COMMENTS

BOOMING IMPACTS: ANALYZING BUREAU OF LAND MANAGEMENT AUTHORITY IN OIL AND GAS LEASING AMID THE MISSING AND MURDERED INDIGENOUS WOMEN’S CRISIS

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INTRODUCTION

“States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.”

— United Nations Declaration on the Rights of Indigenous Peoples

Edith Chavez’s family became concerned when they had not heard from her. She usually kept in touch with them through Facebook, but when her posts abruptly stopped, her sister, Ladonna, posted on her own Facebook page: “If you’re out there sister, PLEASE CALL.”

Eleven days later, a friend picked up Edith from a hospital in a remote part of North Dakota, nearly 500 miles from her home on the Lake Vermilion Reservation in Minnesota. Edith had been abducted from a gas station, drugged, and transported to the Bakken oil patch. Her memories from the ordeal are hazy, but she suspects that her captors were human traffickers. Edith managed to escape and wandered for two days—without food or water—until a man, seeing she was injured, brought her to his

3. Id.
4. Id.
5. Id.
6. Id.
residence where members of his family cleaned the dried blood and dirt off of her. The identities of Edith’s captors are still unknown.

Edith lived to document her ordeal, but many Native women have not. Sexual violence, kidnappings, and human trafficking have become familiar narratives in the Missing and Murdered Indigenous Women (MMIW) crisis. Within this unconscionable anthology are so-called energy “boomtowns” in the United States—areas near energy-rich sites that experience significant population growth and social change in a given timeframe—where tribal communities face a mounting public health crisis. Only recently has the link between rapid energy development in boomtowns and the victimization of tribal communities become pronounced due to

7. Id.
8. Id.
10. Mary Annette Pember, Missing and Murdered: No One Knows How Many Native Women Have Disappeared, REWIRE.NEWS (Apr. 14, 2016, 10:42 AM), https://rewire.news/article/2016/04/14/missing-murdered-no-one-knows-many-native-women-disappeared/ (quoting a coordinator of the Native Women’s Society: “When Native women go missing, they are very likely to be dead”).
13. A National Institute of Justice-funded study found significant increases in violence in oil-developed crime “hot spots” in North Dakota and Montana. DHEESHANASA JAYASUNDARA ET AL., EXPLORATORY RESEARCH ON THE IMPACT OF THE GROWING OIL INDUSTRY IN NORTH DAKOTA AND MONTANA ON DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING: A FINAL SUMMARY OVERVIEW 6–8 (2016), https://www.ncjrs.gov/pdffiles1/nij/grants/250378.pdf (concluding that increased patterns of crime and victimization in oil-impacted counties were consistent with steep population shifts and demographic changes); see also Rebecca Adamson, Vulnerabilities of Women in Extractive Industries, 2 ANTYAJAA: INDIAN J. WOMEN & SOC. CHANGE 24, 25 (2017) (calling sexual violence the “dirty little secret[...]” of oil, gas, and mineral booms).
enhanced data collection and the media’s reporting of violence against tribal communities.\textsuperscript{14}

With the advice of tribal leaders, the federal government has begun to address the significance of the MMIW crisis\textsuperscript{15} by dedicating substantial resources to improving data collection, conducting federal criminal investigations, and prioritizing outreach.\textsuperscript{16} Notwithstanding these commitments, the Trump Administration’s “energy dominance” agenda\textsuperscript{17} diametrically opposed safeguarding Native women’s right to be free from victimization within tribal communities.\textsuperscript{18} Central to this tension is the Department of the Interior’s (DOI’s) Bureau of Land Management’s (BLM’s) regulatory posture toward the oil and gas leasing process in recent years.\textsuperscript{19}

\begin{itemize}
\item \textsuperscript{14} See Archbold et al., supra note 12, at 407–09; see also Sierra Crane-Murdoch, On Indian Land, Criminals Can Get Away with Almost Anything, ATLANTIC (Feb. 22, 2013), https://www.theatlantic.com/national/archive/2013/02/on-indian-land-criminals-can-get-away-with-almost-anything/273391/ (profiling crimes in North Dakota stemming from the residual effects of oil booms—an influx of workers, a surge of cash flow, and limited jail space).
\item \textsuperscript{17} Fact Sheets: President Donald J. Trump Is Unleashing American Energy Dominance, WHITE HOUSE [May 14, 2019] [hereinafter Unleashing American Energy], https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-unleashing-american-energy-dominance/.
\item \textsuperscript{18} This Comment’s scope is limited to lands under the Department of the Interior’s (DOI’s) authority—the public lands on which oil and gas projects occur and the trust lands that recognized federal tribes reside on and near. Under the Indian Reorganization Act, the DOI may accept fee land into “trust” only for the benefit of members of recognized tribes. Carceri v. Salazar, 555 U.S. 379, 387–88 (2009). As such, the United States has a “unique trust responsibility to protect and support Indian tribes and Indians.” 25 U.S.C. § 5601(3); see also Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 17 (1831) (conceptualizing tribal sovereignty on balance with the United States’ inherent role as a guardian); Tribal Law and Order Act of 2010, H.R. 725, 111th Cong. § 202(a)(1) (2010) (“[T]he United States has distinct legal, treaty, and trust obligations to provide for the public safety of Indian country.”); Fee to Trust, BUREAU OF INDIAN AFFS., https://www.bia.gov/bia/ots/fee-to-trust (last visited Nov. 21, 2020). Some commenters, however, doubt the practical implications of the legal doctrine. See Ezra Rosser, Ahistorical Indians and Reservation Resources, 40 ENV’T L. 437, 513–14 (2010) (reviewing scholars’ skepticism of the trust doctrine as applied to development).
\item \textsuperscript{19} See infra Part I.C.
\end{itemize}
This Comment argues that the BLM must anticipate and plan for Native women’s safety concerns by analyzing the human environmental consequences of extractive projects on federal and Indian lands. Without these considerations, the BLM’s increasingly obsequious leasing process puts Native communities—particularly Native women—at risk. Part I of this Comment overviews how rapid energy development projects impact Native women and explores the friction between the Trump Administration’s energy dominance agenda and efforts to address the MMIW crisis. Part II argues that the BLM must account for the human environmental impacts stemming from the oil and gas leasing process. Accordingly, Part III recommends that the BLM change its policies and procedures to reflect the potential negative environmental consequences of leasing to extractive industries.

I. CHARGING TOWARD A DIM FUTURE: THE ENERGY DOMINANCE CAMPAIGN COMPROMISES SAFETY TO NATIVE WOMEN

A. Extractive Industries and the Marginalization of Native Women

Because law enforcement never apprehended Edith’s captors, she continues to relive the trauma from her ordeal. As a starting point, understanding the origins of crimes committed against Native women is prudent in implementing preventative measures to address the MMIW crisis. Native women experience a disproportionate level of violence compared to non-Natives. A 2016 Department of Justice-funded study found that in


21. Because this Comment analyzes the Bureau of Land Management’s (BLM’s) administration of lease sales of federal onshore resources through the lens of the Missing and Murdered Indigenous Women (MMIW) crisis, it does not discuss the Bureau of Ocean Energy Management’s offshor e resource program in federal waters. See Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1701(a)/9; infra Part II.C (supplying an overview of the BLM’s legal authority to regulate oil and gas leasing).

22. While this Comment primarily focuses on safety risks posed to Native women due to the issues identified in the MMIW crisis, it recognizes that any measures recommended in response to prevent and plan for disruptions from oil and gas firms’ projects in mining, drilling, and extraction also implicate the wider tribal community.

23. Helmberger & Summit, supra note 2 (“[W]ho knows who else he’s done this to . . . .”).

the United States, “Native women are 1.2 times as likely as non-Hispanic white women to have experienced violence in their lifetimes.”25 In energy boomtowns, Native women are particularly susceptible to becoming crime victims due to their locations in rural and remote communities.26 Attention must be given not only to the aftermath of these crimes but also to anticipating the setting and community design that breeds them.

Extractive projects fundamentally alter a community’s landscape due to significant—yet poorly anticipated—population shifts. Once the BLM approves an oil and gas lease, workforce growth in the surrounding area increases demand for essential supplies and services.27 Housing and food costs rise.28 Law enforcement agencies are overwhelmed because, while their budgets remain the same, crime increases throughout the vast stretches of reservations and adjacent lands they patrol.29 Public health agencies that provide critical mental health and substance abuse treatment become even more necessary for the community but are suddenly unable to meet the increased demand for their services.30

The nature of rapid energy development is such that the oil and gas firms hire mostly transient male workers who live in temporary, makeshift housing referred to as “man camps” near tribal communities.31 The oil and gas

26. See supra notes 13–14 and accompanying text (correlating boomtowns with increased violence); see also Kathleen Finn et al., Responsible Resource Development and Prevention of Sex Trafficking: Safeguarding Native Women and Children on the Fort Berthold Reservation, 40 HARV. J. L. & GENDER 1, 5 (2017) (asserting that the generational and historical trauma of colonial violence, along with economic instability, mental health issues, and substance abuse in Native communities, make Native women and children vulnerable to trafficking); RALPH B. TAYLOR & ADELE V. HARRIS, PHYSICAL ENVIRONMENT AND CRIME 17 (1996), https://www.ncjrs.gov/pdffiles/physenv.pdf (suggesting that offenders are more likely to commit crimes when they sense a neighborhood’s vulnerability because they are less likely to be detected).
28. See id. (discussing impact of extractive projects on local economies).
29. Finn et al., supra note 26, at 9 (citing a statistic that the Three Affiliated Tribes, located on the Fort Berthold Indian Reservation, had fewer than “twenty tribal officers to cover the nearly one million acres of rural land”).
30. Id. at 8.
industry is male-dominated, with male workers reaping the economic benefits while women experience far fewer employment opportunities.\textsuperscript{32}

In this setting, Native women are particularly susceptible to human trafficking due to their concomitant exposure to risk factors, including domestic violence, sexual assault, economic exploitation, and generational poverty.\textsuperscript{33} Energy boomtowns also exacerbate socioeconomic inequalities for Native women living from that land, adding another layer of challenges that tribal communities must confront without adequate legal, health, or social support services.\textsuperscript{34} Consequently, the imbalanced—and gendered—effects of energy development facilitate a sex work industry.\textsuperscript{35}

While no one root cause exists as to why energy boomtowns have adversely impacted Native women, researchers agree that the rapid growth of male laborers in energy boomtowns directly corresponds with the development of a sex work industry and an increase in sexual assaults against Native women.\textsuperscript{36} In 2015, a coalition of Native American and women’s organizations sought intervention from the United Nations to raise awareness regarding the sexual violence against Native women in the Bakken oil fields.\textsuperscript{37} For instance, in a

\textsuperscript{32} See generally Gretchen Emnis et al., \textit{A Boom for Whom? Exploring the Impacts of a Rapid Increase in the Male Population upon Women’s Services in Darwin, Northern Territory,} 23 \textit{VIOLENCE AGAINST WOMEN} 535, 547–48 (2017) (evaluating perspectives of women’s support service providers in Australia responding to rapid population change driven by mining).

\textsuperscript{33} Finn et al., \textit{supra} note 26, at 5–6; see also Alexander Klein, \textit{Update: Tribes Not Relying on Federal Assistance to Safeguard Native Women,} 26 \textit{NAT’L BULL. ON DOMESTIC VIOLENCE PREVENTION,} Mar. 2020, at 1 (noting that nearly half of the 4,000 cases of missing Native women in the Great Plains region of the United States and Canada involved sex trafficking, domestic violence, or sexual assault).

\textsuperscript{34} Finn et al., \textit{supra} note 26, at 5–6 (“[S]ocioeconomic inequality is a major facilitator of entry into the sex trade . . . .”).

\textsuperscript{35} Id.

\textsuperscript{36} See Archbold et al., \textit{supra} note 12, at 387–91, 407 (reviewing scholarly literature on how rapid population growth in energy boomtowns results in more public demand for law enforcement intervention); Nicholas Thorne, \textit{Missing and Murdered Indigenous Women and Pipelines,} ARCGIS STORYMAPS (May 7, 2020), https://storymaps.arcgis.com/stories/2e4aa18916 Ae 41e 282820ac 8731be588 (demonstrating the relationship between energy production and MMIW cases in Montana, North Dakota, South Dakota, and Nebraska).

\textsuperscript{37} Native American and Women’s Organizations Request UN Help on Sexual Violence, \textit{INDIAN COUNTRY TODAY} (May 12, 2015), https://newsmai.ve/iniancountrytoday/archive/native-american-and-women-s-organizations-request-un-help-on-sexual-violence_srxHjWjEm yrmz9OPMmZw (specifying that the Bakkan oil fields cover North Dakota, Eastern Montana, and the Tar Sands region of Alberta, Canada).
2019 case study on the Bakken oil-producing region, the victimization rate for Native Americans was 2.5 times higher than for white Americans.\textsuperscript{38}

In addition to the gendered socioeconomic imbalances in energy boomtowns, Native communities are geographically positioned in resource-rich areas that support rapid energy development.\textsuperscript{39} Tribes’ locations throughout the United States are swept up in these projects as large plots of tribal land are directly in the paths of planned energy infrastructure projects.\textsuperscript{40} When oil and gas firms move into these areas, they bring transient outsiders who may lack respect for local cultures, customs, or laws due to the absence of a preexisting connection with the community.\textsuperscript{41} Tribes have raised concerns about members’ health and safety due to a generalized mistrust of these firms entering their communities.\textsuperscript{42} Between planning for rapid energy development and maintaining the geographical integrity of their communities, tribes are uniquely impacted by extractive industries due to their social, cultural, and subsistence-dependent ties to their land.\textsuperscript{43}


\textsuperscript{39} Nadia B. Ahmad, Trust or Bust: Complications with Tribal Trust Obligations and Environmental Sovereignty, 41 VT. L. REV. 799, 802 (2017).

\textsuperscript{40} Sweet, supra note 27, at 1167.

\textsuperscript{41} Id. at 1166; see also Nat’l Cong. of Am. Indians, Research Policy Update: Violence Against American Indian and Alaska Native Women 1–2 (2018), http://www.ncjrs.gov/pdffiles1/bjs/grants/252619.pdf (asserting that non-Native perpetrators are most likely to commit violence against Native women).

\textsuperscript{42} See Complaint at 1, Mandan, Hidatsa, & Arikara Nation v. Zinke, 358 F. Supp. 3d. 1 (D.D.C. 2019) (No 1:18-CV-01462) (seeking review of the DOI’s decision to grant oil and gas permits for a project that threatens tribes’ natural, cultural, and recreational resources); Martha Powers et al., Popular Epidemiology and “Fracking”: Citizens’ Concerns Regarding the Economic, Environmental, Health and Social Impacts of Unconventional Natural Gas Drilling Operations, 40 J. CRIM. HEALTH 534, 536–39 (2015) (finding that, of the 215 letters received in response to a community survey of the perceived effects of natural gas drilling, sixty-five related to threats to water, forty-six were concerning changes to the landscape, and 107 were based on socioeconomic inequalities); Rebecca Clarren, Idle Oil, Gas Wells Threaten Indian Tribes While Energy Companies, Regulators Do Little, INVESTIGATE W. (Sept. 5, 2018), https://www.invw.org/2018/09/05/idle-oil-gas-wells-threaten-indian-tribes-while-energy-companies-and-regulators-do-little/ (discussing the environmental concerns with the hundreds of inactive oil and gas wells on tribal lands).

In sum, Native women are a vulnerable population when it comes to energy development near their communities. Historical oppression rooted in colonialism contextualizes Native women’s lack of political clout to challenge present-day conditions. Coupled with the descent of large numbers of outside male workers “with time and money on their hands” upon their communities, the situation is ripe for criminal activity.

The influx of oil or gas workers to energy boomtowns has overwhelmed tribal and state law enforcement agencies. For tribal governments seeking to protect Native women, resource constraints and jurisdictional limitations prevent them from policing effectively. Scholars and the courts have grappled with the meaning of the tribes’ relationships to the federal government as it relates to land ownership and sovereignty. Despite conflicting interpretations, three principles reflect why this is the case. First, recognized tribes in the United States hold a unique legal status as inherent sovereigns—self-governing and politically independent. Second, although tribes can exercise authority over their members, they generally lack jurisdiction over non-Natives on non-Indian land within tribal territory. In Oliphant v. Suquamish Indian Tribe, the Supreme Court held that tribes cannot prosecute non-Indians who commit crimes within tribal territory. Thus, the jurisdictional reach of state, federal, or tribal law enforcement depends on where the crime took place, the identities of the offender and victim, and

44. Finn et al., supra note 26, at 5.
45. Adamson, supra note 13, at 25.
47. See Finn et al., supra note 26, at 9–10; see also Justice for Native Survivors of Sexual Violence Act, S. 288, 116th Cong. § 2 (2019) (proposing to expand tribal jurisdiction over non-Native defendants accused of a violent crime).
48. Compare Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 559 (1832) (“The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil.”), with 1 COHEN’S HANDBOOK OF FED. INDIAN L. § 4.01(1)(a), Lexis (Neil Jessup Newton et al. eds., database updated June 2019) [hereinafter COHEN’S HANDBOOK] (explaining that although Courts recognize tribes as sovereign, self-governing entities, they are subject to a protectorate relationship with the United States), and Matthew L.M. Fletcher, The Supreme Court and Federal Indian Policy, 85 Neb. L. Rev. 121, 157–60 (2006) (reviewing the evolution of implicit divestiture, the doctrine that an Indian tribe’s inherent sovereignty can be eroded even absent a treaty or congressional act).
49. COHEN’S HANDBOOK, supra note 48.
50. Deer & Warner, supra note 31, at 40–42.
52. Id. at 209 (quoting Johnson v. McIntosh, 21 U.S. (8 Wheat.) 543, 574 (1823)) (affirming that tribal governments assent to the authority of the United States and its laws, and are thus constrained in their authority).
whether a federal enclave statute covers the crime.\textsuperscript{53} Third, the federal government has a fiduciary trust relationship with federally-recognized tribes and, along with its duty to protect tribal interests, may also regulate Indian affairs using its plenary power.\textsuperscript{54}

This jurisdictional milieu results in slow responses to cases, stale evidence that leads to dead ends, and reluctance by local law enforcement to open and investigate future cases.\textsuperscript{55} With outsiders exploiting the limits of tribal jurisdiction and the unlikelihood of prosecution for their offenses, Native women become vulnerable targets of crimes with no legal redress.\textsuperscript{56}

\textbf{B. A Tale of Two Agendas}

1. The Trump Administration’s Energy and Economic Instigation Priorities

The Trump Administration’s early controversial move to withdraw the United States from the Paris Climate Accord was a harbinger of its “energy dominance” campaign.\textsuperscript{57} The Executive’s commitment to maximizing wealth through the energy sector has been realized through plans to privatize public and private land.\textsuperscript{58} Executive action has generated the most
enduring policies in this arena and has dramatically influenced the BLM’s administration over oil, gas, and mineral permitting and leasing programs.

The BLM has the sole discretion to identify parcels for lease sales and controls the permitting process for industries seeking to operate on them.59 In this capacity, the BLM has a duty to take a “hard look”60 when analyzing the environmental consequences from extractive projects conducted on public lands.61 The BLM’s involvement in mitigating the impacts of these projects has receded due to the Trump Administration’s deregulation policies—effectuated primarily through Executive Order (EO) 13,771 to reduce regulations.62

Following EO 13,771, a series of EOs supported swift energy development to spur economic growth at the expense of meaningful environmental review.63 Two of these EOs set the energy dominance agenda by pressing to prioritize infrastructure projects and related energy production.64 First, EO 13,783 directed agencies to identify “all existing regulations, orders, guidance documents, [and] policies” that could “potentially burden” the production


60. See Greater Bos. Television Corp. v. FCC, 444 F.2d 841, 851 (D.C. Cir. 1970) (demonstrating how an agency’s failure to engage in reasoned decisionmaking opens an action up to judicial review).

61. See FLPMA, 43 U.S.C. § 1701(a)(8) (declaring that public land management must consider the environmental and ecological value of that land); see also 43 C.F.R. § 8360.0-5(d) (2018) (defining public lands); General Oil and Gas Leasing Instructions, BUREAU OF LAND MGMT., https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/general-leasing (last visited Nov. 21, 2020) (explaining that competitive and noncompetitive leases are generally issued for ten years but can be extended).


63. See Unleashing American Energy, supra note 17 (announcing a regulatory plan for energy development).

of domestic natural resources. Second, EO 13,807—issued the same year as EO 13,783—explicitly stated that the management of environmental reviews and permit decisions had impeded important infrastructure projects. EO 13,807 sought to expedite “environmental reviews and authorizations for major infrastructure projects” by condensing federal agencies’ various roles during the environmental review of a single project into one coordinated Environmental Impact Statement (EIS) and a single Record of Decision (ROD).

Critics of this effort argue that agencies would be subjected to demanding—if not impossible—timelines that would dilute environmental review and diminish agencies’ role in the permit process, all for naught. Conversely, proponents argue that streamlining for purposes of efficiency and assigning timetables with targeted goals aligns appropriately with Congress’s intent in enacting the National Environmental Policy Act (NEPA)—the environmental law mandating that federal agencies conduct an EIS whenever there is a “major [f]ederal action.”

The United States’ withdrawal from the Paris Climate Accord may have dominated the conversation for the first half of the Trump Administration, but the changes to the environmental review process were the focus of the second half. Under EO 13,868, the scope of federal permitting projects—such as pipeline construction—and the conditions that agencies could attach to them became narrower. Moreover, with the finalization of the Council on Environmental Quality’s NEPA regulations, a host of infrastructure projects could become “non-[f]ederal” and exempt from environmental review if the project lacks minimal government funding or “minimal [f]ederal involvement.” Notwithstanding that federal agencies act while safeguarding

67. Id. at 40,466.
68. See Alejandro E. Camacho, What President Trump’s Infrastructure Agenda Gets Wrong, REGUL. REV. (May 6, 2019), https://www.theregreview.org/2019/05/06/camacho-what-president-trumps-infrastructure-agenda-gets-wrong/ (noting that there is no evidence that agencies’ environmental reviews have caused delays in federal permitting).
71. Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA), 85 Fed. Reg. 43,304, 43,345–47 (July 16, 2020) (to be codified at 40 C.F.R. pts. 1500–1508, 1515–1518). The regulations are silent with respect to a specific threshold federal funding amount or the parameters of agency involvement that would be required to trigger the NEPA. Id. at 43,347 (“CEQ expects that the agencies will further
the environment in consideration of “public health and safety,” the regulations recede environmental review and pose to have a chilling effect on the NEPA’s mandate.\textsuperscript{72}

2. \textit{Political Will to Address the Missing and Murdered Indigenous Women’s Crisis}

The MMIW crisis has captured the attention of lawmakers, researchers, and advocates as one of the most significant public health epidemics facing tribal communities.\textsuperscript{73} The Trump Administration acknowledged the failures to address the MMIW crisis.\textsuperscript{74} On November 26, 2019, the Trump Administration issued an EO calling on federal agencies to undertake innovative and aggressive solutions to reduce the historic levels of violence against Native women.\textsuperscript{75} Noticeably absent from the EO, however, is how rapid energy development has contributed to the MMIW crisis, and whether the federal government should act in this space.\textsuperscript{76}

Separating an environmental analysis into two spheres—natural and human—may be productive for the practical purposes of collecting data to demonstrate the environmental impacts from a single project.\textsuperscript{77} However, considering the two spheres in isolation risks unintended consequences in both when pursuing policy efforts. The Trump Administration’s myopic commitment to leasing more onshore oil and gas exacerbated Native women’s

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\textsuperscript{72} Id. at 43,360; see also NEPA, 42 U.S.C. § 4332(C) (requiring a “detailed statement” explaining “environmental impact,” “adverse environmental effects,” and “alternatives”). But see 42 U.S.C. § 4332(B) (requiring federal agencies to “develop methods and procedures” to present environmental considerations “along with economic and technical considerations” in the Environmental Impact Statement (EIS)).

\textsuperscript{73} See supra Part I.A (covering the empirical research correlating extractive industries with threats to Native women’s safety).

\textsuperscript{74} Supra notes 15–16 and accompanying text.

\textsuperscript{75} See Exec. Order No. 13,898, 84 Fed. Reg. 66,059, 66,059 (Dec. 2, 2019) (establishing a task force led by the Departments of Justice and Interior “to enhance the operation of the criminal justice system” with regard to violence against Native women).

\textsuperscript{76} See supra Part I.A.

vulnerabilities to extractive industries and their workers. Expedited environmental review—and the imposition of standards that narrow which projects get reviewed—leads to a haphazard leasing process that does not anticipate the adverse impacts on communities from major oil and gas leasing activities.

The BLM can protect tribal communities residing on or near land that private industries use for energy development through its leasing and permitting process. Against the backdrop of the MMIW crisis, however, the Trump Administration’s energy dominance agenda overshadowed any initiatives it undertook elsewhere with Native women’s security in mind. Presently, firms leasing public and tribal land for oil and gas projects have expansive discretion regarding whom they hire and often lack responsibility for the looming presence of their workforce.

C. Retreating from Responsibility Through Agency Guidance and Orders

Under the Federal Land Policy and Management Act (FLPMA), there are several types of “formal orders” that may apply to onshore oil and gas program leases, including onshore oil and gas orders and BLM instructional handbooks. EOs are another type of formal order that require federal agencies to act (or not to act) under their existing regulatory framework. During the Trump Administration, EOs formed the basis for the DOI’s Secretarial Orders (SOs). In turn, the SOs have transformed the DOI’s


79. See W. Watersheds Project v. Schneider, 417 F. Supp. 3d 1319, 1332–33, 1335 (D. Idaho 2019) (granting a preliminary injunction and holding that organizations were likely to succeed on their claims that the BLM failed to take a hard look and consider reasonable alternatives and cumulative impacts under the NEPA and the Administrative Procedure Act); Cooper McKim, BLM Vacates Well Approval Following Pushback, WYO. PUB. RADIO (Feb. 13, 2020), https://www.wyomingpublicmedia.org/post/blm-vacates-well-approval-following-pushback#stream/0 (reporting an environmental group’s challenge to a major drilling project, which the BLM unsuccessfully argued did not require an Environmental Assessment (EA) because the project qualified as a categorical exclusion under CEQ regulations).


82. See supra Part I.B.1 (explaining how the Trump Administration used Executive Orders to direct agency action to implement its energy agenda).

environmental review by modifying the depth of the BLM’s and states’ jurisdiction over permitting and leasing programs.84

The DOI’s rollbacks of Obama Administration oversight programs illuminate its support of energy resource expansion at the behest of the Trump Administration.85 Under the Obama Administration, the DOI imposed restrictions on extractive industries by pausing their operational programs and requiring additional assessment of the environmental and public health impacts posed by drilling and mining activities.86 For instance, SO 3330 stressed the importance of ensuring that energy development was in harmony with conservation practices.87 Furthermore, the SO affirmed the DOI’s broad review and permitting responsibilities and included—as part of its strategy—regional mitigation plans to assess resource concerns in several areas (biological, ecological, cultural, and scenic, etc.).88 The SO also

84. See infra notes 85–91 and accompanying text (examining the transformative effect DOI’s SOs have on the BLM’s authority to conduct environmental reviews during the permitting and leasing processes).


87. MITIGATION POLICIES SO, supra note 86, at 4.

88. Id. at 1, 3.
instructed a DOI task force to identify early on—for instance, during the scoping or pre-application phase—the steps to ensure that mitigation opportunities were identified.\textsuperscript{89}

Consistent with the Obama Administration’s decision to promote both energy development and conservation values, the SO, “Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program,” instructed the BLM to carefully determine whether its coal leasing program remained compliant with the NEPA and ensured the United States was getting the fair market value for its sales.\textsuperscript{90} That order was based on concerns from stakeholders and the Government Accountability Office asking whether an abundance of a commodity could result in negative environmental and health outcomes.\textsuperscript{91} The Trump Administration did not explore this question during its energy dominance campaign.

II. Deep Wells and Shallow Waters: The BLM Has the Authority to Protect Native Women

A. Environmental Obligations Under the National Environmental Policy Act

1. Impacts of Oil and Gas Projects

Congress mandated that the BLM manage, develop, and enhance public lands in a way that protects the environment.\textsuperscript{92} In regulating onshore energy resources through leasing and permitting, the BLM must act as a steward for the public lands by reviewing the environmental impacts of proposed projects under the bedrock environmental law, the NEPA. Under the NEPA, the agency must prepare either an Environmental Assessment (EA) (for smaller-scale oil and gas projects) or an EIS for lease auctions or sales.\textsuperscript{93} The BLM’s actions during the oil and gas leasing process—from identifying parcels for lease sale to exploration and drilling for energy extraction—are considered “major [f]ederal actions significantly affecting

\textsuperscript{89} Id. at 4.

\textsuperscript{90} DPEIS SO, supra note 86, at 6–8.

\textsuperscript{91} Id. at 3.

\textsuperscript{92} See FLPMA, 43 U.S.C. § 1701(a)(8), (a)(11) (requiring that the federal government manage public lands in a manner that safeguards their environmental and natural qualities).

\textsuperscript{93} See NEPA, 42 U.S.C. § 4332(C); How We Manage, BUREAU OF LAND MGMT., https://www.blm.gov/about/how-we-manage (last visited Nov. 21, 2020) (explaining the BLM’s balanced approach to managing public land with respect to environmental obligations).
the environment,” which triggers preparation of the EIS. An agency’s review is adequate if it has sufficient information for a court to reasonably understand the anticipated environmental degradation from a “major federal action” on balance with any derived benefits.

Pursuant to the FLPMA and its applicable land-use planning regulations, the BLM is required to identify public lands that may be leased. To identify public lands for auction, the BLM develops a Resource Management Plan (RMP)—a type of order that is part of land use planning and requires compliance with the FLPMA and the NEPA. States have regional field offices that must adhere to these RMPs when preparing land for lease sale and auction. The BLM must analyze site-specific environmental impacts and assess reasonable alternatives to mitigate any impacts before lease issuance. Oil and gas leases are subject to the RMP that applies to where the project is taking place, and oil and gas operators must file an Application for Permit to Drill (APD). Once the APD has been filed, the public is notified to ensure that environmental concerns are not only considered but also mitigated according to the particulars of the site. The agency

96. 43 U.S.C. § 1712(a).
97. See Planning and NEPA in the BLM, BUREAU OF LAND MGMT., https://www.blm.gov/programs/planning-and-nepa (last visited Nov. 21, 2020); see also supra Part I.C. (covering types of formal orders that the Secretary of Interior can issue).
98. Pendery, supra note 81, at 607.
99. See New Mexico ex rel. Richardson v. Bureau of Land Mgmt., 565 F.3d 683, 716–18 (10th Cir. 2009) (holding that the NEPA requires a supplemental qualitative analysis of environmental impacts when a Resource Management Plan (RMP) is modified).
100. 43 C.F.R. § 3162.3-1(c) (2019); see also Land Use Planning and NEPA Compliance, BUREAU OF LAND MGMT., https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/land-use-planning (last visited Nov. 21, 2020) (explaining that the BLM uses its land planning process to attach stipulations and conditions to leased parcels).
established “Rules of Conduct” to protect public land, resources, and the public affected by its ROD. 102

For tribal communities, the BLM must minimize energy development’s adverse effects when approving leases under Tribal Trust Agreements. 103 In this respect, the Tribal Trust Agreements in the Indian Mineral Development Act (IMDA) modify the agency’s administrative responsibilities. Furthermore, the BLM’s duty to fulfill these trust obligations applies to the economic, social, and cultural effects of development. 104

2. The Lease Contract

Leases are contracts between the BLM and the oil or gas firm, which is subject to the terms, conditions, and stipulations in the lease. 105 The BLM’s authorized officer (AO) has considerable discretion in drafting the lease contract. 106 Once the AO approves the contract, she and the firm may proceed to the leasing stage. 107 While lessees enjoy the rights to explore, drill, mine, and extract, they are subject to the AO’s stipulations in the lease contract for the timeframe agreed to by the AO and party. 108

Following lease issuance, the AO ensures compliance with the lease contract, which may be modified as needed. 109 For instance, the AO may modify or waive a preexisting stipulation if the AO determines that an issue

102. 43 C.F.R. § 8365 (2019) (delineating “rules of conduct for the protection of public lands and resources, and for the protection . . . of the public in its use of . . . public lands”).
103. See Indian Mineral Development Act of 1982 (IMDA), 25 U.S.C. §§ 2101–2108 (providing for tribes to enter into “Mineral Agreements” that are subject to various oversight and review processes by the Secretary of the Interior).
104. Id. § 2103(b); see also Pit River Tribe v. U.S. Forest Serv., 469 F.3d 768, 786–88 (9th Cir. 2006) (holding that agencies violated the NEPA and the National Historic Preservation Act by not adequately considering alternatives, including no action, when assessing a project’s environmental impact on an area of cultural and spiritual significance to Native Americans).
105. Pendery, supra note 81, at 642 (stating that the BLM can “regulate the time, place, and manner of oil and gas development to a substantial degree”) (emphasis added).
106. See 43 C.F.R. § 3101.1-3 (2019) (explaining how an authorized officer (AO) may require stipulations before issuing a lease).
109. See id. § 3163.1 (enabling the AO to address noncompliance through notices, fees assessments, and—if the operator is afforded time to take corrective action—cancellation); see also id. § 3162.1(b) (requiring operators to permit inspection of sites and records without notice).
of public concern has been raised. Moreover, the AO retains the authority to create or modify—depending on the progression of the operations and any unforeseen impacts upon the land—stipulations under controlling statutes. The AO may also take reasonable measures to minimize adverse impacts on natural resources, land uses, and users that were not addressed when the lease was executed.

3. Drilling and Development

Once it appears that oil and gas deposits in the field are profitable, the firm may transition to the development stage, which often requires that the firm or its contractors drill in the area. Between leasing and development, i.e., “the exploration phase,” the BLM continues to monitor the firm’s progress. The agency issues permits before the firm can proceed to development, dependent upon whether the firm’s drilling activities may “result in adverse effects.” The NEPA continues to apply because the project’s progression depends on the BLM’s approval, through a ROD, accompanying the EA or EIS. Beyond approval, the BLM may exercise its discretionary authority to identify and rectify unanticipated environmental impacts—including a culturally or socially significant impact—resulting from an oil or gas project’s operations.

110. Id. § 3101.1-4.
111. Id. § 3101.1-2.
112. Id.
113. See id. § 3162.2-1(b) (requiring that leased lands are “properly and timely developed . . . in accordance with good economic operating practices”).
115. See Pendery, supra note 81, at 608–09 (outlining the exploration and development stages of oil and gas leases); see also generally 43 C.F.R. § 3150.1 (stating that noncompliance to the terms of a permit, as well as applicable land use regulations and statutes, subjects it to either revocation or suspension by the authorized officer).
116. See 43 C.F.R. § 10010.25 (defining supplemental environmental impact statements); see also Pit River Tribe v. U.S. Forest Serv., 469 F.3d 768, 787 (9th Cir. 2006) (holding that the agency violated the NEPA by not undertaking a comprehensive review before extending leases based on the cultural significance of the landscape and tribal value).
B. Duties to Protect in Oil and Gas Leasing

This Part highlights the BLM’s critical duties under its statutory and regulatory framework assumed in the leasing process. The BLM must protect the environment and address the impacts of energy development based on the public interest. The terms and conditions in the BLM’s modern lease agreements flow from these legal obligations.

1. Federal Land Policy and Management Act

Under the FLPMA and mineral leasing laws, the BLM is the predominant regulator of oil and gas leases, controlling an estimated 244 million acres of public land and 710 million acres of federal subsurface mineral estate. The FLPMA is also referred to as the “BLM Organic Act” because it provides comprehensive management guidelines and administrative authority to the agency.

The FLPMA is considered the BLM’s charter to manage public lands in a way that safeguards “scientific, scenic, historical, ecological, environmental, . . . atmospheric, . . . and archeological values.” Moreover, Congress intended that the BLM preserve public lands in their natural condition to ensure they remain intact for outdoor recreation and human use or enjoyment for future generations. Fundamentally, conservation of the natural environment entails a human-centered approach to analyzing the adverse impacts of drilling and development. Such an approach would

117. Supra Part II.A.
118. Infra Part II.B.1 (describing legal precept under federal land management duties).
120. FLPMA, 43 U.S.C. § 1701. The BLM administers hundreds of mineral leasing laws. The few statutes explained, however, are the primary statutes that provide for BLM’s general administrative authority over oil, gas, and mineral leasing on public and tribal lands.
121. BUREAU OF LAND MGMT., U.S. DEPT OF THE INTERIOR, PUBLIC LAND STATISTICS 2019, at 2 (2020) [hereinafter PUBLIC LAND STATISTICS], https://www.blm.gov/sites/blm.gov/files/PublicLandStatistics2019.pdf. As of fiscal year 2019, the western states with the most approved applications for new permits to drill on BLM-managed lands were New Mexico (1,420), Wyoming (733), Colorado (354), North Dakota (299), and California (239). Id. at 105.
122. Coggins & Glickman, supra note 120.
123. FLPMA, 43 U.S.C. § 1701(a)(8).
124. Id.
125. See How We Manage, supra note 93.
require a heightened awareness of the security risks posed to Native women during extensive natural resource extraction projects.

Of the values listed, “ecological” and “environmental” hold significance in addressing the nexus between oil and gas leasing programs and the MMIW crisis. The BLM’s responsibility is two-fold: (1) understanding the scope of human environmental impact; and (2) realizing the extent of the BLM’s authority in controlling which operations are permissible under the set lease terms. With the public in mind, the BLM should act in accordance with environmental conservation principles. Furthermore, the FLPMA’s language demonstrates the expansive control that the BLM has—from “cradle-to-grave”—when entering into contractual agreements with oil and gas firms.

Although the FLPMA defines neither “ecological” nor “environmental,” the definition of “areas of critical environmental concern” explicitly provides for human considerations. Specifically, “areas of critical environmental concern” include certain designated lands that require special attention to prevent irreparable damage to “historic, cultural, or scenic values, fish, and wildlife resources, . . . or to protect life and safety from natural hazards.”

In setting forth its public land management policy, the FLPMA contains similar foundational notions to the BLM’s environmental protectionism duties over federal land from the NEPA, which was enacted six years prior. Under the NEPA, the BLM must “create and maintain conditions under which man and nature can exist in productive harmony” and “assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings.” Similarly, the FLPMA provides that the BLM must manage public lands “in a manner that will protect the quality of scientific, . . . ecological, environmental, . . . and archeological values[,] . . . preserve and protect . . . public lands in their natural condition[,] . . . and . . . provide for . . . human occupancy and use.”

126. See 40 C.F.R. § 1508.14 (2019) (providing that human environmental impacts may be assessed when natural environmental effects and economic or social effects are interrelated); Pendery, supra note 81, at 612 (explaining that setting terms in the leasing process allows the BLM to protect the environment).


128. See FLPMA, 43 U.S.C. § 1702(a) (listing the importance of “cultural, historic, and scenic value[]” of public lands, each of which are distinctly human aesthetic values).

129. Id. (emphasis added).

130. See, e.g., id. § 1701(a)(8), (a)(11); NEPA, 42 U.S.C. § 4331(a)(3)–(4), (c).

131. 42 U.S.C. § 4331(a), (b)(2).

The inclusion of “ecological” and “environmental” values in the FLPMA’s policy declaration highlights the legitimacy and importance of the BLM’s environmental mandate with respect to the rest of the Act.133 Stewardship of public lands with accountability for the environment, in light of energy development, is foundational to and guides the BLM’s administration.134 The text also impresses that, despite the often narrow construction of “environment” as meaning only the physical, natural, or biological elements of a place, the term encapsulates both physical and social/human concerns.135 Humans relate to and coexist with each other and the physical environment.136

Several FLPMA sections detail the extent of the BLM’s powers over land use planning.137 When initially developing and revising land use plans, the BLM must weigh the long-term and short-term benefits with the public’s interest central to its decisionmaking.138 The BLM must also, when practical, include the public (through meetings, comments, or hearings) in land use decisionmaking, particularly when development of land use programs “may have a significant impact on non-[f]ederal lands.”139 Complimentary to its consultation mandate, the BLM maintains significant discretion throughout the leasing process, which allows it to carefully manage development through ongoing supervision.140


137. Pendery, supra note 81, at 626 (noting that the BLM’s regulations and terms and conditions provided in modern leases allow it to retain rights to limit or condition development).


139. Id. § 1712(c)(9).

140. See id. § 1718 (stating that conveyances issued shall be subject to terms and conditions necessary “to [e]nsure proper land use and protection of the public interest”).
2. **Mineral Leasing Act**\(^{141}\)

While the FLPMA grants the BLM the general authority for administering federal lands on behalf of the public, the Mineral Leasing Act (MLA)\(^{142}\) and its implementing regulations establish the technical aspects of the leasing process.\(^{143}\) However, before and during development, the MLA provisions related to management and care for the environment state that the BLM must include provisions in its lease agreements for “ensuring the exercise of reasonable diligence, skill, and care in the operation of said property.”\(^{144}\) Moreover, the mandatory “shall” language emphasizes that the BLM must set the ground rules for leases with private firms seeking to develop on federal land.\(^{145}\) The BLM may also revoke or suspend drilling operations and other associated activities involving oil and gas entirely in the pursuit of environmental protectionism.\(^{146}\)

3. **Indian Mineral Development Act**

Extractive industries and their workers are not the only ones who stand to benefit from energy development.\(^{147}\) For example, in economically disadvantaged tribal communities, recent changes to rights-of-way regulations have eased access to the development of necessary pipelines on Indian land, which increased economic opportunities for the tribes.\(^{148}\)

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141. The authority to manage oil and gas resources in the forty-eight contiguous states comes from the Mineral Leasing Act (MLA), 30 U.S.C. §§ 181–287, and the Naval Petroleum Reserves Production Act, 42 U.S.C. §§ 6501–08, and applies to Alaska. The latter will not be discussed due to the unique nature of Alaska’s oil and gas program.


143. See id. § 189 (charging the DOI with developing rules and regulations).

144. Id. § 187.

145. Id.

146. See Getty Oil Co. v. Clark, 614 F. Supp. 904, 913, 918–20 (D. Wyo. 1985) (holding that under the NEPA, the BLM has discretionary authority to modify or suspend operations upon a determination of “unacceptable impacts on the wilderness characteristics of the area”).


The BLM’s land management laws only apply to the BLM’s management over federal lands, as opposed to tribal lands, which are governed by the IMDA. In drafting the IMDA, Congress wanted to promote tribal self-determination by affording tribes greater flexibility to negotiate the mineral leasing of tribally-owned lands. Doing so would promote energy development projects on tribal lands to encourage privatization, and tribes would enjoy greater returns on this development. Notwithstanding this explicit bargaining power, the final decision to approve or deny any minerals agreement ultimately lies with the DOI. In the progression of mineral development, tribal control becomes more limited. Thus, the DOI assumes its trust responsibility to tribes.

The DOI’s Bureau of Indian Affairs coordinates with tribes and the BLM up until the execution of the lease. Specifically, the BLM’s role involves analyzing the site-specific impacts of development on tribal lands. When deciding to approve or deny an agreement, the DOI must consider not only the financial returns to the tribe but also any environmental, social, or cultural consequences from mineral resource development on tribal land. The Trump Administration was challenged to balance inherent tribal sovereignty with maintaining the federal–tribal trust relationship under its American energy dominance campaign. Instead, while relaxing regulation and limiting federal government involvement is in the tribes’

way regulation in context with other agency rulemaking and orders). But see Ahmad, supra note 39, at 816 (noting that although regulations minimized the bureaucracy involved in processing requests from pipeline operators and utility companies, tribal rights on tribal lands were weakened).

151. Id.
153. Finn et al., supra note 26, at 36.
156. How We Manage, supra note 93.
economic interests, the Trump Administration made consequential decisions that suspended tribal interests to incentivize energy production.  

C. Discretion in Oil and Gas Leasing

Within the language of laws are vague notions of how to programatically execute those preferred policies at the agency level. Federal agencies must fill those gaps left in law through rulemaking, subject to judicial review, as part of their congressional mandate. The agency can further fill these gaps through the issuance of policy directives. In the BLM’s case, it may flex its authority by regulating the leasing process.

Executive agencies often reflect presidential priorities through rulemaking and issuance of agency “guidance documents,” such as policy statements or interpretive rules that are not legally binding. Although the vast swath of guidance documents are not rooted in the law but rather in the Executive Branch’s policy preferences and interpretations of the law, they nonetheless have incredible effects upon the agency’s interactions with society and industry.


162. A thorny and hotly-contested area in administrative law. See Nat’l Org. of Veterans’ Advocs. v. Sec’y of Veterans Affs., 260 F.3d 1365, 1374–75 (Fed. Cir. 2001) (distinguishing between substantive rules and interpretive rules); POPPER ET AL., supra note 160, at 283–84; see also, e.g., Dismas Charities, Inc. v. U.S. Dep’t of Just., 401 F.3d 666, 680, 682 (6th Cir. 2003) (holding that agency memoranda implementing a legal interpretation of a statute were interpretive rules and not subject to notice-and-comment).

In effect, the BLM’s gap-filling has become a concerted effort to expand domestically-produced energy sources, citing efficiency, while over time limiting its critical role in environmental review.\textsuperscript{164} For evidence, the DOI’s top-down directives to the BLM through SOs advanced the Trump Administration’s economic pursuits and ended Programmatic Environmental Impact Statements (PEISs) in the process.\textsuperscript{165} In other actions, the DOI directed the BLM to reexamine its mitigation policies and practices to “better balance” the necessity of conservation with “creating jobs.”\textsuperscript{166}

The BLM is considering regulatory changes to the land use plans that its regions depend on for setting goals for development on federal lands.\textsuperscript{167} The agency may remove NEPA requirements in their entirety from its planning regulations.\textsuperscript{168} Doing so would depreciate the notice-and-comment process and reduce the public’s awareness of what environmental consequences might stem from the BLM’s manner of leasing public lands in the arena where transparency is needed the most—significant land use planning.

III. RECOMMENDATIONS: HOW TO RESTORE THE HUMAN ENVIRONMENT FOR NATIVE WOMEN

Edith’s story illustrates the extensive perils Native women face when residing in the shadows of boomtowns.\textsuperscript{169} The tragedy that is the MMIW of its own regulation “does not violate the Constitution or a federal statute, it must be given ‘controlling weight unless it is plainly erroneous or inconsistent with the regulation’”).\textsuperscript{164} See U.S. DEP’T OF THE INTERIOR, ORDER NO. 3355, STREAMLINING NATIONAL ENVIRONMENTAL POLICY ACT REVIEWS AND IMPLEMENTATION OF EXECUTIVE ORDER 13807, “ESTABLISHING DISCIPLINE AND ACCOUNTABILITY IN THE ENVIRONMENTAL REVIEW AND PERMITTING PROCESS FOR INFRASTRUCTURE PROJECTS” § 3 (2017), https://www.doi.gov/sites/dot.gov/files/elips/documents/3355_-_streamlining_national_environmental_policy_reviews_and_implementation_of_executive_order_13807_establishing_discipline_and_accountability_in_the_environmental_review_and_permitting_process_for_pdf (citing efficiency as the reason for streamlining environmental reviews); see also supra Part I. (describing how the Trump Administration’s energy agenda has rolled back environmental review).

165. CONCERNING COAL SO, supra note 85.
166. AMERICAN ENERGY SO, supra note 85.
168. Id.
crisis is not a new phenomenon. The past three administrations have sought to exploit extractive resources on federal and tribal lands to generate revenue and outpace foreign competitors. With that knowledge, arguments to slow energy development in future administrations are likely futile. Although COVID-19 reduced the global economy’s energy demands, leading to plummeting oil prices, some predict that oil and natural gas could rebound as soon as 2022.

At each stage of oil and gas leasing, there are opportunities for the BLM to address the hazards of spurred energy development that often comes at the expense of Native women’s livelihoods. First, the BLM should account for security threats to Native women throughout its environmental review process for onshore oil and gas permitting and leasing projects. Second, the DOI must strengthen its enforcement of the NEPA and the FLPMA through its permitting and leasing authority. Third, because the revenue generated from extractive activities can result in net human environmental costs to Native women, interdisciplinary approaches to data collection must become part of the BLM’s preparation of an EA or EIS to anticipate these costs in proposed extractive projects. An effective way to standardize the collection of this data is through a social impacts analysis. By repudiating a check-the-box approach to environmental review and instead undertaking this three-pronged approach, the BLM can better account for the potential threats against Native women’s health and security from development.

sex trafficking, prostitution, bonded [labor], . . . the internal displacement of women[,] and environmental violence.”).


174. Supra Part II.
A. Contemplate Threats in Oil and Gas Leasing

For Native women, extractive industry development impacts personal safety. For Native women, extractive industry development impacts personal safety. Native women experience sexual abuse and other forms of violence against them, often fueled by alcohol abuse from the outside workers brought in for extractive industry projects.

The lease contract is a powerful yet underutilized tool available to the BLM. The BLM should require firms seeking approval in the leasing process to implement certain preventative policies and mitigation measures before exploration with Native women’s safety concerns in mind. With their vast resources, firms may have more influence over the workforce than traditional deterrence, which has shown to be ineffective. Borrowing from state laws that mandate human trafficking awareness training and signage, with resources for potential victims, oil and gas firms could similarly train their workforce in laws and policies related to substance abuse and human trafficking. Firms are better positioned to conduct random drug testing and monitor worksites and nearby man camps more closely. By taking these measures, the firm complies with federal, state, and— in certain situations—tribal laws and represents to the workforce its commitment to preventing conditions that give rise to violent crime against Native women. Moreover, if legal compliance is insufficient to persuade the parties to mitigate the oil


177. See Angus M. Thuermer Jr., BLM: Oilfield Developers Should Protect Indigenous Women GILLETTE NEWS REC. [Mar. 4, 2020], https://www.gillettenewsrecord.com/news/wyoming/article_66b121e9-8f39-5bd8-h5c7-0067ecda4816.html (noting that the BLM has publicly recommended that energy developers better screen and train workers); see also supra notes 105–112 and accompanying text (explaining the BLM’s discretion to set the terms, conditions, and stipulations in the lease contract).

178. See Sweet, supra note 27, at 1175–76 (positing human rights standards for corporations to prevent and address effects of development); supra notes 51–56 and accompanying text (describing issues that render policing ineffective as a deterrent).

179. Of the western states with the highest acreage of BLM-administered lands, only California requires signage and training for hospitality employees. PUBLIC LAND STATISTICS, supra note 121; KAREN WIGLE WEISS, ECPAT-USA, UNPACKING HUMAN TRAFFICKING, A SURVEY OF STATE LAWS TARGETING HUMAN TRAFFICKING IN THE HOSPITALITY INDUSTRY 16 (2019), https://static1.squarespace.com/static/594970e91b631b3571be12e2/v/3c7f48501de0f0017a00fb/1559753870065/Unpacking+Human+Trafficking+-+FINAL.pdf.
and gas industry’s operational impacts on Native women, evidence suggesting that corporate responsibility makes for good business should also prompt action.  

### B. Bolster Environmental Review

During the scoping phase, the BLM should account for rapid population growth from influxes of oil and gas industry workers on and near areas where tribal communities live. This must occur before and during drilling, construction, and exploration for fossil fuel resources. Specifically, the BLM can standardize geographic analysis and crime mapping as part of early environmental review for projects that tribal communities have expressed concerns over because of foreseen environmental or cultural disruptions.

The DOI’s SOs serve as essential directives that guide the quality of the BLM’s environmental review of its programming. Therefore, to promote consistency in implementation, the Secretary should issue a SO to the BLM’s regional offices emphasizing the potential site-specific impacts of energy development on Native women, with guidelines for how the agency will enhance its environmental review procedures when leasing to oil and gas operators.

In addition to the guiding SOs and EOs, the BLM’s instructional memoranda and handbooks assist the field offices and lessees in complying with governing environmental and land use statutes and their implementing regulations. For example, the agency’s “Gold Book” describes the basics of how operators may use “Environmental Best Management Practices” to

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180. See Adamson, supra note 13, at 28–29 (discussing empirical research that shows a correlation between economic performance based on a company’s ability to manage the social impacts of proposed extractive industry projects); Glob. Witness, Responsible Sourcing: The Business Case for Protecting Land and Environmental Defenders and Indigenous Communities’ Rights to Land and Resources 9 (2020), https://www.globawitness.org/documents/19887/Responsible_Sourcing_Investor_Briefing_April_2020.pdf (stating the risks associated with companies lacking a social license to operate within a community, including excessive delay and severe financial losses).

181. See supra notes 85–89 and accompanying text (describing this early interventionalist approach to mitigating anticipated risks, which the DOI previously endorsed).


183. See supra Part I.C (reviewing the influence of the DOI’s SOs over the BLM’s environmental review policies).

184. See supra notes 97–102 and accompanying text (discussing how RMPs are used in leasing); cf. supra notes 90–91 (providing an example of how the Obama Administration’s DOI used agency action to balance development with the concerns it heard from stakeholders).
“minimiz[e] undesirable impacts [on] the environment.”

185 From this and other advisory manuals, the agency should supplement the existing land management requirements with guiding principles for operators beyond the standard boilerplate language found in permits and lease contracts.

If energy development—made possible by oil and gas leasing—leads to violence against Native women, why are state and local agencies, and the tribes, not better situated than the BLM to address these site-specific impacts and tailor solutions for Native women’s security concerns? This argument is not without merit. However, the BLM is never on an island during its environmental review of a proposed project. Consultation from stakeholders is essential; the agency must consider state, local, and tribal concerns (in addition to other impacted agencies) and respond with proposed actions to ameliorate those concerns or proceed because there is no other option. As such, the environmental obligations the BLM undertakes in oil and gas leasing are the vehicles through which careful agency analysis of potential public safety threats to Native women in the human environment should occur. Accordingly, consulting with local and federal partners, the impacted communities, and the industry gives the agency a better chance at meaningful mitigation.

C. Incorporate a Social Impacts Analysis

The BLM has a duty to promote health, safety, and comfort on federal lands. Through the BLM’s law enforcement authority, this duty extends to several varied conceptions of “safety.” Safety management extends to those who, while on federal land, pose a public disturbance or risk to others, including through unreasonable noise, creating a hazard, or assault.

185. Surface Operating Standards, supra note 101, at 2–3. Notably, the Gold Book has not been revised in more than a decade. Id.

186. Supra Part II.A.2.


190. Id. § 8365.1-4(a)(1), (a)(2), (a)(5).
The core of the BLM’s EIS analysis is that the agency must take into consideration the economic and social impacts that might be felt by local communities.\footnote{191} Furthermore, the EIS must be based on interdisciplinary data that includes the natural and social sciences and environmental design.\footnote{192} Indeed, Congress used the phrase “human environment” to promote the understanding that any impacts on the natural environment are human impacts.\footnote{193}

A social impacts analysis that captures landscape changes from population shifts is one way to understand the impact on Native women’s safety.\footnote{194} Further study is necessary to identify whether there are pervasive trends between imbalanced populations in areas that cannot anticipate the boom—experiencing less available housing and more traffic congestion—and the socioeconomic inequality between the community and the oil workers.\footnote{195}

\footnote{191. Compare 40 C.F.R. § 1502.1 (stating that an EIS must address impacts on the “human environment”), with id. § 1508.14 (noting that an EIS should discuss social and economic impacts when they are interrelated with environmental effects).}

\footnote{192. Id. § 1502.6.}

\footnote{193. See supra notes 128–136 and accompanying text (discussing the statutory construction of “environment” under the FLPMA and the NEPA).}

\footnote{194. Courts have previously considered the intersections between the NEPA and crime as an environmental effect. See Hanly v. Kleindienst, 471 F.2d 823, 826, 836 (2d Cir. 1972) (ordering the General Services Administration to make findings regarding increased risk of crime from the operation of a nearby jail facility); Stand Up for Cal. v. U.S. Dep’t of the Interior, 204 F. Supp. 3d 212, 258, 275 (D.D.C. 2016) (deferring to an agency’s determination that taking a tract of land into trust for a tribe’s operation of a casino would not produce serious community harms, including gambling problems and traffic and transportation impacts); Chelsea Neighborhood Ass’n v. U.S. Postal Serv., 389 F. Supp. 3d 1171, 1184 (S.D.N.Y. 1975) (holding that for a proposed housing project, crime control problems must be considered in an EIS). But cf. Juliana v. United States, 947 F.3d 1159, 1191, 1181 (9th Cir. 2020) (holding that a claim against the federal government for its contribution to climate change from authorized fuel extraction and development was not redressable and showing that redressability issues remain when dealing with attenuated causation).}

\footnote{195. The BLM would link principles underlying the right to a supportive, healthy environment with observed changes in landscape from energy development that risks violating those rights. See 40 C.F.R. § 1508.14 (explaining that social and economic impacts on the human environment should be assessed when they are interrelated to environmental effects); see also NEPA HANDBOOK, supra note 94, at 22 (noting that proposed actions require NEPA analysis when existing environmental analysis documents are inadequate in light of new information); GIS Data, BUREAU OF LAND MGMT., https://www.blm.gov/services/geospatial/GISData (last visited Nov. 21, 2020) (reviewing the types of geospatial data the BLM collects and uses to identify social and economic impacts).}
CONCLUSION

“[T]he health of our Peoples cannot be separated from the health of our environment... upon which the mental, physical and social health of our communities is based.”

— Andrea Carmen

Against the backdrop of its statutory and regulatory framework, the BLM has lessened its crucial role in environmental review and risks sidestepping its obligations to the ecosystem, Native women, and tribal communities. Thus, the BLM must account for and mitigate the human environmental consequences from proposed oil and gas projects under the NEPA and its leases with oil and gas firms.

Federal agencies cannot address these complex problems alone—nor are they authorized to consider the jurisdictional patchwork that is federal, state, and tribal criminal law. However, the status quo of leaving investigatory reactivity to states and localities has not reduced unsolved crimes. Instead, perpetrators have targeted Native women under the belief that muddled law enforcement will continue to leave this already vulnerable group exposed. Edith’s story and others are reminders that securing environmental justice for Native women and tribal communities remains unfinished work. Nevertheless, the BLM has the authority and discretion to rectify the booming impacts of oil and gas leasing operations on federal and tribal lands and, in doing so, promote a higher quality of life for Native women.
