal statutes, including NEPA. Section 102 of NEPA requires federal agencies, in this case BLM, to evaluate and disclose the potential environmental effects of their proposed actions, such as making federal lands available for oil and gas drilling.

The NEPA process can be lengthy and complex, depending on the lands in question, proposed activities on the land, and the length and amount of environmental analysis required.[38] NEPA and regulations implementing the statute developed by the Council on Environmental Quality require federal agencies, including BLM, to either prepare an EIS or make a determination that the proposed action will not have a significant effect on the environment.[39] In cases where BLM determines that a proposed lease for oil and gas drilling will not either be a major federal action or have a significant effect on the environment, the agency is authorized to issue a "finding of no significant impact" (FONSI),[40] thus ending the agency's assessment under NEPA.[41]

In addition, an agency may determine that an entire category of their actions will not, either alone or in combination with other activities, have a significant impact on the environment and thus qualify for a categorical exclusion that is exempt from further NEPA analysis.[42] Congress determined that a limited number of oil and gas drilling operations on federal lands should have such categorical exclusions.[43] The categorical exclusions from NEPA set out in the Energy Policy Act of 2005 are quite limited and most site-specific oil and gas leasing decisions still will be subject to the more in-depth analysis of an EIS followed by either the issuance of a FONSI or the commencement of the process for preparing an EIS.[44]

In cases where BLM determines oil and gas drilling could have a significant effect on the environment, it will authorize preparation of an EIS. The EIS is a detailed statement assessing the full scope of both direct and indirect environmental consequences of the proposed leasing action. When preparing an EIS for oil and gas drilling, BLM posts a Notice of Intent to conduct an EIS in the Federal Register and begins to scope[45] what the EIS should cover. The EIS must state the purpose and need for the statement, provide alternatives

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[38] It should be noted that NEPA is a procedural statute that only requires the agency to assess environmental consequences in accordance with its terms and does not mandate a specific decision by the agency. *Stryckers Bay Neighborhood Council v. Karlen*, 444 U.S. 223, 227 (1980).

[39] 40 C.F.R. § 1501.4(c), (e). The Supreme Court has determined that the regulations developed by CEQ should be given deference even though the regulations were developed at the behest of an Executive Order rather than statutory authorization. *See* H. Rep. No. 112-289 (Part 2) 31 n. 23 (2011).

[40] 40 C.F.R. § 1501.4(e).

[41] Nothing would stop opponents of oil and gas drilling to challenge the failure to draft an environmental impact statement in federal court. *See* S. French, *Judicial Review of the Administrative Record in NEPA Litigation*, 81 CAL. L. REV. 929, 947 n.136 (1993).

[42] 40 C.F.R. §§ 1507.3(b)(2), 1508.4.

[43] Energy Policy Act of 2005, Pub. L. No. 109-58 § 390, 119 Stat. 594, 747-48.

[44] GAO, ENERGY POLICY ACT OF 2005: BLM'S USE OF SECTION 390 CATEGORICAL EXCLUSIONS FOR OIL AND GAS DEVELOPMENT 6 (2011) (GAO-11-941-T) (hereinafter "GAO Report") (noting that categorical exclusions used for less than 30 percent of applications to permit to drill used categorical exclusions). Categorical exclusions are almost never used for the basic determination whether to offer a particular area for leasing under a RMP.

[45] 40 C.F.R. § 1508.25.

to the proposed action or explanations of why certain alternatives were not considered, in addition to analyzing potential environmental consequences.[46] BLM also must obtain public input as it prepares the EIS.[47] When these processes have been completed, BLM issues a draft EIS[48] that covers the scope of its findings. Given the amount of detail and data required, the preparation of an EIS can be long and potentially costly process for the federal government. This EIS is in addition to any EIS that was prepared in conjunction with the preparation of the RMP and constitutes a second assessment of the environmental consequences of drilling for oil and gas on land owned by the federal government.

D. Drilling on Federal Lands

Once a company has obtained an oil or gas lease, it must receive approval from BLM before it may begin drilling operations. To obtain a drilling permit, a company must complete and file an Application for Permit to Drill (APD)[49] with BLM. The APD is used to approve drilling and all related activities on land leased by a company including: road building; digging pits to store drilling effluent; placing pipelines; and other production-related materials and activities.[50]

APDs are issued by local BLM field managers and can begin another round of NEPA review.[51] However, not every APD requires a full EIS. As already noted, the Energy Policy Act of 2005 mandated that certain drilling activity be exempt from analysis under NEPA due to categorical exclusions.[52] Despite these categorical exclusions, the issuance of an APD may result in yet a third environmental assessment of oil and gas drilling on federal lands.

While BLM has the authority to impose significant conditions on the lessee's operations that may be no different from stipulations required by a private lessor, BLM is subject to numerous other federal statutes that it must consider in conditioning the lease. For example, a standard lease for operating on federal lands requires that the lessee "conduct operations in a manner that minimizes adverse impacts to land, air, water, to cultural, biological, visual, other resources, and to other land uses and users.[53] Accordingly, BLM can include stipulations such as: no surface occupancy; distance limitations to protect other resources, time limitations on activities to protect watersheds or wildlife habitat; and the use of camouflage to mitigate scenic disruptions.[54]

Just as in the RMP approval process, the public is provided an opportunity to protest a decision to issue an APD for oil and gas exploration and drilling. While current regulations stipulate that BLM is supposed to

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[46] *Id.* at §1502.13-18.
[47] *Id.* at § 1506.6.
[48] *Id.* at §1502.9(a).
[49] 43 C.F.R. § 3162.3-1.
[50] GAO Report at 3.
[51] 43 C.F.R. § 3162.5-1(a).
[52] For details, see GAO Report at 5.
[53] 1 ROCKY MT. MIN. L. FOUND., LAW OF FEDERAL OIL AND GAS LEASES, at § 15.03(c).
[54] *Id.*

render a decision on an APD within 5 days of the close of the public notice requirement, the law allows the agency to delay a decision until some point in the future.[55]

IV. Small Business Concerns

Access to federal lands containing oil and gas deposits are important to the economic health and vitality of small business energy producers. However, recent actions by DOI have limited access to these resources or increased small businesses' costs to produce energy from federal lands or some combination thereof.

A number of small energy producers and associated stakeholders have raised concern over the implementation of Secretary Salazar's Oil and Gas Leasing Reform Plan.[56] In addition to the above mentioned process of developing RMPs for oil and gas drilling, Secretary Salazar's plan would require additional layers of review and public input into site-specific leasing decisions, including the possible creation of a master leasing plan, before parcels are made available for lease. Small producers believe the current RMP process works well, provides ample opportunity for input from concerned stakeholders, and best ensures that land use plans conform to the principles of multiple-use-sustained-yield.[57]

Concerns over the Oil and Gas Leasing Reform Plan are compounded by another decision Secretary Salazar reached that would limit the application of categorical exclusions, including those issued under the Energy Policy Act of 2005.[58] The Secretary's new order will require field offices to conduct a review for extraordinary circumstances,[59] before applying a categorical exclusion to oil and gas drilling, even though the use of categorical exclusions for oil and gas were specifically designed to apply narrowly and in situations in which the environmental effects are minor or well-known.

Other independent decisions by BLM to defer parcels for leasing, canceling proposed leases and instituting new land use policies also have created uncertainty for small business energy producers. Of particular concern is DOI's Wild Lands Policy[60] that would remove multiple-use stipulations from federal lands that contain certain wilderness characteristics. A number of small oil and gas producers question the necessity of this policy and fear that the scope of the order could result in nearly all BLM land being classified as containing wilderness characteristics.[61]

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[55] 43 C.F.R. § 3162.3-1(h)(3).
[56] BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF INTERIOR, OIL AND GAS LEASING REFORM – LAND USE PLANNING AND LEASE PARCEL REVIEWS, INSTRUCTION MEMORANDUM NO. 2010-117, *available at* http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2010/IM_2010-117.html.
[57] Letter from Public Lands Advocacy Coalition to DOI, Comment, Proposed Rule: Reducing Regulatory Burdens under Executive Order 13563, Document ID: DOI-2011-0001-0030 (August 10, 2011) *available at* http://www.regulations.gov/#!documentDetail;D=DOI-2011-0001-0030, (hereinafter "Public Lands Advocacy Coalition").
[58] Secretary Order No. 3100, Energy Policy Act Section 390 Categorical Exclusion Policy Revision (DOI, May 17, 2011).
[59] 43 C.F.R. §§ 46.205(c), 46.215. BLM defines "extraordinary circumstances" occur when an action that would normally be categorically excluded may have a significant environmental effect and require further analysis.
[60] Secretary Order No. 3310, Protecting Wilderness Characteristics on Lands Managed by the Bureau of Land Management (DOI December 22, 2010), *available at* http://www.blm.gov/pgdata/etc/medialib/blm/wo/Communications_Directorate/public_affairs/news_release_attachments.Par.26564.File.dat/sec_order_3310.pdf.
[61] Public Lands Advocacy Coalition at 10.

Small producers have also raised issues with the long and complex EIS process. The alleged need for comprehensive EIS when making land available for an oil or gas lease is compounded by EIS requirements that may be imposed when processing an APD. Between 1994 and 2005, it took on average over three years to complete an EIS. In recent years, however, that length of time has grown to more than six years.[62] Additionally, it takes an average of 206 days to complete an APD, but can take as long as two years.[63] These wait times persist despite a 62% increase in permit fees that BLM is supposed to use to increase the efficiency of the permitting process.[64]

The cumulative effect of these actions has resulted in a precipitous drop in new oil and gas leases on federal lands. In Colorado alone, the number of leases issued fell from 320 in 2008 to only 11 in 2011.[65] Similarly, like the drop in lands available for lease, the number of new APDs issued by BLM in Colorado declined from 765 in 2007 to 509 in 2011,[66] while the number of APDs issued in the State of Wyoming fell from 3,557 to 1,660 during that same time period.

A. Conclusions

It is clear from DOI's own statistics that procedural barriers and guidance for managing federal lands are harming small energy producers, resulting in higher costs and less economic opportunity for them to compete with larger, better capitalized firms that often control reserves on private, as well as federal lands. Delays in making lands available for lease, delays in the processing of APDs, and questionable environmental reviews all add to the problems small producers face.

In addition, government barriers to energy development on federal lands harm the country's energy, economic, and national security. The United States is a net importer of oil and more than half our annual current account trade deficit is attributable to oil imports.[67] Increasing domestic production not only will reduce our trade deficit, it will also directly contribute billions of dollars to the federal treasury through payments of royalties on lands leased and in production. Increased production also will generate jobs thereby reducing unemployment.

One proposal to address the issue of procedural barriers to drilling on federal lands is H.R. 2375, the "Facilitating American Security Through Energy Resources Act." The bill requires BLM to work with

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[62] WESTERN ENERGY ALLIANCE, TOP TEN WAYS THE FEDERAL GOVERNMENT IS PREVENTING ONSHORE OIL AND NATURAL GAS PRODUCTION 3-4 (May 2011), *available at* http://westernenergyalliance.org/wp-content/uploads/2011/06/Western-Energy-Alliance-Prevention-of-Federal-Onshore-Production-Detailed1.pdf. (hereinafter "Western Energy Alliance").

[63] Western Energy Alliance at 2, *supra* note 63.

[64] Interior Department and Further Continuing Appropriations, FY 2010, Pub. L. No. 111-88, 123 Stat. 2904, 2905 (2009).

[65] BUREAU OF LAND MANAGEMENT, U.S. DEPARTMENT OF INTERIOR, STATE LEASING STATISTICS, *available at* http://www.blm.gov/pgdata/etc/medialib/blm/wo/MINERALS_REALTY_AND_RESOURCE_PROTECTION_/energy/oil_gas_statistics/fy_2011.Par.19679.File.dat/chart_2011_03.pdf.

[66] BUREAU OF LAND MANAGEMENT, DOI, OIL AND GAS STATISTICS, *available at* http://www.blm.gov/pgdata/etc/medialib/blm/wo/MINERALS_REALTY_AND_RESOURCE_PROTECTION_/energy/oil_gas_statistics/fy_2011.Par.36361.File.dat/chart_2011_07.pdf. The statute states that the increase funds are supposed to increase BLM's efficiency in processing APDs.

[67] International Trade Administration, United States Department of Commerce, U.S. Exports Fact Sheet December 2011 Export Statistics (February 10, 2012) available at http://trade.gov/press/press-releases/2012/export-factsheet-february2012-021012.pdf.

current leaseholders to annually identify, inventory, and report the 200 non-production lands with APDs pending that have the highest potential for oil and gas development and then requires the Secretary of Interior to issue the APDs within 180 days of issuing its report.