PUBLIC LANDS FOUNDATION
For America's Heritage

Public Lands Foundation
P.O. Box 7226 Arlington, Virginia 22207

November 3, 2017

Honorable Rob Bishop, Chairman
Honorable Raul Grijalva, Ranking Member
United States House Committee on Natural Resources
1324 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Bishop and Ranking Member Grijalva:

The Public Lands Foundation (PLF) is writing this letter to express our concerns and opposition to the draft oil and gas bill (ONSHORE Act) pending before the Subcommittee on Energy and Mineral Resources, which would amend several existing provisions of the Mineral Leasing Act (MLA), the Federal Land Policy and Management Act (FLPMA), and the Federal Oil and Gas Royalty Management Act. These amendments would provide for State primacy in oil and gas permitting on Federal land, the delegation of permitting on non-Federal or split-estate land to the States, the designation of preferred oil and gas leasing areas and exemptions from NEPA, the delegation of hydraulic fracturing regulations to State and Tribal authorities, and the collection of nonrefundable inspection fees for leases in States with a delegation of authority. In addition, the draft bill would require the Secretary of the Interior to conduct a review of the recently completed Integrated Activity Plan for the National Petroleum Reserve in Alaska (NPRA) to determine lands that should be made available for oil and gas leasing in Alaska. We are deeply concerned that these provisions are not in the public interest or provide for the appropriate environmental protections in the multiple-use management of our public lands. We would be more than happy to engage in further discussions with the Committee and Subcommittee on these concerns and opportunities to further improve the permitting of oil and gas development on the public lands.

The PLF is a nonprofit national organization incorporated in 1987 to support keeping public lands in public hands, embracing multiple-use management of public lands managed by the Bureau of Land Management (BLM), as prescribed by the FLPMA, and following sound environmental principles. We are a membership organization whose members are predominately retired former employees of the BLM. As such, our membership represents a broad spectrum of knowledge and experience in public land management, including knowledge and experience in oil and gas leasing and permitting activities.

The PLF is a strong supporter for the environmentally responsible development of oil and gas resources on the public lands, consistent with FLPMA that recognizes the importance

of our public lands in meeting the Nation's need for domestic sources of minerals (Section 102(12) of FLPMA) and that the public lands be managed for multiple-use (Section 302(a) of FLPMA), including leasing and development for oil and gas resources. The BLM manages some 245 million surface acres and some 700 million subsurface acres, located primarily in 12 western states, including Alaska. This diverse portfolio of lands is administered by the BLM on behalf of all of the American people as part of this multiple-use mission. The BLM manages approximately 30 percent of the Nation's minerals. Onshore energy production on Federal lands account for approximately seven percent of our Nation's oil production and 10 percent of our Nation's natural gas production. The public lands support the Administration's America First Energy Agenda and the Department of the Interior and the BLM priority to maintain our Nation's energy dominance by advancing domestic energy production, generating revenue, and creating and sustaining jobs. We strongly support these goals and the development of oil and gas on the public lands. A recent BLM economic study estimated that the Federal onshore oil and gas program provided approximately $50 billion in economic output and supported approximately 188,000 jobs nationwide. The BLM oil and gas program is also a key revenue producer for the Federal government, provides a significant non-tax source of funding to State treasuries, and is an important economic driver for local communities. The program generated more than $1.56 billion in royalties, rental payments, and bonus bids in FY 2016.

It is important to continue to recognize that the public lands are managed for all Americans and that the BLM retain the authority to represent and protect the varied public interests in the multiple-use management of the public lands, including the mandate to protect those interests in the oil and gas permitting process. It would not be in the public interest to delegate those basic responsibilities to the individual States as proposed by the draft ONSHORE Act. The individual States do not have a multiple-use mandate for protecting the interests of all Americans or for ensuring compliance with our system of environmental laws, including the appropriate protections and reviews under the National Environmental Policy Act (NEPA).

The delegation of State primacy in oil and gas permitting, as proposed by the draft bill, would mean that any permitting action would be a non-Federal action and therefore not subject to the NEPA protections. This is not in the public interest. The proposal in the draft bill to also waive NEPA for permitting actions on non-Federal land and for permitting actions in preferred oil and gas leasing areas is also not in the public interest. Sufficient existing authorities already exist to streamline the NEPA process for oil and gas permitting activities, including tiered NEPA documents, Categorical Exclusions (CXs), and Determinations of NEPA Adequacy. In addition, the BLM has already initiated a review of initiatives that could be taken to further streamline the BLM planning and NEPA procedures. The Secretary of the Interior also recently issued Secretarial Order 3358 that established an Executive Committee for Expedited Permitting (ECEP) to identify best practices and reforms that will improve the permitting process, which would include NEPA procedures. The BLM has already issued an Instruction Memorandum (IM 2018-002) that rescinds previous guidance on the consideration of

greenhouse gas emissions and the effects of climate change in NEPA reviews for energy development and production activities.

The Department of the Interior is currently preparing an updated Strategic Plan that will include priority performance goals and indicators for a variety of mission areas, including permitting activities for oil and gas development. It is our understanding that the BLM aims to eliminate its backlog of oil and gas applications for permit to drill (APDs) by end of FY 2019. The BLM currently has a backlog of approximately 2,900 pending APDs and at the direction of the Secretary the BLM has established some ambitious 90-day targets for APD approvals and have shifted resources to the more active BLM oil and gas field offices to meet those targets. The BLM is also attempting to work with the individual oil and gas operators to match their future drilling rig schedules with priority APD approvals. It should be noted, however, that BLM data suggests that less than half of the processing time for approval of an APD is attributable to BLM delays. BLM data from FY 2016 indicated that 118 days of a 257-day processing timeframe was attributable to operator delays. This workload and these delays would not be solved by the proposed delegation of permitting authority to the States and would not be in the public interest.

It should be noted that the BLM already has regulations in place for the delegation of authority and cooperative agreements for oil and gas inspection and enforcement activities and provisions for reimbursement of costs to States related to oil and gas operations on Federal lands under the provisions of the Federal Oil and Gas Royalty Management Act. These regulations at 43 CFR 3190 provide for a process for a State to submit a petition for delegation to the BLM Director for oil and gas inspection and enforcement activities within a State. It is our understanding that no State has a current approved delegation of authority or cooperative agreement under these provisions of the existing regulations. We would encourage any State to work in partnership with the BLM to pursue a delegation of authority or cooperative agreement for oil and gas inspection and enforcement activities under the existing regulations.

The Department of the Interior on October 24, 2017 released a Final Report on Actions that Potentially Burden Domestic Energy. It is recommended that the Committee review and consider the actions identified in this Report that the Department and the BLM have taken to address oil and gas activities before proceeding further with the draft bill. The Report identifies the several Secretarial Orders that have recently been issued that include specific actions to alleviate and eliminate burdens on domestic energy development, including in many cases oil and gas permitting. It should be noted that the Report specifically identified Secretarial Order 3349 that directed the BLM to undertake a review of the oil and gas hydraulic fracturing rule that was issued in March 2015. In response to that direction, the BLM on July 25, 2017 published a proposed rule to rescind the 2015 hydraulic fracturing rule because the compliance costs of the rule were not justified and that the States and some tribes also currently have laws and regulations in place that address hydraulic fracturing operations. Rescinding the rule has the potential to reduce regulatory burdens by enabling oil and gas operations to occur under one set of regulations within each State. Section 206 of the draft ONSHORE Act is consistent with

this approach, but would appear now to be unnecessary. However, we would recommend that the Secretary and the BLM continue to work with the States on what elements of a regulatory program for hydraulic fracturing operations are necessary for operations on public lands and see if the State would consider adding those elements to their regulations.

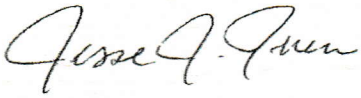
Section 204 of the draft bill includes provisions that would eliminate the requirement for a permit from the BLM for oil and gas operations on non-federal or split-estate lands and also exempt these activities from NEPA review as discussed above. The PLF is opposed to this provision of the bill, as the BLM has a statutory authority for the proper management of the reserved federal mineral estate and to ensure that the rights of all parties, including the oil and gas operator and the private surface owner are protected. Implementation of this provision of the bill would foster further confusion and complexity to the management of split-estate lands. The BLM manages approximately 58 million acres of federal mineral estate beneath privately owned surface lands. In many cases, the surface rights and mineral rights were severed under the terms of the Nation's homesteading laws. The BLM is responsible for the leasing and development of these reserved federal minerals through various laws, regulations and procedures. This includes the responsibility in the permitting process, as a Federal action, to ensure protection of the surface owner and compliance with NEPA review and other federal laws including requirements of Section 106 of the National Historic Preservation Act that requires Federal agencies to take into account the effects of their actions on cultural resources that may be eligible for or listed on the National Register. The BLM has implemented numerous steps in the permitting process to encourage coordination and cooperation between the oil and gas operator and surface owner, including early discussions of surface use agreements. The surface owner is invited to participate in onsite reviews and staking activities, entitled to the same level of surface resource protections as provided on federally owned surface, encouraged to provide input on construction and reclamation issues and mitigation measures, input on sufficiency of surface owners damages bond, and seek compensation for loss or damages. A common theme we have heard from industry on numerous fronts is the need for certainty to carry out their business, consistency in approach to management of mineral resources, and the timeliness of the permitting process. These concerns are also important in the permitting process on split-estate lands and the BLM has a process in place that respects and protects in the interests of all parties. Delegation of this authority to individual States would not be in the public interest.

Section 207 of the draft bill includes provisions for the Secretary of the Interior to conduct a review of the Integrated Activity Plan (IAP) for the NPRA, which was completed in late 2012, to determine whether additional lands should be made available for oil and gas leasing. This provision does not seem to be necessary at this time, as the Secretary issued Secretarial Order 3352 on May 31, 2017 that requires review and revision of the IAP for management of the NPRA. The Secretary also ordered the BLM to maximize the number of tracts offered during the next NPRA oil and gas lease sale. The BLM on October 25, 2017 announced that 900 tracts, which cover 10.3 million acres

and constitute all tracts designated and made available for leasing under the current IAP, will be offered at the oil and gas lease sale on December 6, 2017.

Thank you for the opportunity to provide comments to the Committee on the proposed provisions in the draft ONSHORE Act. We urge the Committee and Subcommittee to reconsider the need for this proposed bill based on the comments provided by the PLF. We would also be happy to continue discussions and dialogue with the Committee and Subcommittee on oil and gas and other important public land management issues.

Sincerely,



Jesse J. Juen, President