

September 27, 2017

Submitted via www.regulations.gov

The Honorable Ryan Zinke
Secretary
U.S. Department of the Interior
1859 C Street, NW
Washington D.C. 20240

Re: Bureau of Land Management Regulatory Reform, DOI-2017-0003-0003

Dear Secretary Zinke:

The Independent Petroleum Association of America (IPAA) and the American Exploration and Production Council (AXPC) appreciate the opportunity to submit comments regarding ways the Department of the Interior (DOI) can improve management of federal lands and reform the regulatory process utilized by the agency. The comments contained in this document specifically address regulatory reform at the Bureau of Land Management (BLM).

IPAA is the leading, national upstream trade association representing oil and natural gas producers and service companies. IPAA represents thousands of independent oil and natural gas explorers and producers, as well as the service and supply industries that support their efforts. Many IPAA member companies actively produce oil and natural gas from leases on federal lands throughout the Intermountain West.

AXPC is a national trade association representing 33 of America's largest and most active independent natural gas and crude oil exploration and production companies. The AXPC's members are "independent" in that their operations are limited to the exploration for and production of natural gas and crude oil. Moreover, its members operate autonomously, unlike their fully integrated counterparts, which operate in different segments of the energy industry, such as refining and marketing. The AXPC's members are leaders in developing and applying the innovative and advanced technologies necessary to explore for and produce natural gas and crude oil that allows our nation to add reasonably priced domestic energy reserves in environmentally responsible ways.

Executive Summary

We welcome the Trump Administration's efforts to make American energy dominance a cornerstone of Administration policy. However, the current regulatory process at the BLM hampers that important goal. As Secretary Zinke is aware, production of oil and natural gas

from onshore federal leases has declined over the last decade. Oil and natural gas projects on federal lands face months of delay due to regulatory obstacles from the BLM that require a given producer to face countless challenges and slow the process to a crawl.

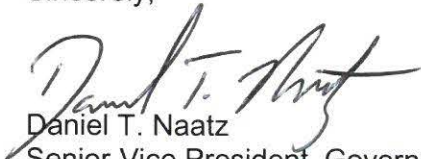
IPAA and AXPC have already submitted extensive comments to the Trump Administration outlining regulatory reform measures that would help increase access to America's oil and natural gas resources. Virtually all of those comments focus on the need to provide relief or reforms to the National Environmental Policy Act (NEPA). We applaud Deputy Secretary David Bernhardt's recent announcement to reform and streamline the NEPA process at DOI and look forward to working with the agency on this issue. The BLM currently has the ability to utilize categorical exclusions to satisfy NEPA requirements and we urge the agency to aggressively utilize this valuable tool. We also suggest the agency consider supporting legislation limiting NEPA application for certain actions. For example, the BLM could pursue legislative efforts to define specific agency actions where a lower threshold of environmental analysis could be used. It is clear that the current program is in need of an overhaul and we believe the BLM should rigorously pursue changes that will make the NEPA process more streamlined.

To the maximum extent possible, BLM should also look for opportunities to delegate federal authority to state agencies. From negotiating Memorandums of Understanding (MOU) and Memorandums of Agreement (MOA) with the states to engaging stakeholders in the planning process, more can be done to fully engage states and local communities. The agency should also ensure that interagency disagreements are not allowed to delay or disrupt projects. Robust engagement with state and local stakeholders is a key part of making land use planning decisions and essential for BLM to carry-out its multiple use mandate.

Please see our enclosed comments which outline in greater detail many of the issues that have been raised. We look forward to working with the BLM to make changes to the oil and natural gas permitting process on federal lands. Unless significant changes are made to the program, the flawed and unworkable system currently in place will only further drive independent producers from operating on federal lands. That would not only be problematic for our members, but also for the federal government and the American taxpayer which receive substantial royalties on mineral production from these areas.

Thank you for the opportunity to submit comments on these important issues and do not hesitate to contact us if you have additional questions.

Sincerely,



Daniel T. Naatz
Senior Vice President, Government Relations
Independent Petroleum Association of America



V. Bruce Thompson
President American Exploration & Production Council

The following recommendations outline various issues that would enhance opportunities to improve the federal regulatory system, streamline permitting and limit abuse of the regulatory process.

Way BLM can use existing authority:

- Use of Categorical Exclusions – Several laws provide for agencies to exclude from burdensome requirements – like a full NEPA review – for certain decisions. For example, the Energy Policy Act of 2005 created Categorical Exclusions (CatEx) that the BLM could apply to a specific set of actions. The Obama Administration chose not to use these CatEx, but they remain available and should be reinstated. Other CatEx options may exist that should be used.
- Memorandums of Understanding (MOU) and Memorandums of Agreement (MOA) – Federal agencies have the ability to negotiate clear understandings regarding the responsibilities of agencies to fulfill certain regulatory and permitting tasks. They can negotiate these roles among federal agencies or between federal and state agencies. For example, the BLM routinely relied on the expertise of state oil and natural gas regulatory agencies to define standards and permit wells even if they were on BLM lands. Those relationships have been severely tested as a result of the BLM regulatory actions to develop its own – and different – drilling regulations, but it can be reestablished. Expanding these relationships will enhance the permitting and regulatory processes.
- Enforcement – Federal law provides authority to enforce its laws. Recently, federal enforcement has moved from a role of providing necessary back up to state action to an aggressive effort to step over states, reinterpret federal requirements, threaten the regulated community with excessive penalties and negotiate agreement requiring actions that exceed federal authority. This approach needs significant reconstruction to provide federal enforcement only when it is essential and to treat the regulated community with respect and fairness.

Reinterpreting Laws

- Initiate Rulemakings to Narrow the Scope of Laws – While all laws define terms, the details of those definitions are eventually framed by regulatory interpretation. On numerous occasions, the Obama Administration endeavored to dramatically broaden the scope of federal authority when it came to federal land management. For example, the Obama Administration worked to broaden the authority of the Migratory Bird Treaty Act by establishing “incidental take” as a criminal violation. While a regulation was never promulgated, the uncertainty caused by the Obama Administration has led to inconsistent enforcement in the field. Providing precise definitions and directions that limit the scope and authority of federal land management agencies would help reduce the extent that laws override state jurisdictions and the opportunity for raising issues by litigation in the federal domain.
- Use Authority to Subcategorize Within Laws – Most federal laws give authority to agencies to subcategorize the regulated community. Subcategorization allows agencies to assure that its regulatory actions are appropriate to the size, function, capacity of the regulated targets. Use of subcategorization can assure that regulations designed for large operations

are not imposed on small businesses in a manner that does not reflect their limited abilities to absorb their costs.

Specific issues for BLM focus

BLM Venting and Flaring Regulation: With the venting and flaring regulation now limited to action by BLM, a draft rule to revise the final rule is necessary as soon as possible. The final rule's purpose of obtaining additional royalties is specious given the impact it would have on reducing production to meet the "methane budgets" it creates. However, its application of controls to low producing wells would compel their shutdown. The regulation needs to be recognized for its true purpose – an attack on low producing American oil and natural gas wells.

BLM Categorical Exclusions Use: The Energy Policy Act of 2005 created 5 categorical exclusions for BLM to use to satisfy NEPA requirements. These exclusions have not been used for several years but could facilitate permitting. Categorical Exclusion No. 3 allows BLM to satisfy NEPA when approving Applications for Permits to Drill (APD) in a developed field by use of a categorical exclusion when a NEPA document that is less than 5 years old analyzed drilling as a reasonably foreseeable activity. BLM should direct field offices to actually utilize this categorical exclusion, and all other categorical exclusions for permitting, as often and to the fullest extent as possible. Where EA's or EIS's are not available for using Cat. Ex. No. 3, field offices should be provided extra funding, staff, or other necessary support to create programmatic NEPA documents that could support use of this categorical exclusion. As a policy matter, BLM/DOI should look at whether "renewing" EAs or EISs that are older than 5 years by a Determination of NEPA Adequacy (DNA) is a legally defensible option for making more existing EAs or EISs available to support Cat. Ex. No. 3. If it is determined that this is not a viable option, further steps such as legislation or (if it would be legally adequate) a rulemaking should be considered to extend Cat. Ex. No. 3 to allow NEPA documents with a DNA to be used to support Cat. Ex. No. 3. Further, development of additional categorical exclusions, by regulation, should be considered, such as categorical exclusions that might tier off of RMP EISs or other EISs or programmatic EAs to allow federal oil and gas leases to be issued without the need to develop EAs.

BLM – Applications for Permits to Drill (APD): Rulemaking should address the burdens placed on operators when attempting to permit drilling and production activities on the federal lands. This could be done in multiple ways, however, the most efficient would be to consider a new framework by which APDs were processed. Similar to permit-by-rule or national permit schemes under other agencies, BLM could improve their process by providing for a timeline by which permits could be denied or challenged. If all requirements were met by the permit applicant, BLM could presume compliance for those permits if after 60 days the operator has not been notified of deficiencies in the permits. Under this scenario, BLM could limit the number of applications it received for review at any one particular time, by providing that the permits would expire after a very short period of time, 120 days from their approval, for example. This would force operators to only apply for permits on wells they were planning to drill under a short time frame. This new framework for permit application and approval would provide for additional resources for the BLM to meet its other obligations at the field level, and allow for more responsible production from the federal lands. This could all be achieved by amending 43 CFR 3163, as currently the BLM is not meeting their statutory deadlines as set out under the Energy Policy Act of 2005.

Currently, BLM has acted to limit permitting actions inappropriately, such as:

- (1) BLM has delayed a sundry notice for well over 6 years not granting approval or disapproval of a relatively routine action. Within the course of 6 years, policies may change and then the operator then is disadvantaged for lack of regulatory certainty, subject to new requirements not consistent at the time the sundry was submitted, and potential enforcement actions.
 - a. Example: commingling applications were not reviewed by the BLM in a timely manner have resulted in rejected applications. Applications submitted in 2009 under guidance at that time, were rejected in 2015 under guidance released in 2013.
 - b. This has been due to the application not complying with new rules that had been released since the application submittal.
- (2) Failure to process applications to drill (APDs) in timely manner: BLM tends to delay processing routine APDs and other approvals often relaying that additional guidance is necessary. Significant backlogs with the approval process have resulted. Recommend a culture change with more focus on customer service and cooperation.
- (3) BLM has utilized a number of APD processing features to illegally and inappropriately extent their authority over private lands. Examples include:
 - a. Requiring applicants of APDs to obtain surface use agreements guaranteeing unfettered BLM access to private lands to evaluate NEPA, historic preservation etc... prior to BLM issuing APDs. BLM must recognize its limited authority over private lands. Simply because some federal minerals may be captured by an oil or gas well does not give BLM unlimited rights over private surface lands or to require operators to broker BLM access to those lands.
 - b. BLM cannot require that operators negotiate certain access or BLM authority elements in surface use agreements with private surface landowners.
 - c. IM 2009-078 has been misused by the BLM to impose requirements that restrict surface owners and operators' rights. It should be withdrawn and reviewed.
 - d. DOI needs to provide clear guidance on handling split estates.
 - e. BLM will obtain additional costly and unnecessary requirements in an APD that BLM otherwise would not have authority to require by demanding Applicate Committed Measures (ACMs) be included in APDs or BLM will not approve APDs. This creates a huge burden on the producer. An example is performing extensive wildlife studies at operator's cost.

Suggested improvements include:

- (1) Reduce application burdens based on level of federal interest: The application requirements are the same for any communitization agreement that pools a federal mineral interest regardless of the value of the interest. As an example, application requirements are the same if a communitization agreement has a Federal mineral interest of 0.3% or 12.5%. This results in a lot of labor for both the BLM and operators even if an agreement has a very small Federal mineral interest. It would be helpful if application requirements were tiered based on the value of the Federal mineral interest similar to how economic application requirements were not required for certain marginal production rates under the new rules.
- (2) Improvement to and usage of electronic paperwork submissions. AFMSS II is only a system for APDs/NOSs currently and this has handicapped the local offices requiring

“workarounds” to circumvent the system. Better mechanisms for payment and/or options for payment are needed.

- (3) Improve BLM website. BLM rebranded the federal lands around recreation and other similar uses. However, it used to serve as a more practical / working system for all uses of federal lands. The website should have a section targeted to customer service for those industries that use federal lands for resource development. It used to be managed by the State offices and it was moved to DC. For example, the Casper and Buffalo BLMs would post information monthly to track the status of actions. Now, information is being disseminated to trade associations and then passed along to members
- (4) NEPA process: AFMSS II – each time something new or deficiencies are submitted through AFMSS II it is routed through the entire review processes which leads to a never-ending process loop of finding deficiencies.
- (5) Streamlined permitting expediting by recognition of conservation programs that are already in place.
- (6) Utilizing regional RMPs as the main source of Environmental Assessments that could be supplemented by coordinated onsite reviews and archaeological database reviews.
- (7) Effectively embracing the Pilot Program to facilitate permitting.

BLM – Onshore Order Revisions: BLM should, as soon as possible, issue an extension of time for compliance with the Onshore Order Revisions (Site Security Rule, Oil Measurement Rule, and Gas Measurement Rule), in a legally defensible manner. As of now, BLM has issued a partial delay, by way of a “Dear Operator Letter”, of certain provisions of the Site Security Rule and Oil Measurement Rule. This piecemeal delay has caused confusion in industry and in BLM itself on what needs to be complied with and when. Further, after issuing an extension of time for compliance, BLM should develop a proposed rule that would improve the rules. Areas in need of improvement include, but are not limited to:

- (1) Improving the process for how measurement equipment will be approved (and the need to ensure approval of equipment on existing facilities to avoid costly retrofits of existing facilities),
- (2) Removal of excessively punitive provisions, such as immediate assessments that allow BLM to impose fines without notice of a violation to operators,
- (3) Removal of provisions that would allow BLM to cancel existing approvals for commingling and off-lease measurement,
- (4) Modifying meter proving, meter tube inspection, and gas sampling requirements so they are more reasonable,
- (5) Modifying Logs and Record reporting requirements to be more reasonable,
- (6) Providing more time for “phase in” of compliance deadlines.

National Environmental Policy Act (NEPA): The requirements of NEPA reviews of major federal actions continue to be abuse by development opponents. Following are some options to consider that might improve the process:

- (1) Established regulation, policy or agency requirements to have a set schedule for the NEPA process to ensure timely environmental reviews, no delays, and reducing costs to both the agencies and industry. Establish a requirement to have EIS documents

completed within 24 months after initiation of review. Some have taken 8 years to get a draft.

- (2) Agencies should assign project manager for any NEPA project with appropriate project management skills.
- (3) The process of mandating alternatives in the NEPA review creates delays, unnecessary evaluations (work and costs). The scope of alternatives and its utility to the NEPA process should be reconsidered.
- (4) Guidance on the scope of integration of greenhouse gases/climate change evaluations must be established.