

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

WESTERN ENERGY ALLIANCE,)

Plaintiff,)

v.)

Civil Case No. _____

SALLY JEWELL, in her official)
 capacity as Secretary of the United States)
 Department of the Interior, and BUREAU)
 OF LAND MANAGEMENT,)

Defendants.)

COMPLAINT

Western Energy Alliance (the “Alliance”) submits respectfully this complaint seeking review of agency action under the Administrative Procedure Act, 5 U.S.C. §§ 701-706 (“APA”) and relief under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02. The Mineral Leasing Act, 30 U.S.C. §§ 181-287, mandates the frequency with which federal minerals must be made available for lease. “Lease sales shall be held for each State where eligible lands are available at least quarterly and more frequently if the Secretary of the Interior determines such sales are necessary.” 30 U.S.C. § 226(b). The Bureau of Land Management (“BLM”) is the federal agency tasked with carrying out this mandate. BLM has failed to meet this requirement. Because BLM’s administration of its leasing program violates express provisions of federal statutory law, this Court should direct BLM to abandon its current leasing schedule immediately, rescind any guidance documents and instruction memoranda that implement these unlawful practices, and promptly adopt a revised

schedule that complies with the terms of the Mineral Leasing Act. And because BLM has unjustifiably denied the Alliance's FOIA requests for information about BLM's administration of federal oil and gas lease sales, the Court should direct BLM to process the FOIA requests and deliver all responsive requests to the Alliance immediately.

PARTIES

1. Western Energy Alliance represents over 300 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. Alliance members are independent oil and natural gas producers, the majority of which are small businesses with an average of fifteen employees. The Alliance advocates for its members' interests related to federal legislative, regulatory, environmental, and public lands policy issues. The Alliance often appears before Congress and federal agencies and in the judicial system to represent its members.

2. Defendant Sally Jewell is the Secretary of the United States Department of the Interior. Secretary Jewell is a cabinet-level officer of the United States government, and named herein in her official capacity.

3. Defendant BLM is a sub-component of the United States Department of the Interior. BLM is the custodian of the federal mineral estate and is responsible for the administration and management of oil and gas development on federal lands.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. The United States has waived its sovereign immunity under the APA, 5 U.S.C. § 702, and FOIA, 5 U.S.C. § 552(a)(4)(B).

5. Venue in this Court is proper under 28 U.S.C. § 1391(b)(2) because a substantial portion of the events forming the basis of this action occurred within the State of New Mexico and because agency records responsive to the Alliance's FOIA requests are located in New Mexico.

FACTUAL ALLEGATIONS

BLM's Leasing Authority

6. The United States owns approximately 700 million subsurface acres of mineral estate. The Mineral Leasing Act establishes the framework under which the Secretary of the Interior leases and manages the development of these resources. The Secretary has delegated her statutory responsibilities associated with the administration of the oil and gas leasing program to BLM.

7. For administrative purposes, BLM is divided into twelve State Offices that exercise regional jurisdiction: (i) Alaska; (ii) Arizona; (iii) California; (iv) Colorado; (v) Eastern States; (vi) Idaho; (vii) Montana; (viii) Nevada; (ix) New Mexico; (x) Oregon; (xi) Utah; and (xii) Wyoming. The BLM State Offices are further divided into Field Offices within the particular State Office's geographic boundaries.

8. Select BLM State Offices exercise jurisdiction over lands in more than one actual state. The Eastern States Office exercises jurisdiction over Arkansas, Iowa, Louisiana, Minnesota, Missouri, and all states east of the Mississippi River. The Montana State Office exercises jurisdiction over Montana, North Dakota, and South Dakota. The New Mexico State Office exercises jurisdiction over New Mexico, Kansas, Oklahoma, and Texas. The Oregon State

Office exercises jurisdiction over Oregon and Washington. The Wyoming State Office exercises jurisdiction over Wyoming and Nebraska.

9. BLM administers the leasing of minerals found beneath: (i) the 258 million surface acres that BLM manages; (ii) 57 million surface acres where the minerals are federally owned but the surface is in non-federal (mostly private) ownership; and (iii) another 385 million acres on which federal agencies other than BLM manage the surface. BLM estimates that half of these 700 million subsurface acres contain oil and/or natural gas.

10. In 2008, BLM determined that these lands contain an estimated 31 billion barrels of technically recoverable oil and 231 trillion cubic feet of technically recoverable natural gas. Since that time, technological innovations such as horizontal and directional drilling, in combination with hydraulic fracturing, have made previously uneconomic or unrecoverable reserves available. These technologies have opened up a new supply of undeveloped oil and natural gas on BLM lands above and beyond the already substantial numbers identified in the 2008 study.

11. The first phase in the development of onshore federal oil and gas resources is land use planning. Resource management plans are prepared for all federal lands and resources, with each field office preparing a plan for the lands and resources within the field office's boundaries. The resource management plans establish which areas within the field office's boundaries are open to oil and gas leasing and which areas are closed. The resource management plans are used to determine whether a specific parcel may be available at an oil and gas lease sale and under what conditions. For open areas, the applicable resource management plan analyzes impacts of reasonably foreseeable development and enumerates any stipulations needed to provide extra

protection for sensitive resources in the plan area. Approximately eight percent of the oil and ten percent of the natural gas in onshore federal lands are accessible for development under standard lease terms.

12. Parcels in areas identified as open for leasing in a resource management plan may be nominated for leasing. Anyone can nominate lands by sending a written expression of interest to the BLM State Office having jurisdiction over the parcel. BLM reviews each nomination to ensure that the parcels are, in fact, available under the resource management plan and that stipulations specified in the resource management plan are attached before the lease is placed on sale.

13. The Mineral Leasing Act, 30 U.S.C. §§ 181-287, mandates the frequency with which federal minerals must be made available for lease. “Lease sales shall be held for each State where eligible lands are available at least quarterly and more frequently if the Secretary of the Interior determines such sales are necessary.” 30 U.S.C. § 226(b).

14. BLM’s regulations require that: “Each proper BLM Sate [sic] office shall hold sales at least quarterly if lands are available for competitive leasing.” 43 C.F.R. § 3120.1-2.

15. On May 17, 2010, BLM issued Instruction Memorandum (“IM”) No. 2010-117. BLM represented that IM No. 2010-117 “establishes a process for ensuring orderly, effective, timely, and environmentally responsible leasing of oil and gas resources on Federal lands.” IM No. 2010-117 at 1. Among other instructions, IM No. 2010-117 emphasizes that “State offices will continue to hold lease sales four times per year, as required by the Mineral Leasing Act, section 226(b)(1), and 43 CFR 3120.1-2(a), when eligible lands are determined by the state office to be available for leasing.” *Id.* at 5.

16. IM No. 2010-117 also instructs state offices to “develop a sales schedule with an emphasis on rotating lease parcel review responsibilities among field offices throughout the year to balance the workload and to allow each field office to devote sufficient time and resources to implementing the parcel review process established in this IM.” *Id.* at 5. IM No. 2010-117 contains no provision accounting for the statutory requirement that quarterly “[l]ease sales shall be held for each *State*,” as opposed to *State Office*, “where eligible lands are available.”

17. BLM’s Instruction Memoranda do not have the force and effect of law and are not controlling when the provisions of a memorandum are inconsistent with the terms of relevant statutes or regulations. *See Atlantic Richfield Co.*, 121 IBLA 373, 380 (1991).

18. BLM’s regulations provide that “Lands included in any expression of interest” are “available for leasing.” 43 C.F.R. § 3120.1-1(e). BLM’s regulations require that “[a]ll lands available for leasing shall be offered for competitive leasing.” 43 C.F.R. § 3120.1-1.

19. BLM has regularly violated the requirement that available lands within each State be offered for lease on a quarterly basis.

New Mexico

20. Before October 2013, the New Mexico State Office had traditionally offered for lease federal minerals within its territory four times per year. On October 25, 2013, the New Mexico State Office announced that it was adopting a rotational schedule for oil and gas lease sales within the State Office’s territory. The New Mexico State Office explained that, under the new rotational approach, the State Office would continue to hold four sales per year, “but only offer for sale Federal mineral estate within a certain District, Field and/or geographic area once per year.”

21. Expressions of interest for parcels under the jurisdiction of the New Mexico State Office have been submitted to the New Mexico State Office and are pending presently before the New Mexico State Office. These expressions of interest include parcels located in each of the States over which the New Mexico State Office has jurisdiction. Upon information and belief, expressions of interest have been pending for parcels in all states under the jurisdiction of the New Mexico State Office at all times since at least 2014. Alliance members are among the companies that submitted expressions of interests for parcels within the New Mexico State Office's jurisdiction.

22. Each of the Expressions of Interest pending before the New Mexico State Office involve parcels designated as open for oil and natural gas leasing under the applicable resource management plans. Once an expression of interest is submitted, these lands become "available for leasing" under BLM's regulations. 43 C.F.R. § 3120.1-1(e). BLM's regulations require that "[a]ll lands available for leasing shall be offered for competitive leasing." 43 C.F.R. § 3120.1-1.

23. The New Mexico State Office is required to conduct four lease sales annually. Each of these lease sales must include parcels in "each State where eligible lands are available." 30 U.S.C. § 226(b). The implementation of the rotational lease schedule has resulted in the New Mexico field office routinely violating this requirement.

24. The New Mexico State Office conducted only two lease sales during Fiscal Year 2015. Lease sales scheduled to be conducted on January 21, 2015 and April 22, 2015 were cancelled "due to workload priorities."

25. On October 22, 2014, the New Mexico State Office conducted a lease sale involving parcels exclusively from the Farmington District Office. The October 22, 2014 lease

sale netted more than \$4.1 million in revenues from the sale of thirteen federal leases. No parcels located in Oklahoma, Kansas, or Texas were available for leasing at the October 22, 2014 lease sale.

26. On July 22, 2015, the New Mexico State Office conducted a lease sale involving parcels exclusively from the Pecos District Office. The July 22, 2015 lease sale netted more than \$70.4 million in revenues from the sale of sixty-nine federal leases. No parcels located in Kansas were available for leasing at the July 22, 2015 lease sale.

27. The New Mexico State Office will conduct no more than three lease sales during Fiscal Year 2016.

28. On October 21, 2015, the New Mexico State Office conducted a lease sale involving parcels exclusively from the Carlsbad Field Office. The October 21, 2015 lease sale netted more than \$28.5 million in revenues from the sale of sixteen federal leases. No parcels located in Oklahoma, Kansas, or Texas were available for leasing at the October 21, 2015 lease sale.

29. On August 26, 2015, the New Mexico State Office cancelled a lease sale scheduled for January 20, 2016, “[b]ecause no new Expressions of Interest were received from industry for parcels in the Las Cruces District Office and the Rio Puerco Field Office.” The demand for parcels varies greatly by field office, with little or no interest in some offices and a backlog of expressions of interest in other offices. At the time the January 20, 2016 lease sale was cancelled, expressions of interest were pending for parcels located in field offices within the New Mexico State Office’s jurisdiction other than the Las Cruces District Office and the Rio

Puerco Field Office and those parcels could have been made available for leasing at the January 20, 2016 sale.

30. The New Mexico State Office did not conduct another lease sale until April 20, 2016. The April 20, 2016 lease sale involved parcels exclusively from the Oklahoma Field Office. The April 20, 2016 lease sale netted \$51,521 in revenues from the sale of eleven federal leases in Kansas and Oklahoma. No parcels located in New Mexico were available for leasing at the April 20, 2016 lease sale.

31. On July 13, 2016, the New Mexico State Office announced that it had postponed an oil and gas lease sale scheduled to be conducted on July 20, 2016. BLM indicated that it deferred the lease sale until September 1, 2016, in response to “concerns regarding adequate notice provided with regard to a location change for the sale from Santa Fe, New Mexico to Roswell, New Mexico.” That lease sale is expected to involve parcels exclusively from Field Offices within the Pecos District. No parcels located in Oklahoma, Kansas, or Texas will be made available during the July 20, 2016 lease sale. Assuming the September 1, 2016 lease sale proceeds on schedule, it will have been approximately eleven months since any parcels located in New Mexico have been made available for leasing.

32. The New Mexico State Office plans to conduct no more than three lease sales during Fiscal Year 2017.

33. On June 6, 2016, the New Mexico State Office announced that it had cancelled an oil and gas lease sale scheduled to be conducted on October 19, 2016. The New Mexico State Office advised that it was only considering expressions of interest received for the Farmington District Office in the October 19, 2016 lease sale, and acknowledged that at least three

expressions of interest had been submitted for parcels within the Farmington District Office. The New Mexico State Office represented, however, that it had failed to complete its environmental review and tribal consultation obligations, and therefore the New Mexico State Office would not offer the parcels within the Farmington District Office for which expressions of interest had been submitted.

34. At the time the October 19, 2016 lease sale was cancelled, expressions of interest were pending for parcels located in field offices within the New Mexico State Office's jurisdiction other than the Farmington District Office and those parcels could have been made available for leasing at the October 19, 2016 sale.

35. The next lease sale the New Mexico State Office is scheduled to conduct after September 1, 2016 is expected to take place on January 18, 2017. Assuming the January 18, 2017 lease sale proceeds on schedule, it will have been more than five months since the last parcel in any state over which the New Mexico State Office exercises jurisdiction will have been offered for lease.

36. On April 19, 2017, the New Mexico State Office is scheduled to conduct a lease sale involving parcels exclusively from the Oklahoma Field Office. On July 19, 2017, the New Mexico State Office is scheduled to conduct a lease sale involving parcels from Field Offices within the Pecos District. Even assuming those lease sales occur according to schedule, a minimum of six months will pass – between January 18, 2017 and July 19, 2017 – without any parcels located in New Mexico being offered for lease. A period of approximately one year will pass – between April 20, 2016 and April 19, 2017 – without any parcel in Oklahoma, Texas, or Kansas being offered for lease.

Montana/Dakotas

37. Expressions of interest for parcels located in Montana and parcels located in North Dakota are pending presently before the Montana/Dakotas State Office. Upon information and belief, expressions of interest have been pending for parcels within both Montana and North Dakota at all times since at least 2014. Alliance members are among the companies that submitted expressions of interests for parcels in Montana and North Dakota.

38. The Montana/Dakotas State Office conducted four lease sales during Fiscal Year 2015. On October 21, 2014, the Montana/Dakotas State Office conducted a lease sale involving parcels exclusively from a field office within Montana. No parcels located within North Dakota were offered at the October 21, 2014 lease sale.

39. On January 27, 2015, the Montana/Dakotas State Office conducted a lease sale involving parcels exclusively from the North Dakota Field Office. No parcels located within Montana were offered at the January 27, 2015 lease sale.

40. On May 6, 2015, the Montana/Dakotas State Office conducted a lease sale involving parcels exclusively from the Miles City Field Office. No parcels located within North Dakota were offered at the May 6, 2015 lease sale.

41. On July 14, 2015, the Montana/Dakotas State Office conducted a lease sale involving parcels exclusively from the North Dakota Field Office. No parcels located within Montana were offered at the July 14, 2015 lease sale.

42. Between January 27, 2015 and July 14, 2015, a period of approximately six months passed without any parcel located in North Dakota being offered for lease.

43. The Montana/Dakotas State Office will conduct no more than two lease sales during Fiscal Year 2016.

44. On March 26, 2015, the Montana/Dakotas State Office cancelled a lease sale scheduled to be conducted on October 20, 2015. The October 20, 2015 lease sale was scheduled to involve parcels exclusively from field offices within Montana. The Montana/Dakotas State Office acknowledged that at least one expressions of interest had been received for a parcel within the jurisdiction of the Billings Field Office. The Montana/Dakotas State Office represented, however, that “the Billings Field Office has decided to defer consideration of the parcel until the draft Billings Resource Management Plan (RMP) is complete.” The Montana/Dakotas State Office did not assert that the existing resource management plan for the Billings Field Office is legally invalid or otherwise inadequate in any way.

45. At the time the October 20, 2015 lease sale was cancelled, expressions of interest were pending for parcels located in field offices within the Montana/Dakota’s State Office’s jurisdiction other than the Billings Field Office and those parcels could have been made available for leasing at the October 20, 2015 sale.

46. On December 22, 2015, the Montana/Dakotas State Office issued notice that it was cancelling a lease sale scheduled to occur on January 26, 2016. The Montana/Dakotas State Office indicated that it was postponing the sale “because there is not enough time to coordinate an appropriate venue.”

47. On May 4, 2016, the Montana/Dakotas State Office conducted a lease sale involving parcels from the Miles City and North Dakota Field Office.

48. Between July 14, 2016 and May 4, 2016, a period of approximately ten months passed without any parcel located in North Dakota being offered for lease.

49. Between May 6, 2015 and May 4, 2016, a period of approximately one year passed without any parcel located in Montana being offered for lease.

Wyoming

50. Expressions of interest for parcels located in Wyoming are pending presently before the Wyoming State Office. Upon information and belief, expressions of interest have been pending for parcels within Wyoming at all times since at least 2014. Alliance members are among the companies that submitted expressions of interests for parcels in Wyoming.

51. The Wyoming State Office will conduct no more than three lease sales during Fiscal Year 2016.

52. On February 2, 2016, the Wyoming State Office canceled a lease sale scheduled for the same day on account of a “severe snowstorm in the area.” The February 2, 2016 lease sale was not rescheduled. BLM instead offered the parcels originally scheduled to be offered at the February, 2, 2016 lease sale at the subsequently scheduled lease sale that was conducted on May 3, 2016.

53. Between November 3, 2015 and May 3, 2016, a period of approximately six months passed without any parcel located in Wyoming being offered for lease.

Utah

54. Expressions of interest for parcels located in Utah are pending presently before the Utah State Office. Upon information and belief, expressions of interest have been pending for

parcels within Utah at all times since at least 2014. Alliance members are among the companies that submitted expressions of interests for parcels in Utah.

55. The Utah State Office conducted only three lease sales during Fiscal Year 2015. Lease sales were conducted on November 18, 2014, February 17, 2015, and May 19, 2015.

56. The Utah State Office will conduct no more than two lease sales during Fiscal Year 2016.

57. On November 16, 2015, the Utah State Office cancelled a lease sale scheduled for November 17, 2015. The Utah State Office represented that the lease sale had “been postponed to allow the time needed to better accommodate the high level of public interest in attending the sale.”

58. The Utah State Office did not conduct another lease sale until February 16, 2016. Between May 19, 2015 and February 16, 2016, a period of approximately nine months passed without any parcel located in Utah being offered for lease.

59. On May 17, 2016, the Utah State Office conducted a lease sale involving parcels from Field Offices within the Color County District. The next lease sale the Utah State Office is scheduled to conduct is expected to take place on November 15, 2016. Assuming the November 15, 2016 lease sale proceeds on schedule, it will have been six months since the last parcel located in Utah will have been offered for lease.

Colorado

60. Expressions of interest for parcels located in Colorado are pending presently before the Colorado State Office. Upon information and belief, expressions of interest have been

pending for parcels within Colorado at all times since at least 2014. Alliance members are among the companies that submitted expressions of interests for parcels in Colorado.

61. The Colorado State Office conducted only three lease sales during Fiscal Year 2015. Lease sales were conducted on November 13, 2014, February 12, 2015, and May 14, 2015. A lease sale that had been scheduled for August 13, 2015 was postponed until August 11, 2016.

62. At the November 13, 2014 lease sale, nineteen parcels were sold. The November 13, 2014 lease sale netted \$94,833 in revenues. At the February 12, 2015 lease sale, twenty-two parcels were sold. The February 12, 2015 lease sale netted \$318,455 in revenues. At the May 14, 2015 lease sale, seventy-three parcels were sold. The May 14, 2015 lease sale netted \$32,140,365 in revenues.

63. The Colorado State Office will conduct no more than two lease sales during Fiscal Year 2016

64. On November 12, 2015, the Colorado State Office conducted a lease sale at which 106 parcels were sold. The November 12, 2015 lease sale netted \$5,021,931 in revenues. Between May 14, 2015 and November 12, 2015, a period of approximately six months passed without any parcel located in Colorado being offered for lease.

65. On February 5, 2016, the Colorado State Office cancelled a lease sale scheduled to be conducted on February 11, 2016. The Colorado State Office acknowledged that expressions of interest for five parcels were pending, but stated that those parcels could not be offered because BLM had not completed tribal consultations for those parcels.

66. On May 12, 2016, the Colorado State Office conducted a lease sale at which six parcels were sold. The May 12, 2016 lease sale netted \$5,222,672 in revenues. Between

November 12, 2015 and May 12, 2016, a period of approximately six months passed without any parcel located in Colorado being offered for lease.

67. The Colorado State Office is not scheduled to conduct another lease sale until November 10, 2016. A lease sale that had been scheduled for August 11, 2016 has already been postponed until August 10, 2017. Even assuming the November 10, 2016 lease sale occurs according to schedule, a minimum of six months will pass – between May 12, 2016 and November 10, 2016 – during which no parcel located in Colorado will be offered for lease.

Eastern States

68. Expressions of interest for parcels located within the jurisdiction of the Eastern States Office are pending presently before the Eastern States Office. Upon information and belief, expressions of interest have been submitted for parcels within numerous states including, but not necessarily limited to, Mississippi, Michigan, Louisiana, Alabama, Arkansas, Ohio, Pennsylvania, and Kentucky. Upon information and belief, expressions of interest for parcels in at least some of these states have been pending at all times since at least 2014. Alliance members are among the companies that submitted expressions of interests for parcels within the jurisdiction of the Eastern States Office.

69. The Eastern States Office conducted only two lease sales during Fiscal Year 2015. Lease sales were conducted on March 19, 2015 and July 28, 2015.

70. The March 19, 2015 lease sale involved parcels located in Arkansas, Louisiana, and Pennsylvania. The March 19, 2015 lease sale netted more than \$426,000 in revenues from the sale of eleven federal leases. No parcels located in any state within the Eastern States

Office's jurisdiction other than Arkansas, Louisiana, or Pennsylvania were offered at the March 19, 2015 lease sale.

71. The July 28, 2015 lease sale involved parcels located in Arkansas, Louisiana, and Michigan. The July 28, 2015 lease sale netted more than \$198,000 in revenues from the sale of thirty-nine federal leases. No parcels located in any state within the Eastern States Office's jurisdiction other than Arkansas, Louisiana, or Michigan were offered at the July 28, 2015 lease sale.

72. A lease sale the Eastern States Office was scheduled to conduct in September 2015 was cancelled. Rather than conduct its own lease sale, the Eastern States Office joined with the New Mexico State Office to offer parcels in Arkansas at a lease sale that the New Mexico State Office conducted on October 21, 2015. The October 21, 2015 lease sale netted \$800 in revenues from the sale of two federal leases in Arkansas. No parcels located in any state within the Eastern States Office's jurisdiction other than Arkansas were offered at the October 21, 2015 lease sale that the New Mexico State Office conducted.

73. The Eastern States Office will conduct no more than two lease sales during Fiscal Year 2016.

74. A lease sale scheduled to be conducted on December 10, 2015 – involving parcels in Arkansas and Michigan – was cancelled and combined with a lease sale scheduled for March 17, 2016. The previously scheduled March 17, 2016 lease sale had previously involved parcels located exclusively in Mississippi and Louisiana. The March 17, 2016 lease sale netted \$900 from the sale of three federal leases. No parcels located in any state within the Eastern States

Office's jurisdiction other than Arkansas, Louisiana, Michigan, or Mississippi were offered at the March 17, 2016 lease sale.

75. On September 20, 2016, the Eastern States Office is scheduled to conduct a lease sale for fourteen parcels located in Kentucky and Mississippi. No parcels located in any state within the Eastern States Office's jurisdiction other than Kentucky or Mississippi are expected to be offered at the March 17, 2016 lease sale.

Impact on Development

76. BLM's illegal administration of its leasing program has injured and will continue to injure individual Alliance members. The failure to hold lease sales according to the Mineral Leasing Act's mandate unnecessarily delays – and can completely halt – development of certain federal minerals. Alliance members have had to wait years in many cases for leases to be finally offered for sale. Without a full leasehold, oil and natural gas operators cannot proceed to the development phase, and many Alliance members have had projects held up for years because of unnecessary and illegal delays at the leasing stage.

77. Among other impacts, leasing delays frequently: (i) prevent member companies from drilling wells on not just federal and Indian lands, but on state and fee leases that can only be accessed through the adjacent federal mineral estate; (ii) restrict member companies' operational flexibility thereby reducing member companies' ability to plan projects so that waste is reduced and development is executed in the most environmentally sensitive manner; (iii) force member companies to miss deadlines and obligations that unitization agreements, joint operating agreements, other leases, and other authorizations and agreements impose (despite diligent and timely attempts to secure illegally delayed federal leases); (iv) deny member companies the

ability to realize revenue from the development of federal minerals; and (v) deny federal and state taxpayers the ability to receive royalty payments from the development of federal minerals.

Lack of Transparency

78. Upon information and belief, BLM does not maintain any written guidance or policy manual governing the scheduling or timing of oil and gas lease sales. Nor does BLM maintain any written guidance or policy manual establishing provisions for hosting and conducting oil and gas lease sales, including but not limited to, the securing of venue space to conduct lease sales, accommodations for the security of lease sale participants, and accommodations for protesters and independent observers of oil and gas lease sales.

79. On April 27, 2016, the Alliance served a series of Freedom of Information Act requests on the following BLM State Offices: (i) Eastern States; (ii) Alaska; (iii) California; (iv) Nevada; (v) Montana/Dakotas; (vi) Wyoming; (vii) Utah; (viii) Colorado; and (ix) New Mexico.

80. Among other inquiries, the Alliance sought information related to: (i) the schedule for and timing of oil and gas lease sales for parcels within the State Office's jurisdiction; (ii) the cancellation, postponement, or rescheduling of any oil and gas lease sale; (iii) provisions for hosting and conducting oil and gas lease sales, including but not limited to, the securing of venue space to conduct lease sales, accommodations for the security of lease sale participants, and accommodations for protesters and independent observers of oil and gas lease sales; (iv) the process by which each State Office selects which parcels are to be included in any oil and gas lease sale; and (v) all expressions of interests that have been submitted to the State Office but which have not been offered for sale.

81. By e-mail dated April 28, 2016, the Colorado State Office acknowledged receipt of the Alliance's FOIA request, assigning the request FOIA control number BLM-2016-00544/CO-16-035. The Colorado State Office indicated that it would advise the Alliance "of the status of our response within 20 workdays if we anticipate a delay," and explained that "[u]nusual circumstances may warrant an additional 10 workday extension."

82. By e-mail dated April 28, 2016, the Montana/Dakotas State Office acknowledged receipt of the Alliance's FOIA request. The Montana/Dakotas State Office indicated that it had "received both your email and FedEx versions of the FOIA request this morning," and advised that "[f]urther information will be sent in the next couple of days." The Montana/Dakotas State Office emphasized that, "[i]f we have questions, we'll be back in touch."

83. By e-mail dated April 28, 2016, the Wyoming State Office acknowledged receipt of the Alliance's FOIA request. The Wyoming State Office indicated that the request "has been input into EFTS (FOIA # BLM-2016-00542)."

84. By letter dated April 28, 2016, the Utah State Office acknowledged receipt of the Alliance's FOIA request and advised that the request had been "placed in the Complex track due to the need to search for records located in the multiple offices." The Utah State Office explained that, "based on our preliminary estimate, a complete response will be made on or before July 1, 2016."

85. On May 12, 2016, the Alliance's counsel spoke by telephone to Brian Smith, FOIA coordinator for the Eastern States Office; Mr. Smith asked several specific questions regarding the scope of the Alliance's request and indicated that the Eastern States Office would begin sending material during the week of May 16, 2016.

86. On May 12, 2016, the Alliance's counsel spoke by telephone to Ryan Witt, FOIA Officer for BLM's Washington, DC Headquarters. Mr. Witt advised that the requests the Alliance had sent to the various State Offices had been consolidated and that BLM's national headquarters would be coordinating responses to all requests. BLM has never provided the Alliance with any written or formal notice that the Alliance's requests have been consolidated.

87. By e-mail dated May 20, 2016, the Colorado State Office provided notice that, "because your above-referenced FOIA request requires that we search for and collect responsive records from a field office separate from the office that is processing your request, we are invoking a 10-day extension for responding to your request that falls within 'unusual circumstances.'"

88. On June 13, 2016, the Alliance's counsel attempted to reach Mr. Witt by both e-mail and telephone to discuss the Alliance's FOIA requests. The Alliance's counsel emphasized that the Alliance had "not heard back from [Mr. Witt's] office or any individual State Office since we last spoke several weeks ago."

89. On June 17, 2016, the Alliance's counsel again attempted to reach Mr. Witt by both e-mail and telephone to discuss the Alliance's FOIA requests. By e-mail, Mr. Witt indicated that "[i]n processing your request our subject matter experts have identified several questions they have related to scope" and inquired whether the Alliance's counsel would be available to speak on Monday, June 20, 2016. The Alliance's counsel responded by e-mail offering available times on Monday, June 20, 2016; Mr. Witt did not respond to that scheduling e-mail.

90. On June 20, 2016, the Alliance's counsel attempted to contact Mr. Witt for a third time, again by telephone and e-mail. Despite the Alliance's counsel indicating that he "would appreciate hearing back from [Mr. Witt] this afternoon," Mr. Witt did not respond.

91. On June 21, 2016, the Alliance's counsel attempted to contact Mr. Witt for a fourth time, again by both telephone and e-mail. The Alliance's counsel emphasized that "no State Office has delivered *any* response to *any* FOIA request the Alliance submitted" and explained that "given the agency's failure to communicate, we have no choice at this time but to consider BLM's response delinquent and the Alliance's requests denied." The Alliance indicated that it remained willing "to discuss alternatives that might make it easier for BLM to respond to the Alliance's requests" but noted that the Alliance also "reserve[d] its right to escalate this matter, whether in the form of an appeal under Subpart D of Interior's FOIA regulations or pursuant to other mechanism available under applicable law." Mr. Witt responded to the June 21, 2016 e-mail, indicating that he was available to speak by telephone the following day.

92. On June 22, 2016, the Alliance's counsel and Mr. Witt spoke by telephone. During that call, Mr. Witt indicated that he would send the Alliance a list of follow up questions regarding the scope of the Alliance's FOIA requests by the end of the day. Mr. Witt did not send the list of questions by the end of June 22, 2016.

93. On June 26, 2016, the Alliance's counsel contacted Mr. Witt again by e-mail, expressing disappointment that the Alliance had not "received any of the follow-up material that you indicated you would send when you and I spoke on the telephone last Wednesday morning, June 22." The Alliance observed that BLM "has not provided any formal notice that the requests Western Energy Alliance submitted on April 28 have been consolidated or provided any

information regarding when the Alliance can expect to begin receiving materials.” The Alliance advised that “[b]ecause BLM has failed to meet its statutory and regulatory obligations, the Alliance expects it will be necessary for the Alliance to exercise its appellate rights” and instructed that Mr. Witt should “consider this e-mail a notice of informal conferral under 43 C.F.R. § 2.57(c).”

94. On July 1, 2016, Mr. Witt transmitted by e-mail a list of questions to the Alliance’s counsel purportedly attempting to clarify the scope of the Alliance’s FOIA requests. On July 6, 2016, the Alliance responded to Mr. Witt’s e-mail. The Alliance requested that BLM “provide a response regarding when the Alliance will receive responsive information no later than 5:00 pm EDT on July 7, 2016.” BLM did not provide any information to the Alliance before that deadline.

95. On July 11, 2016, the Alliance submitted an appeal to the Department of the Interior’s FOIA Appeals Office under Subpart H of 43 C.F.R. Part 2. That appeal advised the Appeals Office that the Alliance had not received any responsive material from any state office to which a FOIA request had been directed and requested that the Appeals Office “direct the State Offices to deliver all responsive material no later than August 5, 2016.”

96. On August 9, 2016, the time period within which the Department of the Interior was required to respond to the Alliance’s FOIA appeal expired. The FOIA Appeals Office has not provided any response to the Alliance’s appeal.

97. As of the date of this filing, no BLM office has provided any response to any request that the Alliance has submitted. Nor has any BLM office provided the Alliance with any estimate of when the Alliance can expect to begin receiving responsive information.

COUNT I

**FREEDOM OF INFORMATION ACT VIOLATION
(5 U.S.C. § 552)**

98. The Alliance reasserts and incorporates by reference the preceding paragraphs 1 to 97.

99. On April 27, 2016, the Alliance submitted requests to nine BLM State Offices seeking information under FOIA regarding the State Offices' management and administration of oil and gas lease sales.

100. BLM ordinarily must determine whether to comply with a FOIA request within twenty workdays from and including the date of receipt; this time period represents the "basic time limit" for FOIA requests. 43 C.F.R. § 2.16(a). BLM may extend the "basic time limit" for "unusual circumstances." *Id.* § 2.19(a); *see id.* § 2.70 (defining "unusual circumstances"). If BLM wishes to invoke an "unusual circumstances" extension, BLM must do so in writing and provide: (i) the unusual circumstances involved; and (ii) the date by which BLM expects to complete processing of the FOIA request. *Id.* § 2.19(a)(1)-(2). If the processing time will exceed thirty workdays, BLM must provide an opportunity to limit the scope of the request or agree to an alternative deadline for processing and make its FOIA Public Liaison available "to assist in resolving any disputes between [the requesting party] and the bureau." *Id.* § 2.19(b)(1)-(2).

101. The "basic time limit" for the BLM State Offices to respond to the Alliance's FOIA requests expired on May 25, 2016. *See* 43 C.F.R. § 2.16(a).

102. On May 20, 2016, the Colorado State Office invoked a "10-day extension" to respond to the FOIA request the Alliance submitted to the Colorado State Office. The Colorado

State Office has neither provided the Alliance any responsive material nor sought any other additional extension of time to respond.

103. By letter dated April 28, 2016, the Utah State Office acknowledged receipt of the Alliance's FOIA request and advised that the request had been "placed in the Complex track due to the need to search for records located in the multiple offices." The Utah State Office explained that, "based on our preliminary estimate," a complete response will be made on or before July 1, 2016." The Utah State Office has not provided the Alliance any responsive material nor sought any other additional extension of time to respond.

104. With the exception of the Colorado State Office and Utah State Office, no other office has requested an extension to respond to the FOIA request that the Alliance submitted to that office or provided any estimate of when the Alliance can expect to receive responsive materials.

105. On May 12, 2016, the Alliance's counsel spoke by telephone to Ryan Witt, FOIA Officer for BLM's Washington, DC Headquarters. Mr. Witt advised that the requests the Alliance had sent to the various State Offices had been consolidated and that BLM's national headquarters would be coordinating responses to all requests. Despite the Alliance's attempts to cooperate with BLM's national headquarters, BLM has not provided the Alliance with any written confirmation that the FOIA requests the Alliance submitted have been consolidated.

106. BLM's national headquarters has made no request to extend any applicable regulatory deadlines. BLM's national headquarters has failed to provide *any* material responsive to *any* request the Alliance submitted. BLM's national headquarters has not provided the Alliance any estimate of when the Alliance can expect to receive responsive material.

107. Because BLM has failed to provide responsive material within the basic time limit and any potentially applicable extension, the Alliance properly submitted an appeal to the Department of the Interior's FOIA Appeals Officer under Subpart H of 43 C.F.R. § Part 2.

108. On August 9, 2016, the time period within which the Department of the Interior was required to respond to the Alliance's FOIA appeal expired. The FOIA Appeals Office has not provided any response to the Alliance's appeal.

109. Having properly submitted an administrative appeal, the Alliance has met its obligations to exhaust its administrative remedies and is entitled to seek judicial review of BLM's failure to respond to the Alliance's FOIA requests.

110. BLM's failure to provide *any* material responsive to *any* request the Alliance submitted is in violation of FOIA.

COUNT II

DECLARATION THAT BLM'S LEASING POLICIES AND PRACTICES VIOLATE THE MINERAL LEASING ACT (Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202)

111. The Alliance reasserts and incorporates by reference the preceding paragraphs 1 to 110.

112. The MLA requires that: "Lease sales shall be held for each State where eligible lands are available at least quarterly and more frequently if the Secretary of the Interior determines such sales are necessary." 30 U.S.C. § 226(b)(1)(A).

113. BLM's regulations provide that lands are available for lease if a parcel is available for oil and gas leasing and an expression of interest has been submitted for that parcel.

114. BLM's State Offices routinely fail to conduct the required four lease sales, despite parcels being available for leasing. The New Mexico State Office conducted only two lease sales in Fiscal Year 2015, and will conduct no more than three lease sales in Fiscal Year 2016. The Montana/Dakotas State Office will conduct no more than two lease sales in Fiscal Year 2016. The Wyoming State Office will conduct no more than three lease sales in Fiscal Year 2016. The Utah State Office conducted only three lease sales in Fiscal Year 2015 and will conduct no more than two lease sales in Fiscal Year 2016. The Colorado State Office conducted three lease sales in Fiscal Year 2015 and will conduct no more than two lease sales in Fiscal Year 2016. The Eastern States Office conducted two lease sales in Fiscal Year 2015 and will conduct no more than two lease sales in Fiscal Year 2016.

115. BLM State Offices frequently schedule, postpone, cancel, delay, or organize lease sales in a manner that results in more than three months passing without any parcel in an individual State being offered for lease. BLM schedules and conducts lease sales without consideration of whether parcels located within each State are available for leasing.

116. BLM has no policy or guidance in effect prescribing the administration of lease sales in a manner compliant with the Mineral Leasing Act

117. The manner in which BLM is presently scheduling and administering oil and gas lease sales violates the express terms of the Mineral Leasing Act.

COUNT III

BLM'S ACTION IS CONTRARY TO LAW (5 U.S.C. § 706)

118. The Alliance reasserts and incorporates by reference the preceding paragraphs 1 to 117.

119. The Mineral Leasing Act requires that: “Lease sales shall be held for each State where eligible lands are available at least quarterly and more frequently if the Secretary of the Interior determines such sales are necessary.” 30 U.S.C. § 226(b)(1)(A).

120. BLM’s regulations provide that lands are available for lease if a parcel is available for oil and gas leasing and an expression of interest has been submitted for that parcel.

121. BLM State Offices frequently schedule, postpone, cancel, delay, or organize lease sales in a manner that results in more than three months passing without any parcel in an individual State being offered for lease. BLM schedules and conducts lease sales without consideration of whether parcels located within each State are available for leasing.

122. BLM has no policy or guidance in effect prescribing the administration of lease sales in a manner compliant with the Mineral Leasing Act.

123. The manner in which BLM is presently scheduling and administering oil and gas lease sales violates the express terms of the Mineral Leasing Act.

124. The manner in which BLM is presently scheduling and administering oil and gas lease sales is in excess of BLM’s statutory authority.

125. BLM is presently scheduling and administering oil and gas lease sales without observance of procedure required by law.

PRAYER FOR RELIEF

The Alliance requests respectfully that the Court grant the following relief:

1. Declare that BLM has unjustifiably denied the Alliance’s FOIA requests and direct BLM to process the FOIA requests and deliver all responsive materials to the Alliance immediately.

2. Declare the manner in which BLM is presently scheduling and administering oil and gas lease sales unlawful as a violation of the express terms of the Mineral Leasing Act;
3. Require BLM to immediately abandon all currently existing lease sale schedules that do not comply with the Mineral Leasing Act and to adopt promptly revised lease sale schedules that comply with the terms of the Mineral Leasing Act;
4. Direct BLM to revise or rescind all agency guidance and instructional memoranda, including I.M. No. 2010-117, that direct implementation of BLM's lease sale program in a manner contrary to law;
5. All costs and attorneys' fees authorized under 28 U.S.C. § 2412; and
6. Such other and further relief, in law and in equity, to which the Alliance may be entitled.

Submitted respectfully this 11th day of August, 2016

By: /s/ Mark S. Barron
Mark S. Barron
Alexander K. Obrecht
BAKER & HOSTETLER LLP
1801 California Street, Suite 4400
Denver, Colorado 80202-2662
Telephone: 303.861.0600
Facsimile: 303.861.7805
mbarron@bakerlaw.com
aobrecht@bakerlaw.com

Counsel for Plaintiff Western Energy Alliance

CERTIFICATION REGARDING NON-MEMBER ATTORNEYS

I hereby certify that I am a member of the New Mexico District Federal Bar in good standing and that non-member attorney Alexander K. Obrecht is in good standing with the Supreme Court of Colorado.

/s/ Mark S. Barron

Mark S. Barron