August 24, 2026

U.S. Department of the Interior
Director (630)
Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240
Attention: RIN #1004-AF33
Submitted via www.regulations.gov

RE: Royalty for Oil and Gas Lost From Onshore Federal and Indian Leases

Dear Director Pearce:

Western Energy Alliance (Alliance), the Independent Petroleum Association of America (IPAA), Colorado Oil and Gas Association, Independent Petroleum Association of New Mexico, Montana Petroleum Association, New Mexico Oil and Gas Association, North Dakota Petroleum Council, Petroleum Association of Wyoming, Utah Petroleum Association, and West Slope Colorado Oil and Gas Association, collectively the Trades, appreciate the opportunity to comment on the Bureau of Land Management's (BLM) proposal to modify its existing regulations pertaining to royalties due on oil and natural gas lost on Federal and Indian leases.

The Trades represent member companies who are engaged in the environmentally responsible development of oil and natural gas on BLM lands across the West. Our members will be directly impacted by this rulemaking and have a substantial interest in ensuring it aligns with BLM's statutory authority and achieves the appropriate balance between environmental protection and energy development on federal lands. The Trades support the proposed updates, with some edits suggested below, and urge BLM to expeditiously finalize the rule.

The Background section of the proposed rule summarizes the lengthy and complex path under which BLM has, over the past decade-plus, attempted to issue a rulemaking governing royalties for oil and gas lost on Federal or Indian leases as a replacement to BLM's Notice to Lessees and Operators 4A: Royalty or Compensation for Oil and Gas Lost (NTL-4A), which was issued in January 1980. The Trades have been intimately involved in both the rulemaking processes and the legal machinations that surround several attempts to replace NTL-4A, and we appreciate the opportunity to comment on and support BLM's current proposal.

In January 2023, Western Energy Alliance and IPAA submitted comments (2023 Trades Letter) on BLM's most recent draft rule, which was titled *Waste Prevention, Production Subject to Royalties, and Resource Conservation* and ultimately finalized in April 2024 (the 2024 Rule). The comments on the 2024 Rule summarized the historical and legal framework surrounding these rulemakings, highlighted concerns with the January 2023 proposal, and provided numerous attachments that fully detail the economic, scientific, and legal concerns the Alliance and IPAA had regarding that proposal.

Rather than repeating those points of discussion herein, we attach our comments from January 2023 as an appendix to this letter. These comments instead provide feedback on the 2026 proposal, including support for numerous proposed changes, as well as suggested edits and clarifications we recommend BLM make before finalizing this rulemaking. The comments below proceed section-by-section through the proposed rule, although not all the sections necessitate a response.

Section 3162.3-1, Drilling Applications and Plans

The Trades strongly support the proposal to remove the requirement to submit either a waste minimization plan (WMP) or self-certification with an application for permit to drill (APD). The 2024 rule required WMPs for APD approvals that were overly burdensome and not required by statute, included information that is not necessary for BLM to approve the APD, and in some cases required disclosure of proprietary information that is unknown to the operator - see pages 8 through 12 of the 2023 Trades Letter. In lieu of submitting this WMP, the operator could self-certify that it will accurately report 100% of gas produced, with limited exceptions for flaring, while placing a royalty obligation on any flaring under an APD issued after self-certification.

BLM's draft rule appropriately notes that WMP "requirements are very expensive, they are not required by law, operators are already financially incentivized to capture as much gas as possible because it benefits them financially to do so, and much of the pipeline capacity constraints of the 2010s have been alleviated." Companies will continue to operate in a manner that allows them to capture all economically-recoverable gas while following applicable federal and state laws and regulations regarding venting and flaring of gas. BLM is neither the federal agency tasked with setting these standards, nor is it required by law to issue regulations enforcing them as part of the APD approval process. BLM's proposed removal of the WMP/self-certification requirement is therefore prudent and in line with its statutory authority.

Section 3179.1, Purpose

As noted in the preamble to the proposed rule, BLM's 2024 Rule outlined four purposes, of which complying with the Federal Land Policy and Management Act's (FLPMA) multiple use and sustained yield mandate came last. The other three purposes "are primarily focused on the prevention of waste from Federal and Indian oil and gas leases," which is not a requirement specifically tasked by Congress under FLPMA, the Mineral Leasing Act (MLA), the National Environmental Policy Act (NEPA), or any other law governing BLM's management of federal lands.

Instead, the 2024 Rule's purpose co-opted statutory authority that is delegated to the U.S. Environmental Protection Agency and state regulatory bodies under the guise of "waste prevention." BLM's proposed rule would update the Purpose section to more appropriately focus on measurement and reporting of production on Federal and Indian leases. The Trades support this updated Purpose section.

Section 3179.10, Definitions and Acronyms

As discussed further below, the Trades request that the definition of "Type 1 Equipment" and "Type 2 equipment" in this section be expanded. Because these definitions are newly created in this draft rule, and because they are important in determining when reporting is required and when it is not, we ask BLM to clarify the definitions and list equipment by name (without creating an exclusive list of Type 2 Equipment).

The Trades note that under this section, gas from Type 1 equipment would normally go to sales; however, the definition of Type 2 Equipment does not list the obverse, i.e. that gas would not go to sales. As drafted, the rest of the rule could be interpreted otherwise and therefore require reporting on gas lost from numerous equipment types that this section does not contemplate.

The Trades discuss the importance of these definitions in our comments on Section 3179.41, below, and request BLM update the definitions as follows, with changes in red:

- *Type 1 equipment means an engineered vent stack, flare, or combustor ~~that consists of open-air pipe, open-air flare stack, flare pit, enclosed flare, or a combustion device~~ designed for venting, flaring, or combustion of gas that would ~~normally~~ actually go to sales without compression or processing, that receives gas downstream of the production separator and upstream of the gas FMP.*

- *Type 2 equipment means all other equipment that would not actually go to sales without compression or processing, <u>including but not limited to</u> crankcase vents, compressor rod packing and other seals, incomplete combustion from engines, flares, or burners, water tank emissions, dehydration unit vents, fugitive equipment leaks, and temporary emissions associated with start-ups, shutdowns, and maintenance.*

<u>Section 3179.40, Reasonable precautions to prevent waste</u>

The Trades express our strong support for removal of the section entitled "Reasonable precautions to prevent waste." Although the MLA does allow BLM to require reasonable precautions, the 2024 Rule created a subjective system under which BLM could require specific measures to prevent waste as conditions of approval for APDs that may or may not be reasonable, with no standards under which to determine whether the requirement is necessary, appropriate, and within BLM's authority.

<u>Section 3179.41, Determining When the Loss of Oil or Gas Is Avoidable or Unavoidable</u>

The Trades support the proposed rule's updated section on determining when oil or gas is unavoidably lost. We specifically support the increase from 20k Mcf to 50k Mcf of vented, flared, or combusted gas in § 3179.41(b)(2) and the increase from 24 to 48 hours for completion well tests in § 3179.41(b)(3).

The Trades further ask BLM to clarify § 3179.41(b)(10), which holds that gas is unavoidably lost in the case of "pipeline constraints." We note that this subsection only applies if there is a connected pipeline; however, the term "constraints" is not defined in the rule in a way that gives guidance to operators on what qualifies under this subsection.

BLM should consider incorporating economic factors into the determination of when "pipeline constraints" lead to unavoidably lost gas, similar to what is contained in NTL-4A. BLM should also consider broadening this subsection to include situations when there is not a gas pipeline available due to no fault of the operator. For instance, if there is a connected sales line but there is insufficient capacity for gas takeaway, this should be considered unavoidably lost gas. Similarly, if a connected pipeline is shut down by the pipeline company, this is also out of the control of the operator and should lead to vented and flared gas being considered unavoidably lost.

Further clarification of “pipeline constraints” would be beneficial and remove legal and regulatory uncertainty going forward.

The Trades further recommend one addition to this list of operations and sources of unavoidably lost gas:

> (13) All Type 2 equipment gas sources ***including but not limited to*** crankcase vents, compressor rod packing and other seals, incomplete combustion from engines, flares, or burners, water tank emissions, dehydration unit vents, fugitive equipment leaks, and temporary emissions associated with start-ups, shutdowns, and maintenance.

As noted in our discussion of § 3179.10 above, it is important to clarify the list of equipment from which gas cannot be defined as avoidably lost, while allowing for other types of equipment to be included in this section in the future. If BLM does not include these equipment types as sources of unavoidably lost gas, companies would be required to report an order of magnitude more line items on its Oil and Gas Operations Report (OGOR), when combined with the new Venting and Flaring Measurement Points section discussed in more detail below.

Section 3179.50, Measurement of Oil-Well Gas Volume at Type 1 Equipment

The Trades appreciate the flexibility provided by giving companies the opportunity to choose their estimation methodology for high pressure flares that are lower than the 1,050 Mcf/month threshold in the current rule.

Similarly, the Trades recommend that BLM provide additional flexibility for measurement of flares exceeding that 1,050 Mcf/month threshold by expanding the list of technologies that can be used for those measurements. BLM should acknowledge in the preamble that BLM and EPA both currently allow other measurement technologies beyond orifice and ultrasonic meters – specifically, thermal mass meters. In the future, should new technologies arrive that are equivalent or superior to those listed, it would be beneficial to have a more open definition of accepted tools. We therefore recommend BLM make the following edits, in red, to the proposed regulation:

(c) Type 1 equipment requiring measurement must use metering technologies in accordance with API MPMS 14.10. ~~either orifice plates and orifice meter tubes, or ultrasonic meters. Type 1 equipment measurement systems must meet the following requirements:~~

~~(1) When using orifice metering systems, the operator must comply with the low-volume measurement requirements in § 3175.80, and the low-volume electronic gas measurement requirements in § 3175.100.~~

~~(2) When using ultrasonic metering systems, the operator must comply with the following requirements:~~

~~(i) Upon request from the AO, the operator must submit test reports prepared in accordance with API 22.3 (incorporated by reference, see § 3179.30) for any make and model of ultrasonic meter used to measure gas at Type 1 equipment.~~

~~(ii) The operator must install and operate ultrasonic metering systems for venting, flaring, or combustion according to the manufacturer's specifications and upon request, the operator must submit those specifications to the AO.~~

~~(iii) The operator must use ultrasonic metering systems that comply with the low-volume electronic gas measurement requirements in § 3175.100.~~

~~(3)~~ Operators must evaluate the production facility to determine which type of vent, flare, or combustion equipment is safe for the facility.

This modification would expand the measurement technology allowed to measure gas at Type 1 equipment to better align with industry standards. Flares are first and foremost part of the safety system, which needs to be able to instantaneously release pressure. Prescribing an orifice meter to be used in this service could restrict the flare's ability to perform in an emergency situation.

Section 3179.51, Required reporting of vented, flared, or combusted gas volumes

While the Trades understand BLM's intent to be good stewards of federal mineral resources by providing "accountability for the full volume produced from a well, lease, unit PA, or CA," we believe this section and the following section, 3179.60, go too far in imposing reporting requirements that are otherwise contrary to the general purpose of this proposed rule.

The 2024 Waste Prevention Final Rule required reporting on flared volumes, which take place at a single point at designated facility locations per Section 3179.72. In contrast, the 2026 Proposed Rule would require per Section 3179.51 reporting on all vented, flared, and combusted volumes – presumably only for Type 1 equipment, although that is unclear as currently proposed. As currently written, it would have the unintended consequence of requiring production accounting for potentially dozens of additional emission points (designed primarily for exceptional pressure control such as pressure safety values) at thousands of individual oil and gas facilities that process federal minerals.

Importantly, these "venting" and "combustion" locations (identified in the proposed rule as "Venting or Flaring Measurement Points" or VFMPs) do not emit at quantities that would be significant from a royalty-paying basis. In addition, because of the very low volumes, intermittent nature, and inherent safety features of these types of equipment, measurement is often impractical and volumes would need to be estimated, complicating the auditability of OGOR reporting. The significant increased reporting burden on the OGOR for individual federal leases is not recognized in the proposed rule.

As such, the Trades oppose the imposition of VFMPs. If BLM is unwilling to remove the introduction of VFMPs from the proposed rule altogether, at a minimum the Trades request that subsection (a) of this section be edited to read as follows, with edits in red:

> The operator must report all vented, flared, or combusted volumes, measured or estimated, and both avoidable and unavoidable losses from Type 1 equipment, using all applicable ONRR reporting requirements.

At the very least, limiting reporting in this section to vented, flared, or combusted gas from Type 1 equipment alone would narrow the new reporting requirements, which would nevertheless still be substantial. As an example, one company estimates that applying this section to Type 2 equipment would increase the amount of line item entries submitted in OGOR for one existing facility would increase from 46 to 506, an eleven-fold increase in reporting requirements. Additionally, this would likely create the need for a reconciliation with the Office of Natural Resources Revenue (ONRR). The Trades assume this was not BLM's intent, and ask BLM to clarify this in the final rule.

3179.60, Standards for Creating an Operator-Assigned Venting or Flaring Measurement Point Number (VFMP)

The Trades oppose the introduction of this section into the proposed rule and believe it is unnecessary to meet BLM's measurement goals. It is unclear what BLM is attempting to achieve by introducing numerous new measurement points, in light of the changes elsewhere in the proposed rule that reduce or eliminate overly burdensome reporting requirements.

As drafted, this section would require operators to apply for VFMP numbers and report all vented, flared, or combusted gas to ONRR, regardless of whether that gas is avoidably or unavoidably lost. That requirement runs directly contrary to the spirit of this proposed rule, which is intended to ease the regulatory burden while ensuring *avoidably* lost gas is accurately reported.

The burden that would fall on the operator to submit a sundry notice for each VFMP and report new line items in its OGOR reporting would be substantial. The Trades ask BLM to consider removing this section in its entirety, as well as prior section 3179.51, or at the very list to narrow the scope and clarify the intent of these sections.

Removed 2024 Rule Sections 3179.100, Leak Detection and Repair Program, 3179.101, Repairing Leaks, and § 3179.102 Required Recordkeeping for Leak Detection and Repair

The Trades express our strong support for removing these sections. While our member companies remain committed to using leak detection and repair (LDAR) under other applicable laws and non-BLM federal and state agency requirements, the 2024 requirements for LDAR exceeded BLM's statutory authority, which is limited to measuring the amount of gas produced. The Trades appreciate that BLM is removing these duplicative and overly burdensome requirements that do not help achieve BLM's statutory mandates.

We further note that the existing deadline for compliance with these sections of the 2024 Rule is December 10, 2026, and if BLM has not finalized this rulemaking by that date, the LDAR requirements go into effect. Therefore, we respectfully request that if BLM is unable to finalize this replacement rule by the December compliance deadline, it issue an additional suspension of the compliance deadline to a later date.

Conclusion

The Trades support BLM's proposed rule for royalties for oil and gas lost on Federal and Indian leases. We urge BLM to move forward with finalizing the rule expeditiously, after addressing our suggested edits and minor concerns as expressed above. Thank you for your time and consideration of these comments. Please do not hesitate to contact us if you have any questions or would like additional information.

Sincerely,

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