PETITION TO THE DEPARTMENT OF THE INTERIOR AND BUREAU OF LAND MANAGEMENT TO INITIATE RULEMAKING TO MODERNIZE THE ONSHORE OIL AND GAS PROGRAM'S FINANCIAL ASSURANCE REQUIREMENTS FOR THE BENEFIT OF ALL AMERICANS

I. Overview

Pursuant to the Federal Land Policy and Management Act of 1976 ("FLPMA"), 43 U.S.C. §§ 1701 et seq., 5 U.S.C. § 553(e) of the Administrative Procedure Act ("APA"), and 43 C.F.R. §§ 14.1 et seq., we hereby respectfully petition the Department of the Interior (DOI) and the Bureau of Land Management (BLM) to immediately promulgate regulations and policies to update the bonding and financial assurance requirements for federal onshore oil and gas leasing and development.

Over a period of many years, and through several different comment periods, DOI and BLM have started the process of initiating rulemaking to update bonding requirements for federal onshore oil and gas development. On April 15, 2015, BLM issued an Advanced Notice of Proposed Rulemaking (ANOPR) seeking input on potential changes to fiscal policies related to its onshore oil and gas leasing program.[1] More recently, BLM initiated a comprehensive review of the federal oil and gas program and released a report in November 2021 recommending new bonding rulemaking.[2] But new bonding rulemaking has not yet occurred.

Petitioners call on BLM to complete its work to ensure the taxpayers who own these resources are not left paying for reclamation and cleanup and to better fulfill the agency's broader obligations as stewards of our public lands and minerals. BLM is long overdue in acting to update bonding requirements and should issue updated policies and commence rulemakings to address these major inadequacies in its onshore oil and gas program.

Congress recently appropriated $4.7 billion to plug and reclaim orphaned wells, but this funding addressed only a small portion of the growing public liability of orphan wells across the nation and did not resolve the root cause. The problem of orphaned federal wells will be better addressed in the long-term by sufficient bonding that fulfills BLM's statutory obligation to require bonds that ensure complete and timely reclamation, structured to remove the risk of further financial burden on the BLM and the taxpayer.

As detailed below, Petitioners call on BLM to promulgate rules to ensure oil and gas companies – not the public and taxpayers – are the responsible parties to plug and reclaim all federal oil and gas wells.

II. Interests of Petitioners

All Americans have a vested interest in the management and use of their public lands and minerals. To the extent that these public resources are being turned over to the oil and gas industry, taxpayers are entitled to have a regulatory framework that ensures reclamation of

[1] *See* 80 Fed. Reg. 22148 (Oil and Gas Leasing; Royalty on Production, Rental Payments, Minimum Acceptable Bids, Bonding Requirements, and Civil Penalty Assessments).
[2] See https://www.doi.gov/sites/doi.gov/files/report-on-the-federal-oil-and-gas-leasing-program-doi-eo-14008.pdf

disturbed lands and protection of water and air resources are funded by the industry that reaped the profits from this public resource. The parties submitting this petition are seeking to enforce those obligations, because the current onshore oil and gas program does not fulfill them.

The Western Organization of Resource Councils (WORC) is a regional network of eight grassroots community organizations with 18,435 members in seven states, including Dakota Resource Council (ND), Dakota Rural Action (SD), Idaho Organization of Resource Councils, Northern Plains Resource Council (MT), Oregon Rural Action, Powder River Basin Resource Council (WY), Western Colorado Congress, and Western Native Voice (MT). Our members farm and ranch on lands overlying and neighboring federal, state, tribal, and privately owned oil and gas deposits, and experience numerous impacts due to oil and gas production, transport, and processing. WORC and its member groups have a longstanding interest in federal oil and gas policy, and for over 35 years have actively engaged in advocacy in this area.

Taxpayers for Common Sense (TCS) is a nonpartisan budget watchdog that has served as an independent voice for the American taxpayer since 1995. TCS works to ensure that taxpayer dollars are spent responsibly, and that government operates within its means. For more than 25 years, TCS has advocated to end wasteful subsidies, prevent long-term taxpayer liabilities, and obtain a fair return from the natural resources we all own.

The Natural Resources Defense Council (NRDC) is a non-profit environmental advocacy organization that uses the law, science, and the support of 3.1 million members and online activists to protect the planet's wildlife and wild places and to ensure the rights of all people to clean air, clean water, and healthy communities.

III. LEGAL & FACTUAL NEED FOR RULEMAKING

The Mineral Leasing Act, 30 U.S.C. § 226(g) and BLM's implementing regulations at 43 C.F.R. § 3104.1 require that all those who conduct oil and gas operations on federal land to post a bond that will ensure "complete and timely plugging of wells, reclamation of lease areas, and the restoration of any lands or surface waters adversely affected by lease operations." [3]

Nevertheless, BLM has never developed a regulatory framework to meet these requirements. Rather, BLM has put in place a requirement for minimum bonds that are insufficient to ensure plugging and reclamation of federal wells. Under current regulations, minimum individual lease bonds are $10,000, statewide bonds are $25,000, and nationwide bonds are $150,000. 43 C.F.R. § 3104.2-3. These amounts were established sixty years ago and have not been updated since to address the impacts of inflation[4] and the increasing depth and complexity of modern wells and infrastructure. As discussed below, numerous studies - and frankly, common sense - have shown that these amounts are woefully inadequate to cover the costs of plugging and reclaiming wells and associated infrastructure.

[3] Regulations require the bond to be posted by "the lessee, operating rights owner (sublessee), or operator."
[4] In fact, rather than being adjusted up for inflation, GAO found that bond amounts have actually decreased on a per well basis over time. "The average value of bonds held by the Bureau of Land Management (BLM) for oil and gas wells was slightly lower on a per-well basis in 2018 ($2,122) as compared to 2008 ($2,207), according to GAO's analysis of BLM data." https://www.gao.gov/products/gao-19-615

For instance, the Government Accountability Office (GAO) has long advised BLM of shortcomings and legal inadequacies in its onshore oil and gas bonding program. A 2011 GAO report concluded, "Specifically, the minimum bond amounts—not updated in more than 50 years—may not be sufficient to encourage all operators to comply with reclamation requirements"[5] – the very requirement of BLM's existing regulations. BLM officials interviewed by GAO at 12 of the 16 field offices said that minimum bond amounts are inadequate for managing potential liability of idle and orphaned wells because the minimum amounts do not provide sufficient incentive for operators to comply with reclamation requirements, meaning bond amounts are so low that operators have a financial incentive to delay or forgo reclamation (GAO found that 5,100 federal wells had been idled for seven years or more, and over 2,000 of these had been idle for 25 years or more) and when wells go orphan, BLM does not have sufficient bonding to cover the costs.[6]

In 2019, the GAO was back with another scathing report documenting the cost to reclaim a well site far exceeds the value of the currently required bonds.[7] The 2019 report found that BLM set 82% of bonds at the minimum blanket bond amount, and that bond minimums do not account for important factors that can greatly impact reclamation cost, such as well depth and geography.[8] GAO found that 84% of bonds covering 99.5% of federal wells are set too low to reclaim all of the wells for which they are intended to apply.[9] The typical reclamation cost for a low-cost well is $20,000, and $145,000 for a high cost well, while the average value of a bond held by the BLM is a mere $2,122 per well.[10]

In fact, BLM itself has recently admitted that the GAO's findings definitively show that bond amounts are not set at a level to ensure plugging and reclamation of federal onshore wells:

> "As stated in the GAO-19-615 Report to Congressional Requesters, the bond amounts are not enough to deter operators from walking away from a lease nor are the bonds enough to plug and reclaim the orphan well locations. The BLM uses bonds to reimburse at least some of the costs of well reclamation, however many times the costs exceed the bond amount."[11]

Likewise, BLM's 2015 ANOPR acknowledged that the current minimums "do not reflect inflation and likely do not cover the costs associated with the reclamation and restoration of any individual oil and gas operation."

With such grossly insufficient bonding amounts, BLM's regulatory framework does the opposite of what it is supposed to do. Instead of ensuring plugging and reclamation, operators

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[5] Government Accountability Office. (2011). Oil and Gas Bonds: BLM Needs a Comprehensive Strategy to Better Manage Potential Oil and Gas Well Liability. (GAO Publication No. 11-292).
[6] *Id*.
[7] Government Accountability Office. (2019). OIL AND GAS: Bureau of Land Management Should Address Risks from Insufficient Bonds to Reclaim Wells. (GAO Publication No. 19-615).
[8] *Id*. at 15-17.
[9] *Id*. at 15.
[10] *Id*.
[11] See https://eplanning.blm.gov/eplanning-ui/project/2015604/510

and lessees have a perverse incentive to just walk away without carrying out the necessary reclamation because forfeiting the bond is of much lower financial cost to the operator than carrying out the reclamation work. The current orphaned well crisis -- with Congress forced to appropriate billions of dollars to reclaim federal wells left abandoned by oil and gas companies – is striking evidence that the *status quo* is not working.[12]

Minimum bond amounts that cover multiple wells on a lease or all wells statewide or nationwide are problematic in several ways. They consider neither the number of wells covered by the bond nor the depth or complexity of the wells, and they have not been adjusted for inflation. Thus, as time passes the per-well bonding amount – which is insufficient to begin with – decreases due both to more wells being drilled and to inflation. In the intermountain west (CO, MT, NM, UT, WY), where a great number of federal drilling leases are located, the National Wildlife Foundation found 8,000 orphaned or inactive wells at risk of being orphaned.[13] The BLM holds $17 million in bonds for these wells, a mere 1.3% of the likely $1.3 billion required to fully plug and reclaim. This leaves a gap of $1.283 billion that will have to be paid by taxpayers.[14]

This problem has been thrown into stark relief the last several years. Oil costs plummeted in 2020, and more than 100 oil and gas companies declared bankruptcy as a result. The first quarter of 2021 saw the highest number of bankruptcies since 2016, the last time oil futures dropped dramatically. As BLM itself acknowledges, "[c]ompany liquidations often result in wells becoming orphaned, which then fall to the Federal Government or States to address, while some companies have used Chapter 11 restructuring to get out of reclamation obligations."[15]

This situation has played out for dozens of onshore oil and gas operators, but it is an ongoing situation for a company with one of the greatest number of federal wells in Wyoming's Powder River Basin. Carbon Creek Energy (a subsidiary of bankrupt US Realm Powder River, formerly Moriah Powder River) is a prime example of the many ways the current process is inadequate to protect BLM and the taxpayer. In 2015, Carbon Creek acquired around 7,500 low and non-producing coalbed methane (CBM) wells in the Powder River Basin. Many of these wells access federal minerals, and a good portion of them are located on BLM surface estate in the central Powder River Basin. Even though natural gas was trading at historically low prices at the time, and many of the wells had already been idled by previous operators, Carbon Creek executives claimed that through economies of scale they would be able to make the wells profitable again, something the previous owners had been unable to do.[16] Seven years later, US Realm is in bankruptcy and Carbon Creek owes more than $20 million in unpaid natural gas production taxes to Johnson County Wyoming, and more than $8 million in royalties to the

[12] See https://www.doi.gov/pressreleases/through-president-bidens-bipartisan-infrastructure-law-24-states-set-begin-plugging
[13] See https://www.nwf.org/-/media/Documents/PDFs/Press-Releases/2021/03-17-21_Inactive-Oil-and-Gas-Wells-on-Federal-Lands-and-Minerals-Report
[14] *Id.*
[15] See https://www.doi.gov/sites/doi.gov/files/report-on-the-federal-oil-and-gas-leasing-program-doi-eo-14008.pdf
[16] https://www.thesheridanpress.com/news/regional-news/carbon-creek-energy-buys-7-500-wells-in-major-cbm-play/article_c0cddf91-3ad4-51aa-884d-e305093c6aef.html

federal government.[17] The BLM filed a "Protective Proof of Claim" on May 1st, 2020 for $67,521,968 for oil and gas reclamation activities. However, the BLM holds only $118,300 in bonds,[18] and it is extremely unlikely they will ever receive even a tiny fraction of the $67 million they have requested to cover plugging and reclamation of wells and associated infrastructure.

Carbon Creek's inadequate bonding also demonstrates the problematic situation of relying on the long and arduous process of bond adequacy reviews conducted by BLM offices. Under BLM policy, field offices have the authority to recommend bond increases as part of regular bond adequacy reviews, or separately if risk factors are present.[19] Field offices then submit their requests to the Authorized Officer (AO) either at the state level (if it is a state-wide bond) or federal level (if it is a nationwide bond),[20] requiring administrative time at both levels. Submitting such bond increase requests is time-intensive,[21] and even when approved it can take years to collect the additional bonding amount from operators. While Carbon Creek's bond was raised above the federal minimum by the Wyoming BLM, the bond is still worth only about $50/ federal well – 500 times less than what BLM estimates in its bankruptcy claim it will cost to clean up the wells if they end up on the orphan well list. And the Carbon Creek situation is one of the better ones because at least the bond was raised. Unfortunately, in many cases, by the time BLM reviews the bond and sends a request to the company to increase the bond amount because of identified risk factors, the company is long gone or in bankruptcy, creating a situation where BLM staff spent time and resources all for naught.

For instance, as of 2021, there were 25 bond increase requests still pending at the Wyoming State Office from 2018 or earlier, and if the increases are eventually approved and the bond is collected, this will result in only $8,534.90 in average per well bond amounts.[22] CBM wells generally cost $10,000-$15,000 to clean up, and modern shale wells can cost 30 times that much.[23]

Requiring per-well bonding will remove a great deal of administrative burden from BLM staff in field offices, state offices, and the national office because the need to carry out bond adequacy reviews will be mitigated. It will also protect against a situation where it is too late to collect additional bond from an operator who is in bankruptcy or otherwise financially unstable. Requiring additional bonding up front is the only way to guarantee bonds will adequately cover reclamation costs.

Financial risk to the agency and taxpayers is not the only problem resulting from BLM's inadequate bond requirements. Deferred plugging and reclamation can lead to increased risk of groundwater and soil contamination, both of which increase the ultimate costs of reclamation,

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[17] https://trib.com/news/state-and-regional/company-eyes-abandoning-bankruptcy-owing-county-20-million/article_a6a82960-1814-5314-9d15-e4500c7a15f6.html

[18] https://docs.google.com/spreadsheets/d/1e6Q7cjoau7yt7ezShACGXXvd6mDNTGSlXLta8G5sBns/edit#gid=173488985

[19] https://www.blm.gov/policy/im-2019-014

[20] See https://www.blm.gov/policy/im-2019-014

[21] See https://www.gao.gov/products/gao-18-250

[22] Documentation available on request; bond amounts provided to Powder River Basin Resource Council from the Buffalo Field Office.

[23] https://legacy-assets.eenews.net/open_files/assets/2020/06/22/document_ew_03.pdf

and often cause irreparable environmental harm. Orphaned wells can leak methane, and provide a pathway for surface runoff, brine, or hydrocarbon fluids to contaminate surface water and groundwater, and contribute to habitat fragmentation and soil erosion.[24]

The benefits associated with updating the BLM's bonding policies are obvious. If bond minimums are set at an amount equal to the estimated cost of reclamation with an escalation clause to stay abreast of inflation, the government limits the chance it will have to bear the expenses associated with reclaiming orphaned wells. This in turn means that American taxpayers will **not** be left footing the bill for the industry's negligence. Updated bond requirements will also deter financially unstable companies or companies that are only interested in speculation from purchasing federal leases. Additionally, proper reclamation of well pads will help restore federal and split estate lands for other uses such as recreation and grazing and will help to restore wildlife habitat and limit fragmentation.

Tribal lands will benefit as well, as BLM's bonding rules apply to tribal and allottee lands. Improving tracking and review of bond adequacy will also help the government periodically assess liabilities and increase bond amounts or adjust agency practices in response to findings.

IV. PROPOSED RULES & RECOMMENDATIONS FOR UPDATED INTERIM GUIDANCE

While some policy updates may be achievable without notice and comment rulemaking, we believe it is essential to expeditiously start the rulemaking process to phase out blanket bonding and ensure oil and gas companies cover all costs of plugging and reclaiming federal wells. We offer the following suggestions for amendments to 43 C.F.R. part 3104:

Full Cost Reclamation Bonds Required for Any New APDs Developed on a Federal Lease

The BLM should eliminate blanket bonds by deleting 43 C.F.R. § 3104.3 from the regulations and updating 43 C.F.R. § 3104.2 to require that lease bonds will be increased at the time of an APD or lease transfer to reflect estimated plugging and reclamation costs. The APD rules would also have to be amended to ensure consistency and to specify that a bond is required with the reclamation plan submitted for the APD (or in some cases for multiple APDs, the Plan of Development). This will allow BLM to continue its current system of bonding by the lease, but also ensure that the lease bond is of a sufficient amount to cover all costs of plugging and reclamation work for all wells developed under the lease. Only through full cost bonding will the BLM meet the standard set by 43 C.F.R. part 3104 and section 226(g) of the Mineral Leasing Act.

Procedurally, requiring an additional bond at the time of a new APD on a lease is consistent with current BLM practice under 43 C.F.R. § 3104.5, which provides under certain circumstances, "the authorized officer shall require, prior to approval of the Application for Permit to Drill, a bond in an amount equal to the costs, as estimated by the authorized officer, of

[24] Ho, J., et al., (2016). *Plugging the Gaps in Inactive Well Policy.* Washington, D.C.: Resources for the Future

plugging the well and reclaiming the disturbed area involved in the proposed operation." This section would need conforming amendments with the new requirements.

We encourage BLM to require a full cost bond with an engineering review and cost analysis approved by the agency. The full cost bond amount should be a minimum of $15/foot, with the option for the company to attempt to justify a lower bond amount with a completed bond estimate worksheet prepared at the time of the APD. A rate of $15/foot, adjusted for inflation, is consistent with studies and past experience of plugging and reclamation work done by state and federal agencies.[25] While admittedly it may not be sufficient in all cases, especially for older, costlier to reclaim wells, it is a simple number that is easy to calculate and enforce with a firm basis in past practice.

Alternatively, BLM could put in place a tiered per well bond, based on depth as detailed by ECONorthwest in their 2018 study:[26]

Figure 5. Estimated Reclamation Cost by Well Depth, Federal Land, in 2017 dollars

Well Depth (feet)	Estimated Reclamation Cost per Well
1,000	$4,500
2,000	$17,700
4,000	$44,000
6,000	$70,300
8,000	$96,700
10,000	$123,000

Source: ECONorthwest
Note: Values are rounded.

These numbers are supported by a 2021 study of plugging and reclamation costs of 19,500 wells that found "Each additional 1,000 feet of well depth increases costs by 20%."[27]

Surface Reclamation Costs Included in Bond Amount

Whatever per foot amount BLM uses should also be inclusive of surface reclamation costs. Alternatively, BLM could create a separate surface reclamation bond like Virginia's minimum individual bond amounts of $10,000 per well plus $2,000 per acre of disturbed land, calculated to the nearest tenth of an acre.[28]

Phasing in Full Cost Bonding for Existing APDs

If current operators are to be held accountable and federal bonds are to ensure complete and timely reclamation as required by statute, it is imperative that all blanket bonds currently held by the BLM be converted into full-cost bonds as soon as possible. The lease bond rules amendments should phase in the new bonding requirements for existing wells with a requirement for operators to calculate a full-cost bond amount based on an engineering review and cost

[25] See Anderson, Coupal and White (2009) (finding that the costs of plugging a sample of 225 wells in Wyoming averaged $10.50 per foot of well depth ($13.18 USD in 2021 dollars).
[26] See https://westernpriorities.org/wp-content/uploads/2018/02/Bonding-Report.pdf
[27] See https://pubs.acs.org/doi/10.1021/acs.est.1c02234
[28] VA Code § 45.1-361.31 https://law.justia.com/codes/virginia/2014/title-45.1/section-45.1-361.31/

analysis, at a minimum of $15/foot of the total well depth drilled, associated infrastructure and pads constructed, and to provide a bond in that amount to the BLM within one year of the effective date of the new rules, minus any bond already provided to BLM.[29]

Additionally, the rules should be amended to apply the new APD full cost bonding requirements at the time of any application to transfer a lease. This bond should be provided to BLM by the new operator before any lease transfer is approved. This would help BLM enforce the bond replacement requirements at the time of lease transfer.

Application to Tribal Minerals

Since BLM's onshore bonding rules also apply to tribal minerals,[30] BLM should promulgate conforming amendments to financial assurance regulations governing tribal mineral leasing and permitting.

Bond Adequacy Reviews

While the need for bond adequacy reviews will be reduced once operators post additional reclamation bonds, it will still be important to review bond amounts periodically for inflation and other factors. We recommend BLM put in place a regulatory requirement that bond reviews be conducted at least every five years, as suggested in the current Instruction Memorandum (IM).[31] These reviews should consider updated reclamation cost estimates and inflation and should result in a minimum automatic bond amount increase commensurate with the rate of inflation. Companies should be allowed to request a bond review if they believe their bond amount should be less, but they must be required to show an engineering report and cost analysis before a bond reduction is considered for approval.

We also encourage specific bond reviews for any idle wells. This requirement would be consistent with, for example, Wyoming's idle well bond policy, which requires an operator to post additional bonding of $10/foot of depth per idle well.[32] A bonding review requirement for idle wells will also help BLM implement the new standard under the Bipartisan Infrastructure & Jobs Act that wells are considered idle after not producing for a period of four years (under previous law the time length was seven years). Bond reviews will assist the agency in data collection and evaluation of idle wells under this new standard.

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[29] BLM has clear authority to revise regulations and apply those regulations to existing leases under the terms and conditions of oil and gas leases, specifically a lease states: "Rights granted are subject to . . . regulations and formal orders in effect as of lease issuance, and to regulations and formal orders hereafter promulgated when not inconsistent with the lease rights granted or specific provisions of this lease." Leases require a bond to be filed but do not specify the amount, allowing it to be raised by BLM order or regulation. See https://www.blm.gov/sites/blm.gov/files/uploads/Services_National-Operations-Center_Eforms_Fluid-and-Solid-Minerals_3100-011.pdf

[30] See https://www.bia.gov/sites/default/files/dup/assets/bia/ots/dres/Nationwide%20Bond%20form.pdf (Nationwide $150,000 bond form, covering multiple jurisdictions)

[31] https://www.blm.gov/policy/im-2019-014

[32] 055-3 Wyo. Code R. § 3-4 https://www.law.cornell.edu/regulations/wyoming/055-3-Wyo-Code-R-SS-3-4 ; *see also* https://www.ncsl.org/research/energy/state-oil-and-gas-bonding-requirements.aspx

Reclamation Standards

Higher bond amounts will be effective in leading operators to pursue more timely reclamation. However, for this reclamation work to be effective in restoring surface lands, BLM's reclamation standards should be updated. Lack of clear reclamation standards has created a piecemeal approach, where standards change from land use plan to land use plan, creating inconsistent reclamation requirements on federal and split estate lands. BLM should adopt broad, uniform, performance-based standards that ensure that all wells drilled on federal and split estate lands meet acceptable and clearly defined minimum requirements for reclamation. Specifically, BLM could incorporate aspects of the Chapter 6 of Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development (aka "The Gold Book")[33] into regulation, allowing those standards to be enforceable through permitting and inspections. The Gold Book's standard that "Reclamation generally can be judged successful when a self-sustaining, vigorous, diverse, native (or otherwise approved) plant community is established on the site, with a density sufficient to control erosion and non-native plant invasion and to re-establish wildlife habitat or forage production"[34] should be a regulatory requirement. Like re-vegetation standards for the coal industry, this standard incorporates species composition and diversity requirements, as well as percent cover aspects, while excluding invasive or noxious species from meeting these requirements.

This approach would ensure operators employ their considerable resources to achieve satisfactory reclamation. It would also provide a consistent standard across field offices to promote better and more frequent reclamation, potentially reducing an operator's desire to shirk responsibilities if they find current reclamation requirements too prescriptive or rigid.

The Need for Immediate Amendments to the BLM's Bonding Review IM

We encourage BLM to act swiftly to update its regulations based on the recommendations detailed above. However, Petitioners understand that the rulemaking process can take time, and therefore, it is important that the agency has effective guidance in place as an interim measure. Since BLM's guidance documents related to bond adequacy reviews was updated recently in 2019 to incorporate GAO recommendations,[35] we merely ask that BLM continue to implement the actions it requires. Since current regulations appropriately recognize that the regulatory blanket bond levels are minimums, the agency has ample regulatory authority to adjust bonding levels based on different risk factors that may arise on existing leases or existing units, statewide or nationwide bonds. BLM must more frequently and effectively use this authority until new regulations are in place.

We further urge BLM to improve its tracking of bond adequacy and data management at the national and field office level. Further, we urge BLM to implement fully its updated policies on orphaned well identification, prioritization, plugging, and reclamation. [36]

[33] See https://www.blm.gov/sites/blm.gov/files/Chapter%206%20-%20Reclamation%20and%20Abandonment.pdf
[34] *Id.*
[35] See https://www.blm.gov/policy/im-2019-014
[36] See https://www.blm.gov/policy/im-2021-039

V. Conclusion

This petition is presented under the Administrative Procedure Act, which provides that each agency "shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule"[37] and the United States Constitution, which protects the right to "petition the Government for the redress of grievances."[38] DOI must respond to this petition "within a reasonable time"[39] and DOI regulations state that petitions will be given "prompt consideration."[40] Courts have found that "a reasonable time for agency action is typically counted in weeks or months, not years."[41] The agency must notify petitioners of the denial of a petition, in whole or in part, and with limited exception, a denial must include an explanation on the grounds for denial.[42] A reviewing court shall compel agency action "unlawfully withheld or unreasonably delayed."[43] We request that DOI and BLM respond to this petition and commence both rulemaking and issuance of new guidance in no less than three months of the date of receipt. We also note that DOI regulations authorize the Secretary to publish this petition in the Federal Register to solicit public comments on the proposed rulemaking if those public comments "may aid in the consideration of the petition."[44] In light of the BLM's previous acknowledgment of the need for updated bonding rules, and the suitability of a public process, we request that DOI and BLM also publish notice of this petition and request public comment.

Bonding and reclamation issues have been of great concern to Petitioners and their members for decades. They have also been of great concern to the agency, Congress, and other stakeholders. As you know, time is of the essence and this issue has lingered for far too long. We look forward to swift and effective agency action.

Sincerely,

Shannon Anderson
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Powder River Basin Resource Council
On behalf of the Petitioners Western Organization of Resource Councils, Taxpayers for Common Sense, & Natural Resources Defense Council

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[37] 5 U.S.C. § 553(e).
[38] U.S. Const., amend. I.
[39] 5 U.S.C. § 555(b)
[40] 43 C.F.R. § 14.3.
[41] *In Re: American Rivers and Idaho Rivers United*, 372 F.3d 413, 419 (D.C. Cir. 2004) (internal citation and quotations omitted).
[42] 5 U.S.C. § 555(e); 14 C.F.R. § 14.3.
[43] 5 U.S.C. § 706(1). *See Telecommunications Research and Action Center v. F.C.C.*, 750 F.2d 70, 76-77 (D.C. Cir. 1984).
[44] 14 C.F.R. § 14.4.