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ONE HUNDRED TENTH CONGRESS

# Congress of the United States

## House of Representatives

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October 31, 2007

The Honorable Dirk Kempthorne  
Secretary  
United States Department of the Interior  
1849 C St. NW  
Washington, DC 20240

Dear Secretary Kempthorne:

The Energy Policy Act of 2005 required the Secretary of Interior to enter into an agreement with the National Academy of Sciences to study the impacts of coalbed natural gas production on the surface waters and ground waters of certain western states. Congress required that the study be completed within one year of enactment and include recommendations for changes to federal law to address adverse impacts of coalbed methane development.

Unfortunately, it appears that the Department has failed to comply with this requirement. The statutorily-mandated study is now 14 months late and has not yet been started. Moreover, documents the Oversight Committee has obtained from the Bureau of Land Management (BLM) indicate that the Administration does not intend to meet the substantive requirements of the Energy Policy Act. Specifically, the documents reveal that BLM is planning to ask the National Academy to conduct a public meeting – not a study as required by law. Under BLM's approach, there will be no study and no recommendations to Congress.

This approach is flatly inconsistent with the legal requirements of the Energy Policy Act and the law's mandate for better information on the impacts of coalbed methane development. I am writing to urge you to abandon this approach, to comply with the law, and to immediately contract with the National Academy for a full report with recommendations.

### Background

Natural gas produced from underground coal seams is known as coalbed methane. Unlike conventional gas production that simply taps reservoirs of natural gas trapped in underground geologic formations, coalbed methane is produced from methane that clings to the surface of the coal. A key technique in developing coalbed methane is known as "hydraulic fracturing." Under this practice, a mixture of water, chemicals, and sand is typically forced into

a well at high pressure. This mixture, or “fracturing fluid,” is put under enough force that it fractures the underground rock formation, allowing natural gas to escape.<sup>1</sup> Ground water is then pumped out of the coal seam in order to decrease pressure on the coal and allow the natural gas to release from the coal and be produced from the well.<sup>2</sup>

While hydraulic fracturing has been used in conventional oil and gas well development, it raises particular concerns in the context of coalbed methane development. Hydraulic fracturing fluids sometimes contain chemicals that cause adverse health effects.<sup>3</sup> According to EPA, coalbed methane wells tend to be shallower and closer to underground sources of drinking water than conventional oil and gas production wells.<sup>4</sup> Also, hydraulic fracturing of coalbed methane wells actually occurs in underground sources of drinking water across the country.<sup>5</sup>

Additionally, the ground water pumped out of coalbed methane wells, known as “produced water,” raises concerns. Produced water is often high in salt content and if released can adversely affect the environment.<sup>6</sup> Producing water also depletes groundwater sources, a limited resource in the arid West.

Over the objections of many members, the Energy Policy Act of 2005 exempted hydraulic fracturing from the Safe Drinking Water Act. At the same time, however, the law required the Secretary of Interior to enter into an arrangement with the National Academy of Sciences to “conduct a study on the effect of coalbed natural gas production on surface and ground water resources, including ground water aquifers, in the States of Montana, Wyoming, Colorado, New Mexico, North Dakota, and Utah.”<sup>7</sup> The study is required to examine the

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<sup>1</sup> Environmental Protection Agency, *Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs* (June 2004) (EPA 816-R-04-003).

<sup>2</sup> *Id.*

<sup>3</sup> Oil and Gas Accountability Project, *Our Drinking Water at Risk: What EPA and the Oil and Gas Industry Don't Want Us to Know about Hydraulic Fracturing* (Apr. 2005).

<sup>4</sup> Environmental Protection Agency, *Evaluation of Impacts to Underground Sources of Drinking Water by Hydraulic Fracturing of Coalbed Methane Reservoirs* (June 2004) (EPA 816-R-04-003).

<sup>5</sup> *Id.*

<sup>6</sup> Thomas F. Darin and Amy W. Beatie, *Debunking the Natural Gas “Clean Energy” Myth: Coalbed Methane in Wyoming’s Powder River Basin*, Environmental Law Reporter (2001).

<sup>7</sup> Sec. 1811 Coal Bed Methane Study, Energy Policy Act of 2005, P.L. 109-58 (Aug. 8, 2005).

effectiveness of current management approaches to development, including best management practices and various production techniques, mitigation approaches and their costs, and the effects of coalbed methane development on water resources, including drinking water.<sup>8</sup> The National Academy of Sciences is also to offer any recommendations for changes to federal law that would be necessary to address adverse impacts to surface or ground water resources associated with coalbed methane development.<sup>9</sup>

### **The Interior Department's Actions**

The National Academy of Sciences study was required to be completed by August 8, 2006, one year after enactment.<sup>10</sup> The study is now 14 months late and has not yet been started.<sup>11</sup> After receiving an inquiry on this matter from the House Oversight Committee on September 5, 2007, the Department of Interior finally decided to proceed with funding the National Academy for limited activity on this subject.<sup>12</sup> However, it appears that the activity that the Interior Department intends to fund does not comply with the requirements of the Energy Policy Act.

In a letter to BLM, the National Academy of Sciences offered four alternatives for work the Academy could do on coalbed methane development.<sup>13</sup> The alternatives ranged in cost from \$15,000 to \$430,000. The National Academy identified the \$430,000 report as “a full Academies report with recommendations, as specified in Section 1811” of the Energy Policy Act of 2005. The \$15,000 alternative would be simply a “meeting and oral summary, without recommendations.”<sup>14</sup> According to the National Academy, the \$15,000 alternative should not

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Telephone conversation between House Oversight Committee staff and Elizabeth A. Eide, Director, Committee on Earth Resources, The National Academies (Oct. 29, 2007).

<sup>12</sup> Letter from Hon. C. Stephen Allred, Assistant Secretary, Land and Minerals Management, U.S. Department of the Interior, to Rep. Henry A. Waxman (September 27, 2007).

<sup>13</sup> Letter from Elizabeth A. Eide, Director, Committee on Earth Resources, The National Academies, to Mr. James M. Hughes, Deputy Director, Programs and Policy, Bureau of Land Management (Feb. 2, 2007).

<sup>14</sup> *Id.*

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even be referred to as a “study” and no written document will be produced as a result of the effort.<sup>15</sup>

Internal documents show that the Bureau of Land Management decided to proceed with the \$15,000 option on September 27, 2007.<sup>16</sup> Yet prior to selecting the \$15,000 alternative, an internal BLM report found that it would be only “of limited value” to BLM.<sup>17</sup>

It appears that the agency may have selected this alternative based, in part, upon a desire not to divert any resources from approving additional permits for development. According to the BLM report, “The costs for further review by the Academy would have an impact on BLM’s ability to provide sufficient funding to process additional oil and gas Applications for Permit to Drill.”<sup>18</sup> An internal BLM e-mail suggests that BLM was also concerned that the National Academy review could identify additional needs for studies: “It is implied that based on review and recommendations, additional studies may be recommended that would cost an unknown amount of money.”<sup>19</sup>

### **Conclusion**

Although the National Academy of Sciences has offered to produce a “full Academies report with recommendations, as specified in Section 1811” of the Energy Policy Act, BLM has apparently requested that the Academy provide merely a “meeting and oral summary, without recommendations.” If BLM stays on this course, not only will the agency fail to meet the clear requirements of the Energy Policy Act, it will also fail to provide the Congress, the states, the public, and affected citizens with a useful analysis of current practices and necessary policy responses.

I urge you to abandon BLM’s approach and engage the National Academy of Sciences to complete a full report as required by law.

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<sup>15</sup> Telephone conversation between House Oversight Committee staff and Elizabeth A. Eide, Director, Committee on Earth Resources, The National Academies (Oct. 29, 2007).

<sup>16</sup> BLM, Energy Policy Act Implementation Accomplishments marked “For Internal Use Only” (Oct. 2, 2007); Bureau of Land Management, Energy Policy Act of 2005: BLM Due Dates and Status (October 2, 2007).

<sup>17</sup> Bureau of Land Management, *Coal Bed Methane Study: Section 1811 of Energy Policy Act* (February 26, 2007).

<sup>18</sup> *Id.*

<sup>19</sup> E-mail from Ray Brady, Manager, Energy Policy Act Team, Bureau of Land Management, to Luke D. Johnson, Bureau of Land Management (February 12, 2007).

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If you have any questions about this matter, feel free to contact me or have your staff contact Greg Dotson or Gilad Wilkenfeld on the Oversight Committee at (202) 225-4407.

Sincerely,

A handwritten signature in black ink that reads "Henry A. Waxman". The signature is written in a cursive, slightly slanted style.

Henry A. Waxman  
Chairman

cc: Tom Davis  
Ranking Minority Member