



A Blueprint for Balance

Protecting America's Public Lands for Future Generations Amid the Energy Boom

Matt Lee-Ashley, Christy Goldfuss, Jessica Goad, and Tom Kenworthy, Center for American Progress
Nada Culver, The Wilderness Society
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Introduction and summary

The United States is riding a wave of expanded oil and gas production that exceeds even the most bullish projections made just five years ago. U.S. dependence on foreign oil has dropped to its lowest level in 20 years, thanks to technologies that have unlocked new supplies and the Obama administration’s “all-of-the-above” energy strategy. U.S. natural-gas production is at an all-time high, while domestic oil production has increased every year since 2008.¹ The International Energy Agency now estimates that by the end of the decade, the United States will surpass Saudi Arabia as the world’s largest oil producer.²

But along with this boom comes major policy challenges, and we must learn from policymakers’ mistakes in other industries. The signs of a technology bubble, a housing collapse, or a financial crisis seem clear in hindsight, yet when it matters most—when stocks are rising and profits are surging—Washington rarely takes the actions needed to translate a frenzied boom into strong, sustainable growth.

The most important question facing the oil and gas industry, policymakers, and stakeholders is not whether the United States can continue to expand domestic oil and gas production in the near to mid-term but how it will do so in a manner that is economically sustainable, environmentally sound, and publicly supported. In particular, the stability and longevity of the oil and gas boom hinges on whether the Obama administration and Congress can adequately address carbon pollution, air pollution, and water pollution; growing public distrust of hydraulic-fracturing practices; prevention and preparedness for catastrophic oil spills; worker-safety concerns; revenue collection on behalf of taxpayers; loss of open space and wild-life habitats; and other health, safety, and quality-of-life issues.

This report focuses on the challenges and opportunities that the oil and gas boom poses for America’s public lands, where oil production is at its highest level in more than a decade and 38 million acres of taxpayer land are under lease to oil and gas companies for drilling.³ For many communities, this kind of development is not new; oil and gas companies, after all, have been drilling on western public

lands for decades. The current oil and gas boom, however, has pushed drill rigs to the edge of, and in many cases into, local communities, prized hunting habitats, national parks, and watersheds that provide drinking-water supplies. As a result, business owners, city councils, county commissions, sportsmen, and citizens from across the political spectrum are expressing growing concern over the reality that without wiser policies, better planning, and stronger oversight from regulators, the oil and gas boom will cost them their way of life and the lands, water, and wildlife they want to protect for future generations.

Tensions over oil and gas drilling in the West have been fueled in part by federal policies that in recent years have favored oil and gas development over other more popular uses such as the protection of lands for hunting, fishing, and hiking. The Obama administration, for example, has been leasing public lands for oil and gas development more than 2.5 times faster than it is protecting them as parks, wilderness, and national monuments. This is out of step with past presidents, who have conserved as much public land as they have leased. What's more, the last Congress was of no help: It became the first Congress since World War II not to protect a single new acre of public land as a national park, wilderness, wildlife refuge, or monument. As former Secretary of the Interior Bruce Babbitt recently observed, "Our public land conservation consensus has fractured and collapsed."⁴

In this report, we outline steps the Obama administration can take to correct the balance between the protection of public lands for future generations and oil and gas drilling. Doing so will help steer growing oil and gas development on public lands onto a safe, sustainable, and responsible path that benefits taxpayers, the industry, and the natural resources with which America has been gifted. In particular, our recommendations aim to fulfill five main goals:

1. Protect public lands for future generations.
 - Create new national monuments.
 - Establish new national wildlife refuges.
 - Identify and advance local communities' land-conservation priorities.
 - Push Congress to pass land-conservation legislation.
2. Promote and expand outdoor recreation as an economic engine.
 - Incorporate economic measures of outdoor recreation into land-management decisions.

- Prioritize the protection and expansion of outdoor recreational opportunities near population centers.
- Protect backcountry recreational opportunities.

3. Provide taxpayers a fair return.

- Increase federal royalty rates to provide a fairer return for taxpayers.
- Increase rental rates to encourage diligent development.
- Update the Bureau of Land Management’s, or BLM, rules for measuring oil and gas that comes out of the ground.

4. Pay back the land

- Establish a mitigation fee to help offset the impacts of drilling.
- Dedicate a portion of revenues from oil and gas development on public land to a new conservation fund.

5. Drill the right way and in the right places.

- Fully implement 2010 oil and gas leasing reforms.
- Issue a secretarial order that clarifies the role of conservation values in oil and gas planning.
- Give priority to drilling proposals in low-conflict areas or areas that conserve land.
- Implement rules for fracking on public lands

Taken together, these goals and our recommendations for meeting them will boost America’s outdoor recreation and tourism economy, enhance certainty for industry, and give local communities and taxpayers a greater voice and a fairer stake when it comes to drilling on our public lands.

The ideas in this report build on reforms that the Obama administration began in its first term, including improvements to the Bureau of Land Management’s oil and gas leasing process; landscape-wide planning for renewable-energy development; and a greater emphasis on protecting sensitive lands from drilling. Although the administration has moved land-management policy in the right direction, the scale of the energy boom—and the risks of not handling it right—demand a redoubled commitment to reform and aggressive steps to protect public lands for public use. With so much at stake, it is in everyone’s interest to ensure that the protection of public lands for future generations rests on equal ground with the extraction of oil and gas resources.

Protect lands for future generations

Recent public opinion research commissioned by the Center for American Progress found that westerners have two overwhelming priorities for public lands management: ensuring access for recreational opportunities and protecting lands for future generations. The research found that oil and gas drilling on public lands is not widely supported among voters; only one in three westerners believe that drilling should be a high priority for land management, compared with two in three voters who see conservation and recreation as top priorities.⁵

Public lands policy in Washington, D.C., has unfortunately lost touch with the public's views. For more than a decade, the debate over natural resources on the federal level has focused primarily and overwhelmingly on maximizing oil and gas production, with both political parties touting their commitment to opening new areas—onshore and offshore—to energy development. Despite growing demand in communities across the country for more open space, wilderness, and parks, Congress has become so paralyzed that it has been unable to pass locally supported land-protection legislation. The last Congress was the first since World War II not to protect a single new acre of public land as a park, wilderness area, or national monument.⁶

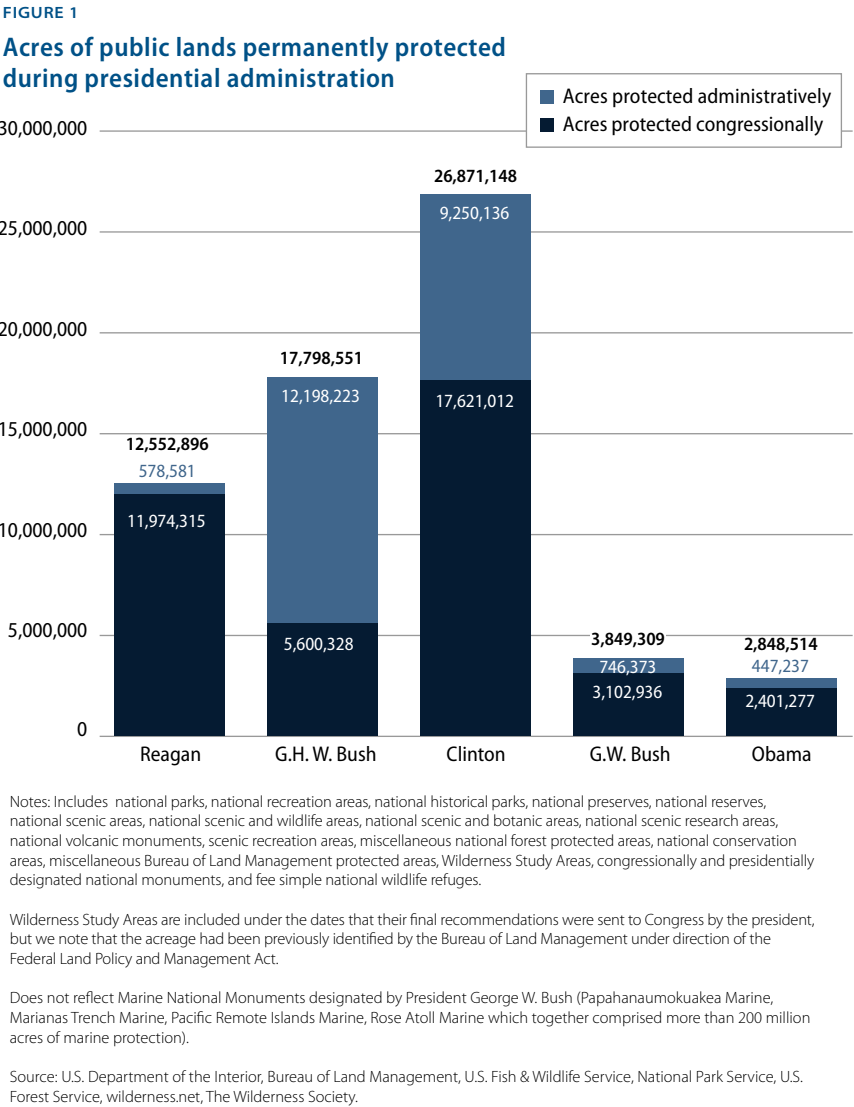
For its part, the Obama administration has lagged behind its predecessors in creating new opportunities for outdoor recreation and protecting land for future generations. Whereas past presidents have succeeded in permanently protecting as much land as they leased to the oil and gas industry for drilling, at the end of its first term, the Obama administration had leased roughly 6.5 million acres of public lands to the oil and gas industry, while protecting only 2.6 million acres.⁷ Those numbers have improved little thus far in 2013; more than 462,000 acres of public lands have been leased to oil and gas companies, while only about 261,000 acres have been permanently protected.⁸

The current trend of accelerating oil and gas development and slowing protections for public lands is not sustainable, publicly supported, or economically sensible.

Faced with the prospect of drill rigs in prime hunting grounds, near national parks, or close to drinking water supplies, western communities are fighting back against federal drilling plans. The heads of western-based businesses have come to Washington, D.C., to appeal for more protections for public lands because for them, outdoor amenities are a key factor in attracting and retaining top talent. Meanwhile, America’s \$646 billion outdoor-recreation economy has great potential, but retailers and manufacturers say that the federal freeze on new public lands protections hurts growth and slows job creation.

Americans want balance on their public lands. The public opinion research CAP commissioned found that Americans believe they do not need to choose between energy development and land conservation; they can do both.⁹ Voters want an energy policy that includes new protections for land, water, and wildlife.

To begin to right the balance between energy development and conservation on public lands, we recommend the following four policy actions.



Create new national monuments

With Congress failing to pass land-protection bills for the first time in 70 years, communities, local elected officials, and members of Congress are calling on the president to use the Antiquities Act to protect public lands that are important to their heritage, quality of life, and local economy. President Barack Obama has used the Antiquities Act nine times to protect more than 275,000 acres, but there are several other community-supported proposals that deserve the president's attention and action, including the Organ Mountains-Desert Peaks in New Mexico,¹⁰ the Boulder White-Clouds in Idaho,¹¹ and the Birthplace of Rivers in West Virginia.¹² Together, these three proposals alone represent more than 1 million acres of iconic American lands that deserve protection by the president.

Establish new national wildlife refuges

Similar to national monuments, national wildlife refuges can be created either under congressional or executive authorities. The Obama administration has demonstrated the economic and conservation benefits of this approach by establishing several new national wildlife refuges in its first term, including the Dakota Grasslands Conservation Area in North and South Dakota, the Everglades Headwaters National Wildlife Refuge and Conservation Area in Florida, and the Flint Hills Conservation Area in Kansas.¹³ These efforts and others, spearheaded by former Interior Secretary Ken Salazar, helped conserve broad landscapes of private, working lands and more than 166,000 acres of public lands in the Obama administration's first term.¹⁴ The administration has the opportunity to build on this progress in its second term.

Identify and advance local communities' land-conservation priorities

Under the America's Great Outdoors Initiative, the Obama administration held listening sessions in all 50 states and the District of Columbia to determine local communities' priorities for the protection of special lands. Interior Secretary Sally

Twelve places not to drill

- Arctic National Wildlife Refuge, Alaska
- Arches National Park, Utah
- Chaco Canyon, New Mexico
- Desolation Canyon, Utah
- Greater Dinosaur, Colorado
- George Washington National Forest, Virginia
- Los Padres National Forest, California
- North Fork of the Flathead River, Montana
- Otero Mesa, New Mexico
- Red Desert/Adobe Town, Wyoming
- Thompson Divide, Colorado
- Wyoming Range, Wyoming

Source: The Wilderness Society, "Too Wild to Drill" (2013), available at <http://wilderness.org/sites/default/files/TWS%20TooWildToDrill-Final.pdf>.

Jewell and Agriculture Secretary Tom Vilsack should build on these efforts by helping to translate deserving ideas into action. The administration, for example, should work with Congress and local communities to advance a proposal to protect the 700,000-acre San Gabriel Mountains and watershed in California. The administration should similarly work with local communities and Sen. Dianne Feinstein (D-CA) to advance her proposal to protect 1.5 million acres in the California desert. By continuing the America's Great Outdoors conversation with local communities, advocating for worthy projects, and welcoming new ideas, the Obama administration will deliver new outdoor amenities where they are most wanted.

Push Congress to pass land-conservation legislation

The last time Congress acted to protect public lands was in 2009, when it passed the Omnibus Public Land Management Act. This bill protected more than 2 million acres of wilderness and established three new national park units, a new national monument, three new national conservation areas, and more than 1,000 miles of national wild and scenic rivers.¹⁵

Following this success, members of Congress introduced more than 30 locally supported land-conservation bills totaling nearly 5 million acres in the 112th Congress. For its part, the Obama administration identified 18 bills, covering 3.5 million acres that deserved protection by Congress as national conservation areas or as wilderness.¹⁶ Despite these worthy ideas and the advocacy of local communities, the 112th Congress failed to protect a single new acre of public land.

Moving forward, the Obama administration should continue its strong support for congressional action to conserve land. It should also signal, however, that if Congress is unwilling to act, the administration will be prepared to use other tools to respond to community requests to protect public lands. The president's commitment to tackle climate change in his State of the Union address would be well applied to the need to conserve land for future generations: "If Congress won't act soon to protect future generations, I will," President Obama pledged.¹⁷

Promote and expand outdoor recreation as an economic engine

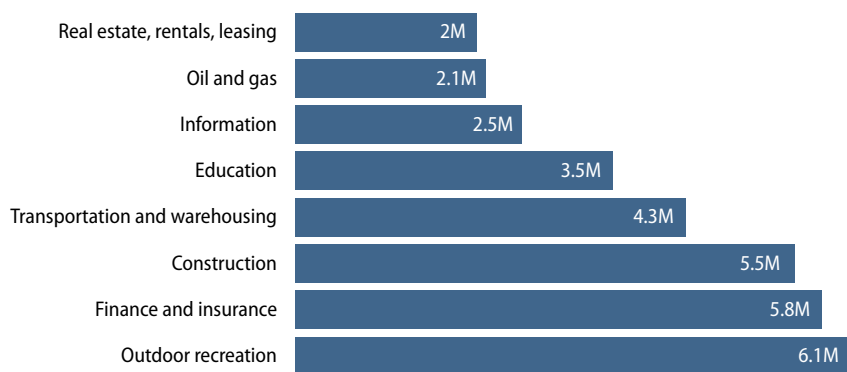
For most Americans, public lands are, first and foremost, a place for recreation and time with family. Vacations to national parks, camping trips to national forests, and fly fishing expeditions in the backcountry help drive a growing \$646 billion outdoor-recreation economy in the United States, supporting nearly three times as many direct jobs as the oil and gas industry.¹⁸ Americans understand and value the benefits from public lands. In fact, recent public opinion research commissioned by CAP found that two out of three westerners across party lines see the expansion of recreational opportunities as a top priority for the management of public lands.¹⁹

Despite the overwhelming and rising demand for more outdoor recreational opportunities, federal land-management policy fails to account for the benefits of increased recreational opportunities from sound conservation policies or the economic costs of reduced recreational opportunities when lands are lost to drilling and development. Land-management agencies do not have adequate measures of market or economic value for the outdoor recreation economy, as they have for logging, oil and gas drilling, and mining.

FIGURE 2

Outdoor recreation employs America

Job comparisons, by industry



Source: The Outdoor Industry Association, "The Outdoor Recreation Economy" (2012), available at http://www.outdoorindustry.org/pdf/OIA_OutdoorRecEconomyReport2012.pdf.

Placing a value on the outdoor economy is critical to understanding and mitigating the impact of industrial-development decisions on recreation. To make sound decisions, land managers should be able to measure how industrial development

will affect recreational use, consumer spending, retailers, outfitters, the service industry, and quality of life in a given area.

In particular, measures of the benefits of outdoor recreational opportunities should incorporate an analysis of the competitive advantage that the land provides for businesses located nearby.²⁰ Business owners in the West, for example, use national parks, forests, monuments, and wilderness areas as assets for recruiting and retaining talented employees that give their businesses a competitive advantage compared to other companies in urban environments that are isolated from high-value places to play outside. As Santiago Becerra, the CEO of Roambi, a tech company located in Solana Beach, California, put it:

*We actively leverage our location and the outdoors to attract and retain our employees. ... For our employees, taking time to get outdoors is re-energizing. It builds passion and commitment, and is critical to creativity and innovation—this is where the best work happens. It's also a competitive edge for us since not all companies work this way.*²¹

Economic studies have confirmed the anecdotal reports of business owners. Over the past 40 years, nonmetro counties where more than 30 percent of their public lands are protected as national parks, monuments, or wilderness areas experienced 345 percent job growth. By comparison, similar counties with no protected public lands saw jobs increase by only 83 percent over the same 40-year period.²²

As the country continues to recover from the worst economic collapse since the Great Depression, the outdoor industry and the public lands that it relies on should be given the full weight of their economic value in land-management decisions. We need both the jobs generated by energy development and those supported by recreation on public lands.

To manage public lands sustainably so that people can access the best places to feed the industries that depend on them, the outdoor-recreation economy must be on equal ground with the oil and gas industry.

To achieve this goal, we recommend the following three policy changes.

Incorporate economic measures of outdoor recreation into land-management decisions

To understand, protect, and promote outdoor recreational opportunities on public lands as part of a strategy to grow the economy, federal land-management agencies need to have accurate and consistent tools to measure the effects of proposed policies and decisions on the recreation economy. This analysis should parallel the type of measurements that are routinely conducted for other industries, including the oil and gas industry, and incorporated into agency decision-making processes.

To implement this goal, the president should issue an executive order directing the Federal Interagency Council on Outdoor Recreation, or FICOR, which was established through the America's Great Outdoors Initiative, to coordinate the development of clear and consistent economic measures for outdoor-recreation benefits and impacts and ensure that these measures are incorporated consistently at all levels of planning and decision making in the land-management agencies.

Case study: White River region, Colorado

The White River region of northwest Colorado offers some of the finest trout fishing and big-game hunting in the country, and is legendary for producing world-class mule deer bucks and quality elk year after year.

This area is also home to the Dinosaur National Monument, where the Green and Yampa rivers flow through desert canyons, and the night skies are among the darkest in the entire country. Hundreds of thousands of visitors explore the monument every year, generating millions of dollars for nearby communities.

The basin also holds significant oil and natural-gas resources. There are currently 1,800 wells in production in the area, and up to 21,000 more wells are expected to be drilled in the next 20 years.

Concerned that expanded drilling will adversely affect hunting and fishing opportunities and tourism, sportsmen and local communities are speaking up for strong drilling safeguards that will protect fish and wildlife habitats, the Dinosaur National Monument, and wilderness-quality lands.

Sources: Kent Walter, "White River Field Office Backcountry Conservation Area Proposal (Meeker, CO: Bureau of Land Management, 2012), available at http://www.trcp.org/assets/pdf/WRFO_Backcountry_Conservation_Area_Proposal.pdf; Yue Cui, Ed Mahoney, and Teresa Herbowicz, "Economic Benefits to Local Communities from National Park Visitation, 2011" (Fort Collins, CO: National Park Service, 2013), available at <http://www.nature.nps.gov/socialscience/docs/NPSSystemEstimates2011.pdf>; Bureau of Land Management, Non-WSA Lands with Wilderness Characteristics Inventory Update (Department of the Interior, 2012), available at http://www.blm.gov/pgdata/etc/medialib/blm/co/field_offices/white_river_field/LWC.Par.48278.File.dat/Lands%20with%20Wilderness%20Characteristics%20Inventory%20update%20for%20web%202012_08_29.pdf

Prioritize the protection and expansion of outdoor recreational opportunities near population centers

Outdoor recreation is a major component of America's economic growth and offers significant potential for additional job creation, yet the federal government does not have a coordinated strategy for encouraging growth in the sector. The current approach to protecting and expanding outdoor recreational opportunities is disjointed and inconsistent across public lands, despite clear and growing needs in many areas of high population growth.

As a step toward developing a coordinated strategy for expanding outdoor recreational opportunities, the administration should identify areas of high recreational value near urban areas. "Nearly every American lives within an hour's drive of lands or waters managed by the Interior Department," Secretary Jewell recently pointed out.²³ The federal government should identify which lands these are and have a plan for enhancing opportunities for hunting, hiking, fishing, and appropriate motorized use on them.

This effort can build from the mapping and analysis the Bureau of Land Management has conducted for public lands that are located close to areas with significant population growth. The agency has determined that some of its popular areas near urban centers have had 200 percent to 300 percent increases in usage over the past decade.²⁴ In some instances, the recreation fee dollars collected from visitors is now comparable to the money generated by timber or grazing.²⁵

We recommend that the Federal Interagency Council on Outdoor Recreation lead and coordinate an interagency effort to identify "recreation hotspots" and opportunities for expanded outdoor access in the "front country," which are areas near cities and population centers where there is high and growing demand for open spaces. In addition to identifying these areas, FICOR should coordinate a cross-government plan for managing these areas to encourage responsible and safe growth of outdoor recreation. It is essential that this strategy identify ways to encourage Americans from all backgrounds and with a wide range of interests to experience the outdoors.

Protect backcountry recreational opportunities

Some of the most unique, coveted, and at-risk recreational areas on America's public lands are remote, rugged, and undeveloped. In fact, backcountry recreational

opportunities such as hiking, canoeing, kayaking, rafting, climbing, mountain biking, camping, hunting, and fishing are often cited as factors that encourage talented workers to move to an area with public lands. Backcountry recreational trips also typically result in higher levels of consumer spending on gear, gas, hotels, and services, and are therefore a major component of America's \$646 billion outdoor-recreation economy.²⁶

Growing oil and gas development on public lands is unfortunately reducing the amount of backcountry that is undeveloped and appealing to recreational users. To better balance protections for untrammeled lands, we recommend new permanent protections of iconic lands as wilderness, national parks, monuments, and wildlife refuges.

We also recommend that the Bureau of Land Management use its administrative authority and statutory obligation to conserve high-value backcountry areas through the Federal Land Policy and Management Act, or FLPMA. The act directs the BLM to “develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands” and to do so in accordance with principles of multiple use and sustained yield.²⁷ FLPMA includes recreation and fish and wildlife in its definition of “multiple use” and specifically calls for “the use of some land for less than all of the resources.”²⁸ It further requires the BLM to set management that “will preserve and protect certain public lands in their natural condition.”²⁹

Based on these authorities, the BLM's leadership should direct its state and field offices to administratively protect backcountry lands through local land-use planning processes across the West. Though these administrative protections are not permanent, they will help keep these backcountry recreational areas just as they are and as the public wants them to be: undeveloped and accessible to all.

Provide taxpayers a fair return

When the U.S. government sells the development rights to Americans' oil and gas resources, the public expects to receive their fair share of the revenues in return. States, communities, and taxpayers are unfortunately missing out on hundreds of millions of dollars in revenues each year because century-old federal royalty rates are set at bargain-basement levels and outdated technologies and policies prevent the federal government from accurately measuring the oil and gas that is being extracted from public lands.

Since the 1920s, the federal onshore royalty rate for oil and gas has been 12.5 percent, approximately half of which goes to the U.S. Treasury, and the other half goes to the state where the drilling occurs. Most oil- and gas-producing states in the West charge between 16.67 percent and 18.75 percent royalties for drilling on state-owned lands, with Texas charging double the federal rate at 25 percent. A recent analysis by the Center for Western Priorities indicates that energy-rich states in the Rocky Mountain West are losing between \$400 million and \$600 million annually because the federal royalty rates are well below the states' rates.³⁰

Royalty rates are a means of delivering a fair return to the taxpayer and achieving desired policy outcomes. This can be accomplished by creating incentives for companies to develop leases more quickly, by discouraging the warehousing of leases and permits, and by encouraging exploration of new plays or fields.

Although the Obama administration has pledged to raise royalty rates in every budget since 2009, these pledges have been met with firm opposition from the oil and gas industry, which claims that higher royalty rates will discourage production. The evidence, however, suggests that resource price, technology, and geology are largely the primary determinant of when and where it is profitable for a company to drill for oil and gas—not royalty or severance tax rates.

Wyoming, for example, has the highest effective severance tax rate in the West and still remains a national leader in production. Montana, in an attempt to attract the

oil and gas industry, has among the lowest effective tax rates, yet drilling in Montana lags behind North Dakota. In fact, because of Montana's comparatively lower severance tax rates, a new well in Montana will generate \$800,000 less for the state than an identical well drilled across the border in North Dakota.³¹ Overall, economic data show that small yet fiscally meaningful differences in tax and royalty policy do not significantly affect oil and gas production. Companies' investment decisions are largely driven by other factors.³²



Chaco Culture National Historical Park with areas to be leased in the background.

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It is also worth noting that taxpayers are missing out on hundreds of millions of dollars of revenue because the Bureau of Land Management's guidelines for measuring oil and gas produced from public lands are outdated. In 2010 the Government Accountability Office, or GAO, concluded that the BLM's 20-year-old measurement and production-accountability regulations are "ineffective and inefficient" and "do not address current measurement technologies." In addition, because of inadequate and antiquated rules, taxpayers are not collecting royalties on the vast quantities of gas that are vented or flared into the atmosphere each year by industry. At the very least, taxpayers deserve an accurate accounting and fair return from the complete volume of resources that are extracted from their public lands.³³

Below we propose three ideas that the administration should explore as it works to deliver a fair return to American taxpayers from public lands. Let's consider each in turn.

Increase federal royalty rates to provide a fairer return for taxpayers

The Obama administration should set new, higher royalty rates for oil and gas development on public lands to more closely track the rates charged by states. In

the process of raising the royalty rate, the administration should consider establishing an escalating royalty rate to encourage companies to develop oil and gas leases in a timely manner. Under this structure, a company that begins producing energy within the first two years of buying the lease could pay, for example, an 18.75 percent royalty rate, while a company that begins producing after the first two years of the lease would pay a higher rate of 22.5 percent, for example.

Increase rental rates to encourage diligent development

Rental fees are paid on oil and gas leases that are not currently in production and not making royalty payments. A company holding a lease on public lands but not currently producing on that land must pay the federal government an annual rental fee of \$1.50 per acre in the first five years and \$2 per acre each year thereafter.³⁴ In 2012, despite nearly 21 million idle acres of leased land,³⁵ rental payments accounted for less than 2 percent of federal onshore oil and natural gas revenues.³⁶ Because rental rates are so low, companies are sitting on thousands of leases and permits. There are currently almost 7,000 approved permits, ready for drilling and energy extraction, sitting idle.³⁷

The Obama administration should raise rental rates on public lands to incentivize diligent development on leased lands that are sitting idle. In particular, the rental rate should rise significantly the longer a lease sits idle to encourage early development of the lease, as several states require. Texas, for example, increases the rental rate from \$5 per acre per year to \$25 per acre per year after the third year of a lease if the lease is not producing. The state of New Mexico doubles the rental fee in the second five years of a 10-year lease if the lease has not begun producing in the first five years.³⁸

Update BLM's rules for measuring oil and gas that comes out of the ground

Following the recommendations of the GAO, the inspector general, and the U.S. Department of the Interior's Subcommittee on Royalty Management, the BLM should move swiftly forward with new rules to accurately measure and account for the full volume of oil and gas that is produced on public lands.

These changes are likely to result in significant new revenues for taxpayers. Although the volume of oil and gas that is currently not being accounted for is

unknown, if more modern and accurate systems result in even a 1 percent to a 3 percent increase in measured volumes, taxpayers would see tens of millions, if not hundreds of millions of dollars in new revenue.

In addition, these rules should include standards for measuring and collecting revenues from hydrocarbons that are vented or flared by industry. The GAO reports that:

Around 40 percent of natural gas estimated to be vented and flared on onshore federal leases could be economically captured with currently available control technologies ... Such reductions could increase federal royalty payments by about \$23 million annually and reduce greenhouse gas emissions by an amount equivalent to about 16.5 million metric tons of CO₂--the annual emissions equivalent of 3.1 million cars.³⁹

These common-sense modernizations would increase revenues and reduce waste and pollution.

Pay back the land

The boom-bust cycle of resource extraction is all too familiar to western communities. Companies rush in to mine, log, or drill, turn their profit, and then—once the resource runs dry or the economics change—skip town. Local communities are often left with a collapsed economy and the costs of cleaning up.

To help reduce the environmental costs of development to local communities and taxpayers, the United States has worked over the past half century to require extractive industries to pay for the impacts of their operations through bonding requirements, mitigation measures, and conservation royalties. The Surface Mining Control and Reclamation Act of 1977, for example, established a fund, paid for through coal revenues, to clean up abandoned mines. The Land and Water Conservation Fund Act of 1965 required that a portion of revenues from offshore oil and gas development be dedicated to the protection of parks, open spaces, forests, and working lands. Likewise, many states have established successful mitigation banking programs to offset the loss of wetlands or other natural amenities when an area is developed industrially.

These laws and policies aim to uphold a simple but powerful principle: A portion of the benefits that come from the extraction of publicly held resources should be reinvested in the protection of land, water, and wildlife for future generations.

Unfortunately, this principle is not consistently or effectively applied to the development of oil and gas resources on public lands. Companies must meet basic reclamation and bonding requirements, analyze the environmental impacts of their projects, and meet federal and state pollution standards. While these measures are important, they are not sufficient to offset the loss of natural amenities that result from a host of impacts, including:

- Spills of oil and toxic chemicals
- Air pollution from rigs and wells

- Traffic, noise, and health impacts to communities located near drilling sites
- Loss of lands for hunting, fishing, hiking, and other outdoor recreational pursuits
- Degradation from nearby oil and gas infrastructure of areas that are too special to drill, such as national parks

Taken together, these and other impacts of oil and gas drilling on public lands are resulting in a net loss to the values that the public most prizes, namely their access to recreational opportunities and the amount and quality of land that is open and protected for future generations.

To break from the current dynamic of growing oil and gas development and shrinking open public lands, we propose two ideas to reinvest the revenues from drilling in the protection and enhancement of the public's resources.

Establish a mitigation fee to help offset the impacts of drilling

The U.S. Department of the Interior should require large drilling projects on public lands to pay a mitigation fee that would be used to help offset the loss of wildlife habitats, recreational areas, and other valued resources.

This fee would be calculated by setting a value on the damage that a proposed drilling project will cause by identifying the condition and overall value of resources—such as big game habitat and recreational opportunities—that would be harmed by a particular drilling project, and by identifying the amount of that resource that is harmed. Based on this assessment, the agency would assess a mitigation fee to compensate for that harm, which must be an amount sufficient to conserve, acquire, or restore other lands of similar value.

The mitigation fee would apply to impacts to lands and resources that cannot be avoided, minimized, or otherwise mitigated on-site. An important backcountry recreation area, for instance, will no longer be enjoyable if there are new oil and gas wells and roads that ruin the experience. The mitigation fees paid would be used to fund conservation or restoration activities in the general area rather than on the project site.

The oil and gas industry is already engaging in paying for this type of off-site mitigation. In Wyoming's Pinedale Anticline, for example, some of the largest opera-

tors agreed to provide a fund to mitigate impacts to wildlife and other resources through on- and off-site projects, monitoring, research, habitat improvements, and oversight activities by agency personnel. But this type of mitigation fund is not uniformly required across all public lands or consistently calculated and applied to encompass the range of important values and uses that are actually being harmed or lost by drilling projects.⁴⁰ By creating a formal mitigation fee program, funds would be used for maximum benefit, based on a supportable calculation.

Assessing project-specific mitigation fees on energy development on public lands is not a new idea. In fact, the Bureau of Land Management is currently using a similar approach as part of its regional mitigation plans for solar energy on public lands. The agency has already developed an initial formula as part of its first Solar Regional Mitigation Strategy,⁴¹ which will be applied in solar-energy zones. Under that process, the agency evaluates the condition of resources and the likely impacts to those resources across large landscapes, ranging from endangered species, cultural resources, national parks, and water supplies to recreational opportunities and lands with wilderness characteristics and scenic values, and then it calculates an appropriate mitigation fee. While this formula is still being refined, the building blocks are fundamentally sound and are applicable to developing mitigation fees for large oil and gas projects.

A similar approach for oil and gas development across broad landscapes would fund conservation at the same landscape scale while providing more certainty for oil and gas developers related to how this type of mitigation will be calculated.

Dedicate a portion of revenues from public land oil and gas development to a new conservation fund

The federal government currently assesses a 12.5 percent royalty on the oil and gas extracted from public lands onshore, with half of the proceeds going to the U.S. Treasury, and the other half to the states where the drilling occurs.⁴² In the section above, we propose that the Department of the Interior raise this royalty rate to be more consistent with state royalty rates to ensure a fair return for taxpayers from the development of their resources. We also propose that of a portion of the additional revenues from a higher royalty rate be set aside for conservation and restoration activities on public lands.

These additional royalty-rate investments could go to a variety of activities, including restoring damaged lands, acquiring inholdings—private land inside federal land tracts—and other lands that are at risk of development, and managing more places for recreational opportunities. The fund could be modeled on the highly successful and popular Land and Water Conservation Fund, which uses revenues from offshore oil and gas drilling for federal, state, and local parks, trails, open space, and land-protection projects.

The Department of the Interior has the executive power to increase the royalty rate, but it would take an act of Congress to establish a new conservation fund. The Obama administration should therefore begin increasing royalty rates and submit a legislative proposal to Congress to establish a conservation fund.

Drill the right way, in the right places

The federal government's long-standing approach to leasing public lands for oil and gas development is illogical, inefficient, and outdated, and it also engenders conflict between competing values and uses. According to one oil and gas industry official, it is a "system currently that throws the conservation community and energy development into conflict ... The current approach to public land oil and gas development is broken and really doesn't work for anyone."⁴³ The Bureau of Land Management's leasing process became so controversial that nearly 75 percent of the leases offered by the agency in the Rocky Mountain region from fiscal year 2007 to fiscal year 2009 were protested.⁴⁴

The central problem is that the BLM's traditional approach to leasing is upside down. Rather than determining the best places for oil and gas drilling before offering leases, it sells leases first and then evaluates environmental impacts. As a result, companies will often spend millions of dollars to acquire leases that are later found to be in areas that local communities find highly controversial, are prized for hunting and recreation, or are environmentally sensitive. This "lease first, look later" approach often results in additional costs, delays, and litigation.

In 2010 the Obama administration began to implement reforms to the BLM's oil and gas leasing program in response to a high-profile controversy in Utah in which the Bush administration sold oil and gas leases near Arches National Park, Canyonlands National Park, and Dinosaur National Monument.⁴⁵ The new policy called for creating landscape-level plans called Master Leasing Plans, or MLPs, that identify the most appropriate places for drilling in a broad area of public lands. The MLPs, which are developed with public input, provide guidance related to where leases are to be issued as a way to improve the quality of decision making and reduce the possibility of conflict and protests.⁴⁶ Since the implementation of the leasing reforms, protests have in fact fallen from 47 percent of all leases sold in 2009 to 18 percent in 2012.⁴⁷

Paonia, Colorado, case study on impacts to communities

"I found out they had proposed 30,000 acres of drilling for natural gas around our community. It wasn't just in the hills. It was literally wrapping around our schools, wrapping every single farm. It was in our communities, not around them."

– Alison Gannett, owner of the Holy Terror Farm, on a lease sale proposed by the Bureau of Land Management near Paonia, Colorado, in February, 2013. Alison Gannett, "A MoveShake Story," Red Reel, October 20, 2012, available at <http://vimeo.com/51823995>.

Once reliant almost entirely on nearby coal mining and oil and gas drilling, Colorado's North Fork Valley is now internationally known for its wine, organic farms, and ranches that have been passed down from generation to generation.

The Bureau of Land Management recently proposed leasing new areas of the valley for oil and gas development, including in and around several wineries, organic farms, community water sources, schools, and popular recreation sites.

The BLM's proposal met strong and vociferous opposition from a wide range of local businesses, government officials, farmers, ranchers, and concerned citizens. The BLM initially backed away from its plan, but residents remain concerned that the agency will continue to press forward with oil and gas development in the wrong places at great cost to their economy and way of life.

Source: "Paonia's Unlikely Win in the War Against Fracking," Fox 31 Denver, August 10, 2013, available at <http://www.citizensforahealthycommunity.org/news/fox-31-denver-tiny-paonias-unlikely-win-in-the-war-against-fracking>.

The Obama administration's work to restore order and common sense to the Bureau of Land Management's oil and gas leasing process is not complete. The 2010 leasing reforms have not been fully or consistently implemented, and some BLM offices continue to offer highly controversial areas for lease, including areas near Colorado's Mesa Verde National Park and Dinosaur National Monument and in and around communities such as Paonia, Colorado.⁴⁸ Moreover, the Obama administration's rapidly expanding renewable-energy program on public lands—which uses a "smart-from-the-start" approach that identifies and attempts to resolve conflicts in advance of development—provides a template for additional improvements to the BLM's oil and gas program.

Next, we provide four recommendations that will help ensure that drilling on public lands is conducted in the right ways and the right places.

Fully implement 2010 oil and gas leasing reforms

The Bureau of Land Management's 2010 leasing reforms established a strong framework for balancing energy production with wildlife, recreation, and other

values of the public lands. The reforms acknowledge that in some cases, leasing of oil and gas resources may not be consistent with safeguarding national parks, national wildlife refuges, wildlife habitat, and other places with cultural and historic values. Importantly, the reforms made clear that “[u]nder applicable laws and policies, there is no presumed preference for oil and gas development over other uses” of public lands.⁴⁹



Location to be leased near Mesa Verde National Park.

WESTERN ENERGY PROJECT

This framework can and should continue to guide the BLM’s approach to oil and gas development. In particular, the reforms call for the creation of Master Leasing Plans, which are intended to give BLM a way to “strategically plan for leasing and development” and “identify and address potential resource conflicts and environmental impacts from development” at a landscape level.⁵⁰ Through these plans, the agency can conduct more detailed evaluations of oil and gas activity and identify both areas suitable for development—and how development will proceed in those areas—and areas where recreation, wildlife, and wilderness values should take precedence.⁵¹

Master Leasing Plans are a “smart-from-the-start” approach that provides greater clarity and certainty for the public, industry, and other users of public lands. We recommend that the agency create MLPs in areas where potential oil and gas development may endanger national parks, community water sources, prime hunting grounds, and other critical public resources.

Issue a secretarial order that clarifies the role of conservation values in oil and gas planning

The 2010 leasing reforms provide important guidance to BLM field managers on how to conduct landscape-level planning for where oil and gas development

should occur on public lands. To implement these reforms successfully, however, and to ensure that the purposes of these changes are applied throughout the agency, leadership at the Department of the Interior and BLM should make clear that maximizing the protection of land, water, and recreational values is a high priority in the oil and gas approval process.

To this end, we recommend that the Department of the Interior issue a secretarial order that would explicitly direct agency staff to minimize drilling impacts on conservation values and maximize conservation opportunities. This order would affirm the Federal Land Policy and Management Act's requirement to manage the public lands for multiple use,⁵² to consider which uses are appropriate in which places,⁵³ and to avoid focusing solely on uses with best economic return.⁵⁴

The order should incorporate detailed direction that will inform the development of land-use plans and overall agency decision making. Specifically, the order would direct the BLM to:

- Assess large landscapes to identify places that are suitable for development and places where it should not occur because of competing resource values
- Incorporate conservation into planning for oil and gas development by:
 1. Identifying and designating potentially low-conflict, high-resource areas for oil and gas development
 2. Identifying and protecting high-value conservation lands for their land, wildlife, cultural, or recreational values
- Apply this approach to agency-planning efforts that are already underway and not just new planning efforts

Give priority to drilling proposals in low-conflict areas or areas that conserve land

In reviewing proposed drilling projects on public lands, the Bureau of Land Management should give priority to those with fewer impacts on natural resources or projects that include measures to protect, restore, or enhance conservation values on public lands.

One way that the agency can do this is by prioritizing industry proposals to lease and drill that are in low-conflict areas with proven development potential. In particular, proposals to lease and drill within the agency's newly designed Master Leasing Plan should be presumed to meet these criteria and should be brought to the front of the line for approval.

In addition, if a project includes a plan for protecting or restoring land, it should also receive priority review. A company, for example, may propose to offset some of the impacts of a drilling project by funding a wildlife-habitat-improvement initiative on public land.

While projects that are proposed for low-conflict areas or areas that include conservation components should be fast-tracked, those that are in sensitive or high-conflict areas should receive additional review. In particular, projects should undergo additional review if they are:

- Located within or adjacent to populated areas
- Included in legislation that would prohibit development if passed
- Located in habitats for endangered or sensitive species
- Likely to affect municipal watersheds or sensitive wetlands
- Located within citizen-proposed wilderness or areas without roads
- Located within recreational-management areas
- Located in areas with likely resource conflicts

If a proposed leasing or drilling project meets any of the above criteria, the agency should identify opportunities to avoid those conflicts. If the agency decides to allow leasing or drilling in a sensitive or high-conflict area, it should also document and justify its decision to do so in a new statement of adverse environmental impact. This policy provides further incentives to avoid potential harm to other resources of the public lands by highlighting the risks and creating incentives for the agency to find ways to manage them.

It is worth noting that the Department of the Interior’s solar-energy program already takes many of these steps by explicitly prioritizing the review and approval of projects that are located away from high-conflict areas. The program also requires additional justification for projects that are not guided to preferred, low-conflict locations. The oil and gas industry should be held to the same standards.

Implement rules for fracking on public lands

The Obama administration has begun to draft rules to provide greater protections for communities and the environment from the impacts of hydraulic fracturing—better known as fracking—techniques that are now widely used on public lands. The administration should move ahead to finalize strong rules that provide the following:

- Public disclosure of the chemicals used in fracking fluids
- Clearer guidelines for assuring wellbore integrity so that fluids do not leak from the well
- Standards for managing wastewater discharge

Moreover, to ensure transparency and greater public confidence, the disclosure of chemicals should come before drilling, not after. This disclosure should be through a government-run website, rather than an industry-supported website, and any trade-secret exemption should be very tightly drawn so it protects only legitimate trade secrets. Producers should additionally be required to test nearby water supplies both before and after drilling.

Conclusion

Without a sustained commitment from policymakers to reform and balance their approach to public land management, the future for oil and gas development on public lands will continue to be characterized by controversy, uncertainty, and litigation. To avoid this path, the Obama administration and Congress must bridge the growing divide between the current focus in federal policy on promoting oil and gas development and the public's growing demand for greater access to recreational opportunities and protections of lands for future generations. With a more even-handed approach to land management, these priorities need not stand in conflict.

With Congress seemingly deadlocked and unable to advance public land legislation, the key to a more balanced and sustainable approach to expanding energy production while protecting lands and waters lies with the president and his team. Without question, the administration made significant progress in its first term toward modernizing and reforming oil and gas policies on public lands, but the pace of the energy boom and the extent to which land-conservation efforts have collapsed in Congress requires renewed leadership from the president.

The challenges facing the Obama administration will not be easy to meet. Despite the economic benefits of steering the oil and gas boom onto a more sustainable and publicly supported path, the oil and gas industry will likely continue to fight every attempt to improve protections for drinking water, generate a fairer return for taxpayers, and set aside places that should not be drilled. The American Petroleum Institute alone is spending up to \$200 million a year to oppose even the most common-sense reforms.⁵⁵

Meanwhile, the administration must overcome the imbalance between drilling and conservation that accrued over its first term. Whereas recent administrations, including those of President George H. W. Bush and President Bill Clinton, succeeded in permanently protecting as much public land as they leased for oil and gas development, the Obama administration faces nearly a 4 million-acre deficit

from its first term that they will need to overcome to restore equity and to address the public's priorities for their public lands.

This blueprint outlines a path toward restoring balance. To translate the current drilling boom into stable, lasting growth, the nation needs the Obama administration to accelerate its efforts to implement a comprehensive energy strategy, curtail dangerous carbon pollution, protect the health of communities, provide taxpayers with a fair return for the development of their resources, and conserve lands and waters for future generations. Only sound policy and strong oversight will give communities confidence that drilling is being done safely, responsibly, and in the right places.

About the authors

Matt Lee-Ashley is a Senior Fellow at American Progress. He previously served as deputy chief of staff at the Department of the Interior, overseeing policy, external, communications, and legislative matters on behalf of Secretary Ken Salazar. In 2010 Lee-Ashley was named the Interior Department's communications director, leading the department's communications response to the Deepwater Horizon oil spill and helping undertake the aggressive offshore oil and gas reform agenda of the Obama administration. From 2005 to 2008 Lee-Ashley worked in the U.S. Senate for then-Sen. Salazar (D-CO), handling military, veterans affairs, and energy and environment policy. A native of Colorado Springs, Colorado, Lee-Ashley graduated from Pomona College in Claremont, California, in 2004.

Christy Goldfuss is the Director of the Public Lands Project at American Progress. She was previously a legislative staffer for the House Committee on Natural Resources, where she focused on policies and legislation affecting the U.S. Forest Service and the Bureau of Land Management. She first started working on lands issues as the federal preservation advocate for Environment America, prior to which she worked as a television reporter in California and Nevada. She received a bachelor's degree in political science at Brown University.

Jessica Goad is the Manager of Research and Outreach at American Progress. She was previously on staff at The Wilderness Society, where she focused on fossil and renewable energy on public lands. Her interest in land conservation stems from her experience growing up in Golden, Colorado, at the base of the Rocky Mountains. Jessica holds a B.A. in political science and environmental studies from Carleton College in Northfield, Minnesota.

Tom Kenworthy is a Senior Fellow at American Progress. He joined American Progress after spending two years as a senior fellow at Western Progress, a regional nonpartisan policy institute in the Rocky Mountain West, where he focused on renewable energy and environmental issues. Tom spent more than three decades as a newspaper reporter, the majority of that time with *The Washington Post* and *USA Today*. He has reported on a wide variety of subjects, including state and national government and politics, Congress, the environment, and the states of the Rocky Mountain West. His longtime specialties were public lands, natural resources, and energy issues, which he covered as a Denver-based national correspondent beginning in 1995. His environmental reporting has won awards from the Society of American Foresters and the Sierra Club. As a policy analyst, Tom

has written commentaries and articles for a variety of national and regional publications. Tom holds a B.A. in history from Cornell University in 1970. He lives in Golden, Colorado, with his wife, Nancy.

Nada Culver is the director and senior counsel of The Wilderness Society's BLM Action Center. She brings over a decade of legal experience working on environmental issues, including energy development, environmental remediation, and nuclear energy. Nada's previous work gives her insight into some of the pressures that the Bureau of Land Management receives from development interests. The BLM Action Center, located in Denver, Colorado, assists and encourages people to participate in land-use planning processes and management decisions, including those addressing transmission, renewable energy, fossil-fuel development, and protection of wilderness.

Ti Hays is the counsel at the Western Energy Project. He was previously an associate attorney with The Wilderness Society's BLM Action Center and spent four and a half years working on public lands issues for the National Trust for Historic Preservation in Washington, D.C., and Denver, Colorado. He has a degree in English from The College of William & Mary and a law degree from Lewis & Clark Law School.

Brian O'Donnell is the executive director of the Conservation Lands Foundation. He was previously the national public lands director for Trout Unlimited, or TU, and has also worked for The Wilderness Society, where he led campaigns that resulted in the congressional designation of the Black Rock Desert and Sloan Canyon National Conservation Areas and dozens of new legislated Wilderness areas throughout Nevada. Brian was the cofounder of the Nevada Wilderness Coalition, Wilderness Support Center, and West Virginia Wilderness Coalition. In the early 1990s Brian served as the executive director of the Alaska Wilderness League. Brian earned a bachelor's degree in economics from Rollins College in 1993.

Greg Zimmerman is policy director at the Center for Western Priorities, overseeing a wide variety of research on Western public lands and energy issues. He previously worked for the State of the Rockies Project, the Colorado Watershed Assembly, and The Nature Conservancy on issues, including water scarcity, land management, and ecosystem services. Greg received his master's degree from the Yale School of Forestry and Environmental Studies, and he currently resides in Denver, Colorado.

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