

Energy HOT TOPICS on Public Lands at the End of the Obama Era

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Introduction:

- Public Lands/US History
- BLM O & G Lease Reform/ Proposed Rules
- BLM Green Energy Policy/Proposed Rules
- New Twists on Federal Land Use Planning
- *“Give Us Our Lands”* Movement



Public Land Background

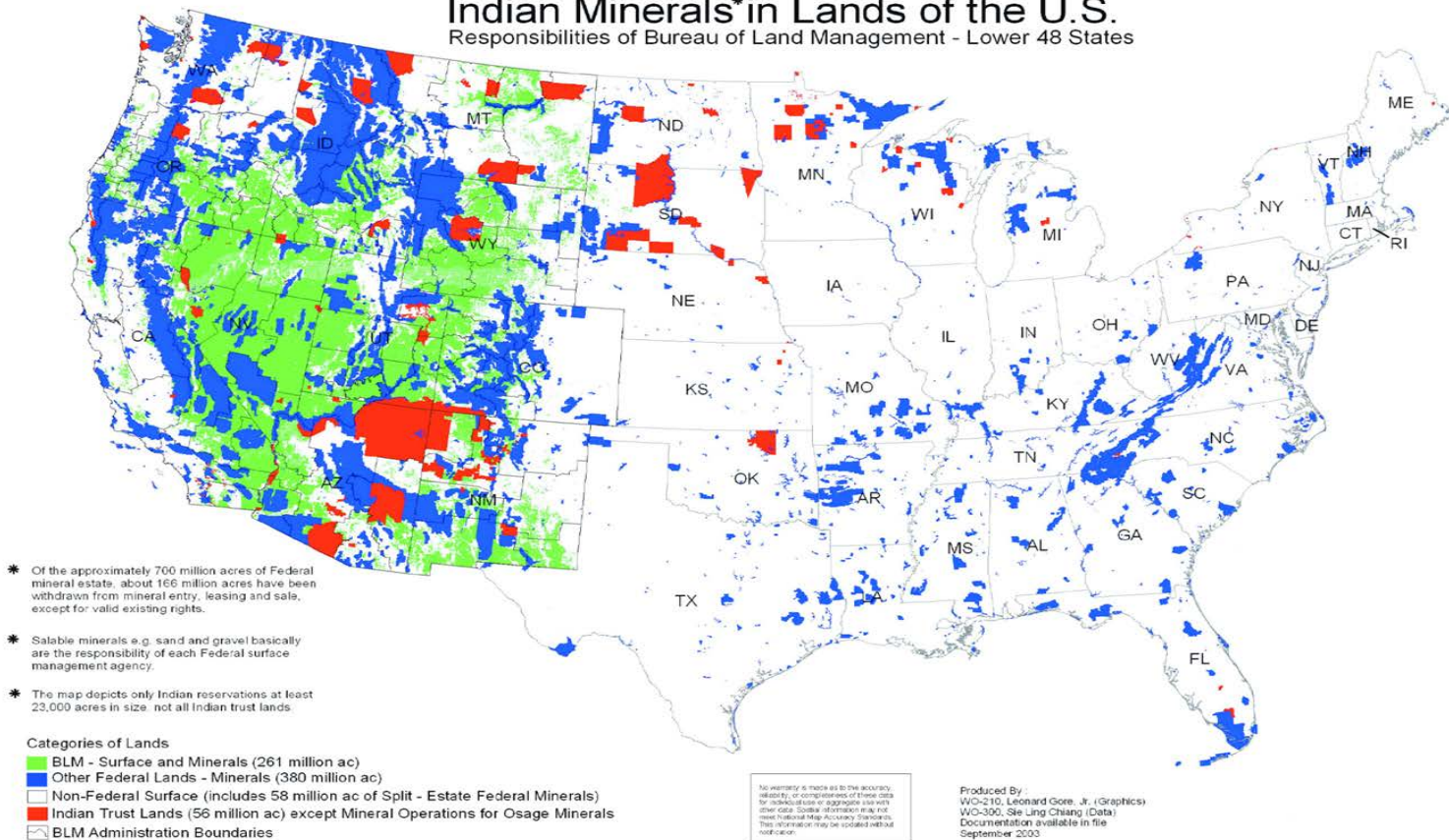
- One-third of US under Federal hands
- Four land managers in two Departments
- Three hundred Indian reservations
- Laws -1862, 1920, 1934, 1960-1970's, 1990's, 2005

Dynamic Tension



Public Land Background

Public Lands, On-Shore Federal and Indian Minerals* in Lands of the U.S. Responsibilities of Bureau of Land Management - Lower 48 States



Public Land Background

“Multiple use management is a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put . . .”
Norton v. SUWA, 542 U.S. 55 (2004)



“Drones finally are a sexy topic. The Interior Department? Still not so much . . . If there were one single address at the intersection of federal power and naked greed, it would be squarely in front of the Interior Department.” Andrew Cohen, *The Atlantic* (March 2013)

Obama Energy Vision

Candidate Obama: Transform US Energy to Fix Climate Change

“This was the moment when the rise of the oceans began to slow.”

Obama 2008 nomination speech



“So we have a choice to make. We can remain one of the world’s leading importers of foreign oil or we can make the investments that would allow us to become the world’s leading exporter of renewable energy.” President Obama (3/09)

2010 Leasing Reform

- Salazar “New Sheriff in Town”
 - *“I will clean up the mess at the Department of the Interior if confirmed.”*
- Withdrawal of 2008 77 Utah Leases (2/09)
 - *“Many of those decisions rushed”*

“Anything goes era is over.”

Denver, CO
January 2009



2010 Leasing Reform

IM 2010-117

- Land Use Plan Review
- Lease Parcel Review
- Master Leasing Plans

“In the prior administration the oil and gas industry essentially were the Kings of the world . . . the public lands were the essential candy store of the industry . . .”

Salazar 01/10

IM 2010-118

Revise EPLAct 2005 O&G CX

Theme:

Reverse/revise Bush energy policies



2010 Leasing Reform

Land Use Plan Review

Does RMP adequately protect resources “*in light of changing circumstances*”

Lease Parcel Review

- Parcel by Parcel Review
- Lease NEPA – public comments
- Lease deferrals encouraged

BLM Land Use Plans

113 million acres open to leasing
166 million acres closed to leasing



2010 Leasing Reform

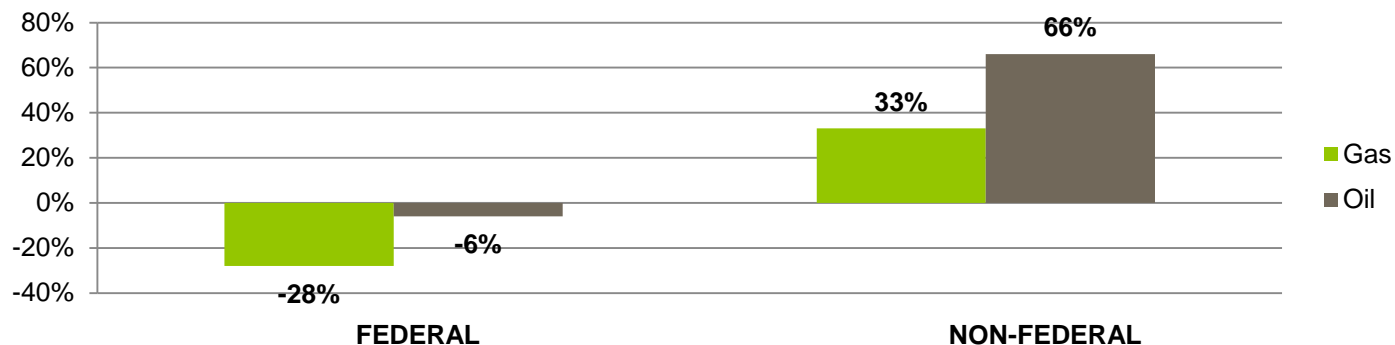
- **Master Leasing Plans (MLP)**
 - Focus: *“reconsider RMP leasing decisions”*
 - Analyze impacts of leasing/likely development
- **Mandatory MLP Criteria:**
 - Substantial portion not leased
 - Majority federal mineral interest
 - Interest in leasing; confirmed by discovery
 - Analysis needed for resource/cumulative impacts
- **NGO 30 MLP Nominations**



2010 Lease Reform Results

- IM 2010-118 (CX policy) reversed/withdrawn
- IM 2010-117 in effect
- Longer slower leasing process
- Fewer protests, fewer parcels and more deferrals

Oil and Gas Production 2009 – 2013
Congressional Research Service (2014)



2010 Lease Reform Results

- MLPs – to be used to open access in *“the right places”* and *“identify places that are too special to drill.”*
Jewell, 3/15
- Good news- Bi-partisan (and industry) support of 2014 legislation for a new fee to support EPA oil and gas Pilot Offices for permitting coordination



Public Land Oil and Gas Reforms



***“Balanced Prosperous
Energy Future”***

“I am determined to help make energy development safer and more environmentally sound in the next two years.” Secretary Jewell, Center for Strategic and International Studies (03/17/15)

Update O&G Rules

“Many in industry get that effective regulations and independent oversight of energy development not only help minimize risk, but are key to building the public confidence . . . But many of our regulations have not kept up.” Jewell, (03/15)



2015 BLM Frack Rule

- **Difficult 5-year process**
 - Leaked proposal
 - Initial May 2012 proposal
 - May 2013 Draft
 - 1.4 million comments
- **Changes from earlier version**
 - Fracking only
 - Post-completion disclosure on FracFocus
 - No “type” wells, well-by-well
- **Focus the same**
 - Well construction/integrity
 - Flowback handling
 - Disclosure

2012 State of the Union



Announces BLM Frack Rule

2015 BLM Frack Rule

Components:

- Application
- Cementing
- Monitoring
- Fluid Recovery
- Disclosure
- Post-completion information

Cost Debate

BLM - \$11,400 per well

Industry - \$97,000 per well

Litigation

Industry

Western States





“It’s time to have a candid conversation about whether the American taxpayer is getting the right return for the development of oil and gas resources on public land.” Jewell, (04/15)

Royalty Rule and Other Changes

- **Royalties**
- **Rental Rates**
- **Minimum Acceptable Bid**
- **Bonding**
- **Penalties**



Royalty Rule – “Start a Discussion”

Background – Critical reports by GAO and Inspector General

2010 – Salazar – raise royalty by 50%

12.5% - 18.75%

2011 – Royalty Comparison Studies

“Potentially contradictory,” BLM

Secretary Jewell *“Unintended consequences”*

“Costs of doing business” onshore

Questions:

- **Interplay - prices, royalty and interest in Federal O&G**
- **Federal land *“environmental benefits”* if production decreases with higher royalties**

Other Changes

- **Annual Rental Payments**
 - Unchanged in 28 years
 - \$1.50 per acre (years 1-5) then \$2.00 per acre
 - *“Use it or lose it”* incentive
- **Minimum Acceptable Bid**
 - Unchanged in 28 years
 - \$2.00 per acre
 - MLA requires demonstration
 - Enhance financial returns
 - More efficient management
 - MLA requires congressional notification



Other Changes

- **Bonding**
 - **Unchanged since 1960 – Eisenhower Era**
 - **Critical GAO Reports**
 - Individual bonds \$10,000
 - Statewide bonds \$25,000
 - Nationwide bonds \$150,000
- **Civil Penalty Assessments**
 - **BLM caps unchanged in 28 years**
 - **I.G. - penalties don't deter trespass**



Venting and Flaring Rule

Update NTL-4A/Onshore Order No. 9

- **Climate Action Plan**
 - Reduce O & G methane 40-45% by 2025
- **2010 GAO Report**
 - Increase royalties
 - Reduce GHG emissions
- **New Rules**
 - *“Royalty free use of oil and gas”*
 - Replace *“beneficial use”* concept
 - Sources of methane
 - Monitoring, tracking & repair
 - New and existing Federal/Indian wells



Other Onshore Order Updates

- Onshore Order No. 1
 - Electronic APD/NOS
- Onshore Orders 3, 4, and 5
 - Site security
 - Oil measurement
 - Gas measurement

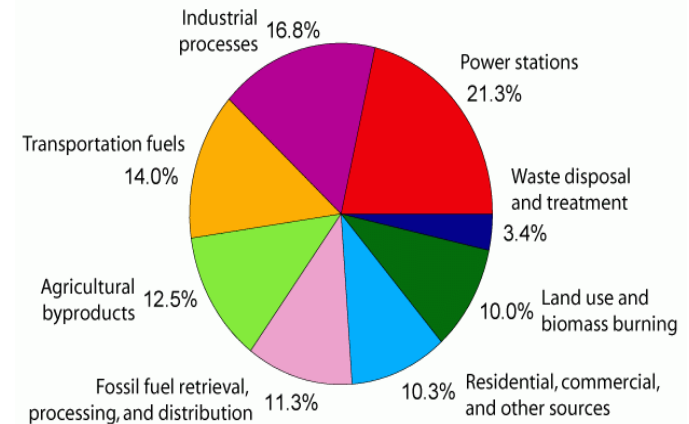


BLM GHG Policy

CEQ GHG Guidance

- 2010 Draft excluded land/resource management
- 2014 Final includes/directs analysis of:
 - GHG emissions – “*small fraction*” not withstanding
 - 25,000 metric ton threshold
 - Actions with “*reasonably close causal relationship*”
 - Alternatives – consider energy efficiency, green energy, carbon capture
 - Mitigation measures – monitoring required
 - Federal “Social Cost of Carbon” for cost/benefit

Annual Greenhouse Gas Emissions by Sector



BLM must consider GHG economic Impact in permitting coal mine, *High Country Conservation Advocates v. U.S. Forest Service (D. Colo. 2014)*

Public Land Renewables

“As Secretary of the Interior, I can see the economic opportunity presented by the new energy economy. Since coming into office, we have prioritized the development of renewable energy on our public lands and off-shore waters.”

Secretary Salazar



Public Land Renewables

The Drivers

- **EPAAct – 10,000 MW green energy on public lands (2015)**
- **Secretarial Order 3283: “Enhancing Renewable Energy Development on Public Lands:” “Top Priority” (3/09)**
- **Secretarial Order 3289: “Addressing Impacts of Climate Change” (9/09)**
- **ARRA (Stimulus) (2009)**
 - **BLM: \$41 million for green energy permit backlog**
 - **DOE Energy Grants - \$ \$ \$**
 - **Permits by 12/31/10**
 - **Construction complete 12/31/13**



Public Land Renewables Policy

- No specific green energy law – FLPMA Title V ROW
 - Post-EPAAct “*land rush*” for green ROWS
- Existing Guidance
 - Wind – IM 2009-043
 - Solar – IM 2007-097
- “Fast Track” Solar Initiative (7/09)
 - Revise focus of Solar PEIS – “Smart from Start”
 - 24 solar energy zones (SEZs) – 29 Million Acres (2010)
 - 17 SEZ – 285,000 acres (2012)
 - Expedite permitting
- Détente with “Big Green”



Public Land Renewables Policy

2011 IMs and Rules

BLM addresses siting/speculation

IM 2011-059 – NEPA compliance

IM 2011-060 – Due diligence

IM 2011-061 – Screening

IM 2011-081 – Grazing conflicts

IM 2011-083 – Mining conflicts

2013 Rule – Withdraws land during wind/solar permitting



Public Land Renewables Results

- **Met EPA Act 10,000 MW goal in 2012**
- **Authorized 52 renewable energy projects**
- **Utility-scale solar - 8,876 MW**
 - Six in operation
- **Wind farms - 4,767 MW**
 - Three in operation
- **Geothermal plants - 605 MW**
 - Five in operation
- **GAO – “*significantly improved permitting times*”**
- **Climate Action Plan goal – 20,000 MW by 2020**



Public Land Renewables

Proposed Rule

Cementing a green legacy

- **Competitive leasing proposal**
 - Designated Leasing Areas
 - Financial incentives
- **2011 Guidance into Rule**
 - Screening process
 - ROW 30-year terms
 - Terms and conditions
 - Due diligence
 - Bonding requirement
 - Rent
 - Per-acre and MW capacity fee



Evolution of Land Use Planning

BLM “*Landscape-level*” Planning

- **Planning 2.0 effort**
 - Less local plans, across jurisdictions
 - Issues at their natural scales
- **Rapid Eco-regional Assessments**
 - Response to Climate Change Order
 - Understand “*ecological values, conditions, trends*”
 - Inform planning decisions
- **MLPs/SEZs/DRECP**
 - Landscape planning for energy/mitigation



Evolution of Land Use Planning

BLM Greater Sage-grouse RMP Amendments

- **Litigation**

- 2005 – FWS “not warranted”**

- 2007 - remanded**

- 2010 – FWS “warranted but precluded”**

- 2011 – ESA Obama settlement – listing decision
9/30/15**

- **50 million acres in 10 states**

- 20 Forests/Grasslands**

- 68 BLM Field Offices**

- 15 FEIS/3 RODs**



Evolution of Land Use Planning

BLM Greater Sage-grouse RMP Amendments

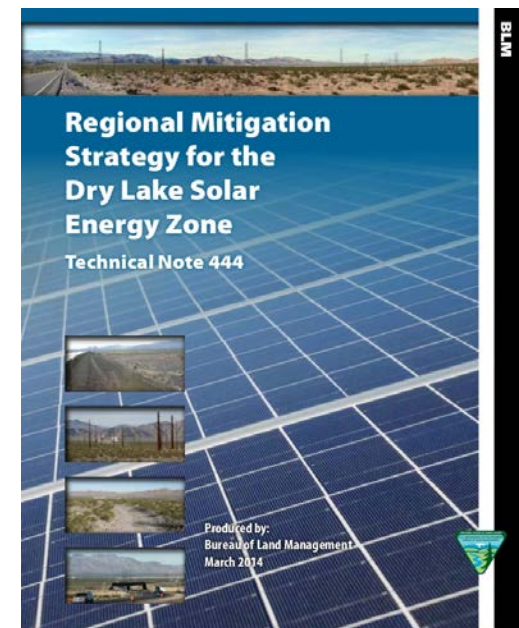
- RMPs – significant range of oil and gas restrictions
 - Closure or NSO in priority habitat
 - O & G – 0.6 - 4 mile NSO lek buffers
 - Reduce well density (1 well/section)/density caps
 - Limit cumulative surface disturbance (3-5%) per 640 acres
- FWS withdrew Bi-State (NV/CA) GSG “distinct population segment” listing (4/2015)
 - Based on conservation plan
- FY15 Rider – delays rulemaking; but not listing
- Industry coalition/counties litigating science – Data Quality Act
- More to come:
 - RMP litigation from greens, states & industry
 - Listing litigation from all of the above



Evolution of Land Use Planning

Interior Landscape Mitigation Order

- **Jewell's First Secretarial Order No. 3330 (10/2013)**
 - Strategy to mitigate impacts of infrastructure
 - Use of “landscape-scale approach” for conservation
 - 2014 Report on Landscape Mitigation Strategy
- **BLM – Regional/Mitigation Policy**
 - Interim Policy, IM 2013-142, Draft Manual Section 1794
 - Updates IM 2008-204, off-site mitigation



Evolution of Land Use Planning

U.S. Forest Service 2012 Planning Rule

- Contentious process to get here
- Secretary Vilsack *“New Vision”* (2009)
 - Conservation, protection, preservation
 - *“Our shared vision begins with restoration”*
resilience to Climate Change
- 2012 Planning Rule/Directives
 - Maintain ecological integrity
 - Protect water air and soil
 - Address water quality/riparian area protection
- Multiple uses and “ecosystems services”
 - No mention of mineral resource development



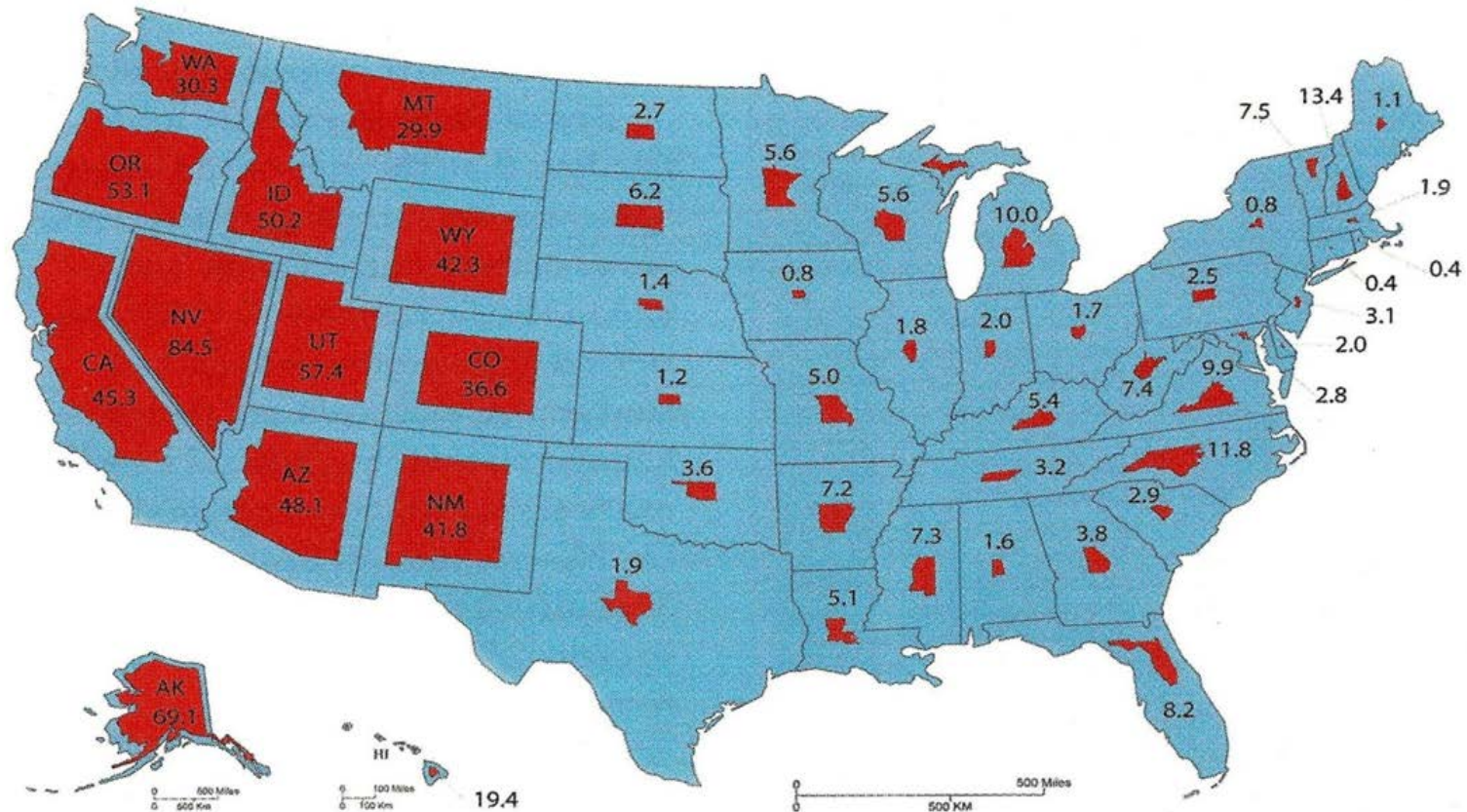
SAGEBRUSH REBELLION 3.0

- State *“Take Back”* of Public Lands
 - American Lands Council
 - “Utah to seize own land from government, challenge federal dominance of Western states” Washington Times (12/2014)
 - Murkowski S.A. 838 Budget Amendment
 - Establish a reserve fund for Federal Land Disposal
 - No authority to transfer
 - Message – land transfers a priority
- Cliven Bundy/Sugar Pine Mine
 - Western anger at BLM/Forest Service



WHO OWNS THE WEST?

Federal Land as a Percentage of Total State Land Area



Data source: U.S. General Services Administration, *Federal Real Property Profile 2004*, excludes trust properties.

Conclusion

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