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Before the
House Natural Resources Committee
Subcommittee on Energy and Mineral Resources
United States House of Representatives
On
H.R. 4293, Natural Gas Gathering Enhancement Act and
H.R. 1587, Energy Infrastructure Improvement Act
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Thank you for the opportunity to testify on behalf of the Department of the Interior (Department) on H.R. 4293 and H.R. 1587. H.R. 4293 would categorically exclude from environmental review under the National Environmental Policy Act (NEPA) the permitting of natural gas gathering lines, and would establish deadlines for such authorizations on Federal and Indian lands. The Department strongly opposes H.R. 4293, which would prohibit the BLM from engaging in valuable public participation and analysis under NEPA. The NEPA process is invaluable to sound public land management, providing a formal opportunity for public engagement, consideration of environmental impacts, and identification of unknown or unforeseen issues. Both the Department of Interior and the Department of Agriculture have capabilities to effectively and efficiently evaluate and process pipe line applications including the use of categorical exclusions where relevant criteria apply. Both Departments also appreciate the need to capture natural gas and are actively seeking means to be responsive while protecting public lands.

The Department also opposes H.R. 1587 which contains provisions which are redundant or conflict with existing Mineral Leasing Act (MLA) authority regarding granting pipeline rights-of-way (ROW) through Federal lands, and strongly opposes the bill's provisions that would authorize the Secretary to issue a permit for oil and gas pipelines on Department-administered lands, which would now include National Park Service (NPS) lands.

Background

The Department of the Interior administers a wide range of lands and resources that includes wilderness areas, lands held in trust for Native Americans, our National Park System, our National Wildlife Refuge System, and our National System of Public Lands. The Bureau of Land Management (BLM) 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 over 245 million surface acres and approximately 700 million acres of onshore subsurface mineral estate throughout the Nation. 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 plays an important role in ensuring safe and effective management of mineral resources on Federal and Indian lands. The BLM works closely with surface management agencies, including the BIA and Tribal governments, in the management of the subsurface mineral estate. While the BLM cooperates with its Federal partners to provide consistent and responsible oil and gas management, the BLM alone is delegated the responsibility of managing public and Indian Trust minerals.

The Mineral Leasing Act of 1920 establishes the statutory framework to promote the exploration and development of oil and natural gas from the Federal onshore mineral estate. Secretary of the Interior Sally Jewell has emphasized that, as the Nation moves toward the new energy frontier, the development of conventional energy resources from BLM-managed public lands will continue to play a critical role in meeting the Nation's energy needs. Facilitating the safe, responsible, and efficient development of these domestic oil and gas resources is one of the BLM's many responsibilities and part of the Administration's broad energy strategy, outlined in the President's *Blueprint for a Secure Energy Future*. Environmentally responsible development of these resources will help protect consumers and reduce our Nation's reliance on oil imports, while protecting our federal lands and the environment. As part of this effort, the Department is working with various agencies in support of Executive Order 13604 to improve the performance of Federal permitting and review of infrastructure projects by increasing transparency, predictability, accountability, and continuous improvement of routine infrastructure permitting and reviews.

Oil production from Federal onshore lands is at its highest level in over a decade, with onshore production about 35 percent above 2008 levels according to the most current available data. The amount of producing Federal acreage continues to increase, and grew by over 300,000 acres from 2011 to 2013. The total number of well bores on Federal lands has increased by over 3,400 wells during this same period to nearly 94,000 total wells.

Well-paying jobs are often associated with oil and gas exploration and development, and provide crucial revenues and economic activity in many communities. Royalties from onshore public land oil and gas development were nearly \$3 billion in Fiscal Year 2013. Approximately half of that total (\$1.4 billion) was paid directly to the states in which the development occurred and is used to fund important state priorities. Over \$930 million in mineral revenues was disbursed to American Indian tribes from production on Indian lands – an increase of more than \$200 million over FY 2012 disbursements.

Fundamental to all of the BLM's management actions – including authorization of oil and gas exploration and development – is the agency's land use planning and NEPA processes. These open, public processes are the vehicle by which proposals for managing particular resources are made known to the public in advance of taking action. The BLM is committed to providing the environmental review and public involvement opportunities required by NEPA for proposals to use BLM-managed lands. In addition, as required under the Federal Land Policy and Management Act (FLPMA), the BLM strives to achieve a balance between oil and gas production and development of other natural resources and protection of the environment and cultural resources. The land-use planning and NEPA processes are vital tools used to achieve this statutory mandate.

Oil & Gas Pipelines

As authorized by the Mineral Leasing Act (MLA, Section 28), the BLM issues ROW grants for oil and natural gas gathering, distribution, and transmission pipelines and related facilities. The BLM may grant MLA ROWs on any public land, or on land administered by two or more Federal agencies, except land in the National Park System or land held in trust for Indian tribes. Oil and gas production is now outpacing pipeline capacity and creating bottlenecks in some locations, putting a strain on America's pipeline infrastructure.

Since 2009, the BLM has participated in the approval of seven major pipeline expansion projects totaling nearly 1,750 miles of new oil and gas pipeline with nearly 750 of those miles crossing Federal lands. In the next 18 months, the BLM is expected to complete review and disposition of three more major pipeline projects totaling nearly 500 hundred additional miles with nearly 250 of those miles across Federal lands. Work on these major oil and gas pipeline projects is in addition to the thousands of miles of smaller pipeline projects that are approved every year to transport oil and gas from the production site to the larger gathering pipelines and the major transport pipeline facilities.

H.R. 4293, "Natural Gas Gathering Enhancement Act"

H.R. 4293 amends several laws to provide additional authority for the Secretary of the Interior to approve natural gas pipelines and gathering lines on Federal and Indian land. Section 4 of the bill amends the Energy Policy Act of 2005 and adds a new provision (section 319) to categorically exclude from NEPA review certain gas gathering lines and associated field compression units. Under the bill, such lines would be categorically excluded from NEPA review if they are within an area that has a land use plan or environmental document that analyzed transportation of natural gas produced from oil wells as a reasonably foreseeable activity and also are located adjacent to an existing disturbed area for the construction of a road or oil and gas pad. The bill's categorical exclusion (CX) is applicable to BLM-managed lands and other Federal lands with two exceptions: 1) if the Governor in which the lands are located requests that the CX not be applied; and 2) if an Indian Tribe requests the CX be applied on tribal lands.

Section 4 of the bill further amends the Energy Policy Act of 2005 and adds a new provision to require the Secretary to conduct a study to identify any actions that may be taken under Federal law or regulation, or changes to Federal law or regulation, to expedite permitting for gas gathering lines and associated field compression units that are located on Federal land or Indian land. This section requires the Secretary to prepare a report to Congress every 180 days on the progress made in expediting permits for gas gathering lines and associated field compression units that are located on Federal or Indian land and on any issues impeding that progress.

Finally, Section 5 of H.R. 4293 amends the MLA to require the Secretary to issue a sundry notice or ROW for a gas gathering line and associated field compression unit not later than 30 days after receiving the request from the pipeline proponent if the request meets the criteria in section 4 of the bill, and not later than 60 days after receiving the request if it does not meet the section 4 criteria. The bill (section 6) also amends FLPMA to require the same approval timeframes.

Analysis

The Department strongly opposes the categorical exclusion from NEPA review of pipeline activities as proposed in H.R. 4293. The engagement of the public through the environmental review process under NEPA is a crucial component of the BLM's multiple-use management of the public lands and for the consideration and mitigation of impacts to adjacent resources and lands. These open, public processes facilitate the consideration of impacts to the affected environment and identify unknown or unforeseen issues, which is invaluable to sound public land management. The BLM is committed to providing the environmental review and public involvement opportunities required by NEPA for proposals for the use of BLM-managed lands. H.R. 4293 would prohibit the BLM from engaging in this important public participation and environmental analysis process, in addition to prohibiting the BLM from engaging in site-specific NEPA analysis if needed for particular natural gas pipelines.

The activities called for in H.R. 4293 are already within the scope of existing Department authorities and consistent with our priorities and activities already underway. For example, for an area that has a land use plan or environmental document for transportation of natural gas as a reasonably foreseeable activity, the BLM could use its existing authorities to authorize the activity following a determination that the existing NEPA is adequate, provided the necessary site-specific analysis and the environmental document found the action would not cause a significant impact to other resources.

The Department also strongly opposes the bill's provisions in section (4) that would allow each state Governor to decide the appropriate level of NEPA analysis to be done by the BLM for pipeline projects on Federal lands within that state. In addition to the practical problems that this raises with pipelines that may cross state jurisdictional lines, giving state Governors the authority to determine planning activities on Federal lands would limit the BLM's ability to comply with its obligations under Federal law. The bill contains a related provision which applies to Tribal land and the Department has concerns that the provision may conflict with the agency's legal responsibility for consultation, stewardship and oversight service under the Indian Mineral Leasing Act of 1938.

The Department also has concerns about the requirement to conduct a study to identify proposed changes to Federal law or regulations and to report every 180 days on progress to expedite permitting for gas gathering lines and associated field compression units that are located on Federal land or Indian land and impediments to that progress. If enacted, these requirements would divert limited BLM resources from oil and gas permitting, inspection and enforcement activities and result in the further delay of environmentally responsible development of pipeline infrastructure.

Sections 5 and 6 of H.R. 4293, which require the Secretary to issue a sundry notice or ROW not later than 30 or 60 days after receiving the request from the project proponent, are also very concerning. The provision does not contain any requirement for the proponent's request to be fully complete prior to submission. This provision removes discretion from the Secretary to authorize the sundry notice or ROW. Furthermore, categorical exclusions still require consideration of extraordinary circumstances before they can be applied, even if NEPA analysis

is not required, and this consideration may be challenging to complete within the 30- or 60-day timeframes.

Finally, the Department opposes the provision in section 6 amending section 504 of FLPMA. This provision would allow the Secretary to authorize gas gathering lines via the authority of Title V of FLPMA, which sets out the requirements for many other types of ROWs. However, section 501(a)(2) of FLPMA prohibits the Secretary from using the Title V authority to authorize oil and gas pipelines, instead deferring to the MLA. The proposed amendment to section 504 of FLPMA would give contradictory direction to the BLM. In addition, it should be noted that under the MLA, fifty percent of the receipts from annual rents for oil and gas pipelines ROWs are provided to state governments in which the pipeline is located, in contrast to the treatment of receipts from FLPMA ROWs, none of which are provided to state governments.

H.R. 1587, “Energy Infrastructure Improvement Act”

H.R. 1587 provides new direction for the Department in granting ROWs through Federal lands for petroleum pipeline purposes – separate and apart from the existing authorization provided in the Mineral Leasing Act. The bill authorizes the Secretary of the Interior and the Secretary of Agriculture to issue permits for ROWs, temporary easements, or other necessary authorizations to facilitate natural gas, oil and petroleum product pipelines and related facilities on eligible Federal lands – including lands managed by the NPS.

The bill requires the Secretary to include terms and conditions for the ROW and states modifications to these terms and conditions must be agreed to by the permittee. Under the bill, the Secretary could recover costs of processing, issuing, and monitoring the permit and an annual rental fee of the fair market value of the use. The bill also authorizes the Secretary to determine the initial term for a ROW permit based on costs incurred, useful life of the pipeline and the public and economic purposes served and requires the Secretary to renew the ROW provided the project is in commercial operation and is operated and maintained in accordance with the terms and conditions. Finally, the bill provides authority for the Secretary to impose citations, fines, or revoke a permit for failure to comply with any terms and conditions of the permit and also provides that a permittee may file suit to challenge a final decision in the United States Court of Appeals.

Analysis

The Department strongly opposes H.R. 1587’s provisions that would authorize the Secretary to issue a permit for oil and gas pipelines on NPS lands – reversing the longstanding prohibition on allowing such pipelines in our nation’s national parks unless explicitly authorized by Congress. In its 1973 amendments to the MLA, Congress determined that such lands would not be part of the general ROW provisions. This specific exemption in the MLA protects the integrity, resources, and values of the National Park System. The significant infrastructure associated with the clearing, grading, trenching, stringing, welding, coating and laying of pipeline as well as the transportation of oil and gas products via pipeline, which carries the risk of oil spillage and gas explosions, is inconsistent with the conservation mandate set forth in the NPS Organic Act. H.R. 1587 would overturn longstanding and necessary protection of park system resources and values, visitor experience, and human health and safety and would undermine the very purpose for which National Park System units were created.

The Department is also concerned that H.R. 1587's provisions could be interpreted to authorize the Secretary to issue a permit for oil and gas pipelines on lands that are a component of the National Wilderness Preservation System, a concept the Department strongly opposes.

The Department also opposes H.R. 1587 because it contains provisions granting ROWs through Federal lands for pipeline purposes which are redundant or conflict with existing BLM authority under the MLA. These new provisions would raise confusion for land management agencies, applicants, and the public regarding which authority should be followed, which "sideboards" apply, what requirements must be met and what new regulations would be required. For example, the bill authorizes the Department to issue permits for pipeline ROWs, but remains silent on the width of any ROW that a permit might affect and does not provide a fixed term for the ROW as provided for under the MLA. In contrast, the MLA identifies a 50 foot maximum ROW and an initial term of no more than 30 years. The bill also fails to identify where an annual rental fee would be deposited. Also of concern are the bill's provisions that require mandatory renewal of the ROW and that allow modifications to the permit only if they are agreed upon by the permittee. The Department believes that the bill's new authority to issue citations or impose fines would be better suited for inclusion in the MLA.

Finally, H.R. 1587 omits a number of important procedural and substantive safeguards Congress previously required with the issuance of ROWs, including: a right of public notice and comment; bonding requirements; pipeline safety and environmental protection provisions; technical and financial capability requirements; disclosure regarding entity ownership; and width limitations.

Conclusion

The Department has been successful and continues working hard to increase the capacity to transport energy resources where appropriate across Federal lands and in coordination with our State and Tribal partners. The BLM plays an active role in providing suitable lands to modernize the nation's pipeline infrastructure in an environmentally responsible way to efficiently distribute the nation's energy resources. Thank you for the opportunity to present testimony on H.R. 4293 and H.R. 1587.