April 14, 2021

SUBMITTED VIA E-MAIL: energyreview@ios.doi.gov

The Honorable Deb Haaland
Secretary of the Interior
1849 C Street
Washington, D.C. 20240

RE: Public Land Solutions Comments to Department of Interior Comprehensive Review of the Federal Onshore Oil and Gas Program

Dear Secretary Haaland:

Public Land Solutions (PLS) is a non-profit organization dedicated to providing comprehensive recreation planning and stakeholder coordination to support effective and sustainable public land solutions. For several years, PLS has been involved at the local, regional and national level during Bureau of Land Management (BLM) rulemaking, land use planning, and permitting proposals related to oil, gas, coal, renewable and potash developments. Our advocacy efforts to protect and enhance recreation assets on public lands has included organizing stakeholder workshops, providing detailed comments and proposed maps during BLM comment periods, providing presentations to local and state government, and communicating with a wide range of interested stakeholders. We greatly value our public lands and benefit directly when they are managed with care and thoughtful consideration regarding how land use decisions affect local outdoor businesses which rely heavily on tourism and outdoor recreation. Public Land Solutions very much supports this overdue review of the federal onshore oil and gas leasing program as many elements of the program are antiquated, inefficient, and damaging to communities around the American West whose economic future depends on healthy landscapes.

I. The Antiquated Federal Onshore Oil and Gas Leasing System Harms Outdoor Recreation Economies and is Overdue for an Update

Life in states with significant amounts of public land has changed dramatically since the passage of the Mineral Leasing Act of 1920. While oil and gas development brought jobs and royalty payments to many rural communities in the 20th century, macroeconomic changes in the energy industry have led a growing number of communities to begin transitioning towards more diverse sources of jobs and revenues. New uses of public lands are bringing new opportunities such as renewable energy, outdoor recreation, and the quality of life that protected landscapes offer. The pandemic is accelerating an existing trend in the "foot loose economy" as more and more businesses, remote workers, and professionals seek opportunities and a high quality of life in places with outdoor access. As a result, investments in recreation assets are bringing improved economic prosperity through growing visitation, new businesses development, and the recruitment of entrepreneurs, professionals and retirees, all seeking access to land in its natural state.

However, the current oil and gas leasing system is undermining this transition and making it more difficult for local elected officials to bring the 21st century economy to their communities. As the recreation economy grows as an economic driver across the country, potential conflicts between the recreation experience and energy development on our federal public lands are increasing. However, there are a variety of tools that can be used—and in many places are already being used—to alleviate these conflicts and optimize public land use. As demand for multiple uses of public lands increases, these policies and tools provide options for land managers and local communities to balance energy development and recreation. But more needs to be done, including key reforms to regulations related to how the federal oil and gas leasing system is conducted.

Poor land use planning decisions can limit the ability of recreation economies to grow, especially when those decisions fail to account for the impacts that industrial activity and energy development can have on recreation resources. A number of policy solutions are available to federal land managers to avoid these conflicts and better support communities that currently depend on resource extraction but who would like to build diversity through outdoor recreation opportunities and related economic benefits. By considering creative measures to balance development with the protection of recreation assets communities can supplement existing oil and gas development with long term planning for recreation infrastructure. Land managers can also better coordinate public input through improved community outreach and workshops that provide more opportunities for synthesizing public input and information related to specific development proposals. State recreation directors, county public land officials, and county sponsored public land committees all increase opportunities for stakeholders to communicate and coordinate with industry and avoid conflicts. Through these efforts, local communities can continue to receive economic benefits from energy development while also building a stable and durable recreation economy. However, this programmatic review of the federal lasing program should also take a hard look at regressive regulations, practices and policies that, among other things, encourage speculation, the abandonment of "orphan wells," the leasing of low potential lands which prevents other more productive multiple uses, and fiscal policies that rob taxpayers of a fair return on the leasing of public land.

A. Ongoing Problems with the Leasing System that Impact Outdoor Recreation

1. Speculative Oil and Gas Leasing of Low Potential Lands Threatens Economic Growth in the American West

Multiple use practices on public lands must be balanced, and the needs of western communities, which are increasingly dependent on outdoor recreation and non-extractive activities for economic growth, need an update of our country's oil and gas leasing laws. It is time to update our oil and gas laws and eliminate oil and gas leasing of public lands with low and no development potential, allowing those areas to better serve nearby communities and residents through the high quality of life that comes with proximity to lands in their natural state.

Currently, 90 percent of the more than 200 million acres of public lands managed by the Bureau of Land Management remain available for leasing. Only about 10 percent of BLM lands are officially protected from leasing via specific conservation designations. The failure to update the Mineral Leasing Act of 1920—and related rules and policies—will lead to more speculative leasing, which casts a growing shadow over nearby public lands and discourages recreation investments. This dynamic will stunt growth and leave communities with increasingly diminished chances for capturing the full benefits of a developing outdoor economy.

To date, less than half of the 26.6 million acres of public lands leased to the oil and gas industry is currently in production—so there are already millions of acres under lease and available now for oil and gas development. Indeed, several thousand approved drilling permits remain unused. In addition, there is a significant opportunity cost to the BLM when it comes to managing these low and no potential leases; many places seeking to improve their recreation assets on BLM lands need recreation staffers and planners to help them execute locally supported plans. Yet, if the BLM is forced to use the bulk of its staff resources to lease low and no potential lands, other multiple uses get left behind, creating a lose/lose situation that could be corrected by updating the way we lease lands across the West.

Such an update to our leasing system could be achieved through congressional action, like the bill *End Speculative Oil & Gas Leasing Act of 2020* which would largely end the leasing of low and no potential lands. An leasing update by the Interior Department could also mean instructing the BLM to fulfill its multiple-use mandate by providing staff and resources that can improve and manage recreation assets to meet the economic development and business recruitment goals of local communities. BLM already has clear authority to prohibit or limit leasing on lands with low or no drilling potential and should consider updating its leasing rules and policies to accomplish this goal.

2. Abandoned and At-Risk Oil and Gas Wells Limit the Potential to Diversify Regional Economies

Another problem with the onshore leasing program is the failure of the Interior Department to require adequate bonding for oil and gas developments, leading to abandoned or at-risk wells that negatively affect other multiple uses of public lands like recreation. Inactive oil and gas wells on federal lands in the western U.S. pose serious threats to wildlife, outdoor recreation, and rural economies. A recent report by Public Land Solutions and the National Wildlife Federation identified 8,050 inactive wells in Colorado, Montana, New Mexico, Utah, and Wyoming that are either orphaned or at risk of being orphaned, and could cost well over $1 billion to clean up. Often these costs are paid by taxpayers after energy companies declare bankruptcy. Also, wells which are unplugged or improperly plugged can leak methane and pollute ground water. Key take-aways from this report include:

- There are currently at least 8,050 at-risk wells on federal lands, including 2,493 that are currently orphaned (meaning the energy company associated with the well has declared bankruptcy). The rest have not been active since 2015.

- At least 97 of these at-risk well sites are within a mile of recreation sites, but many more are close to dispersed recreation locations such as mountain bike trails, climbing crags, and hunting and fishing areas. At least 250 wells are close to population centers.
- More than 5,000 at-risk wells were identified in big game habitat, nearly 400 were in sage grouse habitat, and in Montana 67 wells were within one mile of blue-ribbon trout streams.

Because the report focuses on long-term inactive wells—those that have not produced oil or gas in at least five years—the costs and threats identified are likely just the beginning. There are likely thousands of additional low or non-producing wells on federal lands that could very well become orphaned in the near future; for instance, in New Mexico alone, there are currently over 2,500 wells on federal lands that have not produced in at least one year.

Abandoned, orphaned, and non-producing wells put our public lands, wildlife populations, clean air and drinking water at serious risk. Energy companies should pay adequate bonding rates so that these toxic wells are properly capped and the surrounding lands restored. Abandoned or at-risk oil and gas wells also negatively impact other multiple uses of public land such as outdoor recreation, which is a key building block for many communities looking to evolve from resource extraction and towards year-round economies with diverse economic drivers. The current oil and gas leasing system and the presence of all these orphaned and at-risk wells is undermining this transition and making it more difficult for communities to diversify their economies.

A solution to this problem is the bill introduced this year by Rep. Alan Lowenthal—the *Bonding Reform and Taxpayer Protection Act*—which will ensure that all wells are properly reclaimed and that taxpayers aren't responsible for the costs. Colorado's Senator Michael Bennet also introduced bonding reform legislation during the last Congress, which he may reintroduce during the current session. Similarly, the Department of Interior should also consider bonding reform as part of its overall review of the oil and gas leasing system.

B. Other Common Problems from Oil and Gas Developments that Impact Recreation Resources on Our Public Lands

Successful communities have worked to ensure that the outdoor experiences available near them meet visitor expectations in terms of quality. If there are concerns about too much traffic, the possibility of bad air quality, the degradation of views—to name a few—the recreation "product" or experience is seen to be inferior to that which may be available in another location. Well-managed communities have developed their own brands with regard to the experiences they can offer. If federal land managers do not appropriately balance energy development with the need to preserve these experiences, long-term damage can result making it more challenging for a community to attract either visitors or residents when resource extraction operations have run their course.

A variety of problems can and do result from poorly managing the interface between recreation and resource extraction. These issues require consideration not just with regard to the general effect of energy development on the environment in terms of wildlife, air, soil, and water, but with regard to their specific effect on the outdoor experience and related recreation assets and economy. Some common conflicts between oil and gas development and recreation activity include:

- **Placement and design of industrial infrastructure and necessary access roads.** If access roads cross trails at multiple points, the trail experience can be significantly impacted. In addition, in places like climbing areas, waterfronts, or camping areas where visitors remain in the same place for extensive periods of time, noise, dust, and congestion from nearby road traffic can undermine the outdoor experience.
- **Views of surrounding landscapes** are an important component of any outdoor experience, including those from national parks. Poorly designed infrastructure—such as power lines and pipelines—can extensively degrade iconic views. Poorly planned developments can impact recreation resources not only on BLM-managed project areas, but also on adjacent lands, including private lands, national parks, and other recreation areas managed by local, state, and federal agencies.
- **Safety of visitors** and industry employees must be considered at places where the two are expected to interact. **Noise, smell, air/water quality concerns** from industrial operations can also affect outdoor visitors including from methane leaks/flaring and the potential for oil and gas spills.

II. Solutions and Policy Recommendations

As noted above, competing uses can sometimes diminish the recreation experience. Key legislative and administrative reforms can address the problems outlined above. In addition, there exist several planning tools, best practices, improved technologies, and public engagement strategies that federal land managers and local communities adjacent to federal lands can employ to safeguard recreation resources and support lasting recreation economies.

- **Limit the quantity and scope of competitive sales** and exercise the BLM's broad authority to declare lands ineligible and unavailable for leasing, especially those that have valuable other multiple uses such as recreation.
- **Establish a new mandate for the onshore program** that affirmatively recognizes oil and gas leasing as a discretionary action that should be authorized only when consistent with multiple use and sustained yield principles.
- **Guarantee robust public participation and tribal consultation** during the leasing and permitting process.
- **End the practice of anonymous lease nominations and begin a formal nomination process** allowing BLM to better identify those lands that are suitable for nomination and those that are better suited for other multiple uses. Changing this policy will also avoid inefficient speculative leasing that will expose the identities some of the worst industry actors that regularly abuse the leasing system and fail to comply with environmental protection regulations and bonding requirements.
- **Reform the practice of noncompetitive leasing**, which rarely results in actual oil and gas production and often burdens other uses by limiting land use planning options and discouraging conservation designations and other productive uses such as recreation.
- **Increase royalty rates** to ensure a fair return to taxpayers and discourage speculation. The onshore royalty rate of 12.5% has not changed in over 100 years, and rental rates and

minimum lease bids are also decades-old. Modernizing this fiscal framework—consistent with recent bipartisan legislation proposed by Senators Rosen and Grassley—will modernize this antiquated aspect of the leasing system.

- **Strengthen bonding requirements** to address problems related to inactive and orphaned wells, requiring the industry to be responsible for the millions in clean-up costs now pushed onto taxpayers. Better bonding and fewer abandoned wells will also improve the environmental quality of many communities which will also facilitate economic development for other productive sectors such as outdoor recreation.

The Interior Department should also aggressively **implement effective planning tools** that can help effectively balance energy development and the need to protect and enhance recreation opportunities. Some measures that BLM can use (and has already successfully used) to protect recreational resources include:

- Utilize **master development plans and unit agreements** in areas where a significant amount of new drilling is expected; the BLM can require that operators and lessees coordinate construction of new roads, rigs and other infrastructure to minimize impacts to recreation resources and the broader landscape. Where oil and gas operators are accessing a common reservoir of minerals, BLM can require, or operators can voluntarily agree, to "unitize" their leases and reduce the amount of wells and other infrastructure required.
- In recreational areas open to energy development, BLM should require **development density limits for** well pads, production facilities, pipelines and utilities to protect recreational uses and experiences.
- Require **phased leasing** and developments to prioritize new leasing and energy development authorizations on lands with industry interest and high potential for successful energy development but a low level of other multiple uses such as recreation.

The Interior Department should also require **best practices and improved technologies** after the planning stage when development proposals are made to limit impacts to nearby recreational resources. These best management practices, which can and should be evaluated at the development stage given BLM's broad authority and obligation to manage for outdoor recreation and other multiple uses, are all techniques that allow for smaller surface disturbance and less pollution. A range of options is available to federal land managers and oil and gas developers to minimize their impacts on local communities and other public land uses, including:

- **Alternatives to pits** used to store hydraulic fracturing fluids, produced water, and other drilling materials, containment tanks or closed loop drilling systems.
- **Directional drilling** to minimize surface occupancy and consolidate drill rigs and pumps as a means of limiting surface impacts.
- Technologies that **minimize methane leaking and flaring** to prevent wasteful, unnecessary and harmful emissions, and reduce light pollution.
- Other **strategies to limit air, noise, and water pollution, and to limit visual impacts**.
- **Engaging the public and key stakeholders** early and often in planning for energy development to optimize multiple land uses and foresee and address potential conflicts with energy development. BLM should prioritize **community workshops** bringing together a wide range of stakeholders to discuss proposed plans for local energy developments.

- **Support state recreation directors**, who lead projects related to economic development in their states, can coordinate with state energy departments and better incorporate the recreation economy needs of their communities.

III. Conclusion

The economic and quality of life benefits that recreation brings to communities across the country are growing with each year. The recreation economy boasts over $887 billion in consumer spending and many communities are choosing to invest in recreation assets as a way to diversify their local economies. However, while federal law requires that land agencies provide equal opportunities for multiple uses of public lands—including recreation—energy development often dominates land use planning and can negatively impact recreation experiences and limit associated economic and health benefits. Nonetheless, many of the common problems brought by energy developments on recreation assets and experiences can be ameliorated through proven approaches such as smart from the start landscape level planning, the implementation of best practices, improved technologies, and better communication among stakeholders. Still, regulatory reform for the system as a whole is necessary to truly comply with the Interior Department's multiple use mandate and to maximize the potential for communities across the West to diversify their local economies.

This review of the federal onshore oil and gas leasing program is once-in-a-generation opportunity for the Interior Department to address all the problems outlined in this letter, and ensure conditions are optimized for communities across the country seeking to diversify away from a boom-and-bust oil and gas focused economy. The Interior Department, local land managers, and community leaders can utilize the regulatory and policy reform recommendations outlined in this letter to support appropriate energy production and meet the economic and quality of life goals of local communities.

Sincerely,

Jason Keith
Managing Director
Public Land Solutions