

Written Testimony of Ray Brady

Member of the Public Lands Foundation

Before

House Subcommittee on Energy and Mineral Resources

Re: Proposed Legislation to Empower States to Manage the Development and
Production of Oil and Gas on Available Federal Land

November 7, 2017

Mr. Chairman, we thank you for this opportunity to present the Subcommittee with our views regarding the ONSHORE Act discussion draft. My name is Ray Brady and I am pleased to represent the Public Lands Foundation today. I retired from the BLM in 2015 after more than 40 years of public service with the BLM and the USGS in a variety of field, State and Washington office staff and management level positions in the minerals, lands and realty, and energy program areas including the oil and gas program. As a national, non-profit organization with more than 700 members, comprised principally of retired, but still dedicated, BLM employees, the Public Lands Foundation (PLF) has a unique body of experience, expertise and knowledge of public land management. As retirees, we believe we offer an objective and non-bureaucratic view of what is currently happening on public lands. The PLF supports the BLM and its programs, but we are independent in our views and requests. We strive to improve the effectiveness of the BLM by 1) encouraging professionalism of its employees, 2) increasing the public's understanding of and support for the proper management of the public lands, and 3) promoting scientific management of lands administered by the BLM. We are strong advocates for keeping public lands in public hands.

The PLF believes that public lands should continue to be managed as a unified estate by the Bureau of Land Management. While perhaps well-intentioned, the draft ONHORE Act discussion draft creates far more problems than it solves and we would not support the proposed bill.

A balanced and responsible approach to oil and gas development on public lands is a vital element to the overall economic strength and stability of our Nation. 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. In 2016, the Office of Natural Resources Revenue announced that more than \$1.32 billion of energy revenues were disbursed to 37 states, as their cumulative share of revenues collected from oil, gas and solid mineral production on Federal lands. In addition to State disbursements, \$560 million was disbursed to American Indian tribes and individual Indian mineral owners and \$2.45 billion to the U.S. Treasury.

In 1976 Congress passed the Federal Land Policy and Management Act (FLPMA) which clearly laid out BLM's responsibility for the inventory, planning, use, production, preservation and

management of our public lands for multiple use and in a sustained yield fashion for future generations. Until the early 1980's, the management of the minerals and public land surface estate were split between the USGS and the BLM. That form of management proved impractical and inconsistent with the recently passed FLPMA so Secretary Watt transferred onshore minerals management responsibilities to the BLM in 1982. Federal responsibilities for classifying onshore mineral lands, overseeing exploration and development activities, and inspecting field operations were consolidated for the first time within a single agency. The management merger of the minerals and surface estate has proven to be much more efficient for industry, the various users of the public lands, State and local jurisdictions who are cooperators in analysis and regulation, and the BLM who must administer the surface activities on the public lands from grazing to recreation to wilderness. To again separate management of the two estates will be taking us back into the untenable management situation that existed prior to the early 80's.

In addition, the ONSHORE Act would segregate management of the public lands for BLM and its mandate under FLPMA and the public by eliminating the public engagement process directed by FLPMA and the National Environmental Policy Act (NEPA). It would foster the rapid growth of complex and confusing split estate management scenarios throughout the West. This would be compounded by individual state constitutions that for the most part in the western United States do not share the same mission as BLM-managed public lands. Western state land departments typically have a singular focus of generating revenues for schools, hospitals, and other institutions. For example in New Mexico, the land commissioner has highlighted that "State Lands are often misunderstood in terms of both their character and their management. They are not public lands, but are instead the subject of a public trust created to support the education of New Mexico's children." In addition, most western states do not have a complimentary law to NEPA that engages the public and assesses the environmental impacts to their lands. We believe this very elemental aspect of public land management is absolutely necessary and would certainly be challenged in court and thwart everyone's ability to garner the benefits of balanced and responsible energy production.

Many of us throughout our careers have worked in BLM field offices, states or Washington headquarters within the energy arena. 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 issuing plans, leases and permits. Although the BLM and industry have made tremendous advances since the onshore minerals merger in 1982, we also recognize there is and continues to be a need for the agency to improve and enhance its planning, environmental analysis and permitting actions. The same can also be said of BLM's approach to enforcement and inspection, plugging and abandonment, and reclamation.

The BLM and western states have made some very positive gains in many aspects of energy planning and management through partnering to identify issues, prioritize corrective actions, sharing resources, and addressing public and industry concerns prior to issuing decisions that would otherwise end up in litigation. 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 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 proposal in the draft bill to waive NEPA for permitting actions on non-Federal split-estate land and for permitting actions in preferred oil and gas leasing areas is 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 (DNAs). In addition, the BLM has already initiated a review of initiatives that may further streamline the BLM planning and NEPA procedures. The Secretary of the Interior 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 also recently 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 that will simplify the NEPA review process.

As a result, we believe the public lands surface and mineral estate should continue to be unified and on equal footing to facilitate the needs of the American public now and into the future and meet the intent and purpose of FLPMA. In addition, we believe emphasizing a shared responsibility through partnership opportunities with state, tribal and federal agencies and continued efforts to improve the NEPA process and other aspects of the oil and gas program within BLM would better serve everyone in the end.

Thank you for your time today.