

Tim Spisak
Director
New Mexico Bureau of Land Management
301 Dinosaur Trail
Santa Fe, NM 87505

Cc: Aden Seidlitz, Jim Stovall, Victoria Barr

Submitted via email

January 16, 2019

Subject: Oil and Gas Leasing and Drilling Permit Processing During Shutdown

Dear Director Spisak,

The undersigned organizations represent thousands of people across New Mexico who are concerned about the current lapse in appropriations for the Department of the Interior with regard to mineral development on public lands. In light of all that is affected by decisions to convey public lands to oil and gas companies, we request you immediately postpone upcoming oil and gas lease sales and cease issuing drilling permits. Due to the partial government shutdown, the Bureau of Land Management (BLM) lacks the necessary funds and staff to fully comply with applicable legal requirements, which include mandatory environmental reviews and 30-day public comment and protest periods under the Federal Land Policy and Management Act (FLPMA) and National Environmental Policy Act (NEPA), in order to conduct these sales as scheduled.

Since the start of the government shutdown, neither the Department of the Interior (DOI) nor the BLM have provided any information to the public regarding the status of upcoming lease sales and associated comment and protest periods. A New Mexico scoping period was scheduled to commence on January 7, but no notices were posted. A protest period for a New Mexico lease sale is slated to begin on January 18.

Providing meaningful public participation in the oil and gas leasing process is a binding legal requirement. In September 2018, a federal district court enjoined the provisions of BLM's new oil and gas leasing policy which dramatically curtailed public participation in the leasing process. The court's central finding in the case was that "the public involvement requirements of FLPMA and NEPA cannot be set aside in the name of expediting oil and gas lease sales."¹ Consequently, any attempt to eliminate or abbreviate environmental reviews and public comment and protest periods for upcoming oil and gas lease sales because of the government shutdown would violate this court decision and FLPMA and NEPA.

At the same time, we understand that various BLM offices are continuing to issue permits to drill, adding to our concerns regarding potential damage to public lands without adequate agency consideration of environmental consequences and public oversight.

¹ West. Watersheds Project v. Zinke, 336 F. Supp. 3d 1204, 1238 (D. Idaho 2018).

US News and World Report describes BLM's continued processing of drilling permits and lease sales, despite the ongoing government shutdown that has made BLM staff unavailable to the general public². It is unclear whether and how some BLM employees are being paid to process oil and gas permits. Some reports, as well as BLM's own shutdown "contingency plan", imply that the companies themselves are paying for the fee processing, which if true, would create serious doubts about the BLM's ability to issue leases and permits impartially. As far as we know, wildlife and cultural resources experts have not received exemptions to the shutdown, and are not participating in this processing.

Without the participation of biological and cultural resource specialists, it is impossible for BLM make informed determinations which permit applications require additional National Environmental Policy Act review, Endangered Species Act consultation, National Historic Preservation Act consultation, and/or tribal government-to-government consultation. We have been actively seeking protection for several sensitive landscapes through the RMP process in both the Carlsbad and Farmington field offices, and we are deeply concerned about activities being permitted in these areas before RMP decisions are made.

Reports of BLM's selective implementation of the shutdown also raise questions regarding agency compliance with the Antideficiency Act, 31 U.S.C. § 1341 et seq. The possibility that BLM may be proceeding to authorize ground-disturbing activity and additional leasing without the resources necessary for adequate prior environmental, biological, and cultural review threatens to cause real damage to New Mexico's irreplaceable wildlife and cultural resources, and to create needless conflict that could be avoided.

As a result, the undersigned groups have serious concerns about resource protection and adherence to federal law. We request that BLM promptly postpone oil and gas lease sales and issuance of drilling permits until such time as BLM is able to conduct legally-compliant environmental reviews and comment and protest periods. We further ask that BLM communicate this decision to the public as soon as possible.

We request a phone call or in-person meeting with you and other Bureau of Land Management and/or Department of Interior staff to discuss this issue, as soon as possible.

Sincerely,

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² <https://www.usnews.com/news/national-news/articles/2019-01-11/no-park-rangers-or-food-inspections-but-government-reopens-for-oil-and-gas>

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