EARTHJUSTICE

ADVOCATES for the WEST
PO BOX 1612 | BOISE, ID 83701
www.advocateswest.org | 208.342.7024

May 16, 2025

The Honorable Douglas Burgum
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

BY U.S. MAIL AND ELECTRONIC MAIL:
Douglas_burgum@ios.doi.gov

Re: Department of the Interior Emergency NEPA Procedures

Dear Secretary Burgum:

The undersigned groups write to raise our objections to the *Alternative Arrangements For NEPA Compliance* announced on April 23, 2025, and to the Council on Environmental Quality (CEQ) letter of the same date authorizing those alternative arrangements (collectively, the Emergency Procedures). The Emergency Procedures adopt astonishingly short time frames for completing National Environmental Policy Act (NEPA) analyses and eliminate opportunities for public comment on most of these analyses. The Procedures attempt to circumvent NEPA and shut the public out of energy approval processes, thus compromising the quality and integrity of the Department of the Interior's decision making and leading to worse outcomes for communities and the environment.

In particular, the Emergency Procedures may not lawfully be applied when the Department offers new oil and gas leases and approves applications for permits to drill (APDs). The Emergency Procedures are unlawful for numerous reasons: (1) they are premised on a baseless and unsupported declaration of a "national energy emergency" in Executive Order 14,156, 90 Fed. Reg. 8,433 (Jan. 29, 2025); (2) they conflict with the Department of the Interior's NEPA regulation on emergency responses, 43 C.F.R. § 46.150; (3) they violate the Department's public participation obligations; (4) they fail to conform to the requirements for Administrative Procedure Act (APA) notice-and-comment rulemaking; and (5) they are inconsistent with the timeframes and participation periods mandated by the Bureau of Land Management's (BLM) oil and gas leasing regulations. Accordingly, the undersigned organizations request that you immediately withdraw the Emergency Procedures.

I. There Is No National Energy Emergency.

As an initial matter, Executive Order 14,156 and the Emergency Procedures are a transparent pretext to exempt fossil fuel development from environmental laws rather than a response to an actual energy emergency. There is no urgent need to immediately increase oil and gas production on public lands. Oil production is at an all-time high, the United States is a net exporter of petroleum, and companies are sitting on more than 7,000 approved drilling permits on public lands that are not being used. Moreover, a rational response to an energy emergency would not exclude renewable energy or allow companies to decide whether they will "opt in" to the relevant procedures.

As the Department has recognized, an "emergency" refers to "a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action," or "an unforeseen combination of circumstances or the resulting state that calls for immediate action." *See* p. 6, *infra*. None of the concerns identified in the Executive Order meet this definition.

The Executive Order raises longstanding energy policy issues like energy prices and security, but fails to identify any sudden or unforeseen new circumstances that might require deviation from existing laws and regulations. Instead, the Executive Order borrows talking points that the oil and gas industry has offered for years when seeking to increase drilling and production. These are nothing new. And because these issues involve long-term national energy policy, they cannot be resolved through short term steps expediting approvals of leases and drilling permits.

For example, the Executive Order points to concerns such as:

A. ***"High energy prices"*** caused by an "inadequate energy supply." Executive Order § 1. This ignores several facts:

- Automobile gasoline prices are currently at very modest levels, with the inflation-adjusted price per gallon similar to what it was in the 1950s.[1]

- Oil production in the United States has hit record levels over the past several years. In March 2024, the U.S. Energy Information Agency (EIA) reported that the "United States produces more crude oil than any country, ever."[2]

[1] U.S. Energy Information Agency, *Gasoline and Diesel Fuel Update: U.S. Regular Gasoline Prices* (May 12, 2025) (U.S. average price of $3.12 per gallon), https://www.eia.gov/petroleum/gasdiesel/; U.S. Dep't of Energy, Alternative Fuels Data Center, *Average Annual Retail Fuel Price of Gasoline 1950-2023* (showing gasoline price of $3.15-$3.35 per gallon in 2023 dollars during 1950s), https://afdc.energy.gov/data/10641.

[2] EIA, *Today in Energy* (March 11, 2024), United States produces more crude oil than any country, ever - U.S. Energy Information Administration (EIA) .

- Current oil prices are around $60/barrel, which is not high,[3] and the EIA forecasts that crude oil prices will decline in 2025-2026.[4] Energy companies, in fact, have indicated that substantial price declines may lead them to *curtail* production.[5]

- Natural gas prices are low compared to historic levels, with the Henry Hub spot price recently at less than $3/MMBtu.[6]

B. ***National security***, which requires an "affordable and reliable domestic supply of energy." Executive Order § 1. But:

- The United States already produces more total petroleum than it uses: we have been a net exporter of petroleum since 2020.[7] In addition, U.S. oil exports hit record levels in 2024.[8]

- Natural gas prices are currently low, and the United States is a net exporter of natural gas. No shortage of natural gas is expected: EIA forecasts that natural gas exports will increase by more than 20 percent in 2025.[9]

C. ***Opportunities to sell energy abroad*** in order to create domestic jobs and "strengthen relations with allies and partners, and support international peace and security." Executive Order § 1. But:

- The United States is *already* exporting record amounts of oil.

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[3] Oil Price Charts (May 1, 2025), Oil Price Charts | Oilprice.com.

[4] EIA, *Short-term Energy Outlook* at 2 (May 2025), https://www.eia.gov/outlooks/steo/pdf/steo_full.pdf.

[5] Federal Reserve Bank of Dallas, *Dallas Fed Energy Survey - Comments* (Mar. 26, 2025), https://www.dallasfed.org/research/surveys/des/2025/2501#tab-comments (respondents stating "[a]t $50-per-barrel oil, we will see U.S. oil production start to decline immediately and likely significantly," and "[t]he rhetoric from the current administration is not helpful. If the oil price continues to drop, we will shut in production"); *see also id.* (Special Questions tab indicates that companies reported needing a minimum "breakeven" price of $65 per barrel to profitably drill a new well).

[6] EIA, *Natural Gas: Henry Hub Natural Gas Spot Price* (Daily - April 24, 2025), Henry Hub Natural Gas Spot Price (Dollars per Million Btu).

[7] EIA, *Oil and petroleum products explained: Oil imports and exports*, Oil imports and exports - U.S. Energy Information Administration (EIA). Further, 70 percent of U.S. crude oil imports come from Canada and Mexico. *Id.*

[8] EIA, *U.S. crude oil exports reached a new record in 2024* (April 10, 2025), U.S. crude oil exports reached a new record in 2024 - U.S. Energy Information Administration (EIA).

[9] EIA, *Short-Term Energy Outlook: Natural Gas* (May 6, 2025), https://www.eia.gov/outlooks/steo/report/natgas.php (forecasting that natural gas exports will increase from 12.5 Bcf/day in 2024 to 15.5 Bcf/day in 2025).

- Similarly, U.S. is already the world's largest liquified natural gas exporter.[10] Total gas exports are expected to increase more than 20 percent this year.

D. ***Electric grid stability:*** the Order expresses concern that the stability of the grid "will dramatically deteriorate in the near future due to a high demand for energy and natural resources to power the next generation of technology." Executive Order § 1. In reality:

- EIA reports that "[a]fter almost two decades of relatively little change, electricity consumption grew by 2% in 2024, and we forecast it will continue growing by 2% in both 2025 and 2026, mostly as a result of demand from new semiconductor and battery manufacturing factories and from data centers."[11] However, EIA forecasts that "solar power will supply most of the increase in electricity consumption"—not natural gas.[12]

- In any event, as described above, there is no shortage of natural gas available if new generation capacity from natural gas is needed.

The details of the Executive Order and Emergency Procedures also illustrate the pretextual nature of the alleged "emergency." The Executive Order's exclusion of renewable energy, and the "opt in" nature of the Emergency Procedures, reflect an effort to exempt favored (i.e., fossil fuel) energy producers from federal environmental law rather than to respond to an emergency.

First, the Executive Order defines "energy" to exclude wind, solar and many other renewable sources. Executive Order § 8(a). If there were a genuine energy emergency, the United States would be expected to take an "all of the above" approach to increasing energy supplies. The Executive Order itself recognizes the importance of a "diversified" energy supply, *id.* § 1, and all the concerns listed in the Executive Order can be addressed by increasing renewable energy production along with coal, oil and gas.[13] Clean energy is already affordably

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[10] EIA, *The United States remained the world's largest liquefied natural gas exporter in 2024* (Mar. 24, 2025), The United States remained the world's largest liquefied natural gas exporter in 2024 - U.S. Energy Information Administration (EIA).

[11] EIA, *EIA extends five key energy forecasts through December 2026* (Jan. 15, 2025), EIA extends five key energy forecasts through December 2026 - U.S. Energy Information Administration (EIA).

[12] *Id.*

[13] Further undercutting the claimed emergency, the Executive Order also ignores energy conservation and efficiency. In fact, the Trump administration plans to halt the Environmental Protection Agency's energy-saving Energy Star Program. *See, e.g.*, *Shuttering of EPA's Energy Star Program Would Affect Electric Bills and the Environment*, SCIENTIFIC AM., May 8, 2025, https://www.scientificamerican.com/article/the-epa-plans-to-terminate-the-energy-star-program-heres-what-that-means/.

fueling more and more of our economy, helping to make the United States truly energy independent over the long term and meeting any future growth in electricity demand.

Second, the "opt in" structure of the Emergency Procedures—they apply only where the "project applicant . . . want[s] the review of their project to be covered by the alternative arrangements"—undercuts the Department's claim to be responding to an emergency. If the United States genuinely requires an immediate increase in energy production, expediting that production cannot be left to the business decisions of individual energy companies. The stated goals of the Executive Order are not contingent on whether each operator chooses to seek expedited approvals.

II. The Emergency Procedures Are Unlawful and Arbitrary and Capricious.

A. Executive Order 14,156 Does Not Activate Any Emergency Powers Under NEPA.

President Trump's Executive Order relied on the National Emergencies Act, 50 U.S.C. § 1601 *et seq*. (the NEA), for authority to declare a national energy emergency. Executive Order 14,156. The NEA authorizes the President to declare a national emergency, which allows him to exercise "any special or extraordinary power" that is authorized by an Act of Congress "during the period of a national emergency." 50 U.S.C. § 1621(a).

The NEA does not give the President free rein to disregard the law, however. Rather, an emergency declaration only applies to statutes "conferring powers and authorities to be exercised during a national emergency." *Id.* § 1621(b). As Congress explained: the "National Emergencies Act is not intended to enlarge or add to Executive power. Rather the statute is an effort by the Congress to establish clear procedures and safeguards for the exercise by the President of emergency powers conferred upon him by other statutes." Sen. Rep. 94-1168 at *3 (Aug. 26, 1976).

The NEA also imposes requirements for reporting to Congress and procedures for terminating emergencies. 50 U.S.C. §§ 1621-1631. In particular, the NEA requires the President to "specif[y] the provisions of law under which he proposes that he, or other officers will act" in exercising emergency powers. *Id.* § 1631. This specification must be made in the emergency declaration, or in "subsequent Executive orders published in the Federal Register and transmitted to the Congress." *Id.*

Unlike some other statutes, NEPA does not give the President any "special or extraordinary power" to waive its requirements during national emergencies. *Id.* § 1621(a); *see* 42 U.S.C. § 4321 *et seq*. (NEPA). Moreover, President Trump's Executive Order makes no mention of NEPA—much less "specif[ies] the provisions" of that statute under which he wants to act during the emergency. 50 U.S.C. § 1631.

As a result, the fact that President Trump has declared a purported "emergency" does not give the Department any additional power to disregard the ordinary requirements of NEPA. The Department must look elsewhere for authority to issue the Emergency Procedures.

B. The So-Called "Energy Emergency" Cannot Support the Use of "Alternative Approaches" Under 43 C.F.R. § 46.150.

The Department relies on one of its NEPA regulations, 43 C.F.R. § 46.150, for authority to issue the Emergency Procedures. That regulation allows emergency actions to be taken under certain circumstances, but it does not authorize the Emergency Procedures, or their application to the issuance of oil and gas leases or drilling permits.

The Department must make a reasoned determination, supported by record evidence, that: (a) emergency circumstances actually exist within the meaning of the NEPA regulation, and (b) responding to that emergency requires issuance of a permit or lease prior to NEPA compliance. The Department cannot make those findings.

1. The administration's goal of increasing energy production does not represent an emergency for purposes of NEPA.

The Department's NEPA regulation, 43 C.F.R. § 46.150, only applies where an emergency "makes it necessary to take urgently needed actions before preparing a NEPA analysis and documentation" in compliance with the regular NEPA procedures.

In issuing the regulation, Interior explained that an "emergency" means "a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action," or "an unforeseen combination of circumstances or the resulting state that calls for immediate action." 73 Fed. Reg. 61292, 61301 (Oct. 15, 2008) (applying dictionary definition of "emergency"). BLM's NEPA Handbook offers the following examples of typical emergencies: a "hazardous materials spill," "***ongoing*** wildland fires," and "emergency stabilization actions following wildland fires or other disasters" where stabilization is "immediately needed to protect public health and safety or important resources."[14]

As one court noted, findings of "emergency circumstances" under NEPA have been upheld where they serve to "avert imminent crises outside the agency's control." *NRDC v.*

[14] BLM, *National Environmental Policy Act: Handbook H-1790-1* (2008) at 10-11 (emphasis added), https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_Handbook_h1790-1.pdf.

Winter, 518 F.3d 658, 683 (9th Cir. 2008) (cleaned up), *reversed on other grounds*, 555 U.S. 7 (2008).

For example, federal land managers have relied on emergency procedures to relocate wild horses that were left without forage or water following a wildfire, *Friends of Animals v. BLM*, No. 2:16–cv–1670–SI, 2018 WL 1612836, at *8 (D. Or. April 2, 2018), or when immediate steps were needed to contain an ongoing wildfire. *Forest Serv. Employees for Env. Ethics v. U.S. Forest Serv.*, 2:16-cv-0293-TOR, 2017 WL 2962771, at **1-4 & n.7 (E.D. Wa. July 11, 2017) (similar Forest Service regulation invoked for cutting trees to create a fire line). In other contexts, altering operations of a water control project to prevent the extinction of an endangered species has been classified as an emergency for purposes of invoking NEPA emergency procedures. *Miccosukee Tribe of Indians v. U.S.*, 420 F. Supp. 2d 1324, 1329-30 (S.D. Fla. 2006). And urgent transport operations in support of an active military conflict in the Middle East have been held to be an emergency for purposes of NEPA compliance. *Valley Citizens for a Safe Envm't v. Vest*, Civ. A. No. 91–30077–F, 1991 WL 330963, at **1-2, 6 (D. Mass. May 30, 1991) (affirming alternative NEPA arrangements for nighttime military flights needed to support Operation Desert Storm, which responded to Iraq's unexpected invasion of Kuwait).[15]

The administration's policy goal of increasing domestic energy production does not qualify as an emergency for NEPA purposes. The concerns described by the Executive Order all involve long-standing policy and market issues that have existed, and which the federal government has engaged with, for years. They do not involve a "sudden, urgent" or "unexpected" event, or "requir[e] immediate action" prior to complying with NEPA. 73 Fed. Reg. at 61301.

For example, the desire to export American energy to advance foreign policy goals, and for the United States to enjoy an "affordable and reliable domestic supply of energy," have been policy goals for many decades and are already being implemented. Pp. 3-4, *supra*. Nor do any new developments suddenly or unexpectedly threaten those goals. To the contrary, U.S. oil production is already at record high levels, and this country has been a net exporter of natural gas for the past several years. Pp. 2-3, *supra*. Similarly, while fossil fuel advocates have claimed for years that grid stability could suffer as renewable energy sources become a larger part of the country's energy supply, the electrical grid remains very reliable.[16] And contrary to the

[15] The CEQ regulations provided for NEPA compliance in emergencies, 40 C.F.R. § 1506.11 (2023), and Section 46.150 "supplements, and is to be used in conjunction with" the CEQ regulation. 43 C.F.R. § 46.20(a); *see also*, 73 Fed. Reg. at 61301 (Section 46.150 "codif[ies] . . . CEQ guidance for emergency actions"). Interior is one of many federal agencies following the approach to emergencies outlined in the CEQ regulation.

[16] National Renewable Energy Laboratory, *Top 10 Things to Know About Power Grid Reliability* (Jan. 26, 2024), Top 10 Things To Know About Power Grid Reliability | News | NREL; CleanTechnica, *California Smashes Myth*

Executive Order's stated concern over high energy prices, both oil and natural gas prices are relatively low today. Pp. 2-4, *supra*. There is no rational basis for invoking NEPA's emergency procedures here.

2. Issuing drilling permits and leases prior to NEPA compliance is not required to address any alleged energy emergency.

Even if the energy policy concerns raised in the Executive Order could qualify as an emergency for NEPA purposes, the Department regulation does not allow "alternative arrangements" to be used for issuing new drilling permits or leases. "Alternative arrangements" for NEPA compliance may be applied in two situations:

- If an action won't have a significant impact on the environment, alternative arrangements are available only where "the nature and scope of the subsequent actions related to the emergency require taking such proposed actions prior to completing an environmental assessment and a finding of no significant impact," 43 C.F.R. § 46.150(c); or
- If an action is likely to have a significant impact, any alternative arrangements can "apply only to the proposed actions necessary to control the immediate impacts of the emergency." *Id.* § 46.150(d).[17]

Approval of leases and drilling permits with the goal of increasing energy production is much different from containing a wildfire, responding to a toxic spill, or getting supplies to troops during an active military conflict. BLM lease sales occur every three months in many states, 30 U.S.C. § 226(b)(1)(A), and drilling permit approvals occur on an ongoing basis with thousands of federal permits approved each year—all without needing emergency NEPA procedures.[18] Routine leasing and permitting are not emergency responses that "require taking [action] prior to completing an environmental assessment." 43 C.F.R. § 46.150(c); *see NRDC*, 518 F.3d at 682 (holding that naval training exercises were not NEPA emergencies where they "were planned well in advance and with sufficient time to follow the regular [NEPA] process") (cleaned up).

Attempting to characterize lease and permit issuances as emergency responses would be arbitrary and capricious because those approvals will not immediately increase oil and gas production from federal lands. Leases have a ten-year term and most leases are not brought into

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That Renewables Aren't Reliable (Jan. 24, 2025), California Smashes Myth That Renewables Aren't Reliable - CleanTechnica.

[17] The regulation also provides for "actions necessary to control the immediate impacts of the emergency that are urgently needed to mitigate harm to life, property, or important natural, cultural, or historic resources." 43 C.F.R. § 46.150(a). The Emergency Procedures do not invoke this provision, further undercutting any claim that an energy emergency actually exists.

[18] BLM, *FY 2024 Application for Permit to Drill (APDs) Status Report: 09/01/2024 to 09/30/2024* (reporting that 3,592 APDs were approved in fiscal year 2024), FY 2024 Application for Permit to Drill (APDs) Status Report - September 2024.

production for several years—with most oil and gas production occurring more than ten years after the lease is issued.[19] Similarly, drilling permits have a three-year duration, 43 C.F.R. § 3171.14(a), allowing the operator several years to drill a well. As CEQ has explained, "alternative arrangements developed by an agency address the actions necessary to control the immediate impacts of an emergency. The long-term response to the emergency, including recovery actions, remains subject to the regular NEPA process."[20]

Moreover, an effort to immediately expand federal energy production does not require approving more drilling permits and leases (much less approving them prior to NEPA compliance). As of February 2025, operators already held more than 7,000 approved drilling permits that are not being used—which amounts to almost a three year supply under recent drilling rates.[21] Similarly, there are already more than 9,100 outstanding federal leases that are not in production.[22] Operators make decisions on whether to drill based on the market price of oil and gas and other factors—not due to any shortage of approved drilling permits. Adding more permits and leases to the existing stockpile will do nothing to increase energy production in the short term.

If the Department sees a need to immediately ramp up federal oil and gas production on an emergency basis, it could direct companies to begin developing the thousands of permits and leases they already hold, rather than allowing companies to accumulate even more. The standard oil and gas lease form gives the Department the authority to direct rates of development and production in the public interest.[23] The fact that the Department has not done so underscores the absence of a genuine energy emergency in this country.

III. The Emergency Procedures Violate Statutory and Regulatory Requirements for Public Participation.

The Emergency Procedures are also flawed because they attempt to constrain or outright eliminate any opportunity for public involvement in Interior Department energy and mineral permitting and leasing decisions. This attempt to restrict public input is arbitrary, capricious, and

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[19] Congressional Budget Office (CBO), *Options for Increasing Federal Income from Crude Oil and Natural Gas on Federal Land* at Figure 1-7 (2016), https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51421-oil_and_gas_options-OneCol-3.pdf.

[20] CEQ, *Emergencies and the National Environmental Policy Act Guidance*, 89 Fed. Reg. 106,448 (Dec. 30, 2024).

[21] BLM, *FY 2025 Application for Permit to Drill (APD) Status Report: 01/01/2025 to 01/31/2025* (listing 7,010 approved permits available for drilling), FY 2025 Application for Permit to Drill (APDs) Status Report - January 2025; *BLM Oil and Gas Statistics: Fiscal Year 2024 Statistics* Table 8 (2,383 new wells spud during fiscal year 2024), Oil and Gas Statistics | Bureau of Land Management .

[22] *BLM Oil and Gas Statistics: Fiscal Year 2024 Statistics* Tables 1 and 5 (listing 32,758 federal oil and gas leases, 23,654 of which are in production).

[23] BLM Form 3100-11 § 4 ("Lessor reserves right to specify rates of development and production in the public interest"), Form 3100-11.

contrary to the Department's legal obligations under the Federal Land Policy and Management Act (FLPMA) and NEPA.

FLPMA broadly requires the Secretary of Interior to "give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, the public lands." 43 U.S.C. § 1739(e). FLPMA defines "public involvement" as "the opportunity for participation by affected citizens in rule making, decisionmaking, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance." 43 U.S.C. § 1702(d). Courts have confirmed that 43 U.S.C. § 1739(e) requires BLM to provide opportunities for public involvement in both land-use planning *and* later management decisions implementing such plans, such as mineral leasing or permitting decisions. *See Mont. Wildlife Fed'n v. Haaland*, 127 F.4th 1, 40 (9th Cir. 2025) (holding that the Department of the Interior "has a duty under FLPMA to involve the public in those decisions [regarding the management of public lands]"); *Nat'l Wildlife Fed'n v. Burford*, 835 F.2d 305, 322 (D.C. Cir. 1987) (affirming the district court's conclusion that the government violated FLPMA when it failed to offer public participation opportunities related to the department's decision to revoke protective restrictions pertaining to particular federal lands); *W. Watersheds Project v. Kraayenbrink*, No. 4:05-cv-297, 2006 WL 2348080, at *7 (D. Id. Aug. 12, 2006) ("This statutory language values public input on long-range issues . . . as well as on day-to-day issues"); *see also Natl. Parks and Conservation Ass'n v. FAA*, 998 F.2d 1523, 1531 (10th Cir. 1993) ("Congress, through FLPMA . . . , has determined that the public has a right to participate in actions affecting public lands").

The Emergency Procedures violate this statutory requirement by directing staff to severely constrain or outright eliminate public participation for energy and mineral leasing and permitting decisions. Like NEPA, FLPMA contains no emergency exception. As a result, the Department cannot simply dispense with this public participation mandate in the name of a supposed "National Energy Emergency."

Public input is separately required under NEPA. NEPA requires an opportunity for public comment as part of the Notice of Intent to prepare an EIS. 42 U.S.C. § 4336a(c). The ten days contemplated for comment in the Emergency Procedures are totally inadequate and will undercut this statutory requirement. At that stage—prior to a draft EIS—members of the public typically lack many details about a proposal and its environmental impacts. Allowing only ten days will as a practical matter prevent interested parties from preparing substantive comments. Moreover, the Department's NEPA regulations also require a public comment period with the notice of availability for a draft EIS. 43 C.F.R. § 46.435(a). The Emergency Procedures would eliminate this opportunity, thus denying the public any chance to submit comments with the benefit of information in a draft EIS.

Even when preparing an EA, agencies "must, to the extent practicable, provide for public notification and public involvement." *Id.* § 46.305(a). "A complete failure to involve" the public in the environmental review process thus violates NEPA. *Citizens for Better Forestry v. U.S. Dept. Agric.*, 341 F.3d 961, 970 (9th Cir. 2003); *see also Bering Strait Citizens for Responsible Res. Dev. v. U.S. Army Corps of Eng'rs*, 524 F.3d 938, 953 (9th Cir. 2008) ("[a]n agency, when preparing an EA, must provide the public with sufficient environmental information, considered in the totality of circumstances, to permit members of the public to weigh in with their views and thus inform the agency decision-making process."); *Mont. Wildlife Fed'n*, 127 F.4th at 37–38. The Emergency Procedures violate these standards by eliminating the requirement that officials circulate or allow comment on a draft EIS *and* by allowing projects approved with an EA to be approved without any public input. As explained above, this attempt to curtail public comment in the NEPA process cannot be justified under the Department's regulation governing emergency situations, 43 C.F.R. § 46.150.

Even assuming the Department of the Interior could lawfully constrain or eliminate public involvement in leasing and permitting decisions, it failed to provide a reasoned explanation for doing so here. As noted above, there is no urgent need to increase energy production on federal public lands, and there has also been no reasonable explanation given as to why the energy policy concerns raised in Executive Order 14,156 are so urgent that they require the Department of the Interior to dispense with ordinary procedures for public involvement. Moreover, in deciding to hasten permitting and leasing, the Department entirely failed to consider an important factor: the *cost* of limiting public input. There are numerous benefits to public participation—including increased accountability; additional scientific, technical, on-the-ground, or local expertise; and increased public involvement—that the Department entirely failed to consider in adopting its Emergency Procedures. This alone violates the Department's APA duty to act reasonably. *See Mont. Wildlife Fed'n*, 127 F.4th at 37–41.

IV. The Emergency Procedures Cannot Be Used for Oil and Gas Leasing.

The Department of the Interior must clarify that the Emergency Procedures cannot be used to approve onshore oil and gas leasing because they are inconsistent with the timeframes and participation periods mandated by 43 C.F.R. § 3120.42. That BLM regulation, which contains no exceptions, requires BLM to provide a 30-day scoping period, 30-day comment period, a Notice of Competitive Lease Sale at least 60 calendar days prior to the lease auction, and a 30-day protest period following the posting of that Notice of Competitive Lease Sale. *Id.* The Emergency Procedures are inconsistent with these requirements and thus cannot be used to approve onshore oil and gas leasing.

V. Notice-and-Comment Rulemaking Was Required.

The Emergency Procedures are invalid because the Department of the Interior improperly promulgated them without adhering to notice-and-comment rulemaking procedures required under both the APA and FLPMA.

Under the APA, agencies may promulgate rules only after providing notice and an opportunity for public comment. 5 U.S.C. § 553(b) and (c). The Emergency Procedures constitute a substantive rule subject to the APA's notice-and-comment procedures, because they are a "statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements" for reviewing energy projects. 5 U.S.C. § 551(4) (APA definition of a "rule"). Although the Department of the Interior has provided no justification for bypassing notice-and-comment procedures, we also note that the "rule of agency organization, procedure, or practice" exception does not apply. 5 U.S.C. § 553(b). That exception does not include any action that "substantially affects the rights of those over whom the agency exercises authority." *Pickus v. U.S. Bd. of Parole*, 507 F.2d 1107, 1113 (D.C. Cir. 1974). The Emergency Procedures here go far beyond mere internal procedures and substantially affect the right of third parties to comment, consult, and otherwise participate in the covered decisions. *See Western Energy All. v. Salazar*, No. 10-cv-237F, 2011 WL 3738240, at **1, 7 (D. Wyo. Aug. 12, 2011) (instruction memorandum changing implementation of NEPA required notice-and-comment rulemaking).

Likewise, FLPMA requires the Department to use notice-and-comment rulemaking when establishing procedures for public involvement in land management decisions. Specifically, FLPMA Section 309 states that "the Secretary, *by regulation*, shall establish procedures . . . to give the Federal, State, and local governments and the public adequate notice and an opportunity to . . . participate in, the preparation and execution of plans and programs for, and the management of, the public lands." 43 U.S.C. § 1739(e) (emphasis added). FLPMA Section 310 further directs BLM to follow APA rulemaking procedures. *Id.* § 1740. The Emergency Procedures constitute procedures for public notice and participation subject to Section 309. Accordingly, the Department of the Interior was required to promulgate them through notice-and-comment regulation.

Where Congress explicitly directs an agency to proceed "by regulation" on some subject, the agency has no discretion to use a less formal method. *See MST Express v. Dep't of Transp.*, 108 F.3d 401, 405-06 (D.C. Cir. 1997) (vacating guidance on vehicle safety rating procedures, because the agency "failed to carry out its statutory obligation" to establish these procedures "by regulation"); *Ethyl Corp. v. EPA*, 306 F.3d 1144, 1150 (D.C. Cir. 2002) (vacating an EPA guidance document because Congress explicitly directed EPA to proceed "by regulation" on that subject).

In short, the Department of the Interior's issuance of the Emergency Procedures without notice-and-comment process violated the procedural requirements of both the APA and FLPMA.

VI. Request for Notification and Participation.

The Department of the Interior's NEPA regulations provide that "Bureaus must solicit the participation of all those persons or organizations that may be interested or affected as early as possible, such as at the time an application is received or when the bureau initiates the NEPA process for a proposed action." 43 C.F.R. § 46.200(b). Notwithstanding the legal flaws with the Emergency Procedures, discussed above, the undersigned organizations hereby notify BLM that they are interested in and potentially affected by all energy or critical mineral projects for which an applicant has requested coverage under the Emergency Procedures, or for which such procedures are otherwise applied, and hereby request notification and a participation opportunity on all such proposed actions.

The Department of the Interior's NEPA regulations further provide that Bureaus "must notify the public of the availability of an environmental assessment and any associated finding of no significant impact once they have been completed." 43 C.F.R. § 46.305(c). The undersigned organizations hereby request notification of the completion of any environmental assessment and associated finding of no significant impact issued under the Emergency Procedures.

CONCLUSION

For the reasons stated above, the Department's Emergency Procedures are unlawful and may not be applied when issuing oil and gas leases, drilling permits, or other decisions. The Emergency Procedures should be immediately withdrawn. If the Emergency Procedures are not withdrawn, we hereby request notification and a participation opportunity, pursuant to 43 C.F.R. §§ 46.200(b) and 46.305(c), for all energy or critical mineral projects for which an applicant has requested coverage under the Emergency Procedures, or for which such procedures are otherwise applied.

Sincerely,

Sarah Stellberg
Staff Attorney
Advocates for the West
PO Box 1612
Boise, ID 83701
(208) 342-7024 x209
sstellberg@advocateswest.org

Michael Freeman
Senior Attorney
Earthjustice
633 17th Street, Suite 1600
Denver, CO 80202
(303) 996-9615
mfreeman@earthjustice.org

Kathleen O'Reilly-Doyle and Loren Karro,
Co-Leaders
Alaska Soles Broadband
Great Old Broads for Wilderness

Maddie Halloran
State Director
Alaska Wilderness League

Scott H. Williams
Restoration Project Manager
Amargosa Conservancy

Marc Fink
Senior Attorney
Center for Biological Diversity

Natasha Léger
Executive Director
Citizens for a Healthy Community

Kara Matsumoto
Public Lands Policy Director
Conservation Lands Foundation

Lisa Saltzburg
Senior Attorney
Defenders of Wildlife

Kevin Wong
Executive Director
Friends of Big Morongo Canyon Preserve

Tom Hannagan
Board President
Friends of Ironwood Forest

Suzie Fortner
Executive Director
Friends of the Dunes

Justin Crellin
Executive Director
Friends of the Lost Coast

Elly Kosova
Government Affairs Advocate
League of Conservation Voters

Jeff Kuyper
Executive Director
Los Padres ForestWatch

Flora Brain
Mattole Field Institute Director
Mattole Restoration Council

Kristin Gladd
Deputy General Counsel
National Parks Conservation Association

Sean McDermott
Arctic Program Coordinator
Northern Alaska Environmental Center

Ryan Houston
Executive Director
Oregon Natural Desert Association

Eric E. Huber
Managing Attorney
Sierra Club

Hanna Larsen
Staff Attorney
Southern Utah Wilderness Alliance

Ben Tettlebaum
Director & Senior Staff Attorney
The Wilderness Society

Daniel E. Estrin
General Counsel and Legal Director
Waterkeeper Alliance

Kyle Tisdel
Climate & Energy Program Director, Senior Attorney
Western Environmental Law Center

Hannah Stevens
Executive Director
Western Slope Conservation Center

Erik Molvar
Executive Director
Western Watersheds Project

Aubrey Bertram
Staff Attorney & Federal Policy Director
Wild Montana

Daniel Timmons
Climate & Health Program Director
WildEarth Guardians

Peter Hart
Legal Director
Wilderness Workshop

Matt Gaffney
Legal and Governmental Relations Director
Wyoming Outdoor Council

Cc (by electronic mail):

Karen Kelleher, BLM Alaska acting State Director -
blm_ak_state_director@blm.gov
Raymond Suazo, BLM Arizona State Director -
blm_az_asoweb@blm.gov
Joseph Stout, BLM California State Director -
castatedirector@blm.gov
Doug Vilsack, BLM Colorado State Director -
blm_co_statedirector@blm.gov
Leah Baker, BLM Eastern States acting State Director -
blm_es_inquiries@blm.gov
June Shoemaker, BLM Idaho acting State Director -
blm_id_infoaccesscenter@blm.gov
Sonya Germann, BLM Montana/Dakotas State Director -
BLM_MT_SO_Information@blm.gov, bejones@blm.gov
Jon Raby, BLM Nevada State Director -
BLM_NV_NVSO_web_mail@blm.gov
Melanie Barnes, BLM New Mexico State Director -
blm_nm_comments@blm.gov
Matt Preston, BLM Utah acting State Director
blm_ut_state_director@blm.gov
Andrew Archuleta, BLM Wyoming State Director -
blm_wy_state_office_wymail@blm.gov
Katherine Scarlett, Chief of Staff, Council on Environmental Quality -
katherine.r.scarlett@ceq.eop.gov, katherine_r_scarlett@ceq.eop.gov
Jomar Maldonado Vazquez, Council on Environmental Quality –
jomar.maldonadovazquez@ceq.eop.gov