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Social License to Drill

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In April, Maryland became the second state after New York to ban hydraulic fracturing, better known as fracking. This action may affect industry's access to pockets of the Marcellus Shale formation, one of the nation's largest oil and gas plays.

One need look no further than to the numerous local ordinances banning fracking to realize that absent public confidence in the regulatory system, the oil and gas industry can lose its access quickly. Former Secretary of the Interior Ken Salazar often said that unless common standards exist to ensure that fracking of natural gas is done safely and responsibly, the practice could become the "Achilles' heel" of the nation's domestic energy agenda.[1]

Salazar's comment hit on a simple concept: The oil and gas industry—like any industry—must have a social license to operate. Americans need a certain degree of trust that the industry's activities are relatively safe, that the costs and risks are being managed and are acceptable, and that companies are following the rules.

Over the past six months, however, the Trump administration has launched an unprecedented attack on the safeguards that protect the country's clean air and water and ensure balanced development on public lands that belong to all Americans. From abandoning a rule to reduce methane pollution to proposing to drill in the Arctic National Wildlife Refuge, the new administration appears to be looking for every opportunity to cater to the oil and gas industry. In fact, President Donald Trump's Secretary of the Interior Ryan Zinke met with more oil and gas industry executives in his first four months on the job than any other type of interest group.[2]

Executed under the chest-thumping banner of "energy dominance," these deregulatory actions may actually have the opposite effect. By systematically dismantling environmental and safety protections, the Trump administration is putting the oil and gas industry's social license—and therefore the underpinnings of the industry itself—at risk.

This brief examines four areas where the Trump administration's actions, through the U.S. Department of the Interior, have the potential to kneecap the oil and gas industry by eroding public trust.

Gutting public health and safety standards

To justify opening up more public lands and waters to oil and gas development, Secretary Zinke is fond of saying that it is better to produce energy in the United States, where there are standards, rather than "have it produced overseas under little or no regulations."[3] This argument makes some sense—that is, until one considers that the Trump administration is actively trying to undo the very regulations that help ensure energy development is safe and responsible.

In the Trump administration's crosshairs are safeguards that range from protecting communities' drinking water to reducing harmful emissions of carbon pollution to preventing offshore disasters such as the Deepwater Horizon oil spill. Examples of safeguard pullbacks include:

- **Hydraulic fracturing standards:** In 2015 the Interior Department updated requirements for wellbore integrity, wastewater disposal, and public disclosure of chemicals.[4] Undoing the rule, as Zinke has suggested he may do, would undermine public confidence that the government has a basic understanding of what chemicals are being used in fracking or what basic protections are in place to protect communities and drinking water.[5]

- **Methane waste and pollution:** A rule by the Bureau of Land Management, or BLM, would limit the amount of methane gas—a powerful pollutant—that companies can let escape into the atmosphere when drilling on public lands.[6] The methane gas plume is so large above the 40,000 gas wells in northern New Mexico that it can be seen from space.[7] Under Zinke, the Interior Department recently stated that it will not implement this safeguard—an action that the states of New Mexico and California have challenged in court.[8]

- **Offshore safety:** Developed in the wake of the Deepwater Horizon oil spill, the well control rule tightened standards on blowout preventers, the last-resort safety devices that failed catastrophically during the 2010 disaster.[9] The co-chairmen of the bipartisan commission established to understand lessons learned from the disaster called this rule "the most important action the government has taken to reduce offshore drilling hazards."[10] In a move that puts Gulf Coast communities at risk of another devastating oil spill, Trump has targeted this rule along with other offshore safety standards in a recent executive order.[11]

Poll after poll shows that Americans believe access to clean drinking water and clean air is essentially a civil right.[12] They expect and trust that the government has in place reasonable standards that protect their health and safety. In the absence of these assurances, communities have taken matters into their own hands, restricting industry's access to resources or implementing their own standards and safeguards. For example, towns, cities, and counties in 22 states have passed measures to curb fracking.[13] Regarding methane emissions, industry will likely have to navigate a patchwork of standards as states implement them in the absence of common federal guidelines.

In short, if the Trump administration is successful in rolling back basic public health and safety standards, it is not only putting communities at risk, but also putting industry at risk of losing the public's trust.

Cutting out the "public" in public lands

In May, Secretary Zinke suddenly suspended the BLM's Resource Advisory Councils, citizen advisory groups that have served as the conduit for local community input on public land management for the past 20 years. While Zinke couched the move as part of a benign review of the Interior Department's committees, the suspension has the immediate effect of cutting out local input on BLM decisions—including whether and how oil and gas development is done on public lands.

The halt of Resource Advisory Council meetings coincides with a sweeping review that Zinke has ordered of all policies that could "potentially burden" energy development.[14] The catch-all nature of the review—being conducted behind closed doors and without public input—means that it could affect everything from the department's market-based mitigation policies to guidance on drilling in national parks.

Zinke's secret energy review is reminiscent of former Vice President Dick Cheney's Energy Task Force, which colluded with industry to write recommendations that land management plans prioritize energy development, expedite or sidestep environmental reviews, and double oil and gas production on public lands. But Cheney's lopsided approach ultimately backfired, miring industry in controversy and delays.[15]

After years of George W. Bush administration policies that maximized oil and gas production at the expense of everything else, western communities became tired of the drill now, drill everywhere approach. As detailed in a Center for American Progress issue brief, this frustration came to a head in 2008 when the Bush administration offered oil and gas leases at the doorstep of Arches National Park.[16] The firestorm of controversy that followed led to a series of leasing reforms that strengthened public input and better balanced oil and gas development with other values and uses of public lands. (See text box below for more detail)

A Turning Point for the BLM

In December 2008, the Bush administration auctioned off oil and gas leases on more than 100,000 acres of public land in southeastern Utah, including near Arches and Canyonlands national parks. The action was met with intense backlash from the public. A federal court blocked the leases, citing the "threat of irreparable harm to public land if the leases are issued."[17]

The Obama administration's subsequent review of the BLM's oil and gas program found a broken, controversial system that heavily favored the oil and gas industry at the expense of other considerations, including proper environmental reviews. As a symptom of the larger problem, from 2007–2009 three-quarters of all proposed leasing parcels in four states—Utah, New Mexico, Colorado, and Wyoming—were formally protested by local communities, conservation organizations, or other stakeholders.[18] These objections slowed down the BLM's ability to issue leases after sales for years.

In 2010, the BLM implemented significant reforms that put oil and gas development on equal footing with other uses of public lands; allowed the BLM to focus leasing on public lands with higher resources and fewer conflicts in order to minimize impacts to the environment or other uses, such as recreation or subsistence; and brought the public into the leasing process earlier. The oil and gas leasing policies that now guide the BLM better reflect the agency's statutory mandate and the public's evolving priorities for public lands; however, the aforementioned reforms are now under threat from Secretary Zinke's energy review.

The Trump administration's actions threaten to drag the BLM back to the era of distrust and controversy that dogged the Bush administration and, consequently, spurred the BLM to infuse the oil and gas leasing process with transparency. By cutting the public out of critical leasing decisions, Zinke may in fact undo the necessary framework that provides certainty to oil and gas operators to drill on public lands.

Giving away public lands

The Interior Department is steward of 20 percent of America's lands—including national parks, wildlife refuges, and conservation lands—and 30 percent of the federal subsurface mineral estate.[19] As such, the department wields huge power—especially in the West—over how lands are managed on behalf of the American public.

The Trump administration has made clear that it views public lands and waters as a vehicle through which to achieve "energy dominance."[20] While public lands do play a key role in the nation's conventional and renewable energy development, the administration is showing a blatant disregard for the American public's view of where it's appropriate to develop and where it's not. For example:

- Trump's budget proposes opening up the Arctic National Wildlife Refuge to oil and gas drilling. Recent polling by CAP shows that Americans oppose drilling in this pristine area by a factor of 2 to 1.[21]

- The BLM plans to auction off oil and gas leases at the doorstep of Dinosaur National Monument and the San Rafael Swell in Utah. Similar proposals in the past have been met with protests and lawsuits from the local community.

- The Trump administration is rewriting plans that reflect millions of comments and years of public input. Specifically, the Interior Department is scrapping the land management plan for the National Petroleum Reserve in Alaska and the five-year plan for offshore oil and gas, both in order to open up even more public lands and waters to fossil fuel development.

This giveaway of public lands ignores that the real problem for the oil and gas industry is excess, not access. Industry has a massive surplus of leases and permits—more than they know what to do with. Less than half of federal acreage under lease is currently producing, and industry is sitting on almost 8,000 unused permits, an all-time high.[22]

Trump's policies can't change the fact that low global market prices are contributing to industry's weak demand. An astonishing 90 percent of public lands and minerals managed by the BLM are already open to drilling, but industry bid on less than a quarter of federal acreage offered for lease at auction in fiscal year 2015, the most recent year for which the BLM has made data available.[23]

The Trump administration's agenda to sell out public lands to fossil fuel development is not only shortsighted, but it is also out of step with American values. By wide margins, both those who voted for Hillary Clinton and those who voted for Trump in the 2016 presidential election agree that it's more important to protect natural places than to increase drilling on public lands.[24]

As it now stands, when it comes to access to public lands, the oil and gas industry is suffering from an embarrassment of riches. With Americans wary of a partisan agenda that favors special interests, the Trump administration would be wise to stop tipping the scale so far toward fossil fuel development.

Ripping off taxpayers

Any fair contract should include just compensation in exchange for goods or services. In the case of fossil fuel development, the industry pays the American people for the use of their public lands and waters in the form of royalties on production, rental payments, and lease sales.

By most measures, industry pays less than market rates for royalties on onshore oil and gas production—a rate that hasn't been changed in almost a century—and enjoys bargain-basement prices on federal coal leases.[25] Moreover, loopholes allow oil and gas companies to sit on federal leases for years—even decades—without paying a dime in rent. The Wilderness Society estimates that these loopholes alone add up to more than $80 million in lost revenues every year.[26] The loser, in all of these instances, is the American taxpayer.

Instead of exploring ways to ensure that oil and gas companies provide fair compensation to taxpayers for exploiting resources that are owned by all Americans, the Trump administration is headed in the opposite direction. It has moved quickly to slash royalty rates even further and to quash efforts to deliver a fair return to taxpayers. For example:

- The Trump administration has delayed compliance with BLM's methane rule, which would save $330 million in taxpayer-owned gas annually and result in direct payments to the public by $800 million over the next decade.[27] By failing to implement the rule, the Trump administration is allowing royalties owed to the American taxpayer to go up in smoke.
- The Interior Department has slashed royalty rates from 18.75 percent to 12.5 percent for offshore oil and gas production.[28]
- Secretary Zinke has halted the programmatic review of the federal coal program, an important vehicle through which to ensure a competitive and fair market leasing process.
- Secretary Zinke has refused to implement a noncontroversial, fully vetted rule that would require fossil fuel companies to pay full royalties for extraction from public lands, which would benefit taxpayers by an estimated $88.5 million annually.[29]

While Zinke has announced he will resurrect a Royalty Policy Committee, his department's early actions suggest the committee will be more concerned with appeasing the oil and gas industry than seeking a fair return for the American taxpayer.[30]

Conclusion

Many in the oil and gas industry acknowledge the implicit social contract required to successfully operate in the United States. It is why BP spent millions in advertising to bolster their image and regain public trust after the devastating Deepwater Horizon oil spill.[31] It is why companies such as Royal Dutch Shell and Chevron Corporation are members of the Center for Sustainable Shale Development, an organization dedicated to responsible development in Appalachia. [32] And it is why some companies voluntarily regulate their operations to better protect communities' clean air and clean water.[33]

In a 2011 report, the National Petroleum Council recognized public confidence as an essential business ingredient, concluding: "The critical path to sustained and expanded resource development in North America includes effective regulation and a commitment of industry and regulators to continuous improvement in practices to eliminate or minimize environmental risk."[34]

As the Trump administration attempts to remove "burdens" to the oil and gas industry, they may actually be burdening developers in lasting ways that upholding reasonable regulations and balanced energy development never could. One need only replay the tape of the litigious, ugly end of George W. Bush's administration to understand the consequences of overzealous and overreaching energy policies.

The Trump administration's assault on public lands and the safeguards that protect public health and safety raises a fundamental question: to what end? While it may succeed in lining the pockets of energy executives in the short term, it's ultimately a lose-lose-lose situation for the American people, the environment, and—perhaps surprisingly—the fossil fuel industry.

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