DEPARTMENT OF THE INTERIOR

Final Report:

Review of the Department of the Interior Actions that Potentially Burden Domestic Energy

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Report of the Secretary of the Interior
Final Report: Review of the Department of the Interior Actions that Potentially Burden Domestic Energy

I. Purpose of this Report

> *"Energy is an essential part of American life and a staple of the world economy. Achieving American energy dominance begins with recognizing that we have vast untapped domestic energy reserves. For too long America has been held back by burdensome regulations on our energy industry. The Department is committed to an America-first energy strategy that lowers costs for hardworking Americans and maximizes the use of American resources, freeing us from dependence on foreign oil."*
>
> Secretary Zinke, May 1, 2017, Secretarial Order 3351 Strengthening the Department of the Interior's Energy Portfolio

This final report describes the Department of the Interior's (Interior or Department) progress in implementing Executive Order (EO) 13783, *Promoting Energy Independence and Economic Growth*, dated March 28, 2017. EO13783 requires the head of each agency to carry out a review of all agency actions that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. *See* EO13783, section 2(a). On May 8, 2017, the Office of Management and Budget (OMB) issued guidance to agencies on the contents of a draft report. *See* OMB Guidance M-17-24 (May 8, 2017). The Secretary of the Interior (Secretary) has aggressively pursued a comprehensive review of Interior's energy activities and this final report details the results of this review.

II. Interior's Role in Domestic Energy Production, Development, and Use

Interior is the steward and manager of America's natural resources, including oil, gas, coal, hydropower, and renewable energy resources. Interior manages lands, subsurface rights, and offshore areas that produce approximately 19 percent of the Nation's energy. Energy development on public lands increases domestic energy production, provides alternatives to overseas energy resources, creates jobs, and enhances the Nation's energy security. The Office of Natural Resources Revenue (ONRR) collects an average of over $10 billion annual revenue from onshore and offshore energy production, one of the Federal Government's largest sources of non-tax revenue.

Nine of Interior's bureaus have energy programs and responsibilities:

- The Bureau of Land Management (BLM) administers onshore energy and subsurface minerals on certain public lands.
- The Office of Surface Mining Reclamation and Enforcement (OSMRE) works with states and tribes to oversee environmentally sound coal mining operations;
- The Bureau of Ocean Energy Management (BOEM) oversees offshore oil, gas, and wind development.
- The Bureau of Safety and Environmental Enforcement (BSEE) is the lead Federal agency charged with improving safety and ensuring environmental protection related to the offshore energy industry, primarily oil and natural gas, on the U.S. Outer Continental Shelf (OCS).
- The Bureau of Reclamation (BOR) is the second largest producer of hydroelectric power in the United States, generating over 40 million megawatt-hours of electricity each year;
- The Bureau of Indian Affairs (BIA) oversees leasing of tribal and Indian land for energy development.
- The Office of Natural Resources Revenue (ONRR) collects revenue from energy production and development.
- The United States Geological Survey (USGS) conducts research and assessments on the location, quantity, and quality of energy resources, including the economic and environmental effects of resource extraction and use.

The U.S. Fish and Wildlife Service (FWS) and National Park Service (NPS), while not directly involved in the production or development of energy as part of their missions, may have Federal or non-Federal oil and gas or mineral inholdings. These agencies also manage lands and trails through which important energy-related infrastructure may pass in order to bring affordable energy to American families throughout our country. These agencies therefore have the ability to reduce potential burdens on domestic energy production, development, or transmission.

III. Immediate Action – Secretarial Orders

When the United States is a leader in developing its energy resources, it is less dependent on other nations, leading to a stronger America. Interior is committed to an America-First energy strategy that fosters domestic energy production in order to keep energy prices low for American families, businesses, and manufacturers. Every drop of oil, Mcf of natural gas or MW of offshore wind energy produced here in the U.S. benefits the American workers employed in those operations and also frees us from dependence on foreign energy resources. Beyond enhancing America's energy security, low cost energy benefits the American consumer and enhances American manufacturing competitiveness, making American businesses more competitive globally. Secretary Zinke recognizes that development of energy resources on public lands increases the Nation's domestic energy supply, provides alternatives to overseas energy resources, generates revenue, creates jobs, and enhances national security. Eliminating harmful regulations and unnecessary policies will require a sustained and focused effort. That said, the Department will strike the appropriate balance in order to make use of our Nation's domestic resource wealth while also ensuring careful attention to safe and environmentally responsible operations both onshore and offshore, and promoting conservation stewardship.

Secretary Zinke has issued seven Secretarial Orders to improve domestic onshore and offshore energy production that further these principles. To ensure energy policies receive the highest level attention across Interior, the Secretary established the Counselor to the Secretary for Energy Policy position to coordinate the energy policy of Interior, including, but not limited to, promoting responsible development of energy on public lands managed and administered by Interior, developing strategies to eliminate or minimize regulatory burdens that unnecessarily encumber energy, and promoting efficient and effective processing of energy-related authorizations, permits, regulations, and agreements. *See* Secretarial Order 3351, "Strengthening the Department of the Interior's Energy Portfolio" (May 1, 2017). Establishing this position that reports directly to the Secretary assures that developing America's energy resources in a responsible way to create jobs and enhance the energy security of the United States will remain a central priority. The remaining six Secretarial orders are:

- Secretarial Order 3348 – Concerning the Federal Coal Moratorium;
- Secretarial Order 3349 – American Energy Independence;
- Secretarial Order 3350 – America-First Offshore Energy Strategy;
- Secretarial Order 3352 – National Petroleum Reserve – Alaska;
- Secretarial Order 3353 – Greater Sage-Grouse Conservation and Cooperation with Western States; and
- Secretarial Order 3354 – Supporting and Improving the Federal Onshore Oil and Gas Leasing Program and Federal Solid Mineral Leasing Program.

These Orders direct Interior bureaus and offices to take immediate and specific actions to identify and alleviate or eliminate burdens on domestic energy development. Within this framework, bureaus have identified actions and, in some cases, already made progress in alleviating or eliminating the energy burdens.

A. Secretary Order 3348 – Concerning the Federal Coal Moratorium

One of Secretary Zinke's first acts was to sign Secretarial Order 3348, "Concerning the Federal Coal Moratorium" (March 29, 2017), which removed the moratorium on the Federal coal leasing program by revoking a prior Secretarial Order (Secretarial Order 3338, "Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program"). Secretarial Order 3348 promotes American energy security, job creation, and proper conservation stewardship. It directs BLM to process coal lease applications and modifications expeditiously and directs Interior bureaus and offices to make appropriate changes to policy and guidance documents to further President Donald Trump's policy of promoting American energy independence and economic growth. (See further discussion below at IV.x and E.)

In addition to lifting the coal moratorium, Secretary Zinke took other actions to advance American energy independence. In announcing these actions he said, "Today I signed a series of directives to put America on track to achieve the President's vision for energy independence and bringing jobs back to communities across the country." These directives foster responsible development of coal, oil, gas, and renewable energy on Federal and tribal lands and initiate review of agency actions directed by EO13783.

B. Secretarial Order 3349 – American Energy Independence

The most overarching Secretarial Order reducing burdens on energy development is Secretarial Order 3349, "American Energy Independence" (March 29, 2017), which directed bureaus to examine specific actions impacting oil and gas development, and any other actions affecting other energy development. It revoked Secretarial Order 3330, "Improving Mitigation Policies and Practices of the Department of the Interior," and directed bureaus and offices to review all actions taken pursuant to that Order for possible reconsideration, modification, or rescission. It also directed each bureau and office to review actions taken regarding rescinded Executive Orders related to climate change. Further, it directed the review of the following specific actions impacting energy development:

- BLM Hydraulic Fracturing Rule (RIN 1004–AE26) (see discussion below under IV.A.i.);
- BLM Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule (RIN 1004–AE14) (see discussion below under IV.A.ii);
- NPS Non-Federal Oil and Gas Rights Rule (RIN 1024–AD78); and
- FWS National Wildlife Refuge System; Management of Non-Federal Oil and Gas Rights (RIN 1018–AX36) (see discussion below under IV.F.).

C. Secretarial Order 3350 – America-First Offshore Energy Strategy

This Order enhances opportunities for energy exploration, leasing, conservation stewardship, and development on the Outer Continental Shelf (OCS), thereby providing jobs, energy security, and revenue for the American people by reinitiating the five-year planning process. Among other actions, it directed the review of the following regulatory actions that impact offshore energy development:

- BOEM Notice to Lessees (NTL) No. 2016-N01 entitled, "Notice to Lessees and Operators of Federal Oil and Gas, and Sulfur Leases, and Holders of Pipeline Right-of-Way and Right-of-Use and Easement Grants in the Outer Continental Shelf";
- BOEM Offshore Air Quality Control, Reporting, and Compliance Rule (RIN 1010-AD82);
- BSEE Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control (RIN 1014–AA11); and
- BOEM and BSEE Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf Rule (RIN 1082–AA00).

D. Secretarial Order 3352 – National Petroleum Reserve – Alaska

This Order provides for clean and safe development of oil and gas resources in the National Petroleum Reserve in Alaska, recognizing that prudent development of these resources is essential to ensuring the Nation's geopolitical security. (See discussion below at IV.J.)

E. Secretarial Order 3353 – Greater Sage-Grouse Conservation and Cooperation with Western States

Sage-grouse protections can affect energy development because these activities often share the same land across the 11 western states and 67 million acres of Federal land that are affected by sage grouse habitat. This Order establishes a Sage-Grouse Review Team that includes representatives from the BLM, FWS, and U.S. Geological Survey (USGS) to review the 2015 Sage-Grouse Plans and associated policies, giving appropriate weight to the value of energy and other development on public lands within BLM's overall multiple-use mission and to be consistent with the policy set forth in Secretarial Order 3349, "American Energy Independence." (See discussion below at IV.A.vii.)

F. Secretarial Order 3354 – Supporting and Improving the Federal Onshore Oil and Gas Leasing Program and Federal Solid Mineral Leasing Program

This Order intends to ensure that quarterly oil and gas lease sales are consistently held and to identify ways to promote the exploration and development of Federal onshore oil and gas and solid mineral resources, including improving quarterly lease sales, enhancing the Federal onshore solid mineral leasing program, and improving the permitting processes. See discussion below at IV.A.

Details of progress in accordance with the aforementioned Executive and Secretarial Orders are described below, as well as relevant proposed actions that are currently under review. Prior to reaching a final determination regarding any proposed action, Interior may be required to comply with the notice and comment requirements of the Administrative Procedure Act or other laws and regulations, and will weigh the results of such procedures accordingly in its decisionmaking process.

IV. Results of Interior's Review of Potentially Energy-Burdening Actions

A. Bureau of Land Management

The Bureau of Land Management administers more land than any other Federal agency, consisting of more than 245 million surface acres and 700 million acres of subsurface mineral development. In response to EO13783 and Secretarial Orders 3348, 3349, and 3354, BLM is revising and reforming its leasing processes, improving the Coal Management Program, and delaying, revising, or rescinding burdensome regulations and policies to improve domestic energy production and support jobs.

Below is a list of specific actions BLM is undertaking to reduce burdens on the production of energy on BLM managed resources.

i. Review of the Hydraulic Fracturing rule

Executive Order 13783 required Interior to review the final rule entitled, "Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands," 80 FR 16128 (Mar. 26, 2015). Secretarial Order 3349 directed BLM to undertake that review. On July 25, 2017, BLM published a proposed rule to rescind the 2015 hydraulic fracturing rule because the compliance costs of the existing 2015 rule are not justified (82 FR 34464). All 32 states with Federal oil and gas leases and some tribes currently have laws or regulations that address hydraulic fracturing operations. Thus, rescinding the rule has the potential to reduce regulatory burdens by enabling oil and gas operations to occur under one set of regulations within each state or tribal lands, rather than two. Rescinding this rule may result in additional interest in oil and gas development on public lands, especially under higher commodity prices.

Interior has identified this proposed rescission as a deregulatory action under EO13771.

ii. Temporarily Suspend or Postpone Certain Requirements and Review to Rescind or Revise the Venting and Flaring Rule

Executive Order 13783 required Interior to review the final rule entitled, "Oil and Gas; Waste Prevention, Production Subject to Royalties, and Resource Conservation," 81 FR 83008 (Nov. 18, 2016), also known as the "Venting and Flaring" rule. Secretarial Order 3349 ordered BLM to review the rule and report to the Assistant Secretary – Land and Minerals Management on whether the rule is fully consistent with the policy expressed in EO13783.

The BLM conducted an initial review of the rule and found that it was inconsistent with the policy stated in EO13783 that "it is in the national interest to promote clean and safe development of our nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation." The BLM recognizes that the 2016 final rule poses a substantial burden on industry, particularly those requirements that are set to become effective on January 17, 2018. The BLM issued a proposed rule that was published in the Federal Register on October 5, 2017, seeking comment on temporarily suspending or delaying certain requirements until January 17, 2019, to reduce the regulatory burden on the energy industry. This will provide industry additional time to plan for and engineer responsive infrastructure modifications that will comply with the regulation.

If finalized, the revised regulation will provide significant additional phase-in time to oil and gas operators.

The BLM intends to work with industry to develop metrics, including key timelines or benchmarks, and the reduction of flaring from Federal and Indian lands over time.

Following up on its initial review, BLM has reviewed the 2016 final rule in accordance with the policies set forth in EO13783. The BLM is currently drafting a proposed rule that would eliminate overlap with the Environmental Protection Agency's (EPA) Clean

Air Act authorities while also clarifying regulatory provisions related to the beneficial use of gas on Federal and Indian lands.

The BLM has identified the delay of effective date rulemaking as a deregulatory action under EO13771.

iii. Revise Oil and Gas; Onshore Orders Nos. 3, 4 and 5

The burdens placed on industry through these 3 new regulations are being reviewed as directed under EO13783. These 3 rulemakings, which were promulgated and issued concurrently, updated and replaced BLM's Onshore Orders for site security, oil measurement, and gas measurement regulations, respectively, that had been in place since 1989. They are codified in the Code of Federal Regulations at 43 CFR parts 3173, 3174, and 3175. External and internal oversight reviews prompted these rulemakings and found that many of BLM's production measurement and accountability policies were outdated and inconsistently applied. The new rules also address some of the Government Accountability Office (GAO) concerns for high risk with regard to Interior's production accountability. These 3 regulations impose new cost burdens on operators as a result of oil and gas facility infrastructure changes. The cost estimates for each individual rule are as follows:

- Order 3, Site Security: $31.2 million in one-time costs, plus an $11.7 million increase in annual operating costs;
- Order 4, Oil Measurement: $3.3 million in one-time costs, plus a $4.6 million increase in annual operating costs; and
- Order 5, Gas Measurement: $23.3 million one-time cost, plus $12.1 million increase in annual operating costs.

The new regulations also provide a process for approving new technology that meets defined performance goals. Some provisions of the rule may have added regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation.

The BLM is currently assessing the rules to determine 1) if additional revisions are needed beyond the already-implemented phase-in period for certain provisions, 2) the ability for industry to introduce new technologies through a defined process, rather than through an exception request, and 3) the built-in waivers or variances. The BLM expects to complete its assessment of possible changes to alleviate burdens that may have added to constraints on energy production, economic growth and job creation by the end of the fourth quarter of FY 2017.

The new regulations have built in necessary waivers or variances. The BLM's establishment of a phase-in period for the new site security and production measurement regulations is an interim measure. The BLM will measure success over the phase-in period in terms of the production measurements, royalties paid, a reduction in under-reporting of production, and greater site security for production facilities.

iv. Revise and Replace Policy, Oil and Gas; IM 2010-117, "Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews"

This policy will be replaced with revised guidance for the purpose of establishing greater efficiencies in the oil and gas leasing process. Policy Instruction Memorandum (IM) 2010-117 established a process for leasing oil and gas resources on Federal lands. The BLM intended the IM to reduce the backlog of unissued leases. However, the IM has resulted in longer time frames in analyzing and responding to protests and appeals, as well as longer lead times for BLM to clear and make available parcels for oil and gas lease sales. It has also resulted in increased workload and staffing needs to conduct additional upfront environmental analysis.

The BLM has undertaken an effort to revise and reform its leasing policy and to streamline the leasing process from beginning (i.e. receipt of an Expression of Interest) to end (competitively offering the nominated acreage in a lease sale). Under existing policies and procedures, the process can take up to 16 months (and sometimes longer) from the time lands are nominated to the time a lease sale occurs. The BLM is examining ways to significantly reduce this time by as much as 8-10 months. The BLM plans to complete revisions to the leasing process in the first quarter of FY 2018.

A shorter period from nomination to sale will reduce the number of nominated acres awaiting competitive sale at any given time and will increase industry certainty regarding the acreage it holds. As a result, industry will be able to plan for and execute exploration and production strategies earlier, and respond more effectively to changing market conditions.

Reducing the average time from acreage nomination to lease sale will be BLM's measure of success. The BLM does not control what acreage industry nominates because market conditions can fluctuate dramatically; therefore, total nominated acreage awaiting sale is not likely to be a measure of success.

Until the policy revisions are completed, BLM is setting quarterly lease sale acreage targets to address the acreage currently nominated. The BLM is also identifying ways to augment staff support for potential sales in those offices with the greatest numbers of acres nominated.

v. *Rescind Policy, Oil and Gas; IM 2013-101, "Oil and Gas Leasing Reform – Master Leasing Plans (MLPs)"*

This policy announced the incorporation of Master Leasing Plans (MLPs) in the oil and gas leasing process, further explained in Chapter V of the BLM Handbook H-1624-1, entitled "Planning for Fluid Mineral Resources." The IM establishes a process for integrating an MLP into the land use planning process. The BLM has extended this IM several times while the BLM completes the public scoping and analysis for MLPs. An unintended consequence of this policy has been that many areas open to oil and gas leasing have been deferred from leasing while they await the completion of the MLP process.

The BLM has undertaken an effort to revise the leasing reform and MLP policy and to re-establish the BLM Resource Management Plans (RMPs) as the source of lands available for fluid minerals leasing. The BLM is currently evaluating existing MLP efforts with the goal of ending this approach. The BLM expects to rescind this IM and complete the

revision of the above BLM Handbook, as well as any other relevant BLM handbooks, in the first quarter of FY 2018.

Because this change will re-establish the RMP as the source of land allocation decisions for fluid minerals, it will result in more streamlined National Environmental Policy Act (NEPA) analysis and a shorter timeframe for acreage nominations to make it to a competitive lease sale. Since extra time and NEPA analysis adds to uncertainty for industry and use of taxpayer dollars by the Department, removing these process-related steps has the effect of decreasing uncertainty.

The primary measure of success in removing regulatory burden from the rescission of the MLP policy will be in the elimination of related nominated acreage sale deferral pending completion of MLP NEPA. While there will continue to be acreage sale deferrals for various reasons, completion of MLP NEPA will no longer be one of them. The time frames will be shorter.

vi. Revise Policy, Oil and Gas; IM 2013-177, "National Environmental Policy Act (NEPA) Compliance for Oil and Gas Lease Reinstatement Petitions"

This IM directs all BLM oil and gas leasing Field Offices to: 1) ensure RMP conformance; 2) evaluate the adequacy of existing NEPA analysis and documentation; and 3) complete any necessary new or supplemental NEPA analysis and documentation before approving a Class I or Class II oil and gas lease reinstatement petition. This IM has resulted in additional analysis and review time that often involves another surface management agency and, in some instances, has led to adding new lease stipulations prior to lease reinstatement.

Lease reinstatements were previously considered a ministerial matter, entailing a commensurate level of review and process to complete. However, IM 2013-177 changed that in significant ways, resulting in additional NEPA review and significantly greater timeframes for completing the reinstatement. Rescinding or modifying this policy will greatly reduce decisionmaking timeframes on lease reinstatement requests. The BLM expects to complete review of this policy in the first quarter of FY 2018 and promptly finalize by the second quarter.

The BLM expects that changes to this policy will refocus the emphasis back to existing NEPA analysis and information, which will significantly shorten the time it takes to consider and process a lease reinstatement request. The policy changes will provide greater certainty and reduced expense for energy development companies and result in production occurring sooner.

The BLM will measure the reduction in burden in terms of the average time it takes to consider a complete lease reinstatement request.

Similar to MLPs, in the interim, BLM must identify and evaluate the status of each current lease reinstatement request in order to determine whether and how to expedite review and processing. There are no other interim measures, waivers or variances that are relevant to the process.

vii. Revise Policy, Oil and Gas: IM 2016-140, "Implementation of Greater Sage-grouse Resource Management Plan Revisions or Amendments – Oil & Gas Leasing and Development Sequential Prioritization"

Policy IM 2016-140 is being reviewed for the purpose of enhancing consistency and certainty for oil and gas development in areas of sage-grouse habitat as directed by EO13783. This IM provides guidance on prioritizing implementation decisions for BLM oil and gas leasing and development, to be consistent with Approved Resource Management Plan Amendments for the Rocky Mountain and Great Basin Greater Sage-grouse Regions and nine Approved Resource Management Plans in the Rocky Mountain Greater Sage-grouse Region (collectively referred to as the Greater Sage-grouse Plans). The IM applies to activities in the areas covered by both the Rocky Mountain and Great Basin Regions Records of Decision, issued by BLM in September 2015, and also contains reporting requirements for communication between BLM State Offices and the Washington Office (WO). The IM may have added administrative burdens since it requires additional analysis and staff time to screen parcels and weigh potential impacts to the Greater Sage-grouse before the parcels are offered for leasing. It also requires additional analysis and staff time to process drilling permit approvals near Greater Sage-grouse areas.

The BLM's effort to avoid listing of the sage-grouse as an endangered species has affected many programs and a large area geographically. With new technologies and capabilities, such as long-reach horizontal boreholes in the oil and gas industry, the impacts are not as significant as once perceived. Likewise, the administrative burden is better understood and is likely less than once thought. Efforts are underway to better understand these conditions and define ways in which energy production and sage-grouse protection may continue to co-exist. Greater consistency and predictability will provide greater stability for industry. The BLM is currently assessing the policy to determine what revisions are needed and expects to complete this review in the fourth quarter of FY 2017.

When the BLM completes this effort, industry will have greater certainty in leasing, exploration and production activities due to availability of acreage for oil and gas development and a defined process and timeframe for consideration of Greater Sage-grouse impacts.

The BLM will measure success by assessing changes in industry's interest in nominating acreage for competitive sale and developing existing leases in areas affected by the Greater Sage-grouse amendments to RMPs. As industry increases its understanding and gains confidence in the consistency and predictability of BLM actions relative to Greater Sage-grouse, then acreage nominations, permit requests, and development should stabilize and be tied to market forces rather than tied to BLM Greater Sage-grouse decisions.

The BLM has been processing acreage nominations in Greater Sage-grouse areas and making them available for competitive sale. In addition, existing leases are being developed. This is evidence, in the interim, that both BLM and industry are developing innovative ways to adapt energy development in light of Greater Sage-grouse protections.

viii. Review of General Greater Sage-Grouse Conservation Policies and Plans

In September 2015, the BLM incorporated Greater Sage-grouse (GRSG) conservation measures into its land use plans within the range of the GRSG. In September 2016, the BLM issued a number of IMs to help guide the implementation of the GRSG plans. These GRSG plans and policies will affect where, when, and how energy and minerals are developed within the range of the GRSG.

Pursuant to Secretarial Order 3353, "Greater Sage-Grouse Conservation and Cooperation with Western States," an Interior Sage-Grouse Review Team (Review Team) is working with the State-Federal Sage-Grouse Task Force to identify opportunities for greater collaboration, to better align Federal and State plans for the GRSG, to support local economies and jobs, and consider new and innovative ways to conserve GRSG in the long-term. Pursuant to the Secretarial Order, in August 2017, the Review Team submitted a report to the Secretary summarizing their review and providing recommendations regarding next steps.

The Review Team's report identified a number of potential actions to enhance the coordination and integration of state and Federal GRSG conservation efforts.

Success will be measured and evaluated in terms of improved working relationships among local, state, tribal, and Federal units of Government and in terms of improved partner and stakeholder understanding of effective GRSG conservation measures and of the science underlying them.

The BLM anticipates that some of the actions outlined in the Review Team's report to the Secretary could be implemented in the near future through changes in policy (through issuance of IMs, for example), technical assistance, or training. Other actions may require amending the land use plans. On October 11, 2017, the Department of the Interior, through BLM, initiated a public scoping process for RMP amendment(s) with associated NEPA documents. The comments may be submitted until November 27, 2017. Depending on the scope and significance, such amendments could take upwards of 9 months to 3 years to complete.

ix. Improve Land Use Planning and NEPA Act Policies and Procedures:

The BLM's land use planning regulations and policies are outlined in 43 CFR subparts 1601 and 1610, Resource Management Planning; BLM Manual Section 1601; and BLM Handbook 1601-1. The BLM's policies for complying with NEPA are outlined in BLM Handbook 1790-1 and the Interior NEPA implementing regulations are at 43 CFR Part 46. Taken together, these regulations, manuals, and handbooks establish the policies and procedures BLM follows when conducting land use planning and NEPA compliance, including specific actions related to energy and mineral development.

Pursuant to the Secretarial Memorandum of March 27, 2017, entitled "Improving the Bureau of Land Management's Planning and National Environmental Policy Act Processes," the BLM is identifying potential actions it could take to streamline its planning and NEPA review procedures. As part of this identification process, BLM is working with state and local elected officials and groups, including the Western

Governors' Association and the National Association of Counties, to engage and gather input. The BLM also has invited tribes and the public to provide input on how the Agency can make its planning and NEPA review procedures timelier, less costly, and more responsive to local needs. Pursuant to the Secretarial Memorandum, in September 2017, BLM will submit a report to the Secretary outlining recommended actions.

Once implemented, the actions recommended in the report should reduce the time and/or cost of complying with BLM's statutory direction to conduct land use planning under section 202 of FLPMA and complying with NEPA when evaluating proposed actions. These recommendations also should lead to more-standardized analyses in BLM's NEPA reviews at the land use plan and project level.

The reduction in burden will be measured and evaluated in terms of processing times and/or costs of authorizing energy development.

Some of the actions outlined in BLM's report to the Secretary will be actions that BLM will be able to implement in the near future, such as improvements to business processes, or updates to internal manuals or handbooks. Other actions would require changes in statute or regulation (such as new Categorical Exclusions), may depend on other agencies to act, or may require front-end investments in data or information technology.

x. Review Coal-Related Policies and Actions

On March 29, 2017, Secretary Zinke issued Secretarial Order 3348 to lift the Federal coal moratorium imposed by previous Secretarial Order 3338. This Order conformed to the directive in EO13783 requiring the Secretary to lift the moratorium and commence Federal coal leasing activities consistent with all applicable laws and regulations.

The BLM is working to process coal lease applications and modifications "expeditiously" in accordance with regulations and guidance that existed before Secretarial Order 3338. The BLM also ceased activities associated with preparation of the Federal Coal Program Programmatic Environmental Impact Statement (PEIS).

Consistent with EO13783 and Secretarial Order 3348, the BLM is reviewing its policies, with the intent to update or rescind them.

xi. Other Recommendations for Alleviating or Eliminating Actions That Could Directly or Indirectly Burden Energy Exploration or Production

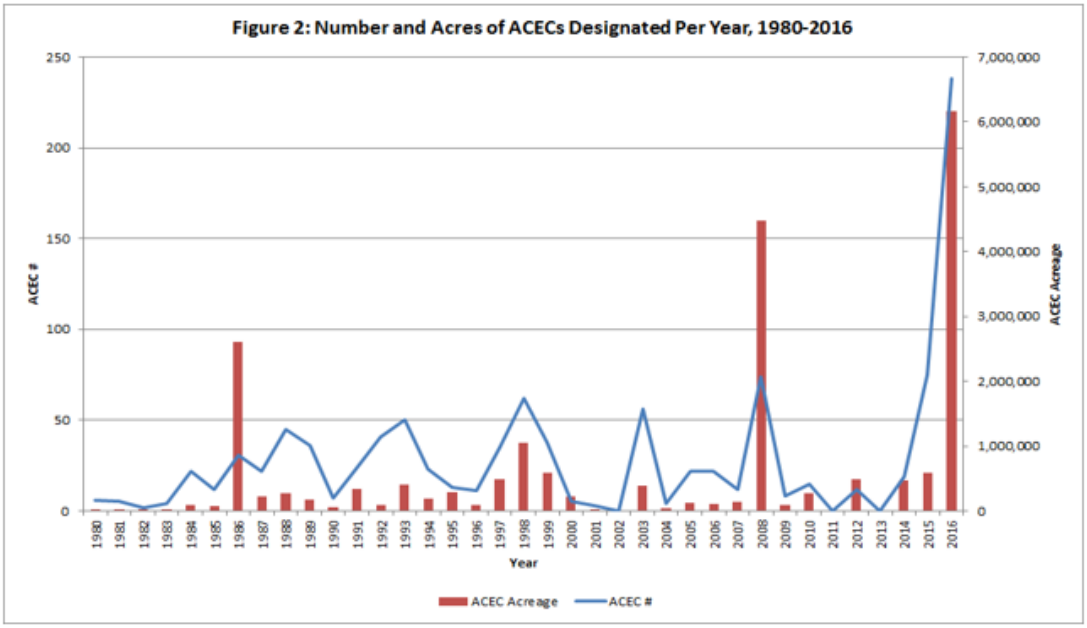
- **Review Land Use Designations**

  The BLM land use planning process ensures that public lands are managed in accordance with the intent of Congress as stated in FLPMA (43 U.S.C. 1701 et seq.), under the principles of multiple use and sustained yield. The BLM's Resource Management Plans (RMPs) are the basis for every on-the-ground action the BLM undertakes, which includes determinations on lands suitable for future energy leasing and permitting opportunities. The BLM uses land use designations

as a part of the land use planning process to guide the management of certain geographic areas towards particular objectives, values or uses.

While some land use designations are made by Congressional, Secretarial, or Presidential action (and therefore require specific land management principles), the BLM has used broad discretion in establishing other formal and less-formal land use designations to set additional management criteria for public lands. In some cases, these criteria may conflict with other multiple use objectives for the land – such as energy development – and therefore have the potential to burden domestic energy development on public lands by reducing access to leasable acreage.

At the time of this report, BLM identified over 60 different land use designations used in RMPs, many of which may lead to additional restrictions on the use of the land. One example is the Area of Critical Environmental Concern (ACEC) designation, which is authorized by Federal Land Policy and Management Act (FLPMA). The Eastern Interior RMP, finalized on January 3, 2017, designated over 2 million acres of ACEC – much of which was recommended for closure to mineral entry and mineral leasing in order to best meet the objectives of the ACEC. The chart included below provides a visual reference for the increased use of this land use designation especially in more recent RMPs.



Note: Figure 2 only shows the number and acres of ACECs designated per year (by fiscal year) and does not present the number and acres that may have been removed per an RMP amendment or revision. Data includes ACECs that may also be Research Natural Areas. Not included in these data are ACECs that have been designated so far in FY 2017, including 2,062,997 acres of ACECs designated in the AK - Eastern Interior Fortymile and Draanjik RMPs.

The BLM will further evaluate the need for these numerous land use designations as a part of the ongoing review of their planning process. The BLM will also

work with state, local, and tribal partners to incorporate efficiencies and update policies on the use of land use designations that may burden or hinder energy development on Federal lands.

- **Review Use of Leasing Stipulations and Conditions of Approval**

  Aside from providing for leasing with standard lease terms in the land use planning process, BLM may apply lease stipulations to a specific unit at the planning stage. Stipulations set additional criteria to which an operator must adhere once the acreage is leased. Stipulations include no surface occupancy restrictions (NSO), which close acreage to surface-disturbing activities, timing restrictions (TL), which close acreage to surface-disturbing activities during certain timeframes, and other controlled surface use (CSU) restrictions, which include more specific restrictions such as sound and visual impacts or construction requirements. In some cases, these stipulations may have an impact on the attractiveness of the lease sale parcel in the bidding process.

  The BLM may also assign Conditions of Approval (COA) at the permitting stage when an operator first applies for an Application for Permit to Drill (APD). Once an APD is filed, the BLM will send an onsite inspection team to determine the best location for the well, road, and facilities; identify site-specific concerns and potential environmental impacts associated with the proposal and potential options for mitigating these impacts, including COAs. Site-specific concerns include, but are not limited to: well spacing; riparian and wetland areas; visual resource management such as painting infrastructure specific colors; and cultural and wildlife survey needs to comply with the National Historic Preservation Act (NHPA) and the Endangered Species Act (ESA).

  Lease stipulations and additional conditions of approval added at the permitting stage burden energy development on public lands by adding additional development costs; increasing the complexity of the drilling operations; and extending project timeframes. The 2008 Energy Policy and Conservation Act Phase III study found that of the 128 Federal land use plans surveyed for inventory, approximately 3,125 individual stipulations and 157 types of COAs were being used.[1] The BLM does not have updated figures at the time of this report.

- **Review Protest Regulations and Policy**

  Current BLM regulations allow any party to file a protest on a BLM decision, such as a protest on a land use plan or on a subsequent decision to include a parcel in an oil and gas lease sale. This process provides multiple opportunities to protest every step of the process of offering public lands for oil and gas leasing. To date, many state offices, such as CO, MT, NM, UT, and WY are receiving protests on

[1] https://www.blm.gov/sites/blm.gov/files/EPCA_III_Inventory_Onshore_Federal_Oil_Gas.pdf; p. 42, 109.

every oil and gas parcel offered through the Notice of Competitive Lease Sale process.

In the past, protests were parcel-specific on issues unique to the parcel in question. In recent years, the reasons for protesting every parcel in the sale are broad-based and non-parcel specific, such as general concerns on climate change or hydraulic fracturing. In FY 2016, 72 percent of parcels offered for lease were protested. By comparison, in FY 2012, only 17 percent of parcels received protests. The number of parcels offered on the original sale notice decreased from 2,247 in FY 2012 to 820 in FY 2016.

If a protest is still pending on the day of sale, the parcel can still be offered during the sale but the protest must be resolved prior to the lease being issued and the protest may diminish interest in bidding. This in turn can delay payment of the State's share of the bonus bids – which occurred most recently in the State of New Mexico. In September 2016, BLM hosted a record-setting lease sale generating $145 million in revenue, of which $80 million was owed to the state Mineral Leasing Act revenue sharing provision. As a result of the number of protested parcels and the length of time it took to resolve all protests, the payment to the State of New Mexico was delayed approximately 250 days.

This uptick in the protest process and the inability to reach conclusive resolutions in a timely manner is a burden on oil and natural gas development on public lands. A regulatory change may be necessary to limit redundant protests that hinder orderly development. Alternatively, the BLM is investigating the value in creating regional leasing teams that could build sufficient capacity to offer parcels during the BLM's quarterly lease sales.

xii. Revise Energy-Related Collections of Information under the Paperwork Reduction Act

The BLM anticipates revising energy-related collections of information under the Paperwork Reduction Act (e.g., Approval of Operations (1004-0213) and Application for Permit to Drill (1014-0025) to reduce administrative burden on energy development and use through simplification of forms and associated instructions/guidance and ceasing collection of information that is unnecessary or lacks practical utility.

B. Bureau of Ocean Energy Management

The BOEM is responsible for managing development of the Nation's offshore energy and mineral resources through offshore leasing, resource evaluation, review, and administration of oil and gas exploration and development plans, renewable energy development, economic analysis, NEPA analysis, and environmental studies. The BOEM promotes energy security, environmental protection and economic development through responsible, science-informed management of offshore conventional and renewable energy and mineral resources. The BOEM carries out these responsibilities while ensuring the receipt of fair market value for U.S.

taxpayers on OCS leases, and balancing the energy demands and mineral needs of the Nation with the protection of the human, marine, and coastal environments.

Since the publication of EO13771 on January 30, 2017, BOEM has been reviewing all aspects of its programs to identify regulations and guidance documents that potentially burden the development or use of domestically produced energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law.

Below are specific actions BOEM is undertaking to reduce burdens on the production of energy offshore in the America-First Offshore Energy Strategy, as delineated in EO13795 and S.O. 3350:

i. Air Quality Rule

The BOEM has been re-examining the provisions of the air quality proposed rule published on April 5, 2016 (81 FR 19718), which would provide the first substantive updates to the regulation since 1980. The proposed rule addressed air quality measurement, evaluation, and control with respect to oil, gas, and sulphur operations on the OCS of the United States in the central and western Gulf of Mexico and the area offshore the North Slope Borough in Alaska. Interior is currently reviewing recommendations on how to proceed, including promulgating final rules for certain necessary provisions and issuing a new proposed rule that may withdraw certain provisions and seek additional input on others.

ii. Financial Assurance for Decommissioning

Notice to Lessees No. 2016-N01, for which implementation has been suspended, would make substantial changes to BOEM's requirements for companies to provide financial assurance to meet decommissioning obligations. The BOEM has been undertaking a thorough review of the NTL, including gathering stakeholder input.

iii. Arctic Rule

On July 15, 2016, BOEM and the BSEE promulgated a final rule, "Oil and Gas and Sulfur Operations on the Outer Continental Shelf—Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf" (81 FR 46478). Interior is reviewing the requirements for exploratory drilling conducted from mobile drilling units within the Arctic OCS (Beaufort Sea and Chukchi Sea Planning Areas). Interior is considering full rescission or revision of this rule, including associated information collection requirements. Review of this rule is expected to allow greater utilization of the Arctic drilling season.

iv. Oil and Gas Leasing on the Outer Continental Shelf

Secretary Zinke directed development of a new 5-year OCS oil and gas leasing program to spur safe and responsible energy development offshore. On July 3, 2017, BOEM published a request for information and comments on the preparation of a new 5-year National OCS Leasing Program for 2019-2024 (82 FR 30886). Upon its completion, the new program will replace the 2017-2022 program.

Secretarial Order 3350 directly implements EO13795, and also advances Interior's implementation of EO13783 by providing for the reevaluation of actions that impact exploration, leasing, and development of our OCS energy resources. This Secretarial Order enhances opportunities for energy exploration, leasing, and development on the OCS by establishing regulatory certainty for OCS activities. In accordance with this Secretarial Order, Interior is reviewing potential regulatory changes to reduce burden on offshore energy production, development, and use.

In addition, on July 13, Secretary Zinke offered 75.9 million acres offshore Texas, Louisiana, Mississippi, Alabama, and Florida for oil and gas exploration and development. The region-wide lease sale conducted on August 16, 2017, was the first offshore sale under the OCS Oil and Gas Leasing Program for 2017-2022. Under this program, 10 region-wide lease sales are scheduled for the Gulf, where resource potential and industry interest are high, and oil and gas infrastructure is well established. Two Gulf lease sales will be held each year and include all available blocks in the combined Western, Central, and Eastern Gulf of Mexico Planning Areas.

v. Seismic Permitting

Currently BOEM is one of two Federal agencies required to take separate regulatory actions in order to permit geological and geophysical surveying on the OCS. These seismic surveys, which are conducted by applicants, enable BOEM to make informed business decisions regarding oil and gas reserves, engineering decisions regarding the construction of renewable energy projects, and informed estimates regarding the composition and volume of marine mineral resources. This information is also used to ensure the proper use and conservation of OCS energy resources and the receipt of fair market value for the leasing of public lands.

The ongoing delay in reaching decisions on Federal authorization of seismic surveys is a burden that hinders domestic energy development by preventing industry from being able to better determine the size and location of potential energy resources below the seafloor. The BOEM experts believe that these surveys can be authorized with appropriate mitigation measures consistent with the protection required by applicable Federal laws, primarily the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). While BOEM is responsible for ultimately issuing a permit to allow these activities to move forward, no seismic surveying can be done without MMPA authorization by the National Marine Fisheries Service (NMFS). For this reason, the issuance of certain seismic permits by BOEM has been held up in a years-long process awaiting NMFS authorization. BOEM and NMFS are currently working on ways to streamline review, as directed in EO 13795, Sec. 3(c).

The Department believes that some improvements can be made through simple program initiatives, such as NMFS assigning dedicated staff to the permits or allowing BOEM to determine MMPA compliance for the purposes of BOEM-related activities in accordance with EO 13807. Finding a genuinely effective solution may warrant statutory changes as well as reorganizing departmental responsibilities within the Executive Branch in order to streamline opportunities to increase efficiency.

vi. Revise Energy-Related Collections of Information under the Paperwork Reduction Act

The BOEM is reviewing four energy-related information collections, two of which are related to the Arctic Rule, and two of which collect information that is no longer needed.

C. Bureau of Safety and Environmental Enforcement

The BSEE ensures the safe and responsible exploration, development, and production of America's offshore energy resources through regulatory oversight and enforcement. The BSEE is focused on fostering secure and reliable energy production for America's future through a program of efficient permitting, appropriate regulations, compliance monitoring and enforcement, technical assessments, inspections, and incident investigations. As a steward of the Nation's OCS oil, gas, and mineral resources, the Bureau protects Federal royalty interests by ensuring that oil and gas production methods maximize recovery from underground reservoirs.

The BSEE continues the efforts begun earlier this calendar year to review and seek stakeholder input on opportunities to reduce burden on the regulated community while maintaining necessary safety and environmental protections. Specifically, the BSEE is focusing its review on 2 final rules, published in 2016, regarding safety and environmental protection for oil and gas exploration, development and production activities on the OCS. The first is the Well Control and Blowout Preventer (BOP) Rule (81 FR 25888); the second is the Arctic Exploratory Drilling Rule (the Arctic Rule) (81 FR 46478), which was issued jointly by BSEE and BOEM. Both rules (as described below) revised older regulations and added some new requirements that potentially burden development of domestic offshore oil and gas production. The BSEE continues to identify specific issues in both final rules that, if revised or eliminated through a future rulemaking process, could alleviate those burdens without reducing the safety or

environmental protections of the rules. The BSEE is beginning the process of drafting timelines and developing stakeholder engagement strategies for potential revision to both sets of regulations. These rules fit into the category of "Other Actions that Potentially Burden Development or Use of Energy." The BSEE has also identified policies that should be re-examined. Those are:

- review decommissioning infrastructure removal requirements and timelines for infrastructure;
- clarify Civil Penalties Guidance; and
- review current policies associated with taking enforcement actions against contractors.

The BSEE already completed publication of a final rule revising requirements of 30 CFR 250.180 to extend the period of time before a lease expires due to cessation of operations from 180 days to 1 year, thus allowing operators greater flexibility to plan exploration activities.[2] The BSEE also improved its civil penalty program through the creation of a Civil Penalty Enforcement Specialist in each district in the Gulf of Mexico Region to serve as a liaison with District and Headquarters throughout a civil penalty case, providing clarity and consistency among civil penalty cases.

The BSEE is also reviewing the Production Safety Systems Rule (30 CFR part 250, subpart H), based on Department guidance received between April and May of 2017. If areas for revision are identified, the BSEE would tier it behind the Well Control Rule (WCR) and the Arctic Rule in terms of potential burden reduction.

Below are the specific details of BSEE's review to identify additional regulations and policies that potentially burden development or use of energy.

i. Revise Well Control and BOP Rule (WCR)

The WCR was issued on April 29, 2016, and consolidated new equipment and operational requirements for well control, including drilling, completion, workover, and decommissioning operations. The rule also incorporated or updated references to numerous industry standards and established new requirements reflecting advances in areas such as well design and control, casing and cementing, real-time monitoring (RTM), subsea containment of leaks and discharges, and blowout preventer requirements. In addition, the final rule adopted several reforms recommended by several bodies that investigated the *Deepwater Horizon* incident.

The BSEE is considering several revisions to its regulations. Among those considerations is a rulemaking to revise the following aspects of the new well control regulations, including but not limited to:

[2] *See*, "Oil and Gas and Sulphur Operations in the Outer Continental Shelf – Lease Continuation Through Operations," 82 FR 26741 (June 9, 2017).

- revising the requirements for sufficient accumulator capacity and remotely-operated vehicle (ROV) capability to both open and close reams on subsea BOPs (i.e., to only require capability to close the rams);
- revising the requirement to shut in platforms when a lift boat approaches within 500 feet;
- extending the 14-day interval between pressure testing of BOP systems to 21 days in some situations;
- clarifying that the requirement for weekly testing of two BOP control stations means testing one station (not both stations) per week;
- simplifying testing pressures for verification of ram closure; and
- revising or deleting the requirement to submit test results to BSEE District Managers within 72 hours.

These changes are expected to strike the appropriate balance in order to maintain important safety and environmental protections while also ensuring development may continue.

The BSEE initiated review of potential regulatory changes to this rule in July 2017. The interim step before issuing a proposed rule to revise existing regulations is to seek input on potential areas of reform from the stakeholders. The BSEE is in the process of determining the most effective way to engage stakeholders to provide meaningful and constructive input on regulatory reform efforts related to well control. As a result of stakeholder outreach, the above list of potential reforms may be increased.

ii. Revise Arctic Rule

The Arctic Rule was published on July 15, 2016 (81 FR 46478), and revised existing regulations and added new prescriptive and performance-based requirements for exploratory drilling conducted from mobile drilling units and related operations on the OCS within the Beaufort Sea and Chukchi Sea Planning Areas (Arctic OCS). After conducting its review to eliminate burdens and increase economic opportunities, BSEE is considering a several revisions to the rule, including but not limited to:

- modifying requirement to capture water-based muds and cuttings;
- eliminating the requirement for a cap and flow system and containment dome that are capable of being located at the well site within 7 days of loss of well control;
- eliminating the reference to the expected return of sea ice from the requirement to be able to drill a relief well within 45 days of loss of well control; and
- eliminating the reference to equivalent technology from the mudline cellar requirement.

The BOEM has also identified an opportunity to reduce burden on operators. A joint rulemaking would likely be undertaken again.

Among the potential benefits of the items listed above is the possibility of allowing greater flexibility for operators to continue drilling into hydrocarbon zones later into the

Arctic drilling season. Current leasing strategies in the Arctic constrain future exploratory activities to which this rule would apply.

Success will result in a reduction in burdens associated with exploration of the Nation's Arctic oil and gas reserves while also providing appropriate safety and environmental protection tailored to this unique environment.

Prior to proposing a rulemaking to make the changes above, BSEE and BOEM plan to undertake stakeholder engagement activities. As a result of stakeholder engagement, the list of potential areas for proposed reform may change or grow. This process will enhance our ability to engage the public and stakeholders, as well as ensure our ability to engage in a robust consultation with tribes and Alaska Native Claims Settlement Act corporations. Stakeholder engagement will have the added benefit of allowing BSEE and BOEM to receive input on how the agencies calculate the primary lease term in order to provide a more tailored approach to the limited drilling windows in the Arctic.

iii. Decommissioning Infrastructure Removal Requirements

The BSEE will re-examine the NTL 2010-G05, "Decommissioning Guidance for Wells and Platforms," to determine whether additional flexibility should be provided to better account for facility and well numbers and size, as well as timing consideration that can arise in the case of financial distress or bankruptcy of companies. Any changes to the NTL will not have an impact on companies' underlying decommissioning obligations, but could provide more flexibility to allow for cash-flow management and ultimately increase assurance that decommissioning obligations can be fulfilled without government expense.

iv. Lease Continuation Through Operations

This action was completed on June 9, 2017, when final rule 1014–AA35, "Oil and Gas and Sulphur Operations in the Outer Continental Shelf-Lease Continuation Through Operations," was published in the Federal Register (82 FR 26741). Section 121 of the Consolidated Appropriations Act of 2017 mandated that BSEE revise the requirements of 30 CFR 250.180 relating to maintaining a lease beyond its primary term through continuous operations. The final rule changed all of the references to the period of time before which a lease expires due to cessation of operations from "180 days" and "180th day" to a "year" and from "180-day period" to a "1-year period." The rule has become effective and is allowing operators greater flexibility to plan exploration activities.

v. Contractor Incidents of Noncompliance

The BSEE currently has a policy that calls for issuing notices of noncompliance (INCs) to contractors as well as operators in certain instances. The BSEE will examine whether this policy is achieving the desired deterrence value or whether an alternative compliance incentive should be considered and the policy revised. There are currently several

ongoing court actions that could result in adjustments to this policy. The BSEE will consider all of this information while examining the policy.

vi. Civil Penalties

Since 2013, the BSEE civil penalty program has continued to improve its processes and programs. For example, in 2016, each of the Districts in the Gulf of Mexico Region (GOMR) created the position of Civil Penalty Enforcement Specialist to assist with the review of all INCs to determine which INCs are appropriate for civil penalty assessment, and to act as a liaison with the District and Headquarters (HQ) throughout a civil penalty case. This effort has greatly assisted in proving clarity and consistency to the development of civil penalty cases.

vii. Energy-Related Information Collections under the Paperwork Reduction Act

The BSEE has approximately 25 information collections associated with our regulations and guidance that must be renewed every 3 years on a rolling basis. The renewal process involves an analysis of whether each information collection continues to be necessary and if whether it requires modification. Through this process, BSEE continuously reviews our forms and the information we collect and reduces the collection burden wherever appropriate. Additionally, there may be further burden reduction associated with potential revisions to the Well Control and Arctic rules once final determinations have been made with respect to specific action on those regulations.

D. Office of Natural Resources Revenue

The ONRR is responsible for ensuring revenue from Federal and Indian mineral leases is effectively, efficiently, and accurately collected, accounted for, analyzed, audited, and disbursed to recipients. The ONRR collects an average of over $10 billion annual revenue from onshore and offshore energy production, one of the Federal government's largest sources of non-tax revenue.

i. Royalty Policy Committee

In an effort to ensure the public continues to receive the full value of natural resources produced on Federal lands, Secretary Zinke signed a charter establishing a Royalty Policy Committee (RPC) to provide regular advice to the Secretary on the fair market value of and collection of revenues from Federal and Indian mineral and energy leases, including renewable energy sources. The RPC may also advise on the potential impacts of proposed policies and regulations related to revenue collection from such development, including whether a need exists for regulatory reform. The group consists of 28 local, tribal, state, and other stakeholders and will serve in an advisory nature. The Secretary's Counselor to the Secretary for Energy Policy chairs the RPC. The first meeting will be held on October 4, 2017.

ii. 2017 Valuation Rule

On April 4, 2017, ONRR published a proposed rule that would rescind the 2017 Valuation Rule. The ONRR, after considering public feedback, recognized that implementing the 2017 Valuation Rule would be contrary to the rule's stated purpose of offering greater simplicity, certainty, clarity, and consistency in product valuation. The ONRR determined that the 2017 Valuation Rule unnecessarily burdened the development of Federal and Indian coal beyond what was necessary to protect the public interest or otherwise comply with the law. ONRR therefore repealed the rule in its entirety and reinstated the valuation regulations in effect prior that rule. (82 FR 36934, August 7, 2017).

E. Office of Surface Mining Reclamation and Enforcement

The OSMRE ensures, through a nationwide regulatory program, that coal mining is conducted in a manner that protects communities and the environment during mining, restores the land to beneficial use following mining, and mitigates the effects of past mining by aggressively pursuing reclamation of abandoned mine lands. The OSMRE's statutory role is to promote and assist its partner states and tribes in establishing a stable regulatory environment for coal mining. The proposed level of regulatory grant funding provides for the efficient and effective operations of programs at a level consistent with the anticipated obligations of State and tribal regulatory programs to account for the Nation's demand for coal mine permitting and production.

On February 16, 2017, President Trump signed a resolution under the Congressional Review Act to annul the Stream Protection Rule (SPR) (81 FR 93066, December 20, 2016). This rule imposed substantial burdens on the coal industry and threatened jobs in communities dependent on coal. As described below, OSMRE has drafted a Federal Register document to conform the Code of Federal Regulations to the legislation and return the regulations to their previous status and anticipates publication on or about September 30, 2017. In the interim, OSMRE has ensured that the SPR is not being implemented in any way and that regulation is occurring under the pre-existing regulatory system.

The OSMRE is reviewing additional actions to reduce burdens on coal development, including, for example, reviewing the state program amendment process to reduce the time it takes to formally amend an approved Surface Mining Control and Reclamation Act (SMCRA) regulatory program.

In compiling the following list of actions for review, OSMRE considered direct and indirect impacts to the coal industry, as well as impacts to the states with primary responsibility for regulating coal mining activities, pursuant to the SMCRA.

Recommendations for Alleviating or Eliminating Burdensome Actions

i. Disapproval of the Stream Protection Rule

The SPR was published on December 20, 2016, and became effective on January 19, 2017. In accordance with the Congressional Review Act, Congress passed, and the President signed, a resolution of disapproval of the SPR on February 16, 2017, as Public

Law 115-5. No provisions of the SPR have been enforced since passage of the resolution. In addition, OSMRE will formally document the CRA nullification of the SPR by publishing in the Federal Register a document that replaces the SPR text with the regulations that were in place prior to January 19, 2017. This will result in the removal of any amendments, deletions, or other modifications associated with the nullified rule, and the reversion to the text of all regulations in effect immediately prior to the effective date of the SPR.

The OSMRE estimates the elimination of this rule will save industry approximately $82 million annually, and will reduce the amount of time states and OSMRE are expending in the processing of permit applications and monitoring performance during the life of the operation.

Interior has identified the CRA nullification and subsequent action by OSMRE to conform the CFR to the Congressional action as a deregulatory action under EO 13771.

ii. Work with Interstate Mining Compact Commission (IMCC) to Revisit and Revise Ten-Day Notices and Independent Inspections – Directives INE-24, INE-35, REG-8

Under revisions to OSMRE Directive REG-8, which establishes policies, procedures and responsibilities for conducting oversight of state and tribal regulatory programs, OSMRE conducts 10 percent of all routine oversight inspections with 24 hours' notice to the state regulatory authority. If the state inspector is unavailable to accompany the OSMRE inspector, OSMRE will conduct the inspection alone. These and other oversight inspections sometimes result in the issuance of Ten-Day Notices (TDNs) to the state regulatory authority under Inspection and Enforcement (INE)-35. In addition, INE-24, issued on May 26, 1987, requires OSMRE to issue a TDN to state regulatory authorities upon receipt of a citizen's complaint.

Between 2011 and 2016, 882 TDNs were issued to state regulatory programs. On an annual basis, the majority (39 or 74 percent) of those resulted from citizen's complaints. In addition, an evaluation of data during 2013 found that the number of TDNs issued when the state inspector does not participate was determined to be 6.4 percent of the total oversight inspections, versus 1.5 percent when the state inspector accompanied the OSMRE inspector. State regulatory authorities, particularly in the Appalachian Region, have expressed concern that the number of hours required to prepare TDN responses can be significant.

In an effort to address these concerns, a joint OSMRE and State/Tribal Work Group assessed various topics, including the use of TDNs and independent inspections. In a report issued on July 30, 2014, the Work Group made six specific recommendations for the TDN process and four recommendations regarding the independent inspection process. Interstate Mining Compact Commission (IMCC) member states have requested OSMRE revisit these recommendations, and others, in an effort to implement the recommendations. In addition, OSMRE will revisit and revise, as needed, the specific

policy directives governing the use of TDNs and independent inspections in cooperation with the IMCC to reduce the amount of time states and OSMRE are expending to process TDNs.

The review will commence this calendar year, following specific timelines and benchmarks to be established jointly with IMCC.

iii. Work with IMCC to Revise or Rescind OSMRE Memorandum and Directive INE-35 – TDNs and Permit Defects

On November 15, 2010, the OSMRE Director issued a memorandum directing OSMRE staff to apply the TDN process and Federal enforcement to permitting issues under approved regulatory programs. In support of this memorandum, on January 31, 2011, the Director reissued Directive INE-35, regarding policy and procedures for the issuance of TDNs. This directive requires the issuance of a TDN whenever a permit issued by the state regulatory authority (RA) contains a "permit defect," which the directive defines as meaning "a type of violation consisting of any procedural or substantive deficiency in a permit-related action taken by the RA (including permit issuance, permit revision, permit renewal, or transfer, assignment, or sale of permit rights)." The directive further states that OSMRE will not review pending permitting decisions and will not issue a TDN for an alleged violation involving a possible permit defect where the RA has not taken the relevant permitting action (e.g., permit issuance, permit revision, permit renewal, or transfer, assignment, or sale of permit rights).

Since the issuance of this policy and associated directive, concerns have been raised by some states and industry stakeholders regarding the potential impact on mining operations where the RA has issued a permit, revision, or renewal, and the operator has commenced activities based upon RA approval. The OSMRE in cooperation with the IMCC will revisit the policy and directive and revise or rescind, as appropriate to provide more certainty to the industry in the state RA permitting process.

The review will commence this calendar year; specific timelines and benchmarks will be established jointly with IMCC.

iv. Revise Processing State Program Amendments – Directive STP-1

Directive STP-1, issued in October 2008, establishes policy and procedures for review and processing of amendments to state regulatory programs. Most changes in state law or regulations that impact an approved SMCRA regulatory program require submission of a formal program amendment to OSMRE for approval. Such changes to primacy programs cannot be implemented until a final amendment is approved by OSMRE. In addition, written concurrence must be received from the Administrator of the Environmental Protection Agency with respect to those aspects of a state/tribal program amendment which relates to air or water quality standards promulgated under the authority of the Clean Air Act or the Clean Water Act prior to OSMRE approval. In accordance with 30 CFR 732.17(h)(13), OSMRE must complete a final action on program amendments within 7 months of receipt. Often, due to the complexities of the process and other issues, including influences outside of OSMRE, it is difficult for OSMRE to meet the required processing times.

The result is that state regulatory authorities are occasionally unable to move forward in a timely manner with needed program amendments.

Based upon the results of an internal control review (ICR) and work with the state/tribal work group, OSMRE is developing new training guides and opportunities for states and revising Directive STP-1 to improve the state program amendment process. The OSMRE will also review the process with the Office of the Solicitor to evaluate opportunities for process improvement. In addition, the recent approval by OMB of the information collection requirements of 30 CFR Part 732 was conditioned upon OSMRE developing new guidance and supporting documents for states to use when preparing amendments to approved programs. The OSMRE intends for these actions to reduce its processing time for state program amendments.

The revision of Directive STP-1 and development of training guides is anticipated to be completed this calendar year. OSMRE will track processing times once the revised directive and training have been implemented, and compare results to previous years. The OMB approval of new guidance for Part 732 is required by July 31, 2020.

v. Revise or Rescind OSMRE Policy Advisory and Proposed Rulemaking: Self-Bonding

On August 5, 2016, the OSMRE Director issued a policy advisory on self-bonding. The advisory was in direct response to three of the largest coal mine operators in the nation filing for Chapter 11 protection under the U.S. Bankruptcy Code between 2015 and 2016. Those companies held approximately $2.5 billion of unsecured or non-collateralized self-bonds that various states with federally-approved SMCRA regulatory programs previously accepted to guarantee reclamation of land disturbed by coal mining. The advisory stated that "the bankruptcy filings confirm the existence of significant issues about the future financial abilities of coal companies and how they will meet future reclamation obligations." While recognizing the action of certain state programs to address self-bonding issues, the advisory went on to say that "each regulatory authority should exercise its discretion and not accept new or additional self-bonds for any permit

until coal production and consumption market conditions reach equilibrium, events which are not likely to occur until at least 2021." Since the issuance of this advisory, all three companies of concern have completed their plans for Chapter 11 reorganization, and either have or are expected to replace all self-bonds with other forms of financial guarantees.

In addition to the issuance of the policy advisory on self-bonding, OSMRE accepted a petition for rulemaking submitted March 3, 2016, by WildEarth Guardians. The petition requested that OSMRE revise its self-bonding regulations to ensure that companies with a history of insolvency, and their subsidiary companies, not be allowed to self-bond coal mining operations.

Limiting the use of self-bonds, as indicated in the policy advisory or potentially through a rulemaking, could impact a company's ability to continue mining. In addition, there will likely be an increased demand and potential negative impact on the availability of third party surety bonding.

On January 17, 2017, the GAO announced that it will conduct an audit of financial assurances for reclaiming coal mines (Job Code 101326) that will focus on the role of OSMRE in implementing and overseeing the Surface Mining Control and Reclamation Act's requirements related to financial assurances.

In view of the current status of the self-bonding bankruptcies and recent executive orders concerning rulemakings, OSMRE will reconsider the scope of the policy advisory and revise or rescind, as appropriate. In addition, OSMRE will revisit the need for and scope of any potential rulemaking in response to the previously accepted petition. Furthermore, OSMRE will carefully consider the report and recommendations of the pending GAO audit of financial assurances currently underway. The OSMRE will solicit public input prior to finalizing any decision on the need for further rulemaking.

The OSMRE will continue to monitor the status of self-bonding issues in state programs in cooperation with the IMCC and other stakeholders (sureties, industry, and environmental groups).

vi. Revise or Rescind OSMRE Enforcement Memorandum – Relationship between the Clean Water Act (CWA) and SMCRA

On July 27, 2016, the OSMRE Director issued a policy memo to staff providing direction on the enforcement of the existing regulations related to violations of the CWA caused by SMCRA-permitted operations and related issues, such as responses to self-reported violations of National Pollutant Discharge Elimination System (NPDES) limits and OSMRE responses to Notices of Intent (NOI) to sue alleging CWA violations at SMCRA-permitted operations. The policy memo specifically required an NOI to be processed as a citizen complaint, which requires OSMRE to issue a TDN to the state RA upon receipt of the NOI. In addition, the memo stated that a violation of water quality standards is also a violation of SMCRA regulations.

State regulatory authorities, as well as industry, have raised issues with this guidance document expressing concern with overlap and potential conflicts between section 702(a)(3)[3] of SMCRA and the CWA. In addition, state RAs have raised concerns about new TDNs and related enforcement actions that have been issued in response to this policy guidance. The relationship between the CWA and SMCRA and the role of the state RAs in ensuring compliance in accordance with their approved SMCRA regulatory programs have been longstanding issues. Resolution will bring certainty to the state regulatory programs as well as for the industry.

The OSMRE will revisit the policy issues and concerns in cooperation with the IMCC and will revise or rescind the memorandum, as appropriate. Review of the policy with IMCC member states will commence this calendar year; the revised or rescinded policy should be complete by the end of this calendar year. The OSMRE will consider seeking public input prior to finalizing the policy.

vii. Revise Policy on Reclamation Fee for Coal Mine Waste (Uram Memo) and Propose Rule for Additional Incentives

On July 22, 1994, then-Director Robert Uram issued a memorandum outlining the conditions under which OSMRE would waive the assessment of reclamation fees on the removal of refuse or coal waste material for use as a waste fuel in a cogeneration facility. Recently, the Pennsylvania regulatory authority (PADEP) requested that OSMRE update this policy as outlined below to incentivize reclamation efforts on sites with coal refuse reprocessing activities.

The PADEP believes that the reclamation fees deter operators from reclamation efforts on sites with coal refuse reprocessing activities. Coal refuse sites located within the Anthracite Coal Region are unable or have ceased the removal of coal refuse to be used as waste fuel at co-generation facilities. This is partly or totally due to the assessment of reclamation fees on coal refuse used as waste fuel. In addition, PADEP recommended that OSMRE consider waste derived from filter presses at existing coal preparation plants to be a "no value"[4] product, which would encourage its use as a waste fuel rather than requiring it to be disposed in a coal refuse pile.

The OSMRE will revisit the 1994 Uram Memo, with the goal of providing an incentive for use of coal refuse as a coal waste fuel. In addition, OSMRE will revisit the remining incentives provided by the 2006 amendments to SMCRA at section 415, some of which apply specifically to removal or reprocessing of abandoned coal mine waste. Additional incentives pursuant to Section 415 will require promulgation of rules, and, therefore, input from the public will be solicited.

[3] Nothing in this Act shall be construed as superseding, amending, modifying, or repealing the Mining and Minerals Policy Act of 1970 (30 U.S.C. 21a), the National Environmental Policy Act of 1969 (42 U.S.C. 4321-47), or any of the following Acts or with any rule or regulation promulgated thereunder, including, but not limited to --
(3) The Federal Water Pollution Control Act (79 Stat. 903), as amended (33 U.S.C. 1151-1175), the State laws enacted pursuant thereto, or other Federal laws relating to preservation of water quality.

[4] No value determinations are based upon the criteria established in the 1994 Uram Memorandum.

Providing additional incentives to industry to promote remining of coal refuse and other abandoned mine sites will provide for additional reclamation of abandoned mines that would not otherwise be accomplished through the Abandoned Mine Lands (AML) program. Specific benchmarks for measuring success, such as acres of additional reclamation performed, will be developed consistent with the implementation of the incentives.

viii. Energy-Related Information Collections under the Paperwork Reduction Act

The OSMRE reviewed the current industry costs associated with the Paperwork Reduction Act and did not find any information collections that "potentially burden[5] the development or utilization of domestically produced energy resources" in accordance EO13783. It should be noted that there will be no industry costs associated with information collection based on the Stream Protection Rule, due to the Congressional Review Act nullification of that final rule.

F. U.S. Fish and Wildlife Service

The FWS is reviewing its final rule, "Management of Non-Federal Oil and Gas Rights," 81 FR 79948 (Nov. 14, 2016) to determine whether revision would be appropriate to reduce burden on energy.

Additionally, below is a list of burdens and opportunities to fulfill the intent of the Executive Order:

i. Streamline Rights-of-way (ROW) for pipelines and electricity transmission

The approval process for new ROW access can be overly restrictive and excessively lengthy. The National Wildlife Refuge System Administration Act, as amended, requires all uses, including rights-of-way, of National Wildlife Refuges to be compatible with the mission of the System. The FWS will work with stakeholders in a more timely fashion to determine if proposed ROW uses are compatible. Additionally, FWS will revise its ROW regulation to streamline the current ROW granting process to significantly decrease the time to obtain ROW approval from the current 3-12 month time frame.

ii. Review Incidental Take Regulations for oil and gas activities in the Southern Beaufort Sea and Chukchi Sea, under the Marine Mammal Protection Act (MMPA)

The MMPA prohibits take (i.e., harass, hunt, capture, or kill) of marine mammals (16 U.S.C. 1361 et seq.) unless authorized by the Secretary. Existing measures in the MMPA incidental take regulations require: 1) maintaining a minimum spacing of 15 miles between all active seismic source vessels and/or drill rigs during exploration activities in the Chukchi Sea; 2) no more than two simultaneous seismic operations and three offshore exploratory drilling operations authorized in the Chukchi Sea region at any time; 3) time restrictions for transit through the Chukchi Sea; 4) time and vessel restrictions in the

[5] Burden "means to unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources" (Presidential Executive Order 13783, Promoting Energy Independence and Economic Growth, March 28, 2017).

Hanna Shoal Walrus Use Area; 5) location of polar bear dens and 1-mile buffer; 6) maximum distance around Pacific walruses and polar bears on ice and groups of Pacific walruses in water; 7) sound producing mitigation zones & shut-down/ramp up procedures; 8) marine mammal observers and monitoring requirements; and 9) excessive reporting requirements.

The FWS has the opportunity to review the Chukchi Sea incidental take regulation which expires in 2018, and the regulation for the southern Beaufort Sea expires in 2021. They may either be allowed to expire or be revised and reissued.

iii. Modernize Guidance and regulations governing interagency consultation pursuant to Section 7(a)(2) of the Endangered Species Act

Section 7(a)(2) of the Endangered Species Act requires Federal agencies, in consultation with the Secretary of the Interior or the Secretary of Commerce (delegated to the Fish and Wildlife Service and the National Marine Fisheries Service, respectively), to ensure that any action authorized, funded or carried out by the agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. However, the time and expense associated with satisfying the interagency consultation requirements are unnecessarily burdensome.

The FWS has discretion to create efficiencies and streamlining in the consultation process through targeted revision to regulations and/or guidance and is reviewing opportunities for further process improvements.

iv. Build Upon the Efforts of the Western Governors' Association and Others to Improve the Application of the Endangered Species Act, Reduce Unnecessary Burdens on the Energy Industry, and Facilitate Conservation Stewardship

A number of groups, most prominently the Western Governors' Association, have worked to evaluate and develop recommendations to improve the application of the ESA. For example, the Western Governors' Association developed the *Western Governors' Species Conservation and Endangered Species Act Initiative (Initiative),* which conducts broad-based stakeholder discussions focused on issues such as identifying means of incentivizing voluntary conservation, elevating the role of states in species conservation, and improving the efficacy of the ESA. Interior intends to build on these efforts to improve the application of the ESA in a manner that ensures conservation stewardship, while reducing unneeded burdens on the public, including the energy industry.

v. Re-Evaluate Whether the MBTA Imposes Incidental Take Liability and Clarify Regulatory Authorities.

Federal Courts of Appeals have split on whether the Migratory Bird Treaty Act (MBTA) imposes criminal liability on companies and individuals for the inadvertent death of migratory birds resulting from industrial activities. Three circuits – the fifth, eighth, and ninth – have held that it does not, limiting taking liability to deliberate acts done directly and intentionally to migratory birds. Two circuits – the second and tenth – have held that

it does. On January 10, 2017, the Office of the Solicitor issued an opinion regarding the issue, which was subsequently suspended pending further review of the opinion and the underlying regulations and decisions. This review is currently ongoing, and may serve as the basis for the development of new internal guidance or regulations that provide clarity to this longstanding issue.

vi. Evaluate the Merits of a General Permit for Incidental Take Under the Bald and Golden Eagle Protection Act

The FWS intends to evaluate the merits of a general permit for incidental take under the Bald and Golden Eagle Protection Action Act (BGEPA). When the bald eagle was delisted under the ESA, FWS issued a rule establishing a permit program for incidental take under BGEPA. On December 16, 2016, FWS adopted a final rule intended to address some of industry's concerns regarding the BGEPA incidental take permit process (81 FR 91494). One measure strongly supported by industry, a general permit for activities that constitute a low risk of taking eagles, was not considered as part of this rulemaking process, though FWS did accept comments on the subject for consideration in a future rulemaking. The FWS is reviewing these comments to determine whether additional regulatory changes would be appropriate to reduce the burden on industry.

G. Bureau of Reclamation

The BOR is the second largest producer of hydroelectric power in the United States, operating 53 hydroelectric power facilities, comprising 14,730 megawatts of capacity. Each year, BOR generates over 40 million megawatt-hours of electricity (the equivalent demand of approximately 3.5 million US homes),[6] producing over one billion dollars in Federal revenue. In addition to our authorities to develop, operate, and maintain Federal hydropower facilities, BOR is also authorized to permit the use of our non-powered assets to non-Federal entities for the purposes of hydropower development via a lease of power privilege (LOPP).

The BOR is committed to facilitating the development of non-Federal hydropower at our existing Federal assets. Acting on this commitment, BOR has undertaken a number of activities, including:

i. Completion of two publically available resource assessments.
Assessments identify technical hydropower potential at existing BOR facilities, irrespective of financial viability.

ii. Collaboration with stakeholder groups to improve the LOPP process and LOPP Directive and Standard (D&S) policy guidance document.

A BOR LOPP is a contractual right given to a non-Federal entity to use a BOR asset (e.g. dam or conduit) for electric power generation consistent with BOR project purposes.

The BOR has conducted LOPP outreach with stakeholder groups and hydropower industry associations; and made resources and staff available via a LOPP website: https://www.usbr.gov/power/LOPP/index.html. The BOR has also partnered with sister

[6] See, https://www.eia.gov/tools/faqs/faq.php?id=97&t=3

agencies (United States Army Corps of Engineers and the Department of Energy) under the Memorandum of Understanding (MOU) for Hydropower to, in part, encourage and streamline non-Federal development on Federal infrastructure.

Through these activities, BOR has made resources available to developers and peeled back the barriers that may burden non-Federal hydropower development - while continuing to protect the Federal assets that our customers, operating partners, and stakeholders have depended on for over a century. The response BOR has received from these groups (including the development community) in this effort has been overwhelmingly positive. LOPP projects provide a source of reliable, domestic, and sustainable generation – that supports rural economies and the underlying Federal water resource project.

H. Bureau of Indian Affairs

The BIA provides services to nearly 2 million American Indians and Alaska Natives in 567 federally recognized tribes in the 48 contiguous States and Alaska. The BIA's natural resource programs assist tribes in the management, development, and protection of Indian trust land and natural resources on 56 million surface acres and 59 million subsurface mineral estates. These programs enable tribal trust landowners to optimize sustainable stewardship and use of resources, providing benefits such as revenue, jobs and the protection of cultural, spiritual, and traditional resources. Income from energy production is the largest source of revenue generated from trust lands, with royalty income of $534 million in 2016.

Indian Energy Actions

i. Clarify "Inherently Federal Functions for Tribal Energy Resource Agreements (TERAs)

Tribal Energy Resource Agreements (TERAs) are authorized under Title V of the Energy Policy Act of 2005. A TERA is a means by which a tribe could be authorized to review, approve, and manage business agreements, leases, and rights-of-way pertaining to energy development on Indian trust lands, absent approval of each individual transaction by the Secretary. Interior promulgated TERA regulations in 2008 at 25 CFR part 224. The TERAs offer the opportunity to promote development of domestically produced energy resources on Indian land; however, 12 years after the passage of the Act and 9 years after the issuance of TERA regulations, not one tribe has sought Interior's approval for a TERA. One theory asserted by at least one tribe as to the failure of this legislation is the Act does not address precisely how much Federal oversight would disappear for tribes operating under TERAs. Specifically, Interior had not defined the term "inherently Federal functions" that Interior will retain following approval of a TERA. This term appears in Interior's regulations at 25 CFR §§ 224.52(c) and 224.53(e)(2), but not in the Act. Without some assurance as to the benefits (in terms of less Federal oversight) a tribe would receive through clarification of "inherently Federal functions," tribes have no incentive to undergo the intensive process of applying for a TERA. Clarification of this phrase would also address Recommendation 5 of GAO-15-502, *Indian Energy Development: Poor Management by BIA Has Hindered Energy Development on Indian Lands* (June 2015). The recommendation directed Interior to "provide additional energy

development-specific guidance on provisions of TERA regulations that tribes have identified to Interior as unclear."

The BIA has been working closely with the Office of the Solicitor to develop guidance on how Interior will interpret the term "inherently Federal functions." It is expected that by providing this certainty as to the scope of Federal oversight, tribes will better be able to justify the process of applying for a TERA. The BIA expects to have the guidance finalized and available on its website by October 2017.

The BIA anticipates that the benefits of this action will be to promote the use of TERAs, which will both save tribes the time and resources necessary to seek and obtain Interior approval of each transaction related to energy development on Indian land, and will help ease Interior's workload by eliminating the need for Departmental review of each individual transaction.

The reduction in burden will be measured by the number of tribes that choose to obtain TERAs. Once each tribe obtains a TERA, Interior will work with the tribe to estimate savings in terms of time and resources.

I. Integrated Activity Plan for Oil & Gas in the National Petroleum Reserve – Alaska

Noting that the National Petroleum Reserve – Alaska (NPR-A) is the largest block of federally managed land in the United States and offers economically recoverable oil and natural gas, the Secretary issued an order focusing on management of this area in a manner that appropriately balances promoting development and protecting surface resources. *See* Secretarial Order 3352, "National Petroleum Reserve – Alaska" (May 31, 2017). Currently, 11 million acres (or 48 percent) of the total 22.8 million acres in the NPR-A are closed to leasing under the current Integrated Activity Plan (IAP). The Secretarial Order requires review and revision of the IAP for management of the area and, within the existing plan, maximizing the tracts offered during the next lease sale.

J. Mitigation

Implemented properly, mitigation can be a beneficial tool for advancing the Administration's goals of American energy independence and security, while ensuring public resources are managed for the benefit and enjoyment of the public.

Interior seeks to establish consistent, effective and transparent mitigation principles and standards across all its Agencies. Interior and its bureaus and offices intends to develop consistent terminology, reduce redundancies, and simplify frameworks so that the Federal mitigation programs and stepped down programs are more predictable and consistent. Some mitigation is facilitated by goodwill and some is through our regulatory paradigm.

BLM

i. Review and Revise Mitigation Manual Section (MS-1794) and Handbook (H-1794-1) Related to Mitigation, Which Provide Direction on the Use of Mitigation, Including Compensatory Mitigation, To Support the BLM's Multiple-Use and Sustained-Yield Mandates.

The Mitigation Manual Section and Handbook provide direction on the use of mitigation, including compensatory mitigation, to support BLM's multiple use and sustained yield mandates. The BLM is reviewing whether the 2016 Manual and Handbook replaced several IMs (IM Numbers 2005-069, 2008-204, and 2013-142) issued by BLM for the same purpose.

The BLM is considering revisions to the Manual and Handbook to provide greater predictability (internally and externally), ease conflicts, and may reduce permitting/authorizations times.

Measuring success would be largely quantitative. The BLM would continue to track impacts from land use authorizations and would also track the type and amount of compensatory mitigation implemented and its effectiveness, preferably in a centralized database.

The BLM is drafting an IM that provides interim direction regarding new and ongoing mitigation practices while the Manual and Handbook are being reviewed and revised. Use of the existing Manual and Handbook would continue, as modified and limited by this IM, until they are superseded.

ii. Review of Manual 6220 – National Monuments, National Conservation Areas, and Similar Designations (07/13/2012) To Assure That It Conforms to BLM's Revised Mitigation Guidance.

Manual 6220 provides guidance for managing BLM National Conservation Lands designated by Congress or the President as National Monuments, National Conservation Areas, and similar designations (NM/NCA) in order to comply with the designating Acts of Congress and Presidential Proclamations, FLPMA, and the Omnibus Public Land Management Act of 2009 (16 U.S.C. 7202). Manual 6220 requires that when processing a new ROW application, BLM will determine, to the greatest extent possible, through the NEPA process, the consistency of the ROW with the Monument or NCA's objects and values; consider routing or siting the ROW outside of the Monument or NCA; and consider mitigation of the impacts from the ROW. Land use plans must identify management actions, allowable uses, restrictions, management actions regarding any valid existing rights, and mitigation measures to ensure that the objects and values are protected. The manual requires that a land use plan for a Monument or NCA should consider closing the area to mineral leasing, mineral material sales, and vegetative sales, subject to valid existing rights, where that component's designating authority does not already do so.

A review of Manual 6220 to identify where clarity could be provided for mitigation, notification standards, and compatible uses, may potentially reduce or eliminate burdens. The BLM will review Manual 6220 following the proposed revisions to BLM Mitigation Manual Section (MS-1794) and Handbook (H-1794-1) to ensure that Manual 6220 conforms to the BLM's revised mitigation guidance.

Addressing any potential issues, along with providing consistency with BLM Mitigation Manual is expected to provide greater predictability (internally and externally), reduce conflicts, and may reduce permitting/authorizations times.

Success will be measured in BLM meeting legal obligations under the designating Act or Proclamation for each unit and the allowance of compatible multiple uses, consistent with applicable provisions in the designating Act or Proclamation.

iii. Other Reviews of BLM Manual Provisions

Secretarial Order 3349 also revoked a prior order regarding mitigation and directed bureaus to examine all existing policies and other documents related to mitigation and climate change. (*See* Secretarial Order 3330 "Improving Mitigation Policies and Practices of the Department of the Interior.") Actions Interior is taking to implement this direction include:

- **BLM Manual 6400 – Wild and Scenic Rivers, Policy and Program Direction for Identification, Evaluation, Planning, and Management (07/13/2012)**

  Manual 6400 provides guidance for managing eligible and suitable wild and scenic rivers and designated wild and scenic rivers in order to fulfill requirements found in the Wild and Scenic Rivers Act (WSRA). Subject to valid existing rights, the Manual states that minerals in any Federal lands that constitute the bed or bank or are situated within 1/4 mile of the bank of any river listed under section 5(a) are withdrawn from all forms of appropriation under the mining laws, for the time periods specified in section 7(b) of the WSRA. The Manual allows new leases, licenses, and permits under mineral leasing laws be made, but requires that consideration be given to applying conditions necessary to protect the values of the river corridor. For wild river segments, the Manual requires that new contracts for the disposal of saleable mineral material, or the extension or renewal of existing contracts, should be avoided to the greatest extent possible to protect river values.

  Manual 6400 will be reviewed following the proposed revisions to BLM Mitigation Manual Section and Handbook to ensure that it conforms to BLM revised mitigation guidance. Although the requirements for minerals and mineral withdrawals are legally mandated under the mining and mineral leasing laws in sections 9(a) and 15(2) of the WSRA, Manual 6400 will be reviewed for opportunities to clarify discretionary decision-space.

  Ensuring consistency with the BLM Mitigation Manual will foster greater predictability (internally and externally), reduce conflicts, and may reduce

permitting/authorizations times.

Success will be measured in terms of complying with the WSRA and identifying and allowing compatible multiple uses.

- **BLM Manual 6280 – Management of National Scenic and Historic Trails and Trails under Study or Recommended as Suitable for Congressional Designation (09/14/2012)**

Manual 6280 provides guidance for managing trails under study, trails recommended as suitable, and congressionally designated National Scenic and Historic Trails to fulfill the requirements of the National Trails System Act (NTSA) and the Federal Land Policy and Management Act. Manual 6280 identifies mitigation as one way to address substantial interference with the natural and purposes for which a National Trail is designated.

Manual 6280 will be reviewed following the proposed revisions to the BLM Mitigation Manual Section and Handbook to ensure it conforms to the BLM revised mitigation guidance. Although many of the requirements are legally mandated under the National Trails System Act, Manual 6280 will be reviewed for opportunities to clarify any discretionary decision-space to reduce or eliminate burdens.

Addressing any potential issues, along with providing consistency with the BLM Mitigation Manual is expected to provide greater predictability (internally and externally), reduce conflicts, and may reduce permitting/authorizations time.

Success will be measured in terms of complying with the NTSA and identifying and allowing compatible multiple uses.

FWS

iv. Compensatory Mitigation for Impacts to Migratory Bird Habitat

The FWS has the authority to recommend, but not require, mitigation for impacts to migratory bird habitat under several Federal authorities. Pursuant to a Memoranda of Understanding with the Federal Energy Regulatory Commission (FERC), implementing EO13186 (January 10, 2001), FWS evaluates the impacts of FERC-licensed interstate pipelines to migratory bird habitat.

The FWS is developing Service-wide guidance to ensure the bureau is consistent, fair and objective, appropriately characterizes the voluntary nature of compensatory mitigation for impacts to migratory bird habitat, and demonstrates a reasonable nexus between anticipated impacts and recommended mitigation. The FWS anticipates it will take 3 months to finalize the guidance.

Guidance will result in timely and practicable licensing decisions, while providing for the conservation of migratory Birds of Conservation Concern.

Success will be measured by timely issuance of licenses that contain appropriate recommendations that do not impose burdensome costs to developers.

The FWS Regional and Field Offices will provide informal guidance through email and regularly scheduled conference calls to educate and remind staff of policy.

v. Mitigation Actions - Regulations and Policy Governing Candidate Conservation Agreements with Assurances (CCAAs)

The CCAAs are developed to encourage voluntary conservation efforts to benefit species that are candidates for listing by providing the regulatory assurance that take associated with implementing an approved candidate conservation agreement will be permitted under section 10(a)(1)(A) for the Endangered Species Act if the species is ultimately listed, and that no additional mitigation requirements will be imposed.

Recent revisions to the CCAA regulations and policy and the adoption of "net conservation benefit" as an issuance standard has been perceived by some to impose an unnecessary, ambiguous, and burdensome standard that will discourage voluntary conservation. There are also concerns with the preamble language that suggested that CCAAs may not be appropriate vehicles for permitting take of listed species resulting from oil and gas development activities.

The FWS will solicit public review and comment on the need and basis for a revision of the CCAA regulation and associated policy for the purpose of evaluating whether it should maintain or revise the current regulation and policy or reinstate the former ones. The FWS anticipates that it will take 3 months to prepare the Federal Register Notice soliciting public review and comments. The FWS will then publish the Federal Register Notice with a 60-day comment period. Based upon comments received, FWS will decide whether and how to revise the regulation and policy.

The anticipated benefits will be ensuring the CCAA standard is clear and encourages stakeholder participation in voluntary conservation of candidate and other at-risk species.

Success will be measured by FWS providing timely assistance to developers if they seek a CCAA.

The FWS Headquarters will provide Regional and Field Offices with informal guidance through email and regularly scheduled conference calls to remind staff of the regulation and policy review.

vi. Mitigation Actions - FWS Mitigation Policy

In 2016, FWS finalized revisions to its 1981 Mitigation Policy, which guides FWS recommendations on mitigating the adverse impacts of land and water development on fish, wildlife, plants, and their habitats.

Some stakeholders believe the revised policy's mitigation planning goal exceeds statutory authority.

The FWS will solicit public review and comment for the purpose of evaluating the policy. The FWS anticipates that it will take 3 months to prepare the Federal Register Notice soliciting public review and comment on the policy. The FWS will then publish the Federal Register Notice with a 60-day comment period. Based upon comments received, FWS will decide whether and how to revise the policy.

The anticipated benefits will be timely and practicable mitigation recommendations by FWS staff to energy developers (and others) that promote conservation of species and their habitats.

Success will be measured by incorporation of recommendations without delays to the permitting or licensing process.

The FWS Headquarters will provide FWS Regional and Field Offices informal guidance through email and regularly scheduled conference calls to remind staff of the policy review.

vii. FWS ESA Compensatory Mitigation Policy

In 2016, FWS finalized its ESA Compensatory Mitigation Policy (CMP), which steps down and implements the 2016 revised the FWS Mitigation Policy (including the mitigation planning goal). The CMP was established to improve consistency and effectiveness in the use of compensatory mitigation. Its primary intent is to provide FWS staff with direction and guidance in the planning and implementation of compensatory mitigation.

Some stakeholders believe the mitigation planning goal exceeds statutory authority.

The FWS will solicit public review and comment for the purpose of evaluating whether it should modify the policy. Additional legal review will be undertaken after comments are reviewed. The FWS anticipates that it will take three months to prepare the Federal Register Notice soliciting public review and comment on the policy. The FWS will then publish the Federal Register Notice with a 60-day comment period. Based upon comments received, FWS will decide whether and how to revise the policy.

The anticipated benefits will be timely and practicable mitigation recommendations by FWS staff to energy developers (and others) that promote conservation of species and their habitats.

Success will be measured by incorporation of recommendations without delays to the permitting or licensing process.

The FWS Headquarters will provide FWS Regional and Field Offices informal guidance through email and regularly scheduled conference calls to remind staff of the policy review.

viii. Interim Guidance on Implementing the Final ESA Compensatory Mitigation Policy

This document provides interim guidance for implementing the Service's CMP. The guidance provides operational detail on the establishment, use, and operation of compensatory mitigation projects and programs as tools for offsetting adverse impacts to endangered and threatened species, species proposed as endangered or threatened, and designated and proposed critical habitat under the ESA.

Within 6 months of completing revisions to the ESA Compensatory Mitigation Policy (CMP) (or deciding revisions to the CMP are not necessary), FWS will revise the interim implementation guidance (to be consistent with the revised CMP) and make it available for public review and comment in the Federal Register for 60 days. Within 6 months of close of the comment period, FWS will publish the final implementation guidance in the Federal Register (Note: we anticipate that the implementation guidance may need to be reviewed under the Paperwork Reduction Act, which may affect the timeline).

The anticipated benefits will be timely and practicable mitigation recommendations by FWS staff to energy developers (and others) that promote conservation of species and their habitats.

Success will be measured by incorporation of recommendations without delays to the permitting or licensing process.

The FWS Headquarters will issue a memorandum to Regional and Field staff reiterating the limited applicability of the CMP's mitigation planning goal and that decisions related to compensatory mitigation must comply with the ESA and its implementing regulations.

K. Climate Change

Interior is reviewing bureau reports of the work conducted to identify requirements relevant to climate that can potentially burden the development or uses of domestically produced energy resources. Most of the bureaus found no existing requirements in place. A couple of bureaus have non-regulatory documents (i.e., handbook, memo, manual, guidance, etc.) that inwardly focus on their units and workforce management activities. Interior is reviewing these to better understand their connection to other management, operations and guidance documents.

BLM

The BLM rescinded its Permanent Instruction Memorandum (PIM) 2017-003 (Jan. 12, 2017).

This Permanent IM transmitted the CEQ guidance on consideration of greenhouse gas (GHG) emissions and the effects of climate change in NEPA reviews, and provided general guidelines for calculating reasonably foreseeable direct and indirect GHG emissions of proposed actions.

As the CEQ guidance was withdrawn pursuant to section 3 of EO13783, the BLM Permanent IM was rescinded. In the future, BLM will consider issuing new guidance to its offices on approaches for calculating reasonably foreseeable direct and indirect GHG emissions of proposed and related actions.

Any new IM would provide guidance on consideration of GHG emissions and the effects of climate change in NEPA reviews. The BLM is also developing a unified Air Resources Toolkit that can be used across all organizational levels to consistently calculate, as needed and appropriate, relevant air emissions for a variety of BLM resource management functions. Once available, this toolkit will expedite analysis of reasonably foreseeable GHG emissions associated with energy and mineral development.

V. Outreach Summary

To ensure that Interior is considering the input of all viewpoints affected by the identified actions to reduce the burden on domestic energy, Interior has been, and will continue to, seek from outside entities through various means of public outreach including, but not limited to, working closely with affected stakeholders. In accordance with Administrative Procedure Act requirements, the Department is seeking public input on each proposal to revise or rescind individual energy-related regulatory requirements. The Department is also considering input it receives as part of its regulatory reform efforts through www.regulations.gov when such input relates to energy-related regulations.

The Department's outreach efforts encompass state, local, and tribal governments, as well as stakeholders such as the Western Governors' Association, Interstate Mining Compact Commission, and natural resource and outdoorsmen groups. To comply with tribal consultation requirements, Interior will host a separate consultation with official representatives of tribal governments on matters that substantially affect tribes, in accordance with the Department's policy on consultation with tribal governments.

VI. Conclusion

Interior is aggressively working to put America on track to achieve the President's vision for energy dominance and bring jobs back to communities across the country. Working with state, local and tribal communities, as well as other stakeholders, Secretary Zinke is instituting sweeping reforms to unleash America's energy opportunities.

VII. Attachments

Secretarial Orders and Secretary's Memorandum