



U.S. Department of the Interior  
The Honorable Jim Caswell, Director (630)  
Bureau of Land Management  
Mail Stop 401 LS *Attention:* 1004-AD90  
1849 C Street, NW  
Washington, DC 20240

September 22, 2008

**Re: Oil Shale Management – Proposed Rule (Federal Register July 23, 2008)**

Dear Director Caswell,

Thank you for the opportunity to comment on the proposed rule for Oil Shale Management. Taxpayers for Common Sense (TCS) is a non-partisan budget watchdog serving as an independent voice for American taxpayers. For more than a decade, TCS has actively worked to ensure that taxpayers received a fair return on minerals and resources extracted from federal lands and waters.

In regards to the proposed regulations, Taxpayers for Common Sense is gravely concerned that the federal government is prematurely pursuing a commercial leasing program for oil shale development on federal lands. We believe there is substantial evidence that if a commercial leasing program is pursued at this time the fiscal consequences for federal taxpayers will be significant. Specifically, the draft rule raises several areas of concern described below.

First, we are concerned that the proposed oil shale leasing program does not guarantee a fair return to taxpayers. A federal mineral leasing program should provide a fair return for federal taxpayers, and for oil shale development, it is explicitly required under the Energy Policy Act of 2005. However, given that oil shale is in its very early stages of development, it would be extremely difficult to ensure a fair return for federal taxpayers. As the Bureau of Land Management (BLM) states in the proposed rule, because the oil shale industry is still in the research and development phase, it is “difficult to predict whether or when multi-buyer/multi-seller markets would develop that would provide FMV [fair market value] pricing for products of oil shale.” In other words, if a competitive market for oil shale products does not develop, the federal government will not receive a fair return.

Secondly, the BLM’s proposed rule sets the royalty rate for oil shale leases too low to live up to its obligation of ensuring a fair return to taxpayers. Both alternatives proposed in the rule - the 5% flat rate and the sliding rate from 5% to 12.5% - are lower than the

federal royalty rate for onshore oil and gas (12.5%). The BLM's decision to impose a lower royalty rate – out of fear that a higher rate “may not allow oil shale to become competitive”– essentially amounts to another taxpayer subsidy for an industry which is already subsidized by the federal government. The Energy Policy Act of 2005 subsidized oil shale research and development by leasing land for R&D without requiring bonuses or rents and without collecting royalties that produced at less than commercial scales.

Because the BLM cannot yet assess how profitable oil shale development will be, it is fiscally irresponsible to risk setting the royalty rate too low. Furthermore, the Mineral Leasing Act allows the Secretary of the Interior to reduce, suspend or waive royalties on oil shale if necessary to promote development or if the lease cannot be “successfully operated.” Thus there is less risk to taxpayers of setting a royalty rate that turns out to be too high rather than risking a massive give-away of public lands to oil shale companies.

Finally, it would be fiscally irresponsible to expand the Minerals Management Service (MMS) portfolio at this time. Given the recent scandals in the collection of oil and gas royalties and track record of mismanagement charging them with additional responsibility would be gravely irresponsible. Despite the tawdry nature of the scandals, the underlying issues demonstrate a very serious conflict of interest; staff is too close to the oil and gas industry and is not accountable to taxpayers. TCS is committed to reforming our revenue collection process, ensuring fair contracting, and increasing accounting accuracy at MMS.

Thus, Taxpayers for Common Sense strongly urges the BLM to delay the oil shale leasing program until (1) more data is available on the cost of commercial oil shale production; and (2) the Minerals Management Service has demonstrated the capability to fairly and accurately collect royalties generated from the development of oil shale on federal lands.

The oil shale industry is years from commercial viability. The proposed regulation states, “the assumption is that any significant production of oil shale is not likely to occur for a number of years.” It is fiscally irresponsible to enact final regulations for commercial leasing on an industry that is clearly in the research and development phase.

Only when the oil and gas industry can demonstrate oil shale is commercially viable and taxpayers can be assured of a fair royalty rate and a transparent and accurate revenue collection process, should the federal government enact final regulations on a commercial leasing program.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Alexander". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ryan Alexander  
President