Re: Open Government Initiative

Dear Mr. Phillips and Ms. McFate:

The Center for Regulatory Effectiveness (CRE) has been an enthusiastic supporter of President Obama’s Open Government Initiative since its inception. We are pleased to be one of only nine organizations, along with OMB Watch, cited on the White House’s Why Open Government Matters blog posting where we described that the President’s Directive as “an excellent document.”1 We have also championed the President’s landmark Initiative on our website where we explained that the President’s Directive is “a remarkable document.”2

It is because of this Administration’s vigorous commitment to open government that we were amazed by the Bureau of Land Management’s (BLM’s) attached response to a routine request for access to public comments received in response to a Federal Register notice. Frankly, as explained below, we were astonished when we received BLM’s response that, in the year 2012 and under President Obama’s leadership, a federal agency would block public access to public comments.

CRE requested that BLM release public comments received on its Draft Programmatic Environmental Impact Statement for Oil Shale.3 The public comment period had been closed by a month and BLM refused to place the materials on Regulations.gov. Consequently, we had no alternative other than to request the material from BLM.

---

In the attached response we received from BLM, the agency stated:

*It is not required, nor is it feasible for the BLM to electronically release or otherwise publish public comments in real-time as they are received;*

We found that the BLM statement remarkable for two reasons:

1. CRE never requested “real-time” access to docket comments, rather we asked for public comments on a proceeding for which the comment period had closed a month earlier, our letter to BLM is available on the CRE website;\(^4\) and

2. BLM’s apparent inability to provide routine access to public comments without delays of months, or more, is in stark contrast to the superb work accomplished by the Office of Federal Register, under the Open Government Initiative, to speed and expand public access to public comments through the Federal Register 2.0 project.\(^5\)

We find it difficult to understand how BLM could characterize our request for public comments on a docket that had been closed for a month as a request for “real time” access to comments “as they are received.”

If BLM’s response to CRE is based on a misunderstanding that CRE requested comments in “real time” then BLM should notify CRE, and the public, that the agency will release public comments on **all** proceedings at the close of the public comment period.

If, on the other hand, BLM’s policy decision is to not release public comments at close of the comment period but rather make the release of the public comments contingent on a “decision being reached” at some point in the future, Mr. Phillips should:

1) Advise BLM that their policy is inconsistent with the Open Government Initiative; and

2) Make the letter public.

---

\(^4\) [http://www.thecre.com/oil/?p=221](http://www.thecre.com/oil/?p=221)

Center for Regulatory Effectiveness

Respectfully,

Jim Tozzi
Member, Board of Advisors


cc:
Nancy-Ann DeParle, Assistant to the President and Deputy Chief of Staff for Policy
Jennifer Palmieri, Deputy Communications Director
Sarah C. Bernard, Deputy Director of Digital Strategy
Jon Carson, Director of the Office of Public Engagement
Todd Park, Chief Technology Officer
Lisa Jollay, Acting Assistant Director, Information Resources Management, Bureau of Land Management
Michael Pool, Director (Acting), Bureau of Land Management
In Reply Refer To:
1264 (560) I

Bruce Levinson
Center for Regulatory Effectiveness
1601 Connecticut Avenue, N.W.
Washington, DC 20009

Dear Mr. Levinson:

This is in response to your letter dated June 8, 2012, addressed to the Bureau of Land Management (BLM) Assistant Director for Information Resources Management, concerning compliance with Open Government/Transparency Plans.

We understand that you are seeking real-time release of public comments received on the draft oil shale Programmatic Environmental Impact Statement (PEIS) for “Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the [BLM] in Colorado, Utah, and Wyoming, 77 FR 5833 (February 6, 2012).” The BLM’s current practice regarding public comments on a draft PEIS is to release the draft, collect and analyze the comments on the draft, and then release the comments in the final statement with the analysis. It is not required, nor is it feasible for the BLM to electronically release or otherwise publish public comments in real-time as they are received; however, we are constantly assessing our capabilities and processes as we continue to implement Open Government principles.

We do not believe that our current practice affects the public’s ability to fully participate in the commenting process as all comments received are considered, and made available to the public, along with the agency’s response, at least 30 days prior to any decision being reached regarding a proposed action. Further, the BLM’s practice is to hold one or more public meetings during a comment period in locations relevant to the action at issue, where views can be shared and individual questions can be answered directly. In the case of the Draft PEIS, the BLM held four meetings the week of March 12-15, 2012, in the following locations: Rifle, Colorado; Salt Lake City, Utah; Vernal, Utah; and, Rock Springs, Wyoming.

We invite you to continue using the established commenting processes. We have also received your Freedom of Information Act (FOIA) request seeking the public comments received on the Draft PEIS and will be addressing that request in the FOIA process.
If you would still like to engage in a meeting to further discuss your concerns or this response, please contact the BLM Information Quality Lead Mr. Corey J. Wells at (202) 912-7561, or at cjwells@blm.gov.

Sincerely,

Lisa Jollay
Acting Assistant Director,
Information Resources Management