



February 24, 2023

The Honorable Deb Haaland  
Secretary, Department of the Interior  
1849 C Street, N.W.  
Washington, DC 20240

**Re: Need for Interior Department Rule to Address Longstanding Problems with the Onshore Oil and Gas Leasing Program**

Secretary Haaland:

Public Land Solutions (PLS) and Outdoor Alliance (OA) appreciate the Bureau of Land Management's (BLM) ongoing work to reform the oil and gas leasing program and protect recreation values while also addressing conservation and fiscal concerns. We welcome the reforms contained in the Inflation Reduction Act (IRA) and the guidance documents issued by the BLM last November,<sup>1</sup> in particular the use of specific filtering criteria to avoid oil and gas leasing conflicts with outdoor recreation. To give these reforms durability and address additional concerns, we ask the Department of the Interior (DOI) to pursue a comprehensive rule, including to making recreation-specific guidance permanent. Additionally, given the "tethering" provisions of the Infrastructure Reduction Act (IRA)<sup>2</sup> that tie federal wind and solar development to a specific level of oil and gas leasing on public lands for the next 9 years, it is imperative that DOI pursue comprehensive rulemaking to meet the administration's commitments to address the climate crisis and implement the recommendations in the Department of Interior's *Report on the Federal Oil and Gas Leasing Program* (DOI Report) released on November 26, 2021.<sup>3</sup>

**Public Land Solutions**

Public Land Solutions is a non-profit organization dedicated to providing comprehensive recreation planning and stakeholder coordination to support effective and sustainable public land solutions. We have been involved at the local, regional, and national level during BLM planning and permitting proposals related to oil and gas leasing; however, our primary focus is the protection and enhancement of recreation assets and opportunities to develop durable and robust recreation economies. Our advocacy efforts to protect and enhance recreation assets on public lands include organizing stakeholder workshops, providing detailed comments and proposed maps during BLM comment periods, delivering presentations to local and state governments, and communicating with a wide range of interested stakeholders.

**Outdoor Alliance**

Outdoor Alliance is a coalition of ten member-based organizations representing the human powered outdoor recreation community. The coalition includes Access Fund, American Canoe Association, American Whitewater, International Mountain Bicycling Association, Winter

Wildlands Alliance, The Mountaineers, the American Alpine Club, the Mazamas, Colorado Mountain Club, and Surfrider Foundation and represents the interests of the millions of Americans who climb, paddle, mountain bike, backcountry ski and snowshoe, and enjoy coastal recreation on our nation’s public lands, waters, and snowscapes.

As recreation advocates, PLS and OA support durable and effective rules to mitigate potential impacts from future ongoing lease sales on specific recreation assets and other important values that could be detrimental to recreation opportunities and the potential for local communities to invest in a recreation economy.

### **BLM Instruction Memoranda Providing Guidance on Oil and Gas Leasing**

Public Land Solutions and Outdoor Alliance welcome the BLM’s work in issuing instruction memoranda providing guidance for both the 2021 DOI *Report on the Federal Oil and Gas Leasing Program*<sup>4</sup> (DOI Report), as well as the specific direction found in the IRA. In particular, we greatly appreciate the inclusion of recreation values in parcel evaluation criteria, the reinstatement of increased public participation opportunities, and reforms that will limit oil and gas speculation on public land, especially regarding lands with high recreation and conservation values.

In particular, we appreciate the guidance found in IM 2023-007—“Evaluating Competitive Oil and Gas Lease Sale Parcels for Future Lease Sales”—which provides direction for the evaluation of nominated lease parcels and the selection of which parcels to be offered in oil and gas lease sales. This deferral/filtering criteria was developed in response to the recommendation made in the DOI Report on the federal oil and gas leasing program that, “the BLM should carefully consider what lands make the most sense to lease in terms of expected yields of oil and gas, prospects of earning a fair return for U.S. taxpayers, and conflicts with other uses.”<sup>5</sup> Instruction Memo 2023-007 then directs the BLM to evaluate parcels by filtering each specific expression of interest (EOI) through a set of criteria including proximity to existing oil and gas development, the presence of important fish and wildlife habitats or connectivity areas, the presence of historic properties, sacred sites, or other high value cultural resources, development potential (with preference for lands with high potential for development), and *the presence of recreation and other important uses or resources*.<sup>6</sup>

Instruction memo 2023-007 goes on to direct the BLM that after the conclusion of the scoping period but before issuing the draft National Environmental Policy Act (NEPA) document for the lease sale, the BLM office(s) will apply these criteria and assign a preference value of ‘high’ or ‘low’ to EOI parcels. The BLM will generally conduct environmental analysis for lease parcels with a high preference value first for potential inclusion in a lease sale and **will defer lease parcels with a low preference value**.<sup>7</sup>

PLS and OA believe that the diligent use of this specific filtering criteria—which is similar to the criteria DOI implemented (and we supported<sup>8</sup>) for the June 2022 lease sales in Utah that included an EA with a Recreation Resources Preservation Alternative—could effectively avoid leasing conflicts with outdoor recreation. This is an important and necessary reform in the federal leasing process—which should be formalized in a rulemaking—that will limit negative impacts

to recreation experiences and economies, while also reducing the “burden and expense [that] falls on the BLM to process those parcels consuming BLM staff resources that might otherwise be used for the management of other valuable multiple uses such as outdoor recreation.”<sup>9</sup>

PLS and OA ask BLM, to the extent possible, to apply the filtering criteria to the EOIs as a preliminary screen at the outset of the scoping phase during the leasing process. Additionally, the guidance is currently not specific as to what factors a BLM office should base the “presence of recreation” on—that is, BLM should clarify the data sources it is relying on to determine the presence of recreation, as many outdated resource management plans are incomplete with respect to recreation inventories. We suggest that the determination be based on best available information, including information submitted by the public.

During BLM’s December 16, 2022 “virtual information forum”<sup>10</sup> explaining the recent oil and gas leasing instruction memos, BLM staff stated that any parcel found to overlap or conflict with any of the evaluation criteria (such as recreation) would be designated as having “low preference” for leasing. However, IM 2023-007 states that parcels with “low preference” may still be offered for leasing, and therefore retains ambiguity that may continue the existing dynamic whereby important values such as recreation will come in conflict with future leases.

The screening and deferral criteria should, at a minimum, consider whether a nominated lease parcel overlaps land with recreational resources and ensure that the parcel proposed for lease as well as surrounding lands have been recently inventoried for recreational resources and that appropriate outreach and consultation with regional recreation advocates and interest groups has taken place. PLS, OA, and local outdoor recreation groups welcome the opportunity to share information with BLM to support this analysis. OA possesses likely the most comprehensive data set of outdoor recreation assets nationwide, and we are interested to continue actively exploring opportunities to make this data available to BLM.

Any parcels overlapping lands where impacts would be in direct conflict with the recreation experience, cause visual impairment to the landscape, or cause other impairments such as access conflicts, should not be available for a lease sale or should be deferred from leasing. When evaluating a nominated lease parcel that overlaps land in proximity to any recreation resource, BLM should consider the impact of leasing on recreation sites, the impact of leasing in an area where development activities would impact the views of surrounding landscapes, socioeconomic impacts to regional recreation economies, and the impact of leasing in an area where development would put the safety of visitors at risk. BLM must also ensure opportunities for state agencies, county public land officials, stakeholder groups, and the public to provide input on recreation assets.

PLS and OA also appreciate new guidance found in IM 2023-008—“Impacts of the Inflation Reduction Act to the Oil and Natural Gas Leasing Program”—which will limit oil and gas speculation at areas with high recreation value by implementing IRA provisions that reform the leasing process regarding EOIs by no longer issuing noncompetitive leases or accepting noncompetitive offers. We also support the guidance in IM 2023-008 that requires all competitive leases issued after the enactment of the IRA to impose a 16.67% royalty rate and rental rate of \$3/acre for the first two years, \$5/acre for years 3-8, and \$15/acre for a term of 9

years or more. Moreover, leases will now require a minimum bonus bid of \$10/acre. We also appreciate IM 2023-009—“Discretion to Grant Oil and Gas Lease Reinstatements”—which provides guidance for exercising discretion when processing reinstatements in order to verify that reinstating a terminated lease is in the public interest. Reinstating leases on public lands with recreation resources is clearly not in the public interest. All of these new requirements will limit speculators who have little to lose bidding on and locking up parcels of lands that may otherwise have other values such as recreation and conservation.

PLS and OA also strongly support the increased/reinstated public participation opportunities directed by IM 2023-010—“Oil and Gas Leasing – Land Use Planning and Lease Parcel Reviews” which supersedes a previous instruction memo (IM 2021-027, “Oil and Gas Leasing – Land Use Planning and Lease Parcel Review”) regarding public participation. BLM is now required to provide a minimum 30-day scoping period, a minimum 30-day NEPA document review/comment period, and a 30-day protest period. Public participation on public land use decisions is vital to ensure that the public interest is being served and that the BLM is engaged in informed decision making. Over the last several years, recreation advocates have highlighted leasing conflicts with recreation assets—often at recreation locations that the BLM was unaware of—resulting in eventual lease parcel deferrals. This was made significantly more challenging because of inadequate public participation opportunities.<sup>11</sup>

### **Inflation Reduction Act**

We appreciate provisions of the IRA that codified many long-overdue and necessary reforms to the federal onshore oil and gas leasing system. These include updates to nominating fees, raising minimum competitive bids, royalties, and rental rates. These changes bring rates closer to what operators pay for state and private land leases and development and will reduce rampant speculation. We applaud Congress and the administration for taking this significant action, and we look forward to the BLM promulgating rules to implement the reforms in the IRA to make durable the guidance found in the November instruction memoranda.

Given that the IRA also requires the Department of the Interior to offer the lesser of either 2 million acres or 50 percent of the acreage nominated for oil and gas leasing on public lands each year for the next 9 years in order to issue rights-of-way for wind and solar development, we have significant concerns that this large volume of ongoing leases will continue to have significant impacts on public lands and waters, the ongoing climate crisis, recreation opportunities, and the brands of public land communities across the country seeking to diversify by developing outdoor recreation economies.<sup>12</sup> BLM has discretion over if and when to hold lease sales under the Mineral Leasing Act, Federal Land Policy and Management Act, and related caselaw, and the IRA does not change this level of discretion and authority. Therefore, we urge the BLM to exercise its authority and promulgate a comprehensive rule addressing future leasing.

### **The Need for Broader Mineral Leasing Reforms**

Recent leasing proposals in Wyoming and New Mexico—while an improvement due to the reforms in the Inflation Reduction Act—nonetheless exemplify much of what is still broken in the federal oil and gas leasing system and do not maintain an appropriate balance among the

principal uses of public lands. Inappropriate leasing causes impacts to outdoor recreation, limiting opportunities for recreation to benefit regional economic development. Studies show that recreational visits decline at locations with oil and gas developments, and that poorly sited developments harm water quality and quantity and fragment important wildlife habitat.<sup>13</sup> Current leasing practices also fail to require adequate bonding, threatening to worsen the existing orphaned well crisis that puts recreation resources and conservation values at continued risk of oil and gas infrastructure even after development activities conclude. The BLM must take a hard look at how ongoing leasing negatively affects other important multiple uses of public lands, such as outdoor recreation, as well as cultural and natural resource conservation and wildlife management.

Because BLM will continue to hold lease sales—even before initiating a rulemaking for the federal oil and gas program—it is critical that the agency prioritize the use of the screening criteria found in IM 2023-007 to determine whether any nominated lands might be available for inclusion in a lease sale at all; and, if so, BLM should then deploy state- or site-specific criteria in determining whether to defer lands from leasing. The need for BLM to utilize nationwide and state-specific leasing screens is grounded in BLM’s obligations “to prevent unnecessary or undue degradation of the lands” under FLPMA, and to promote “reasonable diligence” in developing leases, to prevent “undue waste,” and to safeguard “the public welfare” under the MLA.

The expectation of future lease sales provides an opportunity for BLM to modernize its leasing policies and protect key landscapes that are highly valuable for outdoor recreation pursuits. As noted above, we ask BLM to update its leasing regulations to include the institutionalization of a “Recreation Resource Preservation Alternative” in all future lease proposals affecting BLM lands anywhere an oil and gas lease sale is offered in proximity to any recreation resource. Such a standardized recreation protection alternative is consistent with the BLM’s multiple use mandate and the recommendations in the 2021 DOI Report.<sup>14</sup>

**Additional reforms** that should be addressed in a DOI Rulemaking include:

- Bonding reform—which is not included in the IRA. BLM/DOI should increase federal bonding rates to a level that fully covers potential reclamation costs so that oil and gas companies, and not taxpayers, are held responsible for plugging and reclaiming wells drilled on public lands.
- Speculative leasing—while the IRA’s elimination of noncompetitive leasing was an important step towards curbing wasteful leasing practices, more must be done to prevent harmful oil and gas speculation from threatening other valuable uses of our public lands such as recreation. DOI should take action to address the speculative practice of leasing lands with little to no development potential to ensure that those lands can be protected and managed for the recreation and conservation values they offer.
- In order for the BLM to issue rights-of-way for wind and solar projects, the IRA mandates that DOI offer 2 million acres of public lands (and 60 million acres of offshore waters) for oil and gas leasing and development each year (or, if less, at least half the acreage for which expressions of interest have been submitted from potential bidders). Many questions remain related to this requirement and BLM should clarify how it is approaching this requirement

(i.e., the lesser of 2 million acres or 50% of EOIs). For example, it is unclear when a year starts/ends for the tolling of requirements.

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Public Land Solutions and Outdoor Alliance are grateful for BLM’s efforts in producing the guidance found in last November’s instruction memoranda. We ask the BLM to conduct a comprehensive rulemaking incorporating the recommendations from the 2021 DOI Report, the reforms codified in the IRA, and the guidance issued in the recent instruction memoranda. We believe these steps will help mitigate impacts from ongoing lease sales on recreation assets and other valuable resources. Ongoing leases will nonetheless cause broader problems beyond the site-specific conflicts, such as exacerbating the climate crisis, intensifying wildlife habitat fragmentation, and escalating water quality concerns. Therefore, we support a durable BLM rulemaking to address the specific issues note herein as well as to comply with DOI’s own recommendations and the IRA. As DOI has acknowledged: “[it] is time for the Interior Department to take steps to better manage our public lands” because the “federal oil and gas program is not serving the American public well.”<sup>15</sup>

Best regards,



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<sup>1</sup> See <https://www.blm.gov/policy/im-2023-010>

<sup>2</sup> Under this provision, for the next decade after the new law takes effect, no right of way could be granted for wind or solar energy development on federal lands unless a quarterly lease sale is held that results in issuance of an oil and gas lease, if any acceptable bids have been received, within the 120 days prior to the proposed wind or solar energy right of way being issued. In addition, at least 2 million acres of federal lands (or, if less, at least half the acreage for which expressions of interest have been submitted from potential bidders) must have been offered for oil and gas leases in the year before each proposed wind or solar right of way is issued.

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<sup>3</sup> See *Interior Department Report Finds Significant Shortcomings in Oil and Gas Leasing Programs*, at <https://www.doi.gov/pressreleases/interior-department-report-finds-significant-shortcomings-oil-and-gas-leasing-programs>

<sup>4</sup> See Report on the Federal Oil and Gas Leasing Program, Prepared in Response to Executive Order 14008, U.S. Department of the Interior, November 2021, found at <https://www.doi.gov/sites/doi.gov/files/report-on-the-federal-oil-and-gas-leasing-program-doi-eo-14008.pdf>.

<sup>5</sup> DOI Report at 12.

<sup>6</sup> See IM 2023-007, found at <https://www.blm.gov/policy/im-2023-007>.

<sup>7</sup> See IM 2023-007, found at <https://www.blm.gov/policy/im-2023-007>.

<sup>8</sup> See Public Land Solutions and Outdoor Alliance Comments to BLM Utah 2022 1st Quarter Competitive Oil and Gas Lease Sale (DOI-BLM-UT-0000-2021-0007-EA), found at <http://977.885.myftpupload.com/wp-content/uploads/2022/01/UT-BLM-Q1-2022-lease-sale-PLS-OA-EA-comments-120621a.pdf>.

<sup>9</sup> See DOI Report at pages 12-13.

<sup>10</sup> See <https://www.blm.gov/press-release/blm-hold-virtual-information-forum-recently-issued-oil-and-gas-leasing-policy>.

<sup>11</sup> See *Best Practices for Balancing Recreation and Energy Development on Our Public Lands*, Public Land Solutions, found at [https://publiclandsolutions.org/wp-content/uploads/2017/04/PLS\\_Balancing-Rec-and-Energy-Report-web.pdf](https://publiclandsolutions.org/wp-content/uploads/2017/04/PLS_Balancing-Rec-and-Energy-Report-web.pdf).

<sup>12</sup> A fundamental principle of the Federal Land Policy and Management Act (FLPMA) is that outdoor recreation is one of the “major” uses of public lands, alongside grazing, energy development, fish and wildlife, rights-of-way, and timber production. In addition, the Multiple Use Sustained Yield Act (MUSY) mandates that public resources are managed “so that they are utilized in the combination that will best meet the needs of the American people,” and that renewable resources shall be managed in a manner that avoids “impairment of the productivity of the land.” See 16 U.S.C. § 531(a).

<sup>13</sup> See *Inactive Oil and Gas Wells on Federal Lands and Minerals: Potential Costs and Conflicts*, Western EcoSystems Technology, Inc., found at <https://www.nwf.org/Latest-News/Press-Releases/2021/03-17-21-Inactive-Oil-and-Gas-Wells-Report>

<sup>14</sup> *Id.* at page 4-5.

<sup>15</sup> See DOI Press Release, *Interior Department Outlines Next Steps in Fossil Fuels Program Review*, at <https://www.doi.gov/pressreleases/interior-department-outlines-next-steps-fossil-fuels-program-review>.