

**Congress of the United States**  
**Washington, DC 20515**

November 30, 2012

The Honorable Ken Salazar  
Secretary of the Interior  
U.S. Department of the Interior  
1849 C Street, NW, Room 5665  
Washington, DC 20240

Dear Secretary Salazar:

The Bureau Land Management's (BLM's) proposed rules for hydraulic fracturing create a duplicative system of rules that in many ways are operationally unworkable and inconsistent with existing state rules. Serious questions and concerns have been raised about the potential negative impact on jobs, local economies, federal and state revenues, and American energy production. We share those concerns and want to specifically highlight the rules' potential infringement on state water laws and the implications for state water rights.

Depending on how they are implemented, BLM's proposed rules could overstep their statutory authority over water, threatening all water right owners and undercutting the current system of state allocation and administration of water rights. BLM's proposal creates federal approvals and mitigations for water source, water use, and water disposal. The rules give BLM veto authority over water use related to oil and natural gas development on federal lands, which is entirely inappropriate.

No Administration has the authority to prevent any state or resident from using water consistent with state water laws. BLM lacks statutory authority to manage water appropriation and administration. Congress, as intended, has long-deferred to the states in this arena. States throughout the West, and across the country, enshrined this principle in their constitutions. Creating a parallel federal permitting regime conflicts with existing state systems and will create uncertainty and roadblocks to water use decisions related to oil and gas development.

BLM is not on sound legal ground if it wants to prohibit a holder of valid, existing water rights from contracting with an operator to supply water for hydraulic fracturing. Furthermore, the draft rules could interfere with water allocation between the states pursuant to interstate compacts and Supreme Court decrees. It also appears to create new water testing requirements for water used in hydraulic fracturing and for flowback water that will actually discourage water recycling and reuse, which should be supported and encouraged for environmental purposes.

Water represents one of the most valuable economic interests for landowners, cities, counties, and industries across the United States. States have a strong track record in protection of water quality and are committed to ensuring clean water for our residents. BLM's proposal oversteps its authority and fails to recognize the uncertainty and confusion it creates. As with many other

aspects of the proposed rules, BLM should not duplicate existing state regulations or encroach on state water authority.

Sincerely,

Tom Adams

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