



Erik Milito

Director
Upstream and Industry Operations
1220 L Street, NW
Washington, DC 20005-4070
USA
Telephone 202-682-8273
Fax 202-682-8426
Email militoe@api.org
www.api.org

July 24, 2017

Honorable Ryan Zinke
Secretary of the U.S. Department of the Interior
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Re: Secretarial Order 3354 and BLM Future Planning Efforts and Project/Environmental Reviews

Dear Secretary Zinke:

The American Petroleum Institute (“API”) is pleased to see the Department of the Interior describe a specific plan to promote the exploration and development of oil and natural gas resources on Federal lands. The oil and natural gas industry is committed to assisting the nation in realizing the benefits of the energy and mineral resource endowment with which we have been blessed in a manner that achieves safety and environmental performance, and that generates jobs and strengthens America’s energy security.

API is a national trade association representing over 625 member companies involved in all aspects of the oil and natural gas industry. API’s members include producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry. API member companies are leaders of a technology-driven industry that supplies most of America’s energy, supports more than 9.8 million jobs and 8 percent of the U.S. economy, and, since 2000, has invested nearly \$2 trillion in U.S. capital projects to advance all forms of energy, including alternatives.

To secure the tremendous benefits of domestic energy production for our nation and to achieve the goal of “energy dominance” that the Administration has described as a policy objective, it is imperative that we increase access to our nation’s abundant federal onshore and offshore resources. From this perspective, we commend the citation of the Mineral Leasing Act of 1920 in Secretarial Order 3354, and its requirement that oil and gas lease sales “be held for each State where eligible lands are available at least quarterly and more frequently if the Secretary of Interior determines such sales are necessary,” 30 U.S.C. §226, and we support the Order’s call for improvements in the implementation of the requirement for quarterly lease sales directed by the Mineral Leasing Act.

To further the Administration’s energy policy goals, it is equally important for government to assure a stable and predictable regulatory environment, and to align management of America’s public lands with the direction provided by law. Thus, we also support the Secretarial order’s call for identification of options to improve the Federal onshore leasing program, including the identification of additional steps to

enhance exploration and development of Federal onshore oil and natural gas resources, and the development of strategies to improve the permit processes for oil and gas operations on Federal lands.

Toward that end, we offer the following recommendations for the Department, for the Bureau of Land Management, and for the coordination of actions by Federal agencies to achieve these statutory and policy objectives. Too often, oil and gas projects experience months and even years of delay due to regulatory, administrative, and litigation obstacles that sideline projects on Federal lands while projects on non-Federal lands proceed under more efficient and predictable regimes of permitting, regulation and judicial review. Given the enormous investments and extensive planning necessary to locate and produce oil and gas resources, these delays and the resulting uncertainty deter investment in Federal leases in this critical energy sector, and adversely impact the broader economy as well.

First, BLM may not prioritize timely processing of oil and gas lease and permit applications, and there are seldom, if ever, negative consequences for the agency as a result of such delays. API recommends that through Executive or Secretarial Order or equivalent measure, the BLM be directed to prioritize timely completion of oil and gas leasing and permitting decisions, and reorganize BLM staff and other resources accordingly, consistent with the availability of appropriations. We further recommend that the Department and the BLM incorporate this priority into performance standards for agency staff at all levels.

In order to expedite environmental review required for issuance of permits, we support action by the Secretary to encourage the BLM to accept submittal of environmental information prepared by third parties at the request of an applicant where this meets the requirements of 40 C.F.R. § 1506.5). We note that there are numerous examples on Federal lands where oil production on Federal leases is shut-in because producers cannot obtain flaring approvals, and pipelines are not being timely approved on Federal lands to gather and transport the gas. Gas production can be similarly contingent on the advance construction of pipeline infrastructure to deliver the production to market. Thus, consistent with the foregoing recommendations, API urges that the BLM must similarly prioritize and redirect staff resources to facilitate timely decisions on oil and gas pipelines and other supporting infrastructure necessary for oil and gas production.

In order to achieve these outcomes, the Department and the BLM must commit to approvals within required timeframes. This includes lease issuance within 60 days of an accepted high bid per the Mineral Leasing Act, and issuance of Applications for Permits to Drill (“APD”) within 30 days of submission of a complete permit application per Energy Policy Act of 2005 (“EPAcT”) Section 366. There are also situations where to avoid “starting the clock” for an APD decision, some BLM field offices deem APDs as not “complete” for lengthy periods of time and for reasons outside the lessee’s control. See 43 C.F.R. § 3162.3-1(a). API recommends that the Department and the BLM promulgate guidance to District Offices that APDs should be deemed submitted within 10 days unless BLM provides clear written reasons to the lessee, also as provided in EPAcT Section 366. Once those issues are resolved, BLM cannot raise new completeness issues. Some field offices have also imposed ad hoc requirements for APDs that have no basis in regulation or law, asking companies to perform extra cultural, wildlife, flood plain, or other surveys, among other measures. Such arbitrary requirements lengthen the APD processing time, and may vary greatly from field office to field office. As part of the review described in the Secretarial Order, we strongly encourage a review of all local orders or instructional memoranda published by district offices to determine the consistency of these with the Secretarial Order, and the withdrawal or termination of those orders or equivalent documents found not to be consistent.

Some reports indicate that it can take an average of over 300 days for a BLM District Office to process an APD. This is a substantially longer time period than was the case in the previous decade. It can sometimes take years for approvals for more complex projects. Prior Council on Environmental Quality (“CEQ”) guidance addresses “Clear Time Lines for NEPA Reviews,” but does not clearly direct any action on this issue. See CEQ, “Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act.” API requests that the Secretary or Director must

clearly prescribe that time limits will be determined at the commencement of the NEPA process, and recommends that time limits adhere to the 3-month EA and 12-month EIS expected timelines described in CEQ guidelines; we would also encourage a rulemaking to achieve this outcome. See CEQ, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, #35 ("Time Required for the NEPA Process"). Also, because non-lead cooperating agencies may delay or change their comments on BLM NEPA documents, the Secretary should direct that agencies submit timely comments that cannot be amended or supplemented without cause. We also believe it is important that the level of NEPA analysis undertaken be appropriate to the scale of the project or action being analyzed. For example, consistent with U.S. Supreme Court precedent, agency regulations, and CEQ regulation 40 CFR 1508.7, NEPA analysis for oil and gas projects should only examine a project's reasonably foreseeable, quantifiable impacts, not purely speculative impacts that are unlikely or uncertain to occur. Finally, in regard to the role and participation of cooperating agencies in review of permit applications to the BLM for oil and gas projects we strongly urge that the Department and BLM continue the practice of collocating personnel from different agencies in BLM offices implemented under the EPA Act Sec. 365 to assure efficiency and thoroughness of such review. We note that the Pilot Office Program was reauthorized in 2014, as part of the FY 2015 National Defense Authorization Act. Included in that reauthorization was an increase in APD fees which Congress intended to provide additional funds focused exclusively on permit processing and to ensure those offices with the most activity are receiving a commensurate amount of funding for permit processing.

Among the factors that have led to increasingly lengthy BLM approval processes has been the experience of some operators that certain BLM offices or personnel are reluctant to invoke existing categorical exclusions ("CXs") applicable to the leasing or permitting decision at issue. The CX is a valid and useful tool under NEPA, allowable under 40 C.F.R. § 1508.4 (and BLM's NEPA Handbook, H1790-1, Appendices 2, 3, 4 & 5). Indeed, Congress explicitly established a number of CXs for oil and gas development, including one for disturbances less than five acres, which includes most drilling pads. See EPA Act § 390; BLM NEPA Handbook at Appx. 2. API believes that the Secretary or Director should reaffirm the use of existing CXs and direct staff to use an existing CX unless an Environmental Assessment is clearly shown to be necessary. We believe that CXs can be applicable to a broad range of permit requests for oil and gas projects, particularly where these are consistent with the Resource Management Plan ("RMP") developed for the BLM district in question, plans that are customarily subject to NEPA review and an Environmental Impact Statement prior to adoption. We also recommend that the BLM should affirmatively solicit industry and public proposals for new types of CXs.

Lessees and operators often conduct multi-phase projects involving a sequence of similar activities in close geographical proximity. For example, onshore oil and gas drilling may consist of multiple wells on a single lease, well pad, or field. Each requisite Federal approval may trigger a new NEPA review, even though the relevant activity's local impacts may previously have been assessed in a NEPA document. API recommends that the BLM's NEPA process should tier from recent reviews of similar, nearby projects where circumstances have not materially changed. BLM should be instructed to utilize a Determination of NEPA Adequacy ("DNA") where appropriate, and not undertake unnecessary NEPA review.

From time to time, the BLM has issued guidance documents attempting to impose different or additional requirements beyond existing law and regulations, such as the commingling Instruction Memorandum 2013-152 ("IM"), which the industry showed to be problematic. In line with the direction being provided by Secretarial Order 3354, API recommends that the Secretary request a review of existing guidance documents published by the BLM for their consistency with the objectives of the Secretarial Order and take action to curb the issuance of agency guidance documents to promulgate new, material substantive or procedural requirements for project review and approval without public notice and comment under the Administrative Procedure Act.

In closing, as it relates to Land Use Planning and the development of RMPs, BLM must adhere to its statutory charge to manage the public lands "on the basis of multiple use and sustained yield," and "in a

manner which recognizes the Nation's need for domestic sources of minerals . . . from the public lands." The appropriate approach to Land Use Planning must embrace BLM's long-standing policy expressed in FLPMA to maximize resource values for the public. Also, in connection with regional land use planning, BLM should end the practice the practice of imposing requirements on projects for which BLM approval is sought that are based on provisions of RMPs that have not been finalized. Given the overly complicated, burdensome and delay-ridden system in place for the permitting and development of oil and natural gas projects, BLM should rework the system to be user-friendly and efficient for all users, and for oil and gas project developers in particular. Many positive changes can be made based upon the collection of comments above, and BLM should continue using a public notice and comment process prior to the finalization of a new or modified framework for the agency's land use decisions.

Again, we applaud the effort that is being called for by Secretarial Order 3354, and hope that the recommendations in this letter can be implemented to assure that the objectives set forth in the Secretarial Order are matched by the actions of the BLM nationally and at the district office level.

Should you have any questions, please contact Richard Ranger at 202.682.8057, or via e-mail at rangerr@api.org.

Thank you for considering the recommendations in this letter.

Very truly yours,



Director
Upstream and Industry Operations
American Petroleum Institute

Cc: Acting Director, BLM, Michael D. Nedd
Counselor to the Secretary for Energy Policy, Vincent DeVito