THE DEPARTMENT OF THE INTERIOR

WASHINGTON

October 22, 2018

Memorandum

To: Ryan Zinke
Secretary of the Interior

From: Scott Angelle
Chair Royalty Policy Committee

Subject: Royalty Policy Committee Recommendations

Recently, the Royalty Policy Committee (RPC) met in Denver, CO. This was the fourth in-person, full committee meeting.

During the meeting, members of the RPC's three subcommittees presented, debated, and agreed to three final recommendations. The recommendations were unanimously approved by the RPC for your consideration and are the result of a thorough, cooperative, and collaborative process.

The Committee also heard public comments which will be made part of the official record. The minutes from the meeting will be posted to the Committee website at www.doi.gov/rpc.

The full Committee will meet next on January 31, 2019, in Phoenix, AZ. In the meantime, work groups are continuing to meet to discuss potential incentives for your consideration that may increase coal production and optimize federal revenue from off-shore wind investments.

Attachment:
Summary of Proceedings including recommendations

ROYALTY POLICY COMMITTEE
SEPTEMBER 13, 2018 MEETING

SUMMARY OF PROCEEDINGS

U.S. DEPARTMENT OF THE INTERIOR
PREPARED: SEPTEMBER 2018

I. Introduction

The U.S. Department of the Interior (DOI), hosted by Secretary of the Interior Ryan Zinke and by Acting Chair of the Royalty Policy Committee Scott Angelle, and with James Schindler presiding as Designated Federal Official (DFO) and Executive Director, convened the fourth public meeting of the Royalty Policy Committee (RPC) on September 13, 2018 in Denver, CO.

Please note that, throughout this meeting summary, comments are provided without attribution unless made by presenters or by non-Committee members.

Interested parties are invited to contact the RPC at rpc@ios.doi.gov with any questions, comments, or concerns regarding the content of this meeting summary.

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II. Summary of Decisions and Action Items

A. Decisions

The RPC approved the following recommendations for submission to the Secretary of the Interior *(see the Presentations, Key Discussions, and* Committee Vote *section, page 2)*:

1. *RPC recommends that the Secretary of the Interior pursue rulemaking to adopt all applicable provisions of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) and the Federal Oil and Gas Royalty Simplification Act of 1996 to include Federal coal by the provisions of each statute. The Secretary should also propose including Federal coal be included in the statue in his legislative proposals to Congress.*
2. *RPC recommends the DOI pursue rulemaking to define "Federal Gas Index Pricing" with a Marketable Condition Concept, consistent with the hypothetical presentation titled "Gas Index Pricing Options," dated August 2018, as presented to the RPC meeting of September 13, 2018.*
3. *To promote transparency, the RPC recommends that DOI publish well, lease, and monthly production data for royalty-bearing resources on Federal lands. Tribes should have the ability to opt-in. This information should not include data prohibited by law from being released.*

B. Action Items and Next Steps

1. The Solicitor's Office will review the RPC's TERA recommendation and define which activities are and are not "inherently Federal functions."
2. A subgroup of the Tribal Energy Subcommittee will look at categorical exclusions.
3. The Chair will report on taxation to the Tribal Energy Subcommittee before the January RPC meeting.
4. The Planning, Analysis, and Competitiveness Subcommittee will revise the Notification of Permit to Drill recommendation for the January meeting.

5. The nomination period for open vacancies on the RPC will be announced in the Federal Register.
6. The Office of Natural Resources Revenue (ONRR) will identify challenges of the gross proceeds model and report to Fair Return and Value Subcommittee.

III. Presentations, Key Discussions, and Committee Vote

James Schindler, presiding as Designated Federal Official (DFO) and Executive Director, opened the meeting and welcomed participants. Mr. Schindler announced that over the past year some committee members have ended their voluntary service with the RPC and the nomination period for committee vacancies will be posted in the Federal Register, likely at the beginning of October, and remain open for 30 days. There is at least one opening in each sector (*For more information and to apply, go to the RPC website https://www.doi.gov/rpc/federal-register-notices*). The goal is for the nominations and selection to be completed by the next meeting. Mr. Schindler also announced that Mr. Vincent DeVito, the previous chairman of the RPC, has left the committee. Mr. Scott Angelle, Director of the Bureau of Safety and Environmental Enforcement (BSEE), is now acting chairman of the RPC.

Mr. Angelle introduced himself and shared his views of the committee. He noted the committee has moved out of Washington and come to the front lines of energy. Mr. Angelle thanked Mr. DeVito for his leadership and work to get the committee off the ground. He stated the work this committee does makes a difference to each American and in seeking affordable energy. Mr. Angelle concluded his introduction by outlining the increases in energy production and revenues on Federal lands from 2016 to 2017. He added the U.S. is on pace for a 17% increase in revenues from 2017 to 2018.

Mr. Schindler walked through the meeting agenda and announced all the materials are available on the RPC website. After obtaining feedback on the meeting process, the RPC has adjusted the agenda to reflect more time for public comment and questions/discussions. Mr. Schindler also announced that feedback is welcome on the agenda and format.

All individuals in attendance introduced themselves. A full attendance list can be found in Section VII – Meeting Participants, page 30.

A. Tribal Energy Subcommittee

President Russell Begaye, Navajo Nation, introduced the subcommittee. Mr. Begaye shared that there has been a lot of enthusiasm for participating. He noted the sizeable impact on Tribal lands from the issues discussed here and that the Tribes look forward to taking complete control over their natural resources. Mr. Begaye noted there have been struggles over many years in fully utilizing Tribal resources including diminishing revenues from coal, possible closure of mines, and delayed development of resources

due to the time it takes for an Environmental Impact Statement (EIS). He added the subcommittee is looking forward to developments on issues such as TERA, categorical exclusions, and dual taxation.

Subcommittee members shared updates to the RPC in the following areas:

- TERA: Bidtah Becker, Navajo Nation Division of Natural Resources
- Categorical Exclusions: Tim LaPointe and Adam Red, Southern Ute Indian Tribe
- Taxation: Bidtah Becker, Navajo Nation Division of Natural Resources

1. TERA

Bidtah Becker, Navajo Nation Division of Natural Resources, provided an update on the Tribal Energy Resource Agreements (TERA) working group. She noted there is a need to develop affordable energy and Tribal lands are part of the answer. Ms. Becker stated there have been no TERAs entered into since Congress authorized DOI in 2005 to enter into agreements with Tribes that would allow them to take over all aspects of energy leasing and production on their lands. In 2015, the Government Accountability Office (GAO) report recommended that agreements can be made for actions that are not inherently federal functions.

At the last RPC meeting, the committee moved forward a recommendation to revisit TERA and the recommendation has been sent to DOI to move forward. Ms. Becker then introduced John Tahsuda to provide updates on this recommendation. Mr. Tahsuda stated that the Solicitor's Office has been working to define inherently federal functions. Mr. Tahsuda stated there has been some confusion identified during this process and that impacted the timeline; however, the goal is to provide clarity and a definition of inherently federal functions in 3-6 months.

In response to Ms. Becker's presentation, RPC members asked the following questions and made the following comments. *Responses from Ms. Becker and other subcommittee members are indicated in italics.*

- The DOI regulations are silent regarding what is an inherently federal function and what is not. So, the path forward is to identify federally inherent functions and what is not?
    - *Yes, DOI is working to identify constitutional duties as well as statutory duties. There is also a trust relationship and DOI is working with the Tribes to identify the functions.*
- Since the 2005 Energy Policy Act, the federal government should have been able to identify those functions. That has not happened. Congratulations on being a part of the administration that is taking this on. It seems like a smart policy going forward.
- The recommendation to define inherently federal functions was presented at the last meeting in Albuquerque, New Mexico. The committee voted on it and accepted the recommendation. From there, it went to DOI to provide a definition.

- The working group looks forward to reporting on the progress at the next public meeting in January.

2. Categorical Exclusions

Tim LaPoint introduced the topic and provided an update on the categorical exclusions working group. He noted that the Energy Policy Act of 2005 was passed to expedite energy development and included five categories of statutory categorical exclusions that only applied to federal lands. Adam Red added that Section 390 of the Energy Policy Act is clear in that Congress sought to minimize NEPA review for the five areas. He stated the subcommittee is working to get the exclusions applied to Tribal lands to minimize disruptions to development from prolonged NEPA analysis.

In response to Mr. LaPoint and Mr. Red's presentation, RPC members asked the following questions and made the following comments. *Responses from Mr. LaPoint, Mr. Red, and other subcommittee members are indicated in italics.*

- Has the categorical exclusion for industry made Indian lands less competitive?
    - *The Southern Ute is not seeing that, but every area is different. BLM is using the categorical exclusions as intended, so Southern Ute permits are being processed faster than in other areas.*
- The Department has been working to look at categorical exclusions in general. The Bureau of Indian Affairs is going through the process.
- NEPA is affecting Tribes in every way. There are lawsuits. A wind farm developed by a foreign company received a categorical exclusion that no Tribe can get. Direct service Tribes should be looked at, as they are losing a fortune every day.
- Categorical exclusions are making it difficult for Tribes to develop lands and generate revenue?
    - *One billion was lost in last 4 years alone. Tribes are going to court over NEPA. Large landowners are trying to take Tribal lands for the mineral rights.*
- The working group will form a subcommittee to review the impacts and steps forward on categorical exclusions and Indian country. Progress will be presented at the next public meeting in January.

3. Taxation

Bidtah Becker provided an update on the taxation working group. Ms. Becker noted that dual taxation, where states and tribes both tax, is an identified hurdle for energy development on Indian country, as it creates an uneven economic environment. She stated each state handles dual taxation differently, with some states having agreements to reduce taxes. Ms. Becker added that this is a key issue to ensure smart energy development on tribal lands. She stated the subcommittee had no recommendations at this time but look forward to having one in January.

In response to Ms. Becker's presentation, RPC members asked the following questions and made the following comments. *Responses from Ms. Becker and other subcommittee members are indicated in italics.*

- DOI will work with colleagues to determine the path forward. There are a lot of impacts on other stakeholders. There will be conversations with the subcommittee in anticipation for the January meeting.

B. Presentation on Revenue Data Site and BSEE Data Center

1. BSEE Data Center

Jeff Harris, BSEE, presented the BSEE Data Center via webex. The BSEE data center (data.bsee.gov) can be reached from the BSEE website by clicking on "offshore stats & facts" and then "offshore data center." Mr. Harris stated the data center is a shared service for BOEM and BSEE and provides a large amount of data, including leasing, drilling, pipeline, wells, platform and rig data, and production. The "Quick Data Online Query" provides users an easy way to search for information via company name, API number, etc., and data for a particular year or a certain amount can also be searched. He added that most data is updated monthly or bimonthly and all reports can be exported as PDF or excel file. He noted most of the data is from the Gulf of Mexico, but offshore production totals include Alaska and Pacific.

In response to Mr. Harris' presentation, RPC members asked the following questions and made the following comments. *Responses from subcommittee members are indicated in italics.*

- The data is updated regularly, but how fresh is the data?
  - There is a lag in the information that can be three or more months for the total data. The average lag time is about four months to get the data from the producers, enter it into the system, and have it available on the website.
- This is a work in progress and previous directors have worked to make this more transparent. Is there an opportunity for a gap analysis on what is there, what is desired, and what resources are needed?
  - There was a workgroup that met every six months. The workgroup met with industry and the vendor data group to improve the system. The group has asked for more GIS data and has acquired a resource for that. Internal reviews have been conducted for what the workgroup does and could be publishing. The focus of the information has changed (ex. a focus on decommissioning, information for operators, etc.) and new items are added as needed. There has not been a formal gap analysis, but the work group has updated as needed. These efforts have improved the quality.

    - *RPC can help get the needed resources to advance or accelerate what needs to be accomplished in this area. It should be transparent and accurate. This brings confidence to the American people.*
- Do you have data on how many users access the site?
    - In 2017, there was 3.5 TB of data accessed by 1.5 million page views.

2. Revenue Data Site

Moroya Faied, ONRR, presented ONRR's revenue data site (revenuedata.doi.gov). She explained that the site allows users to learn how the government manages resources, revenues, and disbursements. Users can view onshore or offshore revenues or revenue by company, commodity, or revenue type and can explore and download production, revenue, and disbursement data. She noted there is also a step-by-step guide to the production process of oil and gas. The States of Colorado, Wyoming, Alaska, and Montana opted into deeper reporting and users can learn about production for the state, as well as specific counties, and download federal and state revenue and disbursement data.

In response to Ms. Faied's presentation, RPC members asked the following questions and made the following comments. *Responses from subcommittee members are indicated in italics.*

- The data site has been a work in progress for years. ONRR has worked with federal partners, industry, and civil society to make the data available and transparent. There is a recommendation to the committee to go even more granular with data. There is a plan to go deeper with the data and have it accessible, minding the restrictions on proprietary data. The plan is to take production data down to the well level. The Solicitor's office is being consulted to look at the Trade Secrets Act and ensure the data presented is in line with the laws and regulations. The hope is this is completed by December and the data is uploaded to the website by end of next December. The desire is for a site that is robust, easy to use, and transparent, and for more users on the site.
- There were four states that participate in the deeper data. What makes them special?
    - Colorado, Wyoming, Alaska, and Montana participated in deeper reporting during the Extractive Industries Transparency Initiative (EITI). Disbursements (state and local funds) and revenue generated is available. Other states do not have this detail.
    - *The federal production data available is not dependent on a state's participation.*
- The Osage Tribe is double taxed. Schools, roads, and bridges have been built with revenue. The numbers generated are fine. There needs to be more detail in how those numbers were generated in order to evaluate what is left. There is a certain level you have to stop the production data.

- *This seems to be the end point for the data. Behind that there are audit responsibilities to verify the accuracy of the data reported.*
  - *All the data seen has gone through audit compliance reviews. State data is also verified through their processes.*
- How many royalty payers are in the system?
  - *There are 2,300.*
- Does the site speak to the process of audits and how to go about doing the tracking and verifying?
  - Yes, this is on the "how it works" page.
- Are Indian lands reported to this site?
  - High level revenue data is available for Indian lands.
  - *There are discussions with the Navajo Nation and some of the other tribes. ONRR presents the Indian data a high level so that the Indian nations can decide on how they want to present their data.*
- Looking at data on the BSEE site and this site, the information provided by, is that uploaded here as well? There may be some allotees that are being put here on the data bank in terms of payouts and such.
  - *None of the Indian data goes further than total revenues associated with Indian lands.*
- The Navajo Nation would be interested in more data, perhaps an opt in function. This would need to be Tribe by Tribe but could be complicated with individual allottees.
- Is there a statutory responsibility for this data to be reported?
  - *This is a transparency initiative, not a statutory responsibility.*

C. Planning, Analysis, and Competitiveness Subcommittee

Randall Luthi, co-chair of the subcommittee, introduced the subcommittee. He stated work is completed through work groups that meet via conference call. Mr. Luthi stated that public interest groups have been able to participate in the workgroup conferences calls and to contact rpc@ios.doi.gov in advance to participate or give a presentation. Subcommittee members shared updates and provided recommendations to the RPC in the following areas:

- Onshore Oil & Gas: Kathleen Sgamma, Western Energy Alliance
- Coal: Matthew Adams, Cloud Peak Energy
- Non-Fossil and Renewables: Marisa Mitchel, Intersect Power
- Offshore Oil & Gas: Patrick Noah, ConocoPhillips Company
- Alaska: John Crowther, State of Alaska
- Studies: Emily Kennedy Hague, American Petroleum Institute

1. Onshore Oil & Gas

Kathleen Sgamma, Western Energy Alliance, provided an update on the work group and a presented a potential recommendationfor a pilot program for drilling and involves the use of a Notification of Permit to Drill (NPD) rather than an Application

for Permit to Drill (APD). Ms. Sgamma noted the pilot program would begin with select cases, mostly categorical exclusions which already meet certain environmental protection criteria, and only be used for select field offices. She specified that if a well meets certain criteria, the necessary environmental analysis has been completed, and a company has provided BLM with the necessary paperwork, an NPD could be used to speed up the permitting process.

Ms. Sgamma also noted that a program to evaluate the pilot program is envisioned. She specified the recommendation can only go forward via legislation, so the recommendation would be for the Secretary to encourage Congress to enact legislation. She noted there are two bills currently before the House Natural Resources Committee, the Common Sense Permitting Act, which has to do with extending categorical exclusions for non-federal surface wells that touch federal minerals, and the Streamlining Permitting Efficiencies and Development Act (SPEED Act), which has to do with the notification for permit to drill. The SPEED Act was the model for the proposed recommendation.

Ultimately the recommendation was referred back to the subcommittee for further analysis, revisions, and to be represented at the next public meeting in January.

In response to Ms. Sgamma's presentation, RPC members asked the following questions and made the following comments. *Responses from Ms. Sgamma and other subcommittee members are indicated in italics.*

- What is the basis for 45 days? Is there a comparable time in other legislation?
  - *Energy Policy Act of 2005 gives BLM 30 days to approve or deny complete applications. BLM does not meet that in a majority of cases, so it has been extended to 45 days to fall in line with APDs. Comments heard earlier center around no chance for public involvement. The public has opportunities for comment in NEPA documents. NPDs could be posted just like an APD is posted now. Currently, once BLM has an APD ready, it is posted for 30 days. The same process could occur for an NPD and the public would have the opportunity to be notified. This is a pilot program to work out the kinks.*
- One member of the public this morning raised concerns about delays from incomplete paperwork. If BLM decides the NPD was incomplete, what is the impact to the timeline?
  - *If the paperwork does not meet the threshold of being complete, then it does not go forward. The permit has to be complete in order to go forward.*
- The statement that says the BLM shall notify or takes no action presupposes that BLM has the duty to evaluate the notice. BLM has 45 days to evaluate the notice to drill. That duty to evaluate is not being altered. The duty to evaluate is the same duty that currently exists. There is not a lessening of regulatory review, but

perhaps a way to streamline and reach the same goal. It would be clear that there is no lessening of the review process.

  - *BLM has two reviews. There is a surface review for incomplete paperwork. Then BLM has 45 days to review and make a decision on if the requirements for an NPD are met.*
  - *So, BLM reserves the right during those 45 days, for whatever reason, to notify the operator of an objection. Such that the 45-day clock does not lead to automatic activity.*
  - *BLM has 45 days to review the NPD to be sure the criteria is met.*
- If there is an event, say a surge in activity and there is a need to staff up or an event where personnel are dislocated, there is not an automatic right to the permit. Correct?
  - *This is designed for areas that have already been evaluated and on a well pad with little environmental impact. This would help BLM if there are workload issues.*
- Does BLM get to a point where they retain authority? Is it to notify the operator of objections? Say if for some reason there is a natural disaster that takes BLM attention away and BLM cannot review the NPD. What happens if day 46 comes around and the NPD has not been reviewed.
  - *That is not how air permitting works now. If the criteria are met, then the permit moves forward. If the permit does not meet the requirements or does not meet a threshold, then a company is liable.*
- I think for my question, BLM would not be able to do anything but reject the application, because it cannot shirk it responsibilities under multiple acts. There are projects with categorical exclusions already, some that have a land use plan, and another involving surveys using third parties. That final survey does not seem to be covered by NEPA. Where does a programmatic EIS come in?
  - *BLM has 45 days to raise objections under the National Historic Preservation Act (NHPA) or the Endangered Species Act (ESA) and goes through consultation. There are requirements under laws. If NEPA analysis has not been completed, you are not in an NPD situation.*
  - *The second paragraph is concerning about the permit going forward if a third party conducts a survey. The recommendation as written seems to indicate a second category of projects could apply for an NPD if a survey is completed, even if no NEPA analysis has been completed. What you are saying though is that if NEPA analysis has not been completed, then this does not apply?*
  - *The surveys were intended to satisfy requirements under NHPA. If no NEPA analysis has been completed, then no NPD can be obtained.*
  - *The language in the paragraph is unclear and could be struck or the language amended.*
- On the first page, there is another paragraph with related language that seems to say the same thing about environmental surveys being completed by BLM approved inspectors. I have the same concern. If you are going to do this without

any guidance of approved inspectors, is BLM supposed to get a process that approves inspectors? There is no mention of affiliated inspectors. Is there a process in mind for BLM to approve inspectors? If not, the language may need to be amended.

  - *Environmental surveys could be changed to wildlife surveys. Biologists or archaeologists that do surveys have to meet certain requirements.*
  - *So, it would be a cultural survey. But not for every APD if one has done already been done for the entire area.*

- Is the group intending to recommend this legislation?
  - *Originally it was going to be rulemaking or a bill. Further analysis has shown that it must be done through legislation. There are two bills already put forward and the recommendation will be consistent with that.*
  - *The language was largely taken from the language of the bill and the bill should be attached to show this.*
  - *There are differences in the bill and the recommendation, but Congress will be looked to for clarifications.*
  - *For the purpose of today, the effort is to make a recommendation on what the language should be. If a recommendation is made today and Congress decides to go a different way, there is no choice but to follow the law of the land. The work of the RPC is to drive the policy that is appropriate for the nation.*
- The recommendation was written to cover rulemaking and legislation. Now that legislation has already been submitted, the recommendation could benefit from input from the agency as well as language from the bills. The best approach may be to withdraw the recommendation and rewrite it. The working group will look at the bills and provide the bills to the committee.
  - *It would be hard to approve a recommendation based on bills that have not been read by the committee members.*
  - *It may be prudent to look at the bills and decide what the committee desires in the bills.*
- There has to be rulemaking. The big question is inherently federal functions for tribes? The same requirements being talked about is the same everyone else is going to use.
- The first paragraph about wells also needs to be defined.
  - *A bullet list of the criteria may help add clarity.*
- Is the proposed legislation for a pilot program?
  - *It is not right now.*
  - *That is an important difference.*

Updates to previous recommendations:

- The agency issued policy on Fee/Fee/Fed and categorical exclusions. The agency is currently revising onshore orders 3, 4, and 5. The agency continues to look for ways to reduce timelines.

2. Coal

Matthew Adams, Cloud Peak Energy, provided updates on the coal working group. He noted that the working group has had great involvement from state representativesand DOI officials. Mr. Adams stated there have been conversations with the WY Department of Environmental Quality about issues and solutions. The group is working through a number of items, including looking to find efficiencies in timelines from concept to shovel for coal. The group is not looking to eliminate environmental permitting or assessments but is looking at streamlining right to mine and getting production and revenue. He stated that the group hopes to have more details in January.

a) Recommendation 1- Rulemaking and legislative proposals

RPC recommends that the Secretary of the Interior pursue rulemaking to adopt the timetable and all applicable provisions of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) and the Federal Oil and Gas Royalty Simplification Act of 1996 to include Federal coal by the provisions of each statute. The Secretary should also propose including Federal coal be included in the statue in his legislative proposals to Congress.

Mr. Adams provided detail on the proposed recommendation. FOGRMA, as amended, put in a body of law for the management of royalties, statues of limitations, appeals, credits, interest payments, underpayments, and deductions for oil and gas. Coal has similar issues to oil and gas, but the framework for oil and gas does not apply to coal. Mr. Adams stated that two key aspects for coal are the royalty return process and applying royalty rate reductions. He added there is no provision for final agency action concerning royalty rate returns, and that without a final agency action, appeals sit and continue to accrue interest with no resolution. He noted there is currently no way for the coal industry to apply a rate reduction that was granted but not taken. The recommendation is to undertake rulemaking or enact legislation that these provisions should apply to coal or a similar framework should be created.

In response to Mr. Adams' presentation, RPC members asked the following questions and made the following comments. *Responses from Mr. Adams and other subcommittee members are indicated in italics.*

- It seems that ONRR would be most affected by this recommendation and change. Anything ONRR would like to add?
  - ONRR would like a clear, defined set of laws that dictates what ONRR does. ONRR has no objections to the recommendation, making sure the right language is in the recommendation.
- Is there is a reason to not extend the recommendation for all minerals?
  - *No. There should be further conversations and proper vetting needed before extending the recommendation.*
- What other minerals?
  - *There are oil, gas, coal, hard rock minerals, renewables, potash, basalt. It should be defined as leasable minerals.*

- Does this require a legislative proposal?
    - *The working group is anticipating the recommendation will take legislation.*
    - *The recommendation was amended from a broader recommendation that included all provisions.*
- The recommendation creates equity between coal and oil/gas. One issue that came up in the public-sector meetings was is this the best system? The committee may want to look at the more general framework in the future.
    - The system we have in place works, but open to efficiencies.
- What percentage of coal on public lands is different from federal vs Indian lands?
    - There is quite a bit of difference. There is more federal than Indian coal. The only active mine is the Navajo mine, which is under stress. There is a proposed mine for the Crow. Blackfeet has a mine, but production is dwarfed.
- If a Tribe wishes to participate, that can be discussed.
- Under the recommendation, should it say legislation and rulemaking or legislation and subsequent rulemaking?
    - *Intent is if it can be resolved with rulemaking it should be. If it is legislation, rulemaking would follow.*

Mr. Angelle asked if there were any objections to the recommendation. Hearing none, he announced that the committee adopted the recommendation.

3. Non-Fossil and Renewables

Marisa Mitchell, Intersect Power, introduced the working group and stated the group has heard from experts in the field and is preparing recommendations for the January meeting.

Renee Orr, BOEM, provided an update on the previous recommendations involving BOEM. She stated that BOEM issued a request for feedback to gather information about the future of renewables and received 104 comments. BOEM is considering those comments and the recommendations of the committee when thinking about moving the renewable energy program forward. BOEM has a robust program in the Northeast and Mid-Atlantic and is looking to Pacific and Southeast Atlantic. Regarding the extension of the OCS, Ms. Orr noted BOEM has had internal conversations and consultations with Congress. There are two pieces of legislation and both would meet the intent of this recommendation. Regarding the previous recommendations involving an instruction memorandum for solar and the grandfathering of projects, Mike Nedd, BLM, said the Department is still reviewing how to move forward on the recommendations.

In response to Ms. Mitchell's presentation, RPC members asked the following questions and made the following comments. *Responses from Ms. Mitchell and other subcommittee members are indicated in italics.*

- Is there a timeline for renewables regarding the BLM recommendations?
    - *At this time there is no timetable, but BLM is considering all options.*

4. Offshore Oil & Gas

Kevin Simpson introduced the working group and stated there has been no consensus on recommendations under discussion, but a deeper dive is required for the leasing program. Renee Orr, BOEM, provided an update on a preliminary recommendation under discussion, which has to do with extending primary terms and lease terms to account for deep water or adverse conditions.

Ms. Orr then provided an update on the previous recommendations. She noted the previous recommendation that involved increasing acreage falls within BOEM's re-initiation of the National Oil and Gas Leasing Program. BOEM has issued a Draft Proposed Program, which received over 2 million public comments, analyzed the comments received, and completed the bulk of the analysis the Secretary must consider. BOEM expects the Proposed Program and a Draft EIS are to be released at the end of this year, followed by a 90-day public comment period and further public meetings. Ms. Orr said the final program decision will be released in 2019.

Mr. Angelle provided an update regarding the previous recommendation involving simplification of the process to clarify costly or declining fields. He stated a workshop for operators to better communicate decisions is being planned. Kevin Karl, BSEE, added that BSEE is working on applications and interest in royalty relief has increased. He noted industry meetings are occurring to explain where royalty relief occurs and BSEE is looking at shallow water. Mr. Karl stated there are two programs to provide royalty relief, the end of life program and special case royalty relief. BSEE will let the RPC know of the workshop date when it is set.

There were no questions or comments following this presentation.

5. Alaska

John Crowther, State of Alaska, provided an update on the working group. The group has no recommendations at this time but is in discussions with other groups. Mr. Crowther noted Alaska has had made significant process on federal permitting decisions and agencies are being responsive. Starting this year, Alaska is looking to increase federal production and royalties from National Petroleum Reserve. Mike Nedd, BLM, provided an update on a previous recommendation concerning leasing in the Alaska National Wildlife Refuge. He stated the lease sale is moving ahead of statutory deadlines. Mr. Nedd said BLM has issued a notice to prepare an EIS and comments closed in August and that BLM is moving to complete the sale as soon as possible.

There were no questions or comments following this presentation.

6. Studies

Emily Kennedy Hague, American Petroleum Institute, provided an update on the working group. The group is looking at modeling from the department and has no critiques or recommendations at this time. She added that DOI provided data to the working group in order to check the models. Renee Orr, BOEM, provided an update on previous recommendations. She stated DOI has rolled the recommendations into one study and are completing a comparative analysis in cooperation with BSEE and BLM. Ms. Orr said DOI is looking at offshore, onshore, and later in life royalty relief.

There were no questions or comments following this presentation.

D. Fair Return & Value Subcommittee

Matthew Adams, Cloud Peak Energy, introduced the subcommittee and thanked the speakers that have participated in work group calls. Mr. Adams stated the subcommittee is focused on evaluation and have coordinated with BLM and ONRR for this collaborative effort.

Subcommittee members shared updates and provided recommendations to the RPC in the following areas:

- Coal Benchmarks: Matthew Adams, Cloud Peak Energy
- Marketable Conditions/Index Pricing: Pat Noah, ConocoPhillips Company
- Public Data: Matthew Adams, Cloud Peak Energy

1. Coal Benchmarks

Mr. Adams stated the working group is looking at a valuation scheme that is different than what is in place currently. The group is working through the analysis and will present it to the Solicitor's Office if it becomes a preliminary recommendation. The group is also looking at valuation issues and would like to create a boundary and set of rules that is consistent to apply, which provides fair value and economic incentive to produce. Greg Gould, ONRR, provided updates to the previous recommendations regarding arms-length sales and updating the solids handbook. Mr. Gould stated that the Solicitor's review of the Secretarial Order to provide a "dear payor letter indicating arms-length sales are preferential" is still ongoing, but the group expects the review to be complete prior to the January meeting.

2. Marketable Conditions/Index Pricing

Pat Noah, ConocoPhillips Company, provided an update on the working group and introduced the recommendation. He said the recommendation approved in February regarding the index pricing approach is undergoing an economic review. The basis for the index price approach was that the Federal Valuation Rule for Indian Land method works well. Since February, the index pricing and marketable conditions work groups were combined and took a new look at index pricing. Mr. Noah noted that the group is

looking to flesh out some different approaches and concepts and that the update today involves possible ways to consider an index price going forward.

a) Recommendation 2 - Rulemaking

RPC recommends the DOI pursue rulemaking to define "Federal Gas Index Pricing" with a Marketable Condition Concept, consistent with the hypothetical presentation titled "Gas Index Pricing Options," dated August 2018, as presented to the RPC meeting of September 13, 2018.

Mr. Noah noted the recommendation is the same as considered in February, but with more specificity. The intent is to provide a standard price that is based on publications and market sources. The price is to apply to well head MMBTUs and incorporate regionally sensitive transportation deductions. He added that the intent is to create a transparent process and not to delegate authority to industry to set their own price. If there is an index price approach, payors would have to use the current system or use the index price solution. If the index price solution was used, it would be a price that came out of rulemaking and clear about how to apply the pricing.

Mr. Noah noted that in the current system, gas is sold by gross proceeds, which can be time consuming, involve a lot of resources, and leads to audits and litigation. The 2017 valuation rule did not work and the highest reported priced was not achievable; therefore, did not represent a valid index. Transportation cost deductions were low and the pricing could only be put towards non-arms length sales. Mr. Noah stated this was an incomplete solution, and the working group has outlined different ways for DOI to construct an index price solution. He noted the numbers in the example that was shown are for illustration purposes only and are used to convey the framework.

Mike Foster, ConocoPhillips, walked through an example of how to apply the index pricing model *(see "meeting materials" for further detail)*. He explained, in the hypothetical producing example, there is one lease with one well that is flowing down to a gas processing facility. Mr. Foster stated there are four dimensions of marketable conditions: production pressure, water, carbon dioxide, and hydrogen sulfide percentages. He noted, in order to calculate the index price, these dimensions are needed at the production site and the downstream delivery site. Mr. Foster outlined the elements necessary for index price valuations:

A) *Market index price* – this is not known and the working group is looking to build off the Federal Valuation Rule for Indian Land model for its ease of calculation, transparency, and ease of auditability.
B) *Average transportation deduction* – this is not known yet. The group is open to suggestions and may defer to ONRR for an average.
C) *Average disallowed system unbundling cost allocation (UCA)* – Mr. Foster stated this needs to be defined. He added ONRR's modeling studies, industry calculations, or government UCAs could be starting points for defining this element.

D) *BTU bump factor* – Mr. Foster stated this needs to be defined. He added the Federal Valuation Rule for Indian Land alternative accounting calculation might be used.

E) *Component E* is the simple published price, which takes all the above factors and calculates the price.

Valuation Options:

1A: Simple ONRR Published Price with BTU Bump – Mr. Foster noted this is a simple calculation with less possibility for human error.

1B: Simple Industry Calculated Price with BTU Bump – In this option, industry calculates the price (component E) rather than having ONRR publish the price.

2: Calculated price using Standardized Table with Bump – This formula uses a table to calculate the components. Mr. Foster added that the whole table with costs needs to be developed, which is three to four times the effort that is needed than to define the components.

3: Optional Method: Gross Proceeds – This option allows industry to calculate via option 1 or 2 or stay on gross proceeds. Mr. Foster added this does not streamline the process and is burdensome.

In response to Mr. Noah's presentation, RPC members asked the following questions and made the following comments. *Responses from Mr. Noah and other subcommittee members are indicated in italics.*

- How significant of an issue is this calculation for the government?
  - It is not an easy task and lot of work is needed to calculate the price every month. The proposal would need to go through rulemaking process. Advance notice of proposed concepts would give the public weigh the ability to weigh-in.
- Is there a way to placemetrics onlitigation, manhours, or whatever the taxpayers are having to struggle with in terms of the gross proceeds model? The government should only embrace another model if it is fair, accurate, represents fair compensation, and reduces unintended consequences. It is important for transparency, and metrics are needed behind how significant of a problem it is for the government. Litigation costs money. Chasing away investment costs jobs. That could put the department in a position to say this is a win-win.
  - There are currently 200 appeals that take months or years. This is a large amount of work by lawyers. High levels can be provided.
- Tribes just came out of litigation that settled the current price. This is federal lands. You do not own the reservation, which is why we decide what happens. A good price should be decided and Tribes consulted.
  - *There have been statements about adopting what Indian nations use. There isappreciation of how simple, accurate, and smart the policy is.*
  - The Southern Ute Tribe and other tribes were concerned with delays and uncertainty. Tribes undertook negotiated rulemakeing with industry and

a collection of producing tribes, with oversight with ONRR. The idea was to come up with an index price, minus deductions, that industry would have certainty, pay the tribes, and it would be a win-win. Tribes and industry have certainty about payments. Ithas been a success for industry and Indian tribes. There are elements of that over the course of 20 years that may need to be tweaked, but it is conceptually solid. This was being considered by federal royalty payors and the Departmentat the time, but agreement could not be reached. As a result, Indian country was able to implement a rule 20 years before the Federal government.

- Reflecting on comments, does this represent shopping? Is there a place where folks might be able to evaluate what is in their best interest?
    - That is still to be resolved. There is two-year period where companies have to stick with the pricing model, so it would not be a well by well or month by month election. It would not be wise economically to bounce back and forth that quickly.
- Does the government retain the right to say preferences?
    - It would be an audit nightmare to bounce back and forth. The proposal is that industry chooses a method that is honored for two years. After the two years, the company can then go back to a different pricing model.
- Related to the safety net, negotiators did not contemplate a net. Lawmakers put the net in, which loses the simplicity.
- The proposal put forward may result in Indian pricing being less competitive. Has ONRR looked at that? Turning to the recommendation, it is unclear what the recommendation is. The language is concept, but the recommendation has already been adopted. What is being adopting today? Language to address tribal concerns may need to be inserted.
    - *The previously adopted recommendation has essentially been repeated. Potential concepts have been presented.*
    - *The Federal government has the responsibility to consult with Tribes. There is concern about unintended consequences and making Indian gas uneconomical. Language restating consultation with Tribes should occur needs to be inserted. The understanding is that the rule takes the Indian model and tweaks it. It is not the same model. The concern is with mixed units and making Indian gas less competitive.*
    - The concept of marketable condition was not a factor in the mid-90s when the Federal Valuation Rule for Indian Land model came about. There are inherent definitions. For example, the 10% deduction for transportation is not accurate today. If a good rate is found and then discount it, the concept may not be far off from the Federal Valuation Rule for Indian Land model. The rate will not be known until the elements have been defined.
- The simplified index pricing system is a good idea. There was a recommendation in February with regard to index pricing. This is an extension of that, but the language does not make that as clear as it should be. Are there language

modifications that states this augments and builds upon the previous recommendation. What is different about this recommendation?
  - *The recommendation today does not need to be approved. However, there is more data to support what has already been approved.*
  - *The value of the work of the committee is to provide information to the folks considering the recommendation. It has value. The public record would be less than robust if we do not acknowledge it.*
  - *A sentence can be added that says the additional information about the marketable condition concept will be added to supplement the February 2018 recommendation.*
- The language of the recommendation was vague until the presentation gave specificity and proposed options for calculations. Should the table, minus the made-up values, be included in the recommendation? There were a number of public comments about whether this formula exempted residue gas from royalty payments.
  - *The chart can be part of the recommendation. Either the chart with no values or with a caveat that says it is for illustration only.*
  - Addressing the residual gas payments, the molecules that make up the residue gas after processing is part of the calculations as wellhead MMBTUs and the heat content of NGLs are in the wellhead MMBTUs as well. The total amount of thermal energy that is produced at the wellhead is valuated. The index price is the residue gas price. The value of the natural gas liquids is addressed by the bump.

Mr. Angelle asked if there were any objections to the recommendation. Hearing none, he announced that the committee adopted the recommendation.

3. Public data

Matthew Adams, Cloud Peak Energy, presented the recommendation.

a) Recommendation 3 - Aligns with President's Managements Agenda

To promote transparency, the RPC recommends that DOI publish well, lease, and monthly production data for royalty-bearing resources on Federal lands. Tribes should have the ability to opt-in. This information should not include data prohibited by law from being released.

In response to Mr. Adam's presentation, RPC members asked the following questions and made the following comments. *Responses from Mr. Adams and other subcommittee members are indicated in italics.*

- What is a confidential area?
  - *Areas that may be marked as confidential are proprietary areas.*
- Does this cover everything, such as wind and solar, or only royalty bearing resources?

    - *Is there production data for wind and solar?*
    - *The question should be is the data being reported and collected to ONRR? I would say no. This is really for data associated for a lease or well area.*
- BSEE has data for offshore areas and publishes it. Is this specific to ONRR's website?
    - *This builds on the data portal. ONRR links to BSEE.*
    - *If in one site, there is simplicity and easy access. Two examples were looked at today. There is also the data warehouse, but that has financial and royalties. There are also state websites, but they do not have the flag or keys for well information. There is a multitude of information that should be viewed. The questions is should there be a centralized data center or one for BLM and another for ONRR?*
- Should the recommendation say "at a single site?"
    - *Onshore vs offshore does not need to be differentiated. Offshore is federal lands. So, if one goes to BSEE or through ONRR, that does not matter. But on the DOI site somewhere, the production data for federal lands needs to be available.*
- We heard earlier about EITI. EITI is about money not production. This is focusing on production data. Is the assumption that people would take the data and multiply to get the revenue? Why the focus on production data?
    - *The request says production data. BSEE has other data, but that is also included in the recommendation. The recommendation was not asking for pricing or revenue data. It is strictly a volume request.*
- Is there a concern that after production, "and revenue" could be inserted?
    - *Yes, there is a concern about proprietary information.*

Mr. Angelle asked if there were any objections to the recommendation. Hearing none, he announced that the committee has been adopted.

IV. Public Comments

Comments were limited to three minutes, so that everyone has their full time to provide a comment. Public comments can be submitted in writing ahead of the meeting to rpc@ios.doi.gov. Comments submitted ahead of the meeting are distributed prior to the meeting and can inform the process. All oral comments are recorded and included in the meeting summary. Witten copies of oral comments can be submitted to the notetaker. Various members of the public took the opportunity to provide public comment during the RPC meeting.

Dan Bucks, former Montana Director of Revenue

My comments are based on a plain reading of the published recommendations. Index pricing is an excellent idea. The idea uses actual prices to value natural gas and more likely ensure a fair return to the American people on the minerals they own. It can simplify, streamlines the process, and enhances equity. Unfortunately, the

recommendation says little about index pricing and too much about the authority given to producers to undermine its results. Allowing producers to opt out and allow producers to determine their own evaluation method or to approve index prices are bad ideas. Under the proposal, the public's interest in receiving fair market value will take a backseat to private financial interest. There is no statement in the recommendation that Interior determines the alternative valuation method. There is a statement that the payor determines the valuation methods. There has been no statement the alternative methods have to conform to the fair market value standard, but instead they be favorable to the interests of producers. That is a plain reading of the words of that recommendation. The committee should amend the proposal to remove language that suggests the producers control valuation methods and the industry approves index prices. Please approve the transparency recommendation as a first step in providing greater public access to information about the minerals they own. I applaud what the Department is doing, as evident in the prior presentations, in terms of the progress they are making. I urge committee to continue to work on greater transparency. The public should have knowledge of the value of the minerals produced and the royalties and lease revenues paid. The American people have a right to this information as the owners of these minerals and need to hold Interior accountable for its work. Interior needs this to be done so that the public has trust in their work.

Editor's note: Additional detail is provided in Appendix B, which contains Mr. Buck's full public comment.

Barbara Vasquez, Western Colorado Alliance
I live in county with burgeoning shale oil and gas development. I sat on the Northwest Colorado BLM Resource Advisory Council (RAC), including as chair. I resigned from the council because the public's voice was not being heard. I understand the value of public input on federal policy and have an appreciation for the staff's work in executing the multiple use mandate for BLM. I want to speak on NPD proposal. I feel this should not be approved. One, often the BLM RAC heard about concerns on lease parcels and were assured the concerns would be addressed during the site reviews for APDs. Replacing the APD process with a notice would eliminate the specific reviews. This is a mistake. Two, the NPD process will reduce public opportunity for participating in decision-making. This is valuable, and you do as well. Think about the restriction on the public voice if you go from an APD to an NPD process. Three, the NPD process will shift BLM resources away from managing the multiple use mandate and favor the extractive industry over the value of many other resources they are charged with managing.

Sara Kendall, Western Organization of Resource Councils
We are a regional network of eight community organizations in seven states. Many of the members are farmers and ranchers that overly or neighbor federal mineral deposit. They experience numerous impacts due to coal mining and oil and gas development. A number of members are tribal members and allottees. Folks rely on the lands for livelihood and should have an opportunity for meaningful participation in the leasing

and permitting processes. We have significant concerns over NPD program. The recommendation fails to take into account important factors that impact permitting times as well as the likely results of the proposal. We urge the committee to look at the causes of permitting delays. In our experience and born by data on BLM's website, a lot of the lag time is due to companies submitting incomplete applications. This proposal would result in BLM shifting resources to permitting and other functions such as enforcement, reclamation, and bond reviews. Oversite of idle and abandoned wells would deteriorate. The NPD proposal could result in permits being automatically approved without sufficient review by BLM. This appears to be at odds with current law at 30 U.S.C. 226 (G), which states that "No permit to drill may be granted without the analysis and approval of the Secretary concerned." We remain concerned with the RPC's failure to produce a fairly balanced and transparent process. With this meeting, DOI has begun giving notice of full committee meeting. We urge committee to comply with statutes, rules, and guidance.

Pam Eaton, Wilderness Society
I want to talk about issues the committee and BLM should be looking at going forward. We've highlighted three issues in our submission and have had discussions with the PAC subcommittee. First, BLM's oil and gas bonding rates are too low. All oil and gas companies are required to post bonds so that when production ends the tracts are reclaimed and the lands and waters affected are restored. BLM's bonds are too low and the current amounts were set more than 50 years ago. The rates are too low to cover the government's potential reclamation liabilities and that gap is in the billions. BLM should raise the bond rates so that taxpayers do not get stuck with the cost of reclaiming orphan wells. Colorado was moving forward in addressing this issue and we think the BLM should do so as well. Second, BLM should stop leasing lands with low or no oil and gas potential. BLM offers land with low oil and gas value but often with high value for other resources like wildlife habitat and recreation. These lands attract little attention from buyers. This past week, BLM offered 244 leases in Nevada. These tracts received no bids. When low potential lands are leased, it is often with minimal rate of $2 per acre. In Utah this week, BLM offered 109 leases covering 200,000 acres. Only 65% were sold and of those 64% went for minimum bid. In FY17, 50% of the acreage under lease was not producing oil and gas. In these instances, the agency incurs administrative costs associated with leasing without collecting ever colleting royalties or revenues. Third, BLM should review the suspended leases which cost taxpayers millions of dollars. About 12% of all leases are in suspension and BLM receives no revenue from these leases.

Editor's note: Additional detail is provided in Appendix B, which contains Ms. Eaton's full public comment.

James Tyson, Colorado Wildlife Federation
Usually when I get up here I give some sort of logical argument, a lot of numbers and facts. But I'm not going to do that today. What I see here is a group of people, a lot of

them savvy investors. What you do not understand is you are representing 350 million Americans and their investments. What I want you to do is to look at the investments you are trying to make and wonder if you are making them in the right place. While resource extraction is great and we need it to make this country what it is, there is more that makes up this country….small towns, opens spaces, ability to choose how we want to spend that time. I'm one of the many Americans that chooses to spend time outdoors in places without resources extraction. If I go to someplace that I know and have been going to for my entire life has an oil well there, I probably will not go back again. That means no money spent in the communities. If you look at the investments dollar for dollar, people spend more money in the communities than on the resources extracted. Please consider that.

Ryan Alexander, Taxpayers for Common Sense
Over the last two decades TCS has produced research and analysis tracking, identifying, and accounting for lost taxpayer revenue under federal leasing and royalty system. We support the recommendation and steps DOI has already taken to release more data on energy production. Our decades of work analyzing ONRR and before that MMS and other agencies' data has given us some insight into challenges of transparency. We thank the committee for taking the step towards greater transparency. We have concerns on other recommendations being presented today. The Planning and Analysis subgroup asked that the BLM be allowed a maximum of 45 days to approve a permit. If BLM does not object within 45 days, the lessee can proceed with drilling. This truncated process will not allow BLM to properly consider additional liabilities, potential damage to energy bearing formations caused by the drilling plan, or other things that may impact the full recovery of taxpayers' oil and gas resources. I sympathize with businesses' desire for certainty but concerned with what we know about this proposal. The proposed Notice to Drill effectively transfers authority for permit issuance to the lessee, but the Mineral Leasing Act clearly places responsibility with BLM. The Fair Return and Values Subcommittee is recommending that DOI implement for the natural gas portion of ONRR's valuation rule. The recommendation itself proposes an index pricing system, but the background language calls for a system with multiple ways to calculate gas value are permitted and payers choose the calculation that suits them best. This system is inherently problematic. Payers will invariably, logically, and appropriately for their interests choose the calculation that provides the lowest values, lowering taxpayer revenues. If adopted, the proposal, will remove BLM's authority to determine valuation, handing power over to self-regulate. A properly designed index pricing system could be good for both taxpayers and industry, but the loopholes undermine the certainty. Finally, there are key areas the RPC has yet to address. First, lost natural gas. According to a recent analysis we did on ONRR data, oil and gas companies have paid royalties on less than 10% of the natural gas vented or flared on federal lands in the last decade. BLM's proposed rule will further decrease royalty revenue. Second, RPC should address taxpayer issues from non-producing and non-competitive oil and gas leases. More than half of onshore acres leased for oil and gas production and 70% of offshore oil and gas leases sit idle. The RPC should examine the

BLM's renting, pricing, and competitive leasing practices. Thank you for taking our comments.

Editor's note: Additional detail is provided in Appendix B, which contains Ms. Alexander's full public comment.

Steve Bonowski, Conservatives for Responsible Stewardship
Thank you to the chairman and committee for offering this opportunity to speak. I am a Lakewood board member of Conservatives for Responsible Stewardship. We are a national non-profit, grassroots organization founded on the premise that environmental stewardship and natural resource conservation are inherently conservative. A true conservative will be a true steward of natural systems and resources. Last week, we took action and submitted a petition to BLM and Secretary Zinke that 117,000 acres of unsold leases in five states be returned to multiple use pending further management review. The full text of the petition is on our website, Conservativestewards.org. The identified parcels have other values: habitat protection for game and non-game species, watershed protection for drinking water, and the potential for outdoor recreation, among others. Outdoor recreation has become a major and perhaps the biggest economic driver for rural communities in the West. There needs to be a reset in January, the second half of the current Trump administration. The current leasing system underperforming. Since January of last year, about 12.7 million acres offered for lease but only 1.3 million acres have been sold to industry. That is only an 11% return on investment. That sounds great if you are dealing with stocks and bonds, but if 89% of leases are going unsold, those lands remain in limbo and are not being put to beneficial use. We hope the committee takes a closer look, beginning at the meeting in Phoenix, of returning to the principles of multiple use and sustained yield as identified in the Federal Land Management Policy Act, which is the BLM's governing organic act.

Jeremy Nicohols, WildEarth Guardians
I would like to share numerous concerns. This committee could be a legitimate committee. There are legitimate issues in terms of how our public lands and resources are managed and whether the American public is getting a fair return. As this committee has been set up and as it is functioning, the public interest mandate is not being heeded or protected in the course of your actions. We are frustrated by this. We implore you to think about the public interest. This is who you serve. You serve the American Public. Even though the committee is made up of industry, think of the millions of Americans who value public lands for more than oil, gas, and coal. Our public lands are so valuable here in the American West. My family recreates regularly. We need them for clean water and clean air. These lands are not solely for the use of the fossil fuel industry. We need a balance. The Nevada oil and gas lease on Tuesday received no bids, yet the BLM is using more taxpayer money to try and sell more lands in Nevada to the oil and gas industry. That highlights how disconnected this administration and this committee is in terms public lands and resource management. We need a balance. There needs to be attention to resources other than fossil fuels. The one disappointing thing here is the

lack of discussion around climate change and carbon costs. They are real and, as much as this committee denies this, those costs impact society. They are impacting the West right now in terms of extreme fires and the unprecedented heat in Denver that is breaking records. Climate change matters and needs to be taken into account by this committee if it is going to be legitimate. I call on you to mention climate change, mention carbon costs, and act accordingly to defend the American public interest.

Christine Berg, Mayor of Lafayette, CO
I am the Colorado field consultant for Moms Clean Air Force, a national organization of one million moms united against air pollution to protect our children's health. As the mayor, an integral part of my role is in stewardship of the city's coffers, open space, and cultural and environmental resources. RPC has the obligation to the American people to be good stewards, but protecting our air and natural resources, not just selling out to only or lowest bidders. The current policy of the RPC exclusively benefits the oil and gas industry, not the taxpayers and certainly not the health of our kids. Each year, oil and gas companies waste $330 million worth of natural gas through venting, flaring, and methane leaks on public and tribal lands. In Colorado alone, taxpayers have lost out on over $36 million in royalties since 2009 due to wasted natural gas on federal lands. Imagine, as an elected official, if I knowingly left millions of dollars on the table that could be used for schools, healthcare, roads, and other infrastructure improvements, I don't think I would stay in office very long, nor does that qualify as good stewardship of public resources. Good stewardship is good for business. Colorado is a case study in how methane protections can co-exist with a strong economy. Since Colorado put its nationally leading rules in place, natural gas production and number of active wells have increased, and the state's economy has outpaced national economic indicators. Efforts to reduce methane waste are cost effective. Efforts to reduce methane emissions is a good deal for the energy industry and has spurred innovation. Good stewardship is also good for your health. A benefit of good stewardship is preventing environmental degradation and protection our kids' health and well-being. Venting and flaring of toxins into the air should not be an acceptable use of taxpayer resources. Please remember your obligation to us by not continuing to poison the air we breathe to benefit corporate interests on our public land. Adding to that, the egregious use of our public lands by changing the rules and not requiring proper permitting or environmental assessments; allowing industry to determine their own price for coal, oil, and gas; and allowing the industry to determine the value of our public lands is the ultimate insult and un-American. Be good stewards. Do what is right and just for the taxpayers. Protect our lands. Do what is right for generations to come who will be inheriting the health and environmental impacts of decisions you are making on this committee.

Alex Dowey, The Wilderness Society
I care deeply about the public lands and waters. The clean air and water they provide, wilderness, wildlife habitat, and the role they can play in addressing climate change. I grew up in the West enjoying our public lands, got engaged to my wife Browns Canyon National Monument, and camp and hike with my daughters on public lands. This is an

integral and an important part of our life. The Federal Land Management Policy act requires Interior to manage for multiple uses and sustained yield, so that my daughters can enjoy the incredible lands that we enjoy today. I have serious concerns with Zinke's energy dominance approach. There are almost daily attacks on public lands, rolling back protections, cutting the public out of decision making about our public lands, and pushing for fossil fuel development above other uses. I have concerns about the RPC's role in this approach. If oil, gas, and coal development occurs on public lands, it must be done responsibly and with the best interests of the American public in mind. RPC was established to ensure fair return to taxpayers on development of public resources. Yet the committee recommendations to date have largely prioritized industry interests at the expense of the American public. For example, the notice to drill proposal would allow industry to notify BLM of their intent to drill, rather than applying for permits, conducting environmental assessments, and collecting public input. This is unacceptable and this recommendation should not be adopted. I call on the RPC to fulfill its mandates of the charter to ensure Americans' right to a fair return on mineral extraction on public lands. I call on the RPC, DOI, and BLM to balance development and conservation, and to increase investments of responsible renewable energy on public lands.

Tracy Coppola, National Parks Conservation Association (NPCA)
NPCA is a leader in National Park advocacy for nearly 100 years. We work to protect and preserve our Nation's most iconic and inspirational places for present and future generations. We offer comments on behalf of our 1.3 million members and supporters. NPCA does support reasonable energy development. However, this development should occur without impacting national park sites and their cultural resources. That includes dark night skies and the visitor experience. It must be conducted in a fair and equitable manner and with respect for human health and the public interest. The current royalty structure fails to meet these standards. First, the committee lacks diversity. RPC should revise membership to reflect the diverse interests in these important issues. Second, the leasing process allows for thousands of acres of public lands to be leased quarterly, at times at a mere $2/acre. Millions of acres of public lands remain idle, creating great uncertainty in communities across the country who are bracing for impacts of the oil and gas development and their associated royalties. In Wyoming, we are looking at unaccounted processes that have impacts in real time. Of all the public lands leased in Wyoming, 52% percent are not in production. Yet more lease sales stack up. That threatens wildlife that are directly connected to the Teton and Yellowstone National Parks. There has been a 47% drop in mule deer populations in Wyoming in this decade. Little has been done to limit the leasing and development that is connected to this shocking decline. The rush for royalties cannot recoup the past decades of loss and harm to national parks. Third, we have concerns about the lack of accounting for the cost of public health and socioeconomic costs derived from oil and gas leasing. We advise the federal government to put more royalties and revenues from leasing back to communities, particularly tribal lands where they are disproportionately exposed to the negative aspects of oil and gas development, including pollution, while not seeing the economic opportunity from the oil and gas extracted from their lands. We urge the RPC

to reconfigure the committee to reflect diverse interests, to seek and implement meaningful reform reflective of our 21st century economy, and develop guidance that is inclusive and transparent to all interests.

Justin Wilson, Center for Methane Emissions Solution (CMES)
The methane emissions industry is a robust and growing American industry. One hundred and forty companies have headquarters the U.S. and there approximately 500 methane facilities located across the country. These facilities are in manufacturing plants, assembly facilities, service centers, service provider offices, and administrative offices. In the U.S., the oil and gas industry is the largest source of methane emissions. These emissions represent an economic challenge. Every year, Americans lose nearly $2 billion worth of methane due to inefficiencies in oil and gas well sites, including faulty equipment, and venting and flaring practices. Responding to this market challenge, companies have produce low cost ldar services and technologies to reduce methane emissions. Several firms offer these services at well sites for as low as $250. Most firms are small, but the growing industry has created thousands of high-skilled, high-pay, and geographically diverse jobs that cannot be offshored. These services are important to consider for public lands. Methane lost on federal lands is worth $75.5 million. CMES hopes the committee will consider the opportunity to capture leaked methane in a cost-effective manner when establishing revenue policies for oil and gas extraction on public lands. This, coupled with a commons sense approach to regulate methane waste, will protect taxpayers from millions in lost revenue.

Peter Sawtell, Eco-Justice Ministries
The details of federal rules about methane, including royalty payments, are complicated and many of them are tied up in legal challenges. In order to draw attention to issues of ethics and fairness, I will draw a wild analogy. Picture a grocery store with some customers interested in dairy products, cheese and eggs. Cheese is oil and eggs are natural gas. In this store, the cheese and eggs are in the refrigerated cases together. There are two customers. One wants cheese, so he grabs all the cheese. The eggs get tossed. This is venting and flaring and creates a huge mess. He pays for the cheese but pays nothing for the eggs he broke. The next customer fills the cart with eggs. She has to drill around the cheese, but she does eventually fill her cart with eggs. In her hurry, some eggs are dropped and some fall out of cart. The customer pays for the eggs she extracted but pay nothing for those lost. Both customers created a toxic mess of shattered eggs, fouling the aisles of the store. Both wasted precious food and left without paying for it. The owner of the store, that's us, has to deal with the cleanup and does not get compensation for the eggs that were vented, flared, and leaked. Economically, any store owner creating this system is a fool. Yet, that system has been in place for years. The mandate of this committee is to protect taxpayer interest by ensuring the public receives the full value of natural resources produced from federal lands. The public is not getting a fair return on its resources. The royalty system encourages waste of natural gas, a finite and non-renewable resource. By not charging for this wasted and leaked methane, the royalty system is complicit in the admission of

this powerful greenhouse gas. As an ethicist, I am here to speak for the people of the U.S. whose economic interests are not being served by this giveaway. I am here to represent future generations, whose interests are not being met when finite resources are lost. I am here to represent all the people of Earth, whose lives and welfare are threatened from climate change. I call on you, the Royalty Policy Committee, to live up to your mandate, and to be fair and ethical when assessing royalties, reducing waste, and minimizing climate change.

Editor's note: Additional detail is provided in Appendix B, which contains Mr. Sawtell's full public comment.

Kim Stevens, Lakewood, CO resident
Thank you to DOI for the opportunity to comment and to RPC for hearing our concerns. As a Colorado resident, I am a frequent user and lover of our federal public lands. I have concerns with the RPC. It is incredibly important of the RPC to fulfill the mandates of its charter, to protect the Americans right to a fair return on mineral extraction from our federal lands. Since its inception, the committee has done everything but this. One big concern is that the committee is mostly made up of the oil and gas industry, with few other stakeholders at the table. The committee needs to stop leasing our public lands that have low oil and gas potential and leave them open to other users. If oil and gas development is to continue developing on our public lands, it needs to be done responsibly and in the best interest of the American taxpayer.

Mackenzie Bosher, CO resident
Growing up here, I've enjoyed backpacking in areas such as the North Fork, viewing wildlife in Jackson County, and fishing in areas like Steamboat. All of these areas have parcels up for lease in the December lease sale. Our lands are not for sale. But if development continues, I want to ensure development is done efficiently and responsibly. My main recommendation is to evaluate the current practice of leasing lands with low oil and gas development potential. This will ensure that the government is not incurring excessive administrative costs for parcels that will never enter into production or generate significant revenue. Hopefully we can continue enjoying.

Rev. Jessica Abell, Green Faith
I represent Green Faith, an international interfaith organization that supports the faith-based voice in environmental stewardship. This is not always an immediate connection. Stewardship is part of the common story for all people of faith. One of the pieces here that we are not addressing is the moral side, which sounds strange, of BLM. People who look like me are often the ones that have to say the difficult things, make the space, have hard conversations, and have the things out that are difficult. I imagine the BLM has angered most of us in this room at some point. That is because that is the hard part of working together and finding this space. Water, fire, storms, pollution, wildlife, coal ash do not care about state jurisdictions, lines, or where we are going to collect data or not. Morally and ethically, in order to go forward, we need the space to talk regionally in

an extra-jurisdictional way, outside of our own interests. I invite all of you who are not from the West or have not spent a lot of time in the West, to take a few minutes to go outside. Breathe some air that you are the stewards and caretakers of. Spend a little time connecting with nature. You are part of the web of protection. We must see our resources and what we have in front of us as so much broader than a way to make quick money. I invite all of you who are involved in any specific industry to think more broadly. Welcome and I hope you get to enjoy some of this beautiful place.

Matt Reed, High Country Conservation Advocates
Gunnison County is home to a coal mine and natural gas development. Both industries unfairly benefit at taxpayer expense from a flawed royalty system. Mountain Coal Company operates the West Elk Mine in Gunnison County. It benefits from reduce royalties for two leases. BLM renewed the royalty rate reduction, which reduces the royalty by almost 40% that would otherwise remit to federal, state, and local taxpayers. This rate reduction continues year after year, reducing county funds. The money is redistributed to local communities as part of federal mineral lease revenues. Local governments use these funds for roads, public facilities, sewer and wastewater treatment plants, broadband development, human services, law enforcement, workforce housing, and improving quality of life for residents. Fair royalties for coal and other minerals mined on federal lands help ensure taxpayers and local communities are receiving a fair return of public resources. HCCA calls on you to not shortchange communities and taxpayers by subsidizing industry through unnecessary royalty rate reduction below the already market rates. Public lands in the county are saturated with oil and gas leases. While there is active development, many of these are speculative leases. Speculative leases hold hostage other uses, while companies sit on them for years and decades. I urge you to reform this process that allows one industry to dictate, at almost no cost, the land use decisions for many acres around Gunnison County.

Kim Pope, Sierra Club
I am the daughter of a retired forest service employee and public-school teacher. I am a descendant of a hard-working ranch family and public land permittees in the Southwest. I am a public lands advocate with the Sierra Club. I wear all of these hats proudly and am here to testify on behalf of the organization I work for but also on behalf of my heritage, whose food was put on the table by responsible stewardship of public lands in the West. I am concerned with the committee's recommendation to expedite the oil and gas process without fully considering impacts to our public lands and rural communities. This year, BLM offered 18,000 acres of land in Southern Colorado during the September lease sale. These parcels were outside one of Colorado's most treasured national parks, Great Sand Dunes, and are located in a valley that supports thousands of elk and deer, filled with complex geology, and has been home to hunters, gatherers, farmers, and ranchers for thousands of years. Despite there being no guarantee of profitability of oil and gas extraction, a huge portion of land was put up for sale to the shock and surprise of the local community. The community stood up with the Sierra club and other public lands advocates to demand BLM take concerns about oil and gas production in this area

seriously. We did our research and learned surprising things BLM did not consider during the expedited environmental review this committee has recommended. First, we learned about the complex geology of the valley, and, if drilling were to occur, the only water source in the valley could be contaminated. When the community and EPA requested a hydrologic study be completed to ensure safety of the area's water, BLM refused and allowed limited public comment on the lease sale. Second, there could be negative health effects for the community from the oil and gas production, such as increases in asthma and other lung diseases caused by air pollution. One of these pollutants is methane. Colorado has a forward-thinking legislature that passed a methane capture rule. Other states do not have this same basic right to methane free air. I'd like to enter into the record a coalition letter asking the committee to advise DOI to reinstate the 2016 BLM methane rule. Finally, during this expedited process, the BLM failed to consult with a very important stakeholder in the process, the Navajo Nation. Thankfully, BLM finally slowed down for consultation. I am here to ask the committee to reconsider their recommendations to DOI regarding an expedited environmental review process for sake of the land and the health, livelihood, and well-being of directly impacted communities.

V. Wrap Up / Closing

Mr. Schindler reviewed the next steps and requested that written comments be submitted ahead of the committee meeting so that the committee has time to review and address the comments. He also announced the meeting summary would be publicly available online in approximately 30 days, and the next RPC meeting will be January 31, 2019 in Phoenix, Arizona. Mr. Schindler reminded everyone that comments can be submitted to rpc@ios.doi.gov and should be submitted by the end of September 14, 2018. The final text of the recommendations will be posted online on the RPC website. Mr. Schindler also noted the requirements for nominations to RPC will be published in the Federal Register. When asked what criteria will be used for evaluating nominations, he noted that decisions will be made using the same criteria published in the Federal Register from the last nomination process.

VI. Meeting Participants

Chairman
Scott Angelle, BSEE (acting)

Executive Director and Designated Federal Officer
James Schindler, BOEM

Ex-Officio
Greg Gould, ONRR
Mike Nedd, BLM
John Tahsuda, AS-IA

Ex-Officio *(Alternate)*
John Mehlhoff, ONRR
Kevin Karl, BSEE
Renee Orr, BOEM

States
Colin McKee, WY
Brent Sanford, ND
John Crowther, AK

States *(Alternate)*
John Andrews, UT
Hans Hunt, WO
Lynn Helms, ND
Daniel Saddler, AK

Tribal
President Russell Begaye, Navajo Nation
Councilman Christopher Adam Red, Southern Ute Indian Tribe
Bidtah Becker, Navajo Nation
Everett Waller, Osage Nation

Tribal *(Alternate)*
Adam Red, Southern Ute Indian Tribe
Academia/Public Interest
Roderick Eggert, CO School of Mines
Van Romero, NM Institute of Mining

Academia/Public Interest *(Alternate)*
Graham Davis, CO School of Mines
Kwame Awuah-Offei, MO University of Science and Technology

Industry
Patrick Noah, ConocoPhillips
Stella Alvarado, Anadarko Petroleum Corporation
Matthew Adams, Cloud Peak
Randall Luthi, National Ocean Industries Association
Marisa Mitchell, Intersect Power
Kevin Simpson, Shell

Industry *(Alternate)*
Kathleen Sgamma, Western Energy Alliance
Gabrielle Gerholt, Concho Resources

Royalty Policy Committee Staff
Jennifer Malcolm, ONNR

Facilitation Team
Rachel Milner Gillers, Facilitator
Erica Wales, Facilitator

Members of the Public in Attendance
Paul Blair, Americans for Tax Reform
Dan Bucks, former MT Director of Revenue
Barbara Vasquez, Western Colorado Alliance
Sara Randall, Western Organization of Resource Councils
Pamela Eaton, The Wilderness Society
James Tyson, CWF
Ryan Alexander, Taxpayers for Common Sense
Steve Bonowski, Conservatives for Responsible Stewardship
Jeremy Nichols, WildEarth Guardians
Christine Berg Mayor of Lafayette, CO
Alex Dane, The Wilderness Society
Tracy Coppola, NPCA
Justin Wilson, CMES
Peter Sawtell, Eco-Justice Ministries
Mackenzie Bosher, Public
Kim Stevens, Public
Rev. Jessica Abell, Green Faith
Matt Reed, HCCA
Kim Pope, Sierra Club
Judy Wilson, ONRR
Johanna Sprigs, BIA
Bonnie Robson, ONRR
Allison Hunn, Democracy Forward
Emily Hague, API
Colin McKee, RPC
Alysa Lundy, Navajo Nation
Suzanne Swank, BP America
Rosario Doriott Dominquez, Baker Hostetler
Carla Clark, BIA IESC
Tom Delehanty, WEP
Matt Kirby, ONRR
Karl Wunderlich, ONRR
John Barder, ONRR
Jim Steward, ONRR
Heidi Badaracco, ONRR

Glenn Fischer, US GAP
Raquel Roybal, ONRR
Jordan Wofford, ONRR
Amy Lunt, ONRR
Ralph Johnson, ONRR
Poel Leggette, Baker Hostetler
Jeff Carlson, ONRR
Evan Wilson, IOS
Channen Hughes, Wild Earth Guard
Yvette Smith, ONRR
Dan Elliot, Associated Press
Chris Carey, ONRR
Yasmen Faied, ONRR
Lisa Winn
David Ellenberg, NWF
Manny Lopez del Rio, Progress Now CO
Elissa I Gease, PhD

Members of the Public Participating Remotely
Alex Thompson, The Wilderness Society
Autumn Hanna, Taxpayers for Common Sense
Ben Lefebvre, Politico
Bill Eikenberry
Brian Bex, The Navajo Nation
Brian Schubiner, Taxpayers for Common Sense
Cheryl Kindschy
Chris Mentasti, Department of the Interior
Claire, Anadarko
Cylene Wood, Beehive Homes of Helena
David Watts
Dennis Webb, Grand Junction Daily Sentinel Newspaper
Eli Lewine, GAL
Elizabeth Klein, New York University School of Law
Frank Yam, BESE
Glen Jameson, Department of the Interior
Heather Richards, Casper Star Tribune
Helen Virene, ONRR
Hiroko Tabuchi, The New York Times
Hunter Mortensen, Town of Frisco Colorado
Jacolyn Holdsgrieve
Janel Chin
Jason St. John, Cloud Peak Energy
Jayni Hein, NYU School of Law
Jeff Harris, BSEE

Jeremy Norton, Devon Energy
Joanie Clemons, US Air Force Retired
Jody Peters
Jose Ortiz, Anadarko
Kim Jackson, The Department of the Interior
Kimberly Jackson, Department of the Interior
Liz Trotter, STG Results
Lori LeBlanc, LMOGA
Lynn James
Matt Harlan, J. Connor Consulting, Inc.
Megan Hessee, Office of Natural Resources Revenue
Megan Hessee, ONRR
Monte Mills, University of Montana
Natalie Houghton
Noelle White, Royalty Valuation from the Honor
Pamela King, E&E News
Peter Wood, Citizen of the United States
Philip Wolf, Cultivating Spirits
Robert Sudar, Office of Natural Resources Revenue
Sally Bisch, St James Lutheran Church
Sarah Connor
Sarah Stewart,Private Citizen
Shannon Anderson, Powder River Basin Resource Council
Sharon Clute, Eland Energy
Tripp Baltz, Bloomberg Environment
William Burband

Appendix A: Meeting Materials

Royalty Policy Committee Meeting
U.S. Department of the Interior
Sheraton Denver West Hotel
360 Union Boulevard, Lakewood, CO 80228.

September 13, 2018, 9:00am-4:30pm (MDT)

Domestic Conference Line: 1-888-469-0854 Passcode: 9724702
International Conference Line: 1-517-319-9462 Passcode: 9724702
Webex: https://onrr.webex.com/onrr/j.php?MTID=m8b07b197593ce80917ef1715ae9f262a

AGENDA

Chair: Scott Angelle, Acting Chair, RPC

DFO: James Schindler, Executive Director, RPC

Meeting Goals:

- Report out from Tribal Energy Subcommittee
- Receive public comments
- Report out and recommendations from Planning, Analysis, & Competitiveness Subcommittee
- Report out and recommendations from Fair Return & Value Subcommittee
- Timeline review

Meeting Materials:

- Agenda
- Tribal Energy Subcommittee presentation & TERA discussion
- Planning, Analysis, & Competitiveness Subcommittee recommendations and presentation
- Fair Return & Value Subcommittee recommendations and presentation
- 2019 Timeline

8:30am–9:00am, Registration

9:00am–9:15am, Welcome and Overview

Call to Order
James Schindler, Designated Federal Officer / Executive Director

Welcome and Introductions
Scott Angelle, Acting Chair, RPC
All Committee Members

Agenda Review
James Schindler, Designated Federal Officer / Executive Director

9:15am–10:00am, Tribal Energy Subcommittee Presentation, and Discussion (No Recommendations)

- Co-Director's Introduction: President Russell Begaye, Navajo Nation
- TERA Discussion and Next Steps: Bidtah Becker, Navajo Nation Office of Natural Resources
- Categorical Exclusions: Jim James, Bureau of Indian Affairs
- Taxation: Jackson Brossy, Navajo Nation Washington Office

10:00am–10:30am, Presentation on Revenue Data Site and BSEE Data Center

10:30am–10:45am, Break

10:45am–11:45am, Opportunity for Public Comment

11:45am–1:00pm, Break for Lunch

1:00pm–2:30pm, Planning, Analysis, and Competitiveness Subcommittee Presentation, Discussion, and Voting

- Co-Director's Introduction: Randall Luthi, National Ocean Industries Association
- Coal: Matthew Adams, Cloud Peak Energy
- Onshore Oil & Gas: Kathleen Sgamma, Western Energy Alliance
- Non-Fossil and Renewables: Marisa Mitchell, Intersect Power
- Offshore Oil & Gas: Patrick Noah, ConocoPhillips Company
- Alaska: John Crowther, State of Alaska
- Studies: Emily Kennedy Hague, American Petroleum Institute

2:30pm–2:45pm, Break

2:45pm–4:15pm, Fair Return and Value Subcommittee Presentation, Discussion, and Voting

- Co-Director's Introduction, Coal Benchmarks: Matthew Adams, Cloud Peak Energy
- Index Pricing: Pat Noah, ConocoPhillips Company
- Marketable Conditions: Stella Alvarado, Anadarko Petroleum
- Oil and Gas Payor Handbook: Gabrielle Gerholt, Concho Resources
- Audit: Greg Morby, Chevron

4:15pm–4:30pm, Wrap-up, Timeline, Conclusion and Next Steps, Adjourn

Planning, Analysis, & Competitiveness Recommendation

Subcommittee Proposing Recommendation:

Planning, Analysis, & Competitiveness

RECOMMENDATION:

RPC recommends that the Secretary of the Interior pursue rulemaking to adopt all applicable provisions of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) and the Federal Oil and Gas Royalty Simplification Act of 1996 to include Federal coal by the provisions of each statute. The Secretary should also propose Federal coal be included in the statute in his legislative proposals to Congress as necessary.

Nature of change:

This change would require rulemaking and an inclusion in the Department's legislative proposals.

Background:

In 1983 Congress enacted the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) 30 U.S.C. §§ 1701 et seq. The primary purpose was to give the Secretary of the Interior expanded authority to audit and enforce royalty payment obligations related to Federal and Indian oil and gas leases. In addition to addressing issues to allow effective administration of royalty obligations and collections, FOGMRA established timetables and accountability requirements.

Analysis:

This recommendation is to provide the same burdens and benefits of FOGRMA (as amended) for coal lessees that are provided to oil and gas lessees. Providing the same fiscal and administrative framework for all energy lessees on Federal land will ensure, among other outcomes: timely enforcement of coal royalty filings; and an agreed upon framework for dealing with credits, overpayments and underpayments of royalties.

The recommendation is for Federal coal only.

Fair Return
& Value
Recommendations

Subcommittee Proposing Recommendation:

Fair Return and Value (Valuation) Subcommittee

RECOMMENDATION:

RPC recommends the DOI pursue rulemaking to define "Federal Gas Index Pricing" with a Marketable Condition Concept, consistent with the hypothetical presentation titled "Gas Index Pricing Options," dated August 2018, as presented to the RPC meeting of September 13, 2018.

Nature of change:

The Change would be a regulatory change requiring rulemaking including any required tribal or other consultation and notification. The RPC recommends that the additional information about marketable condition supplement the February 2018 RPC recommendation.

Background:

This recommendation follows the RPC's February 28th recommendation to

"Pursue rulemaking to define simplified index price rules for Federal gas." The repealed 2017 Federal valuation rule ("Valuation Rule") included an index pricing provision for Federal gas production. While energy companies generally supported the concepts of an index price, the specific price provisions contained within the Valuation Rule were not widely supported due to concerns that (1) the highest reported price was unachievable and reflected index points not representative of how the gas was actually marketed; (2) transportation cost deductions were unreasonably low; and (3) the resulting price could only be used for non-arms-length sales types.

The Working Group (WG) was charged with exploring the potential to combine the index price and a standard table for allowances that addresses the issues associated with the index pricing provision in the repealed Valuation Rule and more effectively achieves a simple, certain, clear and concise index price solution.

The WG noted the relative administrative ease involved with use of the 2000 Indian Gas Valuation Rule. It was also noted within the WG discussions that the adoption of a simplified index price has the potential to address many of the separate issues regarding "marketable condition" currently consuming significant resources. The WG also realizes there may be a need to have additional valuations options that could be favorable to different payors depending on their resources and ability to define all the components in the equation.

Key factors to be addressed by this rule would be:

- The concept will have valuation options. The level of complexity will be determined by the design of the model.
- A standardized average single price (per defined geographic area) acceptable to both industry and DOI/ONRR

- Calculations by ONRR from generally accepted index price publications or other acceptable market-sensitive source
- Price applied to wellhead (or royalty measurement point) MMBTUs
- Incorporate reasonable geographically sensitive transportation deductions
- Apply price to all Federal gas sales types

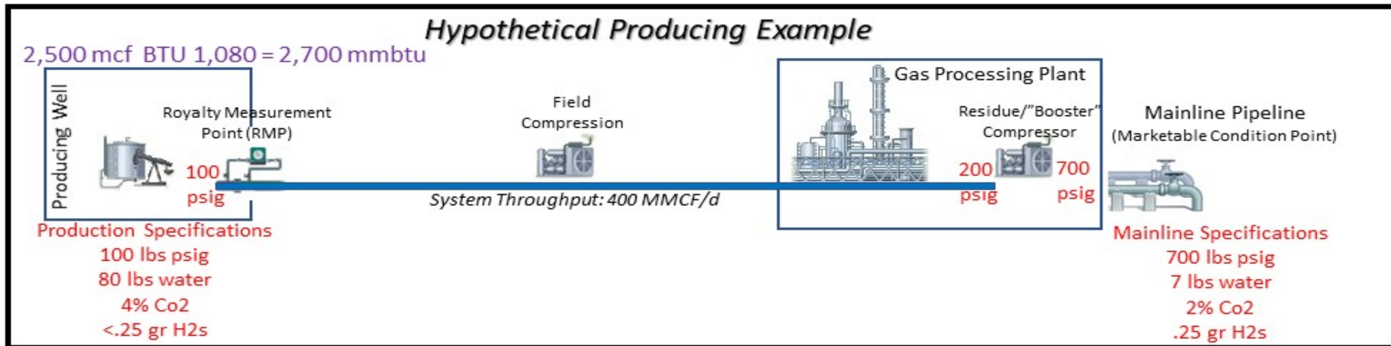
Analysis:

Having the options for determining the valuation method would provide a choice. Payors would determine the method to pay and also have a level of confidence in the valuation process that would withstand audits and be compliant.

The recommendation is for Federal Gas only.

An economics review should provide support for the concept.

Gas Index Pricing Options – August 2018



Required Valuation Components

A. Market Index Price $3.75/mmbtu
B. Average Field Transportation ($0.35/mmbtu)
C. Average Disallowed System UCA: 55%
D. BTU Bump Factor (from Table, based on BTU) 4%
E. Simple Published Price (A – (B * (1-C)) = $3.5925
F. Marketable Condition Standardized Cost Table (see below)

Note: All of the Required Valuation Components to the right plus the elements of the MC Cost Table must be calculated or negotiated by the RPC Team(s)

Field Compressions	Rate per MMBTU	Boosting Compression	Rate per MMBTU	Dehydration	Rate per MMBTU	CO2 Treating	Rate per MMBTU	H2S Treating	Rate per MMBTU
0-100 psi	$0.020	0-100 psi	$0.005	100,000	$0.020	0-.5%	$0.020	.00-.005 gr	$0.005
101-200psi	$0.025	101-200 psi	$0.010	200,000	$0.025	.6%-1.0%	$0.025	.006--.01 gr	$0.075
201-300psi	$0.035	201-300 psi	$0.020	300,000	$0.035	1.0%-1.5%	$0.035	.01--.015 gr	$0.085
301-400psi	$0.040	301-400 psi	$0.025	400,000	$0.040	1.6%-2.0%	$0.040	.01--.015 gr	$0.090
401-500psi	$0.045	401-500 psi	$0.030	500,000	$0.045	2.1%-2.5%	$0.045	.015--.02 gr	$0.095
501-600psi	$0.050	501-600 psi	$0.035	600,000	$0.050	2.6%-3.0%	$0.050	.021--.03 gr	$0.100

$0.050 + $0.030 + $0.040 + $0.040 + $0.00 = $0.16

Valuation Options

1A — Simple ONRR Published Price With BTU Bump
Formula: Volume X E X (1.0 + Bump)
2,700 X $3.5925 X 1.04 =$10, 087.74
X .125 Royalty Rate
$1,260.97 ONRR Royalty

1B — Simple Industry Calculated Price With BTU Bump
Formula: Volume X (A – (B X (1-C) X (1.0 + Bump))
2,700 x ($3.75 – ($0.35 x 45%)) x 1.04 = $10,087.74
X .125 Royalty Rate
$1,260.97 ONRR Royalty

2 — Calc'd Price using Standardized Table w/ Bump
Formula: Volume X (A – (B - F) X (1.0 + Bump)
2,700 x ($3.75 – ($0.35 - $0.16)) x 1.04 = $9,996.49
X .125 Royalty Rate
$1,249.56

Optional

3 — Gross Proceeds
Calculate value and allowances per current regulations

Subcommittee Proposing Recommendation:

Fair Return and Value (Valuation) Subcommittee

Recommendation:

To promote transparency, the RPC recommends that DOI publish well, lease, and monthly production data for royalty-bearing resources on Federal lands. Tribes should have the ability to opt-in. This information should not include data prohibited by law from being released.

Nature of change:

This recommendation lines up with the President's Managements Agenda (PMA) published March 20, 2018, for promoting transparency and to making data available in a useful format.

The change is within the discretion of the DOI under existing authorities. It will likely require additional resources and funding.

Background:

Currently there are multiple levels of data available online for royalty-bearing offshore and onshore. Providing data views to the lowest available detail would allow users access to public non-confidential information and would also promote transparency.

Data to be provided should be well, lease, and monthly production information as reported on the Oil and Gas Operations Report (OGOR) parts A, B, and C.

The BSEE website has online queries for well and OGOR A, B, and C information that are specific to offshore only. Well data has lease and producing interval information along with effective dates. Well information is updated daily and OGR's are updated monthly.

The Natural Resources Revenue Data (NRRD) has annual data for all natural resources at a state/county level. Not the level of detail needed for use as a resource for data mining and audits.

Various State agencies have production and well information available, but not at the level needed for supporting a federal review.

Analysis:

A Data Center (DC) would provide the public the ability to view federal onshore and offshore data in one environment. The data center should have functionality for viewing and extracting PDF reports, ASCII files, and downloadable CSV files.

Industry has been requesting to view other OGOR reports to support and respond to audit requests and data mining that may cover Leases and Agreements that have multiple operators or a single operator that is not the company being asked for information. There are also take in-kind scenarios that require access to other operator reports.

Online data allows any reporter to view data and proactively ensure the accuracy of the data they are responsible for reporting. It also reduces the risk of data discrepancies and data requests.

Currently when needed, reporters must request ONRR to provide extracts of data during reviews of Leases and Agreements. They rely on ONRR to extract and provide the data instead of the reporter being able to locate the information themselves.

Current Data sources available are aged and not addressing the need for industry to respond to audits and data requests without ONRR extracting and providing data on other operator's data when needed. These include:

- ONRR Data Warehouse Portal – secured site with proprietary data
- BSEE Data Center – Offshore data
- Natural Resources Revenue Data – annual data for all natural resources at a state/county level
- State Websites – monthly production data, not consistent or aligned with federal reporting

- In FY 2017 oil production on Federal and Indian lands was about 869 million bbl, accounting for 23% of total U.S. production, a 5% increase compared to FY 2016.
- About 3 tcf of natural gas was produced on Federal and Indian land in FY 2017. This accounted for 9% of total U.S. production in FY 2017

- Offshore Federal production in FY 2017 reached 629 million barrels of oil and 1.18 trillion cubic feet of gas, almost all of which was produced in the Gulf of Mexico. This accounted for about 19% of all domestic oil production and 4% of domestic natural gas production.
- Oil production from the Federal Outer Continental Shelf (OCS) increased 8% in FY 2017 compared to FY 2016.

Coal

- In FY 2017 Coal production on Federal and Indian lands was 347 million short tons.
- This accounts for an estimated 44% of total U.S. production that year.

Renewables

- Currently, 5% of total producing utility-scale wind energy capacity in the United States come from facilities located on public lands. As of March 2018, there were 35 BLM-approved wind energy projects on public lands with 3,284 megawatts of total installed capacity, enough to power 1 million homes.
- As of March 2018, BLM has approved 25 solar projects, totaling 6,319 megawatts of installed capacity, enough energy to power roughly 2 million homes

Revenues

Quarterly ONRR Disbursements by Account Type ($Millions)

	FY 2017					FY 2018			
	Q1	Q2	Q3	Q4	Total	Q1	Q2	Q3	Total
U.S. Treasury	821	950	1,016	-40	**2,746**	946	1,213	1,278	**3,437**
States	438	300	414	286	**1,438**	399	377	609	**1,385**
Reclamation Fund	297	251	349	245	**1,142**	241	313	344	**898**
Historic Preservation Fund				150	**150**				
LWCF	3	11	14	931	**959**	13	20	13	**47**
Tribes	147	177	176	176	**676**	203	236	249	**688**
Grand Total	1,706	1,690	1,968	1,748	7,112	1,803	2,159	2,493	6,455

Disbursements

Quarterly ONRR Disbursements by Commodity ($Millions)

	FY 2017					FY 2018			
	Q1	Q2	Q3	Q4	Total	Q1	Q2	Q3	Total
Crude Oil	895	1,020	1,083	1,019	**4,017**	1,119	1,400	1,666	**4,185**
Natural Gas	253	300	279	266	**1,097**	260	268	263	**791**
NGL	56	66	49	61	**231**	59	92	89	**241**
Other O&G	91	90	373	226	**780**	94	179	235	**508**
Coal	319	179	145	164	**808**	151	147	132	**429**
Other Revenues	91	35	41	13	**179**	119	74	109	**302**
Grand Total	1,706	1,690	1,968	1,748	7,112	1,803	2,159	2,493	6,455

Royalty Policy Committee

Planning, Analysis and Competitiveness Subcommittee
(Economics)

Planning, Analysis & Competitiveness Subcommittee Recommendations

Onshore Working Group Recommendations

Presenter: Kathleen Sgamma, Western Energy Alliance

Onshore Working Group Recommendation #1

Recommendation: BLM should conduct a pilot project for active resource areas to implement a Notification of Permit to Drill (NPD) program in lieu of obtaining an Application for Permit to Drill (APD) on eligible Federal Lands. Upon receiving an operator or lessee's NPD submittal, the BLM would have 15 days to notify the operator in writing if the NPD is incomplete.

Not later than 45 days after receipt of a complete NPD, the BLM shall either: (1) notify the operator of any objections; or (2) take no action. If no action is taken, the operator may conduct the drilling and production activities for which the notification of permit to drill was submitted. If the BLM notifies the operator of an objection, the operator may resubmit a revised NPD or resubmit application as an APD.

Nature of change: This pilot project may be conducted through rulemaking or by inclusion in the Department's legislative proposals to Congress

Coal Working Group

Presenter: Matthew Adams, Cloud Peak Energy

Coal Working Group Recommendation #1

Recommendation: RPC recommends that the Secretary of the Interior pursue rulemaking to adopt all applicable provisions to the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) and the Federal Oil and Gas Royalty Simplification Act of 1996 to include Federal coal by the provisions of each statute. The Secretary should also propose including Federal coal be included in the statue in his legislative proposals to Congress.

Nature of change: This change would require rulemaking and an inclusion in the Department’s legislative proposals.

Planning, Analysis and Competiveness Subcommittee

Overview

Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. §§ 1701 et seq.)	Royalty Simplification and Fairness Act of 1996 (amending FOGRMA)
• Primary purpose was to give the Secretary expanded authority to audit and enforce royalty payment obligations on Federal and Indian oil and gas leases • Authorized the Secretary to impose civil penalties for violations, and to seek imposition of criminal penalties in certain cases • Authorized the Secretary to delegate audit and enforcement activities to the states • Requires payment of interest on late royalty payments • Requires lessee to maintain records for six years	• Added new provisions applicable to Federal oil and gas leases (not Indian leases) • Expanded states' authority under delegation agreements, including ability to issue demands for royalty payments • Prescribed a seven-year statute of limitations on collecting underpaid royalties, specifying only very limited circumstances in which the running of the seven-year period would be tolled • Prescribed a 33-month limitation on the time the Department may take to issue a final decision in administrative adjudications • Authorized lessee to make voluntary adjustments to previous royalty payments • Authorized ONRR to refund and/or credit royalty overpayments

FOGRMA/RSFA - Coal

- **Provisions Currently Referencing Coal are Minimal**
  - § 1720a – applies FOGRMA's civil and criminal penalties to coal leases, effective Oct. 30, 2009
  - § 1753 (b) – clarifies that nothing in FOGRMA reduces the responsibility of the Secretary "to ensure prompt and proper collection of revenues from coal ... on Federal and Indian lands, or to restrain the Secretary from entering into cooperative agreements or other appropriate arrangements with States and Indian tribes to share royalty management responsibilities and activities for such minerals under existing authorities."

FOGRMA / RSFA Time Limits

- **§ 1724(b) Seven Year Limitations Period**
  - "A judicial proceeding or demand which arises from, or relates to an obligation, shall be commenced within seven years from the date on which the obligation becomes due and if not so commenced shall be barred. If commencement of a judicial proceeding or demand for an obligation is barred by this section, the Secretary, a delegated State, or a lessee or its designee (A) shall not take any other or further action regarding that obligation, including (but not limited to) the issuance of any order, request, demand or other communication seeking any document, accounting, determination, calculation, recalculation, payment, principal, interest, assessment, or penalty or the initiation, pursuit or completion of an audit with respect to that obligation; and (B) shall not pursue any other equitable or legal remedy, whether under statute or common law, with respect to an action on or an enforcement of said obligation."

FOGRMA / RSFA Time Limits

- **§ 1724(d) Tolling of Limitations Period**
  - By agreement with ONRR
  - Upon the issuance of a subpoena
  - Misrepresentation of concealment on the part of the lessee
  - Upon the issuance of an order to perform restructured accounting

FOGRMA / RSFA Time Limits

- **§ 1724(h)(1) Appeals and final agency action – 33 month period for decision**
  - "The Secretary shall issue a final decision in any administrative proceeding, including any administrative proceedings . . . within 33 months from the date such proceeding was commenced . . . The 33-month period may be extended by any period of time agreed upon in writing by the Secretary and the appellant."

- **§ 1724(h)(2) Effect of failure to issue decision**
  - "If no such decision has been issued by the Secretary within the 33-month period referred to in paragraph (1)-

    (A) the Secretary shall be deemed to have issued and granted a decision in favor of the appellant as to any nonmonetary obligation and any monetary obligation the principal amount of which is less than $10,000; and

    (B) the Secretary shall be deemed to have issued a final decision in favor of the Secretary, which decision shall be deemed to affirm those issues for which the agency rendered a decision prior to the end of such period, as to any monetary obligation the principal amount of which is $10,000 or more, and the appellant shall have a right to judicial review of such deemed final decision in accordance with Title 5."

FOGRMA /RSFA Interest Provisions

- **§ 1721 Royalty terms and conditions, interest, and penalties**
  - § 1721(a) - "In the case of oil and gas leases where royalty payments are not received by the Secretary on the date that such payments are due, or are less than the amount due, the Secretary shall charge interest on such late payments or underpayments at the rate applicable under section 6621 of Title 26. In the case of an underpayment or partial payment, interest shall be computed and charged only on the amount of the deficiency and not on the total amount due."

- § 1721(h), which formerly required ONRR to pay interest to the lessee on overpayments, was deleted in 2015 (Pub. L. 114-94 § 32301).

FOGRMA / RSFA Adjustments and Refunds

- **Definitions in § 1702**
  - "(17) 'adjustment' means an amendment to a previously filed report on an obligation, and any additional payment or credit, if any, applicable thereto, to rectify an underpayment or overpayment on an obligation;"
  - "(21) 'credit' means the application of an overpayment (in whole or in part) against an obligation which has become due to discharge, cancel or reduce the obligation;"
  - "(27) 'overpayment' means any payment by a lessee or its designee in excess of an amount legally required to be paid on an obligation and includes the portion of any estimated payment for a production month that is in excess of the royalties due for that month;"
  - "(30) 'refund' means the return of an overpayment;"
  - "(32) 'underpayment' means any payment or nonpayment by a lessee or its designee that is less than the amount legally required to be paid on an obligation;"

FOGRMA / RSFA Adjustments and Refunds

- **§ 1721a Adjustments and Refunds (highlights)**
  - (a)(1) "If, during the adjustment period, a lessee or its designee determines that an adjustment or refund request is necessary to correct an underpayment or overpayment of an obligation, the lessee or its designee shall make such adjustment or request a refund within a reasonable period of time and only during the adjustment period."
  - (a)(4) "For purposes of this section, the adjustment period for any obligation shall be the six-year period following the date on which an obligation became due. The adjustment period shall be suspended, tolled, extended, enlarged, or terminated by the same actions as the limitation period in section 1724 of this title."
  - (b)(3) "Payment period. A refund under this subsection shall be paid or denied (with an explanation of the reasons for the denial) within 120 days of the date on which the request for refund is received by the Secretary. Such refund shall be subject to later audit by the Secretary or the applicable delegated State and subject to the provisions of this chapter."
- Note: § 1721a does not address recoupment from future production

FOGRMA / RSFA Record Retention

- **§ 1713(a) Maintenance and availability of records, reports, and information for inspection and duplication**
  - “Upon the request of any officer or employee duly designated by the Secretary or any State or Indian tribe conducting an audit or investigation pursuant to this chapter, the appropriate records, reports, or information which may be required by this section shall be made available for inspection and duplication by such officer or employee, State, or Indian tribe.”
- **§ 1713(b) Length of time maintenance required**
  - “Records required by the Secretary with respect to oil and gas leases from Federal or Indian lands or the Outer Continental Shelf shall be maintained for 6 years after the records are generated unless the Secretary notifies the record holder that he has initiated an audit or investigation involving such records and that such records must be maintained for a longer period. In any case when an audit or investigation is underway, records shall be maintained until the Secretary releases the record holder of the obligation to maintain such records.”

Fair Return and Value
Marketable Condition/Index Price Update

September 13, 2018

Updated Index Pricing Recommendation

<u>Participants</u>
Stella Alvarado
Matthew Adams
Pat Noah
Adam Red
Roderick Eggert
Greg Morby
ONRR Staff

Marketable Condition/Index Price Update

September 13, 2018

February, 2018 recommendation to pursue rulemaking for index pricing for federal gas

Utilized Indian approach as broad basis for this approach

Recommendation was created without consideration of other marketable condition factors

Updated approach incorporates specific elements of valuation as well as alternative index pricing approaches

Marketable Condition/Index Price Update

September 13, 2018

Recommendation

Pursue rulemaking to define Gas Index Pricing Option with a Marketable Condition Concept

Key factors to be addressed by this rule would be:

- The concept will have valuation options. The level of complexity will be determined by the design of the model.
- A standardized average single (per defined geographic area) price acceptable to both industry and DOI/ONRR
- Calculated (by ONRR) from generally accepted index price publications or other acceptable market-sensitive source
- Apply price to wellhead (or royalty measurement point) MMBTUs
- Incorporate reasonable geographically sensitive transportation deductions
- Apply price to all Federal gas sales types

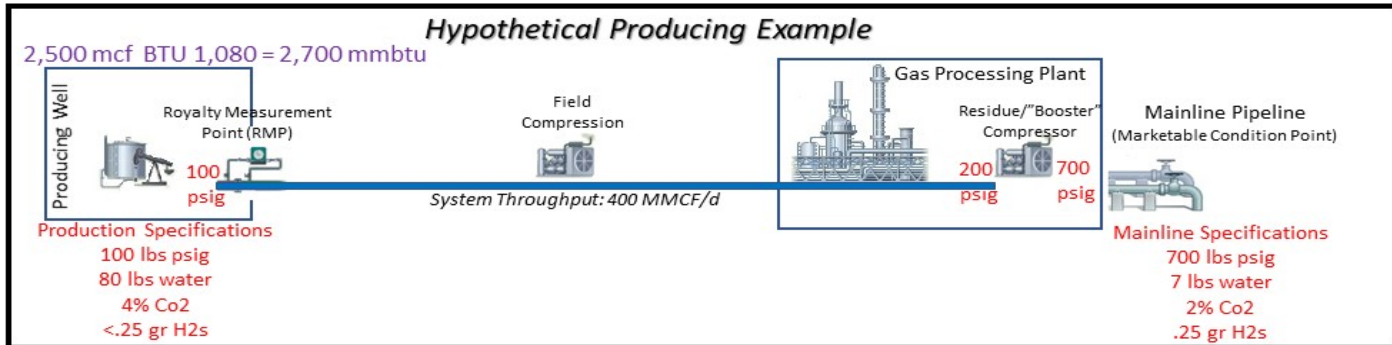
Marketable Condition/Index Price Update

September 13, 2018

Background

- General support among Payors for Index Pricing concept
- Potential to resolve many Marketable Condition issues
- Index Price provision contained within repealed 2017 Federal Valuation Rule was not received well by Payors
  - The highest reported price was unachievable and reflected index points not representative of how the gas was actually marketed;
  - Transportation cost deductions were unreasonably low; and
  - The resulting price could only be used for non-arms-length sales type

Gas Index Pricing Options – August 2018



Required Valuation Components

A. Market Index Price $3.75/mmbtu
B. Average Field Transportation ($0.35/mmbtu)
C. Average Disallowed System UCA: 55%
D. BTU Bump Factor (from Table, based on BTU) 4%
E. Simple Published Price (A – (B * (1-C)) = $3.5925
F. Marketable Condition Standardized Cost Table (see below)

Note: All of the Required Valuation Components to the right plus the elements of the MC Cost Table must be calculated or negotiated by the RPC Team(s)

Field Compressions	Rate per MMBTU	Boosting Compression	Rate per MMBTU	Dehydration	Rate per MMBTU	CO2 Treating	Rate per MMBTU	H2S Treating	Rate per MMBTU
0-100 psi	$0.020	0-100 psi	$0.005	100,000	$0.020	0-.5%	$0.020	.00-.005 gr	$0.005
101-200psi	$0.025	101-200 psi	$0.010	200,000	$0.025	.6%-1.0%	$0.025	.006--.01 gr	$0.075
201-300psi	$0.035	201-300 psi	$0.020	300,000	$0.035	1.0%-1.5%	$0.035	.01--.015 gr	$0.085
301-400psi	$0.040	301-400 psi	$0.025	400,000	$0.040	1.6%-2.0%	$0.040	.01--.015 gr	$0.090
401-500psi	$0.045	401-500 psi	$0.030	500,000	$0.045	2.1%-2.5%	$0.045	.015--.02 gr	$0.095
501-600psi	$0.050	501-600 psi	$0.035	600,000	$0.050	2.6%-3.0%	$0.050	.021--.03 gr	$0.100

$0.050 + $0.030 + $0.040 + $0.040 + $0.00 = $0.16

Valuation Options

1A — 1B — 2 — *Optional* — 3

1A: Simple ONRR Published Price With BTU Bump
Formula: Volume X E X (1.0 + Bump)
2,700 X $3.5925 X 1.04 =$10, 087.74
X .125 Royalty Rate
$1,260.97 ONRR Royalty

1B: Simple Industry Calculated Price With BTU Bump
Formula: Volume X (A – (B X (1-C) X (1.0 + Bump))
2,700 x ($3.75 – ($0.35 X 45%)) x 1.04 = $10,087.74
X .125 Royalty Rate
$1,260.97 ONRR Royalty

2: Calc'd Price using Standardized Table w/ Bump
Formula: Volume X (A – (B – F) X (1.0 + Bump)
2,700 x ($3.75 – ($0.35 - $0.16)) x 1.04 = $9,996.49
X .125 Royalty Rate
$1,249.56

3: Gross Proceeds
Calculate value and allowances per current regulations

Fair Return and Value Transparency – Public Data

September 13, 2018

Participants

Stella Alvarado
Matthew Adams
Pat Noah
Adam Red
Roderick Eggert
Greg Morby
ONRR Staff

Fair Return and Value
Transparency – Public Data

September 13, 2018

Recommendation:

To promote transparency, the RPC recommends that DOI publish well, lease, and monthly production data for royalty-bearing resources on Federal lands and offshore areas. This information should not include Tribal lands or other areas marked as confidential.

Fair Return and Value Transparency – Public Data

September 13, 2018

Nature of change:

This recommendation lines up with the President's Managements Agenda (PMA) published March 20, 2018, for promoting transparency and to making data available in a useful format.

Fair Return and Value Transparency – Public Data

September 13, 2018

Background:

- **Requested by Industry and the Public**
- **No single source provides all data**
  - **multiple levels of data available online for royalty-bearing offshore and onshore production**
- **Promote Transparency and Accountability**

Fair Return and Value Marketable Condition Update

September 13, 2018

Recommendation made to pursue rulemaking to amend regulation 1202.151(b) removing language around the boosting of residue gas.

<u>Prepare Economic Evaluation</u>

Formula designed for estimating economic impact for offshore and onshore

Data request made to industry to provide average rates to be used in the model.

Appendix B: Written Public Comment

WORC

Western Organization of Resource Councils

September 11, 2018

Scott Angelle
Acting Chairman, Royalty Policy Committee
c/o Office of Natural Resources Revenue, Attention: RPC
1849 C. Street NW, MS 5134
Washington, DC 20240
Submitted via email to: rpc@ios.doi.gov

Dear Acting Chairman Angelle and Members of the Royalty Policy Committee,

Thank you for the opportunity to submit comments in advance of your upcoming meeting in Colorado. This letter provides comments on behalf of the Western Organization of Resource Councils, or WORC, and our 12,200 members. WORC is a regional network of eight grassroots community organizations in seven states, including Dakota Resource Council (ND), Dakota Rural Action (SD), Idaho Organization of Resource Councils, Northern Plains Resource Council (MT), Oregon Rural Action, Powder River Basin Resource Council (WY), Western Colorado Congress, and Western Native Voice (MT).

Many of our members farm and ranch on lands overlying and neighboring federal, state and privately owned oil and gas deposits, and experience numerous impacts due to coal mining, and oil and gas production, transport and processing. WORC and its member groups have a longstanding interest in federal coal and oil & gas policy, and for nearly 40 years have actively engaged in advocacy in these areas.

Balance and Transparency

As we have stated in the past, we remain concerned about the Royalty Policy Committee's (RPC) failure to provide a fairly balanced and transparent decision-making process, and particularly its failure to make RPC subcommittee and working group meetings and materials available to the public, its failure to provide adequate notice of Committee meetings and materials, its exclusion of categories of public interest representatives from Committee membership and deliberation, and its failure to comply with DOI's ethics regulations.

In addition, as detailed by WORC's member group Powder River Basin Resource Council (PRBRC) in their comment letter, many of the agenda items for the RPC's upcoming meeting do not yet have supporting information available online, and we are concerned that the public comment period at the meeting is scheduled to occur prior to

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presentations from the subcommittees and the public will have no subsequent opportunity to comment before voting occurs.

These practices limit our ability to provide robust and meaningful comments. We urge the Committee to comply with all statutes, regulations, and agency guidance governing RPC processes.

Notification of Permit to Drill

We have significant concerns about the proposal to implement a Notification of Permit to Drill (NPD) pilot program in place of the current Application for Permit to Drill (APD) for federal onshore oil and gas resources, and the proposal to impose 15 and 45 day time limits on Bureau of Land Management (BLM) staff review of NPDs.

In our view, the NPD proposal is reflective of the RPC's narrow perspective and fails to take into account a number of important factors that influence permitting times, as well as the likely results of the proposal. As described in more detail in the comments submitted by PRBRC, we are primarily concerned that the proposed time limits will limit public participation requirements under the National Environmental Policy Act (NEPA) at an important juncture when site-specific environmental impacts are known for the first time. The time limits would severely restrict the opportunity for onsite visits with surface landowners. Many of WORC's members rely on the land for their livelihood, and have long relationships with the land that allows them to offer rich specificities that can inform BLM's analysis and decision-making, and limit interference with farm and ranch activities, as well as better protecting wildlife and other natural resources. These include, for example, the presence of habitats of species such as bald and golden eagles, locations of floodplains and wetlands, locations of drinking water wells, sharp topography, concerns related to public access, and visual resources worthy of consideration for protection.

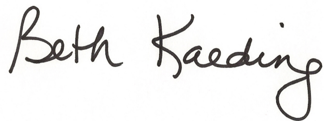
Other concerns include:

- In our experience, backlogs in permitting are often the result of incomplete or inaccurate applications from operators. We urge the Committee to look not only at the permitting time, but to also review the actual causes of permitting delays.
- BLM has been under pressure for some time to shorten permitting times and has been making progress. The 2005 Energy Policy Act requires BLM to review permits for completeness within 10 days and to act on permits within 30 days, and BLM has shifted significantly more resources to permitting from other functions since then to reduce permitting time. We are very concerned that automatically approving permits will force BLM to further limit resources for other important BLM functions, such as environmental, operation and recordkeeping inspections and reclamation bond reviews. We urge the Committee to consider how BLM's resources are currently allocated, whether BLM is meeting other targets (including inspection goals) and what functions would be further limited as a result of this proposal.

- Alternatively, the NPD proposal would result in permits being automatically approved, without sufficient review by BLM, which is unacceptable, and appears to be at odds with 30 USC 226 (g), which states that "No permit to drill may be granted ***without the analysis and approval by the Secretary concerned*** of a plan of operations covering proposed surface-disturbing activities within the lease area." (Emphasis added.)
- Finally, as with a number of previous recommendations on "streamlining" onshore oil and gas leasing and permitting, we question whether the recommendation is beyond the scope of the Committee's charter.

Thank you for your time and consideration of these comments. If we can provide any additional information to you in advance of your meeting please do not hesitate to ask.

Sincerely,



Beth Kaeding, Board Chair

ENCOURAGING RESPONSIBLE DEVELOPMENT TODAY ~ FOR TOMORROW

934 N. MAIN ST. SHERIDAN, WY 82801 (307) 672-5809 FAX (307) 672-5800
INFO@POWDERRIVERBASIN.ORG WWW.POWDERRIVERBASIN.ORG

POWDER RIVER BASIN
Resource Council

September 6, 2018

Scott Angelle
Acting Chairman, Royalty Policy Committee
c/o Office of Natural Resources Revenue, Attention: RPC
1849 C. Street NW, MS 5134
Washington, DC 20240
Submitted via email to: rpc@ios.doi.gov

Dear Acting Chairman Angelle and Members of the Royalty Policy Committee,

Thank you for the opportunity to submit comments in advance of your upcoming September 13th meeting in Colorado. These comments are provided on behalf of our members in Wyoming, many of whom are split estate farmers, ranchers, and rural landowners directly impacted by federal oil and gas and coal production.

Although we appreciate being able to provide comments, we note that they will be less helpful than they might be because many of your agenda items do not yet have supporting information available online. For instance, there is no information regarding “Coal Benchmarks” or the “Oil and Gas Payor Handbook” which is on the agenda for the fair return and valuation subcommittee but not in the “recommendations” document available for review. Similarly, no “coal” recommendations are presented in the planning, analysis, and competitiveness subcommittee materials, but there is an item on the agenda discussing the topic.

Additionally, we are concerned that the opportunity for oral public comment at the meeting occurs before the presentations from the various subcommittees. This means that our public comments – either in writing or in person at the meeting – will not be informed by the presentations. Since the agenda notes that committee members will be “voting” on these various recommendations, we request an additional opportunity for public comment *after* the presentation of each recommendation and *prior* to the vote on that recommendation.

In addition to these process concerns, we also have grave substantive concerns about the proposal from the planning, analysis, & competitiveness subcommittee to implement a Notification of Permit to Drill (NPD) program in lieu of obtaining an Application for Permit to Drill (APD) for federal onshore oil and gas resources. The proposal also imposes 15 and 45 day time limits on BLM staff to review NPDs.

As its rationale, the proposal discusses permitting “backlogs” at two BLM field offices, including the Buffalo Field Office in Wyoming’s Powder River Basin. The Buffalo Field Office is one of the busiest field offices in the country, and also one of the most efficient. Along with the High Plains District Office, the Buffalo Field Office is already a “Pilot Project Office” from the Energy Policy Act’s Federal Permit Streamlining Pilot Project.

If there is a “backlog” in permitting, it is more often a result of operator caused delays than of BLM staff inaction. Imposing time limits and “streamlining” the process won’t help applicants who simply do not submit complete and accurate information to BLM in the first place.

More importantly, the proposed time limits would severely shortchange public participation requirements under the National Environmental Policy Act (NEPA). Review of environmental and socio-economic impacts under NEPA is particularly important at the time of an APD. As BLM has noted in recent environmental assessments on oil and gas leases: “Often, where environmental impacts remain unidentifiable until exploration narrows the range of likely well locations, filing of an Application for Permit to Drill (APD) may be the first useful point at which a site-specific environmental appraisal can be undertaken.”[1]

The time limits will also severely restrict the opportunity for onsite visits with surface landowners, which are a critical and absolutely necessary tool if oil and gas development is to be sited to limit interference with farm and ranch activities, as well as to better protect wildlife and other natural resources.

Finally, like previous recommendations on “streamlining” onshore oil and gas leasing and permitting, the NPD proposal has no place at the Royalty Policy Committee. The RPC should be focused on its clear charge to study and evaluate “royalty policy” and other fiscal policy considerations. The RPC should not be used as a catchall spot for all suggestions from industry related to federal fossil fuel development. We request the Department of Interior to hold public forums and stakeholder outreach initiatives for all of its proposals because the RPC must not be the only venue in which these discussions occur.

Thank you for your time and consideration of these comments. If we can provide any additional information to you in advance of your meeting please do not hesitate to ask.

Sincerely,

Shannon Anderson
Staff Attorney, Powder River Basin Resource Council
934 N. Main St., Sheridan, WY 82801
sanderson@powderriverbasin.org

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[1] Fourth Quarter 2018 Competitive Oil and Gas Lease Sale, Environmental Assessment DOI-BLM-WY-0000-2018-0004-EA

Frisco, Colorado Mayor Pro Tem Hunter Mortensen's
RPC Lakewood, CO Comments
September 13, 2018

My Name is Hunter Mortensen and I'm the Mayor Pro Tem of Frisco, Colorado. I'm speaking on behalf of The Mountain Pact an organization who works with over 40 western mountain communities with outdoor recreation-based economies around federal policy related to public lands and outdoor recreation.

Currently, out-of-date oil and gas leasing and royalty policies are shortchanging taxpayers approximately $90 million per year and tying up public lands from other uses, such as recreation.

Royalty rates, which ensure the American people are properly compensated for the extraction and sale of oil and gas from public lands, should be raised to reflect the present-day value of these lands.

Increasing royalty rates from 12.5% to 18.75% on federally managed lands, as has been done by many states, would increase taxpayer revenue from $400 to 700 million over the next ten years. Likewise, if rental rates and minimum leasing bids for land parcels were raised, an additional $400 million and $100 million in revenue, respectively, would be realized by taxpayers.

The RPC was established as a Committee to review and recommend rules regarding fair valuation of resources produced on public lands, but since the majority of participants in the committee are oil and gas industry representatives, it's clear the interests of the American people are being ignored. We need the RPC to better manage these resources and our public lands for multiple uses, not just energy extraction.

Public lands management and proper valuation of resources produced on our public lands are crucial for mountain communities. The proposals to be amended by the Committee do not adequately address the values and well-being of mountain communities, and thus, we recommend the following:

1. Increases royalty rates to match market prices and rates used by western states and to increase revenue;
2. Increases minimum lease bids to discourage speculation and raise revenue;
3. Increases rental rates to encourage development, discourage speculation and increase revenue; and
4. Prioritize leasing in areas that will generate the most revenues for taxpayers and will not impair other revenue-generating activities like outdoor recreation.

By following these guidelines, the BLM can ensure they are managing our public lands in the best interests of nearby mountain communities and holding true to their multiple use mandate.

RPC, DOI <rpc@ios.doi.gov>

[EXTERNAL] Royalty Policy Committee meeting, Sept. 13th, 2018

John Clark <jclark@town.ridgway.co.us>
To: "rpc@ios.doi.gov" <rpc@ios.doi.gov>

Mon, Sep 10, 2018 at 12:06 AM

To whom it may concern,

I'll keep this brief and to the point. The Interior Dept. has a legal mandate to manage public lands in a way that balances uses between all sectors. If oil & gas leases are be granted at the expense of outdoor recreation, the royalties charged to those uses should be levied at rates that match market prices, minimum lease bids should be raised to discourage speculation and increase revenue, and those leases/rentals should primarily be limited to areas that generate maximum revenue and don't impair other revenue-generating uses like outdoor recreation.

By focusing on those efforts, the Bureau of Land Management (BLM) can do the best job of managing of our public lands, for *everyone*.

Please, do the right thing, and at the very least, make sure that royalties generated by all uses match market rates. At the same time, please continue to follow common sense environmental safeguards, and respect voices from mountain communities that rely on healthy, well-managed public lands for economic stability, outdoor recreation, and cultural vitality.

Sincerely,

John I. Clark
Mayor
PO Box 10
Ridgway, CO 81432

September 7, 2018

Delivered via email to rpc@ios.doi.gov

Royalty Policy Committee
U.S. Department of the Interior

Re: Redress Methane Waste and Lost Revenue

Dear Royalty Policy Committee Members,

We write to the committee today to request that, as you meet in Denver, you address the issue of natural gas waste on public lands. Currently there is no mention of this issue in the Fair Return & Value Recommendations this committee has put forth or how the Bureau of Land Management (BLM) will ensure a fair return to taxpayers and compliance with its waste prevention mandate after the recent changes to the 2016 BLM Methane Waste Prevention Rule. Because one of this committee's goals is to ensure that the public receives the full value of the natural resources produced from federal lands, we urge the committee to make a recommendation that the Department fully reinstate this rule.

In 2016, the BLM finalized common-sense standards to rein in the excessive waste of natural gas occurring on public lands. By curbing unnecessary venting, flaring and leaks at oil and gas facilities, the Waste Prevention Rule would have helped to protect public health, reduce potent greenhouse gas (GHG) emissions, and save taxpayers an estimated $800 million over 10 years[1].

As you may know, the Department of Interior recently revealed a large scale repeal of the BLM's Methane Waste Prevention Rule. In lieu of a comprehensive federal requirement, the BLM would be abdicating its responsibilities and relying almost exclusively on existing state regulations to limit waste. Many impacted states have inadequate or nonexistent natural gas waste and methane reduction regulations. Relying on this patchwork approach would lead to inconsistent standards across our public lands and more importantly, will result in pollution and the continued waste of taxpayer owned resources.

If the abdication rule is finalized, there will be almost no protections to ensure that the public receives the full value of the vented, leaked, flared, or otherwise wasted natural gas being produced on our public lands. This would result in taxpayers losing hundreds of millions of dollars a year on royalty-free natural gas that could otherwise be captured and sold by companies. We believe that BLM's recent actions with respect to reducing methane waste demonstrate a gross dereliction of its duty and should be resolved as quickly as possible.

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[1] Western Values Project, "Up in Flames: Taxpayers Left Out in the Cold as Publicly Owned Natural Gas is Carelessly Wasted" (2014) Available at: [http://westernvaluesproject.org/wp-content/uploads/2014/05/Up-In-Flames.pdf.](http://westernvaluesproject.org/wp-content/uploads/2014/05/Up-In-Flames.pdf)

We appreciate the opportunity to share our concerns on this important issue and recommend the committee address the waste of natural gas on America's public lands at their upcoming meetings.

Sincerely,

American Society of Landscape Architects
CAVU
Citizens for Clean Air
Clean Water Action
Conservation Colorado
Devil's Spring Ranch
Earthworks
Endangered Species Coalition
Environmental and Energy Study Institute
Environmental Defense Fund
GreenLatinos
High Country Conservation Advocates
Interfaith Power & Light
National Parks Conservation Association
Natural Resources Defense Council
Nature Abounds
New Mexico Interfaith Power and Light
Physicians for Social Responsibility
ProgressNow New Mexico
Sierra Club
The Evangelical Environmental Network
The Wilderness Society
Western Colorado Alliance for Community Action
Western Organization of Resource Councils

Prepared Statement for Public Comment Period
Department of Interior Royalty Policy Committee
Lakewood, Colorado—September 13, 2018

Dan R. Bucks
Former Montana Director of Revenue

Note: Shaded text prepared, but not delivered to comply with 3-minute time limit.

Thank you for this opportunity to provide public comments. These comments are based on a plain reading of the published recommendations because that is all that the public has access to for comment purposes.

I will begin by addressing index pricing for natural gas valuation.

Index pricing is an excellent idea. It would use actual market prices to value natural gas and more likely guarantee a fair return for the American people. It can simplify and streamline administration for producers and industry alike—and also enhance equity among competing producers.

Unfortunately, the recommendation says very little about index pricing and way too much about giving power to producers to undermine its results. Allowing producers to opt out and determine their own valuation methods or to approve index prices are bad ideas. Under the proposal, the public interest in receiving royalties based on fair market value will take a back seat to private financial interests.

Lest these statements be judged to not be a fair reading of the recommendation, I would note that nowhere in the recommendation can one find the words "Interior will determine the method to pay." Instead, one reads ,"Payors (producers) would determine the method to pay." One does not find language that requires that alternative valuation methods conform to the legal requirement that the public receive a return based on the fair market value of minerals. Instead, one reads that the alternative valuation methods are intended to "be favorable to different payors (producers)".

These proposals would also reduce equity and uniformity among producers. They are not only bad policy, but also bad law. It is fundamentally improper to delegate public authority to private corporations and entities.

The committee should amend the proposal to remove language allowing producer control of valuations and industry approval of index prices.

I will move now to the transparency proposal.

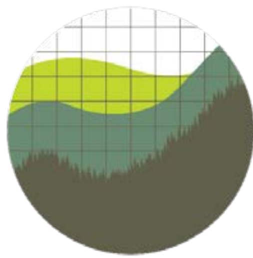
Please approve this recommendation as an excellent first step in providing greater public access to information about the minerals they own.

I also applaud the major steps that Interior has made, as demonstrated in the presentation this morning, to provide greater public access on its website to information about mineral production and revenues.

I urge the committee to continue to work on even greater transparency. Please set your sights on the goal of providing the public with information on the value of minerals produced and royalties and lease revenues paid by lease or other logical area.

As a matter of right, the American people, who own these resources, deserve to know what they are being paid and the basis for doing so. The public also needs this information to hold Interior accountable for achieving a fair return. Interior needs to provide this information to build trust with the American people.

I urge this committee to convene an open forum on transparency in conjunction with one of its future meetings. The committee should also work on direct valuation and index pricing methods to improve valuation with the added benefit of easing the transition to greater public access to information about their minerals.



September 7, 2018

Scott Angelle
Acting Chairman, Royalty Policy Committee
c/o Office of Natural Resources Revenue, Attention: RPC
1849 C. Street NW, MS 5134
Washington, DC 20240
Submitted via email to: rpc@ios.doi.gov

Re: Public Interest Sector Recommendations to the Royalty Policy Committee

This letter is submitted on behalf of the undersigned parties. Members of the public and professional experts from the public interest sector and academia have asked the Royalty Policy Committee ("RPC") to address key issues that should be accounted for in setting royalty policies for energy development from public lands, including the following:

- Existing Department of the Interior ("Interior") royalty rules and practices often fail to value fossil fuels produced from federal lands fully and fairly.
- Interior can substantially increase royalty payments for the public with only a slight impact, if any, on energy production, as documented by the White House Council of Economic Advisors and Government Accountability Office.
- Fossil fuel production has failed to consistently produce lasting, sustainable economic and social benefits for people living in the areas affected by development.
- Fossil fuel production has often damaged the surrounding land, air, water, wildlife, vegetation, and other resources, adversely affecting public health and the environment.
- Leasing public land for fossil fuel production often forecloses other, equally valid uses of public land, including recreation, conservation, watershed protection, and renewable energy production, among others.
- Leasing public land for fossil fuel development accelerates costly and damaging climate change.

The undersigned parties offer the following suggestions as a constructive means for the RPC to respond to such comments. The RPC should consider recommending that Interior:

1. Establish public participation as a central feature of federal land management, and ensure that special interests do not have greater access to decisionmaking than the general public. Decisions regarding planning and selection of lease tracts, lease terms (including minimum bids, royalty rates, and other fiscal terms), and mitigation measures should be conducted through open procedures and subject to public participation.

2. Increase the transparency of mineral leasing and royalty systems and the scope of public reports on revenues received to ensure that U.S. taxpayers know what they are receiving for specific mineral leases and are able to evaluate the adequacy and accuracy of those receipts.

3. Refrain from leasing energy resources in environmentally, historically and culturally sensitive areas, including the Arctic National Wildlife Refuge and other areas near national parks, national monuments, and wildlife refuges.

4. Support regulations designed to curtail the venting and flaring of methane from fossil fuel production, and apply royalties to methane produced, but wasted because available technology was not used to prevent such releases.

5. Increase royalty rates in order to compensate states and communities for extraction costs and enable them to develop alternative, sustainable economic activities that will avoid the mineral leasing boom and bust cycle.

6. Set the fiscal terms for fossil fuel leases (such as royalty rates) at levels that recoup the social cost of greenhouse gas emissions, based on methods and results developed by the Interagency Working Group's Social Cost of Carbon and Social Cost of Methane.

7. Eliminate or amend Interior's current regulation on discretionary royalty relief in order to strongly curtail such royalty relief, which is an improper subsidy of non-economic energy production. Interior should not lower royalty rates and should not increase the use of discretionary royalty relief.

8. Directly value coal for royalty purposes to ensure that values are consistent with fair market prices and are not subject to undue discretion or manipulation by producers.

9. Replace leasing practices that result in little or no competition for leases—such as area-wide leasing for offshore oil and leasing-by-application for coal—and substitute new policies that will enhance competition for leases. New policies to be considered should include, but are not limited to:
   a. Calibrating leases offered to not exceed the market demand for leases;
   b. Increasing minimum bid prices for competitive and noncompetitive leases to dissuade speculative lease stockpiling;
   c. Increasing rental fees on undeveloped acreage to dissuade speculative lease stockpiling that forecloses other valuable uses of public land;
   d. Prioritizing leasing parcels with low environmental costs and a reasonable likelihood of economic production;
   e. Reducing lease extensions and suspensions to encourage competition and diligent development of the existing lease inventory;

f. Considering alternative models to the lease-by-application process in order to build a more effective, responsive, and transparent coal leasing program;
g. Considering inter-tract leasing similar to the recommendation by the Linowes Commission[1] instead of BLM's current lease-by-lease consideration that limits the agency's ability to assess the potential environmental impacts beyond a given proposed parcel;
h. Reinstituting the coal production region process improperly reversed in 1991; and
i. Requesting the U.S. Securities and Exchange Commission to more strongly enforce the SEC's five-year development standards for booked Proved Undeveloped (PUD) reserves.

Sincerely,

Jayni Foley Hein
Policy Director
Institute for Policy Integrity
NYU School of Law[2]

Natural Resources Defense Council

Sierra Club

Dan R. Bucks
Former Montana Director of Revenue

Donna House
Eco-Cultural Diversity Consultant
Dineì/Indigenous Peoples' Communities

Mary Ellen M. Kustin
Policy Director, Public Lands
Center for American Progress

Mark Squillace
Raphael J. Moses Professor of Natural Resources Law
University of Colorado Law School (for identification purposes only)

[1] David F. Linowes *et. al.*, Report of the Commission on Fair Market Value Policy for Federal Coal Leasing (Washington: Commission on Fair Market Value Policy for Federal Coal Leasing, 1984).

[2] This document does not purport to present New York University School of Law's views, if any.

September 7, 2018

Members of the Royalty Policy Committee
Via rpc@ios.doi.gov

To members of the Royalty Policy Committee:

Please find two documents from The Wilderness Society for your consideration in advance of the RPC meeting on Sept. 13 in Denver.

The first document is an assessment of the recommendation being considered at the meeting regarding a pilot project to implement a Notification of Permit to Drill (NPD) program. The document is entitled Circumventing Environmental Review and Compliance for Oil and Gas on Public Lands: RPC Proposing Process to Allow Drilling without Site-specific Plan or Review.

The second document lays out three policy areas The Wilderness Society believes the RPC should address: BLM's Oil and Gas Bonding Policy, BLM's practice of leasing lands with low or no oil and gas development potential, and BLM's approach to managing lease stipulations. We have submitted these to Planning, Analysis and Competitiveness Subcommittee and had an initial conversation about them. We look forward to talking more with the Committee about these issues.

Sincerely,

Pamela Eaton
Senior Advisor
Energy and Climate

Circumventing Environmental Review & Compliance for
Oil and Gas Drilling on Public Lands:

RPC Subcommittee Proposing Process to Allow Drilling without Site-specific Plan or Review

This recommendation proposes that BLM allow oil and gas operators to use a "notification of permit to drill" (NPD) process for public lands drilling rather than the Application for Permit to Drill (APD) process used now. The proposal is for an initial "pilot" that would allow oil and gas operators to begin drilling without BLM action under certain circumstances.

Topline Concerns:

This proposal is outside of the scope of the Royalty Policy Committee (RPC). The RPC charter is "to ensure the public receives the full value of the natural resources produced from Federal lands. The Committee will provide advice to the Secretary, through the Counselor to the Secretary for Energy Policy, on the fair market value of and on the collection of revenues derived from, the development of energy and mineral resources on Federal and Indian lands."

The proposed NPD approach undermines BLM's accountability for public health and safety and allows industry to move forward without oversight. This proposal is similar to more detailed legislation now pending in the House: H.R. 6088, Rep. Curtis (UT-3), "Streamlining Permitting Efficiencies in Energy Development Act": A bill to allow oil and gas companies to drill on public lands through a "notification" system. The bill contains even more circumstances under which NPDs would be used. It limits BLM's ability to object to NPDs under only two circumstances: the activity would likely jeopardize a threatened or endangered species or would impact properties listed, or eligible for listing, in the National Register of Historic Places. Overall, the RPC proposal and H.R. 6088 create incentives for BLM to shirk its responsibility to ensure responsible development of our public lands.

The proposed NPD approach would not be limited to situations where there is little environmental risk. As outlined below, the proposed approach is expansive and would *not* limit the granting of automatic approval of NPD applications to activities in areas with low environmental impacts.

The proposed NPD process will eliminate necessary site-specific environmental review leaving important resources inadequately protected from the impacts of energy development. The APD process is often the first time site-specific environmental review for both downhole risks and surface impacts is conducted for drilling a given lease. As BLM has noted in recent environmental assessments on oil and gas leases:

> "Often, where environmental impacts remain unidentifiable until exploration narrows the range of likely well locations, filing of an Application for Permit to Drill (APD) may be the first useful point at which a site-specific environmental appraisal can be undertaken." **(**Fourth Quarter 2018 Competitive Oil and Gas Lease Sale, Environmental Assessment DOI-BLM-WY-0000-2018-0004-EA)

Too often the agency often puts off meaningful environmental analysis at the planning and leasing stages saying it will conduct analyses at the well permitting stage. The proposed NPD process would rely on the limited analysis done at the planning and leasing stages and effectively circumvent the permitting process, resulting in the approval of permits without necessary site-specific review.

The proposed NPD process would not require Onsite Inspections with operators, BLM and private surface owners.

The proposed process limits the public's ability to comment on and participate in decision-making processes that will determine how their public lands are managed.

Current APD Process: Under current law and regulations, oil and gas operators are required to submit to the BLM a complete Application for Permit to Drill (APD) prior to commencing drilling operations on Federal or Indian lands. BLM must review and approve the APD before an operator can begin drilling. No drilling operations or related surface disturbing activities may be initiated without an approved APD.

The information that an operator must supply to BLM in its Application for Permit to Drill is intended to assure that the public's interest in the down-hole integrity of the well is protected as well as to minimize the adverse surface impacts of proposed development. Operators must submit to BLM information where and how they intend to drill, including:

- A "drilling plan" which contains a description of the drilling program, the surface and projected completion zone location, pertinent geologic data, expected hazards, and proposed mitigation measures to address such hazards.
- A "surface use plan of operations" which describes the road and drill pad location, details of pad construction, methods for containment and disposal of waste material, plans for reclamation of the surface, and other pertinent data as the authorized officer may require.
- A Bond is required to assure compliance with all lease terms for the entire lease when the first APD is submitted.
- Operator Certification of compliance with other laws, by submitting required federal environmental permits (air and water), rights-of-way, zoning permits and state permits.
- An Onsite Inspection with operator, BLM and, where appropriate, private surface owner. Prior to the onsite visit, the operator must stake the proposed drill pad and ancillary facilities.
- Operator must incorporate any changes made as a result of the onsite visit before the APD can be finalized.

Once the APD package is submitted to the BLM, the agency is required to notify the leaseholder within **10 days** of any inconsistencies or omissions, which the leaseholder can then remedy.

- Once the BLM determines that the APD package is complete, the agency has 30 days **plus additional time required for National Environmental Policy Act (NEPA) analysis or compliance with other laws**, such as the Endangered Species Act or National Historic Preservation Act to process the APD.
- Upon receipt of the APD the authorized officer will post a notice that the APD has been received on the BLM AFMSS reports site for 30 days. https://reports.blm.gov/report/AFMSS/7/30-Day-Federal-Public-Posting. NEPA analyses and compliance documents are posted in BLM 's e-planning site: https://eplanning.blm.gov/epl-front-office/eplanning/lup/lup_register.do

BLM's site-specific NEPA analysis for the APD to Drill can take several forms:

- determining that a categorical exclusion (CX) from NEPA applies;
- determining that the existing analysis of the area is adequate, yielding a Documentation of NEPA Adequacy (DNA);
- completing an environmental assessment (EA) and finding of no significant impact (FONSI);
- completing an environmental impact statement (EIS) where there has been a finding of potential significant impacts.

BLM analysis of permit times shows the average time for issuing APDs and the average time to get complete APDs from operators and time for BLM to process complete APDs: https://www.blm.gov/sites/blm.gov/files/Table12_Time_to_Complete_an_APD1.pdf

RPC Proposal for Notification of Permit to Drill (aka Permit By Rule): Under this proposal, in lieu of filing an APD, the RPC Subcommittee Proposal would allow companies to "simply file the necessary paperwork required for NPDs and, after a 45-day waiting period, move forward with drilling." BLM would have only 15 days to notify the operator in writing if the NPD is incomplete and only 45 days after receipt of a complete NPD to notify the operator of any objections. If the BLM notifies the operator of an objection, the operator may resubmit a revised NPD or resubmit application as an APD.

As proposed, **this NPD approach does not require an Onsite Inspection** with the operator, BLM or, where appropriate, the private surface owner. According to the BLM, "The purpose of the onsite inspection is to discuss the proposal; determine the best location for the well, road, and facilities; identify site-specific concerns and potential environmental impacts associated with the proposal; and discuss the conditions of approval (COAs) or possible environmental Best Management Practices for mitigating these impacts." (https://www.blm.gov/sites/blm.gov/files/Chapter%203%20-%20Permitting%20and%20Approval%20of%20Lease%20Operations.pdf)

The absence of onsite inspections reduces the likelihood that BLM will identify potential impacts. The current APD process is often the first time site-specific environmental review for both downhole risks and surface impacts is conducted for drilling a given lease. **As BLM has noted in recent environmental assessments on oil and gas leases: "Often, where environmental impacts remain unidentifiable until exploration narrows the range of likely well locations, filing of an Application for Permit to Drill (APD) may be the first useful point at which a site-specific environmental appraisal can be undertaken." (**Fourth Quarter 2018 Competitive Oil and Gas Lease Sale, Environmental Assessment DOI-BLM-WY-0000-2018-0004-EA) Too often, BLM has played a shell game with the public regarding its environmental analysis of the impacts from oil and gas drilling. The agency continually puts off meaningful environmental analysis at the planning and leasing stages, saying it will conduct analyses at the well permitting stage. The proposed NPD process would rely on the limited analysis done at the planning and leasing stages and effectively circumvent the permitting process, resulting in the approval of permits without necessary site-specific review. This means that if protections for specific resources are not established at the planning or leasing stages, there will be no additional opportunity for the BLM to address impacts to those resources prior to an operator commencing well drilling operations.

The proposal "limits" the pilot NPD effort to wells that meet certain criteria that may seem narrow, but are in fact expansive. **The criteria, as described in the proposal, would allow significant land areas to be developed and a large number of wells to be drilled without adequate environmental review.** Under this proposal, an operator could use the NPD process if the NPD demonstrates that the drilling operations will be located on federal lands in any of the following circumstances**:**

- Wells drilled in a developed field where there are existing wells within a 5 mile radius and an approved land use plan or other environmental document that was prepared within the last ten years pursuant to NEPA that analyzed such drilling as a reasonably foreseeable activity.
  Concerns:
    - An area 5 miles from existing wells is **not** within a developed field. A 5-mile buffer around a single well encompasses 50,000 acres. One well could serve as the basis for drilling across an entire watershed, creating a developed field where only one well existed.
    - BLM's current NEPA policy allows the agency to use the existing resource management plan to issue a Documentation of NEPA Adequacy if the land use plan is current and

addresses the impacts expected from drilling. Using an arbitrary planning date as the basis for waiving requirements for even a minimum level of environmental review could miss significant changes in the environment. It also ignores the fact that the APD is likely the first time any site specific review would be performed for the lease.

- The developed field would include oil and natural gas drilling that has occurred within the last ten years and would not increase the surface disturbance on an existing well pad.
  Concerns:
    - As written, the RPC proposal is not limited to activities on existing well pads in developed fields.
    - This criterion is unclear. Legislation now pending in Congress (HR 6088) presents this concept more thoroughly: "a location or well pad site at which drilling has occurred within 10 years before the date of spudding the well and the proposed operations do not increase the surface disturbance on the location or well pad site."
- NPD would conform to size restrictions, other approvals by communitization or unit agreements approved by a state regulatory agency, or where a categorical exclusion to NEPA compliance applies for oil and gas drilling or re-entry activities.
  Concerns:
    - Categorical Exclusions (CX) from National Environmental Policy Act eliminate public review and comment on activities that impact the human environment. They should be used only in limited circumstances. CXs for certain drilling activities have been abused in the past. In the mid-2000s, BLM approved almost 6,900 oil-and-gas-related activities between 2006 and 2008 without environmental review. The Government Accountability Office (GAO) reported that BLM's use of these categorical exclusions through fiscal year 2008 often did not comply with either the law or BLM's guidance.
    - Again, HR 6088 is more explicit in where this criterion is headed—toward allowing drilling on federal public lands based only on a state drilling permit: "an area consisting of Federal mineral interests that is located within the boundaries of a communitization agreement or unit agreement which contains minerals leased by a State or private mineral owner for which a drilling permit has been approved by a State regulatory agency." State agencies do not have the same responsibilities as BLM to manage for multiple uses and minimize harm to public lands values, including wildlife habitat and recreation opportunities.

The NPD proposal will also allow operators to use third-party inspectors approved by BLM for environmental, archeological, and cultural resources surveys "which confirm that the proposed operations will not have significant impacts on the environment."

Concerns:

- The proposal would not require environmental surveys on a previously authorized location or well pad site where the new proposal does not increase the surface disturbance of that location or well pad.
- The proposal would allow contractors to by-pass BLM involvement in cultural/archeological surveys and directly obtain the concurrence from the State Historic Preservation Officer.
- The proposal would necessitate the agency certifying third part contractors and developing MOUs which is a time and resource intensive process.

TEXT OF PROPOSAL
DRAFT 20180817
Subcommittee Proposing Recommendation:
Planning, Analysis, & Competitiveness

Recommendation:
RPC recommends that BLM conduct a pilot project for an active resource area to implement a Notification of Permit to Drill (NPD) program in lieu of obtaining an Application for Permit to Drill (APD) on eligible Federal Lands. Upon receiving an operator or lessee's NPD submittal, the BLM would have 15 days to notify the operator in writing if the NPD is incomplete. Not later than 45 days after receipt of a complete NPD, the BLM shall either: (1) notify the operator of any objections; or (2) take no action. If no action is taken, the operator may conduct the drilling and production activities for which the notification of permit to drill was submitted. If the BLM notifies the operator of an objection, the operator may resubmit a revised NPD or resubmit application as an APD.

Nature of change:
This pilot project may be conducted through rulemaking or by inclusion in the Department's legislative proposals to Congress.

Background:
The NPD in lieu of an APD is a permit which authorizes certain actions in specific situations where the proposed action occurs in developed areas where environmental analyses have previously been conducted. This NPD authorizes drilling and production activities on exploratory, development, and service wells which take place on Federal oil and gas leases based on a standard set of requirements that apply to multiple wells with similar drilling characteristics. The process for an operator or lessee to obtain a NPD by the proposed pilot project is streamlined compared to issuance of APDs under existing Onshore Order No. 1.
For purposes of this proposal, the NPD is a permit streamlining approach that reduces the time permitting authorities must devote to reviewing applications and issuing approvals for drilling areas that pose low environmental concerns. Many of the approved actions will fall within categorical exclusions established by Congress under Section 390 of the Energy Policy Act of 2005. In addition, the rule will apply to address industry changes in drilling operations that pose low environmental concerns, such as operations occurring on 10-acre well pads used for multi-well operations, which are becoming more common-place in the industry. Under the rule, operators and lessees will be able to obtain environmental surveys from inspectors approved by BLM, which confirm that the proposed operations will not have significant impacts on the environment. Such information may be submitted to BLM as a term and condition of the approval, unless the operator otherwise qualifies for a categorical exclusion under NEPA or is performing operations on a previously authorized location or well pad site and the new proposal does not increase the surface disturbance of that location or well pad. In addition, the proposed terms and conditions for the rule would allow operators or lessees to work with third-party contractors to obtain archeological and cultural resources surveys. Such contractors may directly obtain the concurrence from the State Historic Preservation Officer, without direct involvement by BLM. Any such surveys and requests for concurrence must be submitted to BLM as part of the notification process.

For an operator to obtain approval under such a pilot project, a complete NPD must be submitted. To be considered a complete NPD, the applicant would be required to submit detailed information, which would include but not be limited to surface use plan of operations, drilling plan, and an operator certification, evidence of bond coverage, a well plat, and NPD fees. Federal Lands eligible for the NPD pilot project must be a developed field, with oil and gas operations within a five-mile radius and an approved land use plan or other environmental document that was prepared within the last ten years pursuant to NEPA that analyzed such drilling as a reasonably foreseeable activity. The developed field would include oil and natural gas drilling that has occurred within the last ten years and would not increase the surface disturbance on an existing well pad. Additionally, the action would conform to size restrictions, other approvals by communitization or unit agreements approved by a state regulatory agency, or where a categorical exclusion to NEPA compliance applies for oil and gas drilling or re-entry activities.

The NPD could also be granted if the operator or lessee obtains an environmental survey and archaeological survey from a third-party contractor approved by BLM or pursuant to a memorandum of understanding entered into by the BLM to perform such inspections.
The NPD proposal is a cost-effective means of issuing permits, and provide a more efficient, streamlined alternative mechanism for approving operations which do not have a significant effect on the human environment. Other agencies, such as the Environmental Protection Agency and the United States Army Corps of Engineers have utilized similar 'permits by rule' to streamline their approvals processes.

The simplified process will authorize certain oil and gas wells proposed on Federal oil and gas leases. The Authorized Officer needs to take no action upon receipt of a qualifying NPD because approval is granted through the agency's regulations. Under a permit by rule, operations would be subject to the operational, monitoring and recordkeeping requirements and terms and conditions specified in the rule.

Analysis:
In administering 700 million acres of Federal mineral resources, BLM has a responsibility to make Federal oil and gas resources available for the benefit of the citizens of the United States. Under applicable law, BLM manages approval of all proposed exploratory, development, and service wells, and all required approvals of subsequent well operations and other lease operations. See 43 CFR §§ 3162.3-1, 3162.3-2, 3162.3-3, 3162.3-4 and 3162.5-1. All applications for approvals are submitted to the appropriate Authorized Officer of the BLM. "Authorized Officer" means any person authorized to perform the duties prescribed.

A significant number of applications for approvals are currently pending before BLM. Due to current backlogs, the Carlsbad, NM, and Buffalo, WY, field offices would make ideal locations for this pilot project. Industry has reported that it can take between 139 – 1000 days to obtain application approvals. Industry members believe that over $1.5 million in federal royalty and more than $800,000 in state severance receipts are deferred per day in the state of New Mexico alone due to approval delays. Given the magnitude of deferred payments and the BLM's statutory and management obligations, it is important for BLM to create greater efficiencies in its permit approval processes for the development of Federal oil and gas resources.

On July 5, 2017, the Secretary of the Interior released Secretarial Order No. 3354 with the aim of promoting the exploration and development of Federal onshore oil and gas resources. Order 3354 contains a directive which requires BLM to identify options to "enhance exploration and development of Federal onshore oil and gas resources;" and, "to develop an effective strategy to address permitting applications efficiently and effectively as well as develop clear actionable goals for reducing the permit processing time."

The BLM is proposing updates to Onshore Order No. 1's requirements because they are necessary to create regulatory efficiency in the approval process. Specifically, this proposed rule is designed to create a permit by rule which ensures that operations can be timely initiated and effectively performed on Federal oil and gas leases. Efficient approval of regulatory permits is essential to ensure that significant royalties are not being deferred, that federal resources are being timely and appropriately developed, and to ensure that the American public receive the royalties to which they are entitled on oil and gas produced from Federal leases.

Onshore Order No.1 is one of seven Onshore Oil and Gas Orders that the BLM issued under its regulations at 43 CFR Part 3160. Onshore Order No.1 primarily supplements the regulations at 43 CFR 3162. See also 43 CFR § 3162.3-1 (discussing the requirements for Applications for Permits to Drill (APD)).

Until recently, the BLM's Onshore Orders have been published in the Federal Register, both for public comment and in final form, but they had not been codified in the CFR. In 2016 and 2017, Onshore Oil and Gas Orders 3, 4, and 5 were replaced by regulations contained within the CFR. On January 10, 2017, BLM also codified revisions to Onshore Order No. 1 concerning the filing of APDs. With this rule, the BLM is now proposing to supplement and replace portions of Onshore Order No. 1 to codify a permit by rule for the approval of proposed exploratory, development, and service wells.

Many of the provisions in this proposed rule are developed in response to Secretarial Order 3354 and are based on BLM's experience and recommendations received by Industry members. In aggregate, these provisions will help ensure that the production of Federal oil and gas is adequately accounted for. By replacing the patchwork of guidance developed by BLM state and field offices, this proposed rule would also provide operators with more consistent requirements applicable to their operations on Federal lands nationwide.

BLM's Oil and Gas Bonding Policy Needs to be Updated

The Problem: The BLM requires oil and gas companies to post reclamation bonds[1] to "ensure the complete and timely reclamation of the lease tract, and the restoration of any lands or surface waters adversely affected by lease operations. . . ." as required by the Mineral Leasing Act.[2] Operators can cover reclamation costs for a single lease under a **lease-specific bond** for 10,000; all leases owned by one company in a given state under a **statewide bond** for $25,000; or all leases owned by one company under a **nationwide bond** for $100,000.[3] While bonding acts as an insurance policy for the American taxpayer, the current bonding requirements pose a number of issues:

- **Bond amounts are too low.** BLM established the current minimum amounts for statewide and nationwide bonds in 1951 and for lease-specific bonds in 1960.[4] These amounts have not been adjusted to account for the increased reclamation costs associated with the deeper and more complex wells being drilled today. According to GAO, the cost to reclaim these new wells far exceed $100,000.[5] Moreover, minimum bond amounts have not been adjusted to reflect inflation. In 2018, GAO estimated that if BLM adjusted reclamation bonds for inflation, they would increase to $64,000 (lease-specific), $190,000 (statewide), and $1.13 million (nationwide).[6]
- **Total bonds held are not sufficient to cover the government's potential reclamation liabilities.** This has led to a widening gap between the amount BLM holds in reclamation bonds, which totaled about $164 million in 2008,[7] and potential reclamation costs for all producing oil and gas wells on America's public lands – $6.1 billion, according to a recent estimate.[8] According to GAO, this discrepancy means that, "BLM cannot ensure that it has sufficient bond coverage or other financial assurances to minimize the need for taxpayers to pay for the costs of reclaiming orphaned wells."[9]
- **The agency has failed to systematically track data on potential liabilities and bond adequacy and does not maintain any information on actual reclamation costs incurred.[10]**

[1] 43 C.F.R. § 3104.1.
[2] 30 U.S.C. § 226(g).
[3] *Id.* §§ 3104.2, .3.
[4] GAO, BLM Needs a Comprehensive Strategy to Better Manage Potential Oil and Gas Well Liability 11 (Feb. 2011).
[5] BLM Needs a Comprehensive Strategy to Better Manage Potential Oil and Gas Well Liability at 32.
[6] *Id.* at 29.
[7] GAO, Bonding Requirements and BLM Expenditures to Reclaim Orphaned Wells 11 (Jan. 2010).
[8] Center for Western Priorities, Reclaiming Oil and Gas Wells on Federal Lands: Estimate of Costs 1 (Feb. 2018).
[9] GAO, Bureau of Land Management Needs to Improve Its Data and Oversight of Its Potential Liabilities. (May 2018) at 17
[10] GAO, Bureau of Land Management Needs to Improve Its Data and Oversight of Its Potential Liabilities. (May 2018).

Solutions:

1. **Adjust bond amounts for inflation and well depth and adjust minimum amounts periodically:** An initial adjustment to the federal onshore reclamation bonds should be made for inflation. An additional adjustment should be made to account for the increasing costs of reclaiming deeper oil and gas wells. This can be accomplished through incremental increases in bond amounts based on well depth. Periodic adjustments to minimum bond amounts should be mandatory and occur at least every two years to capture inflationary changes, as well as new information concerning reclamation costs generated by agency reviews.
2. **Require regular reviews of bond adequacy:** BLM should be required to regularly evaluate the adequacy of the bond requirements and make those results publicly available.
3. **Track and periodically report potential liabilities and actual reclamation costs incurred.** This includes proactively monitoring and tracking high-risk inactive wells.

BLM Should Evaluate its Practice of Leasing Land with Low or No Oil and Gas Development Potential

The Problem: More than 90% of fluid mineral acreage managed by the BLM is currently available for oil and gas leasing.[11] The BLM's handbook for fluid mineral planning and the MLA direct the agency to lease lands that are likely to have oil and gas potential, but fail to consider the economic viability of those leases and whether they will ever enter into production. This leads the BLM to make the vast majority of federal minerals available to leasing in land use plans, regardless of the likelihood of development.

Moreover, BLM's guidance often produces illogical management decisions for low or no potential lands that remain open to leasing, resulting in significant resource conflicts and poor taxpayer protections. In many instances, low potential lands receive weaker stipulations than areas with high potential because the agency logically predicts the parcels are unlikely to be developed. This results in lands being managed for oil and gas development rather than other important resource values even though a well may never be drilled.

Unfortunately, because low potential lands attract little interest from buyers, they remain available for leasing at a very low cost – and often go for the minimum bid amount of $2/acre or $1.50/acre when issued noncompetitively. Given the extremely low minimum bond amount and annual rental fees ($1.50/acre), companies often lease these parcels with only a speculative interest.[12] In fact, in FY17, more than 50% of leased acreage was not producing any oil or gas.[13] In these instances, the agency incurs the administrative costs associated of leasing and managing the parcels without ever

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[11] *Open for Business* (October 2014), available at http://wilderness.org/sites/default/files/TWS%20--%20BLM%20report_0.pdf
[12] See TWS Development Potential Technical Report for detailed analysis and case studies: http://wilderness.org/sites/default/files/Development%20Potential-Technical%20Report%20.pdf; Taxpayers for Common Sense, The Cost of Speculation in Federal Oil and Gas Leases, https://www.taxpayer.net/energy-natural-resources/locked-out-the-cost-of-speculation-in-federal-oil-and-gas-leases/.
[13] https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/oil-and-gas-statistics

collecting any royalty revenues. Non-producing leases like these generate less than two percent of total revenue from the federal onshore system.[14]

Solutions:

- **The agency should analyze the costs associated with evaluating nominations, putting up for lease, administering leases issued in low and no potential areas and compare that to the revenue generated from those leases to better understand the fiscal implications of current leasing practices.**
- **BML should limit leasing in low development potential areas.** By limiting the amount of low potential acreage available for leasing, the agency can better protect taxpayers and other public land users in a way that has minimal conflict with industry objectives. The agency could establish a framework for oil and gas development that supports closing lands to leasing where development is unlikely to occur in Resource Management Plans. Additionally, BLM could consider basing oil and gas lease sales on a "List of Lands Available for Competitive Nominations" which would allow the agency to proactively direct industry to areas with better odds of development and with lower resource conflicts, while eliminating areas from consideration that are clearly speculative and unlikely to generate any oil and gas revenues for American taxpayers.[15]

BLM Should Revise its Approach to Managing Lease Suspensions

The Problem: By law, oil and gas companies are required to develop federal leases in a timely manner or relinquish them at the end of their 10-year terms if they remain undeveloped. However, an operator may request a suspension of the lease prior to its expiration allowing a company to retain a lease in its undeveloped state well beyond its original term without making rental payments or generating royalty revenues.

However, BLM's current policy guidance does not provide clear direction for how and when the agency should exercise its discretion to approve or reject lease suspension requests. According to a recent GAO report, BLM has also failed to provide guidance on how to monitor and conduct reviews of suspended leases and record the reason for issuing the suspension in the first place.[16] The agency routinely grants suspensions that are not warranted or required by law and rarely evaluates the status of actively suspended leases. As a result, as of September 2016, there were 3.38 million acres of federal minerals in suspension —more than 12% of the total leased acreage on public lands.[17] Furthermore, over 35% of these suspended leases have been held in suspension for more than ten years.[18]

This has real financial impacts for the agency and the American taxpayer. A suspension freezes the operating and production requirements of a lease, including the obligations to make rental and royalty payments. As a result of these practices, as of 2015, the BLM had failed to recover

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[14] https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/reports/51421-oil_and_gas_options.pdf, p. 2.
[15] 43 C.F.R. § 3120.3-1.
[16] GAO, BLM Could Improve Oversight of Lease Suspensions with Better Data and Monitoring Procedures (Jun. 2018) at 24 & 25.
[17] *Id.* at 32.
[18] *Id.* at 17.

$82,225,149 worth of rental payments that were lost over the life of oil and gas leases suspended at that time.[19] Moreover, maintaining suspensions that are not justified based on BLM's regulations precludes the BLM from managing those lands for other uses that might confer valuable benefits to the public, while at the same time depriving the public of valuable tax revenue.

Solutions:

- **Update criteria for granting suspensions.** BLM should issue revised direction for considering suspension requests that includes clear criteria for when the agency does and does not have discretion to grant a suspension request.
- **Establish a monitoring and tracking system for suspensions.** Updated monitoring and quarterly reporting guidance, as well as a verification system to ensure regular oversight, should be incorporated into the suspended lease management strategy.
- **Increase transparency and opportunities for public involvement in lease suspensions and monitoring.** BLM should post documentation of lease suspension requests and decisions on its NEPA log and in a dashboard available via state office websites. A summary of lease suspensions should be included in the BLM's annual reporting of oil and gas statistics, as well.

For further information, contact Nada Culver, Senior Counsel and Director, Agency Policy and Planning, at 303-225-4635 or nada_culver@tws.org.

[19] The Wilderness Society. (2015). *Land Hoarders: How Stockpiling Leases is Costing Taxpayers*. Available at: https://wilderness.org/sites/default/files/TWS%20Hoarders%20Report-web.pdf

Written Comments by Ryan Alexander

President, Taxpayers for Common Sense

at the fourth meeting of the

U.S. Department of the Interior - Royalty Policy Committee

September 13, 2018

Since 1995, the core of my organization's work has been to ensure taxpayer interests are placed first in federal policies and regulation. We have fought tirelessly to ensure that taxpayers receive fair market compensation for natural resources extracted from federal lands and waters. These resources provide royalty revenues that are an important source of income for the federal government and by extension, taxpayers who are the resource owners.

Over the last two decades, TCS has produced research and analysis documenting the activities of the federal government, including billions of dollars in lost taxpayer revenue due to royalty collection and leasing systems that are largely opaque and frequently undervalue our natural resources, and keep decisions and information from public view.

The Royalty Policy Committee (RPC) is uniquely positioned to address the numerous problems plaguing the current system and to propose reforms that can help get taxpayers a fair return.

Current Recommendations before the RPC

Reverting back to old requirements. In this latest round of recommendations, the Planning, Analysis, & Competitiveness subcommittee requests that DOI reinstate requirements from the Federal Oil and Gas Royalty Management (FOGRMA) Act of 1982, a bill last updated thirty years ago. In a previous rule making the Bureau of Land Management (BLM) noted that measurement regulations in FOGRMA have not been updated since 1989 and that "industry practices and technologies have changed significantly in the intervening 25 years." If adopted by DOI the changes to the measurement requirement would mean a decrease in valuable royalty revenues for taxpayers by negatively impacting the timely and complete collection of natural gas revenue.

Limiting the timeframe for drilling permit issuance. In its second recommendation, the Planning, Analysis, & Competitiveness subcommittee asks that the Department of the Interior (DOI) change how it issues drilling permits for leases that are already producing. Specifically, the subcommittee asks that the Bureau of Land Management (BLM), the agency within DOI responsible for leasing, be allowed a maximum of 45 days to approve a permit. If the BLM does not object within 45 days then the lessee would be able to continue drilling.

BLM's review of an application for a permit to drill allows the agency to consider whether drilling will be conducted in a manner consistent with comprehensive management of the taxpayer's resources. BLM must ensure that drilling activities interfere as little as possible with other multiple uses of federal lands. In addition, drilling plans must be reviewed to ensure that drilling is not conducted in a way that might damage energy-bearing formations or otherwise affect the full recovery of the taxpayers' oil and gas

resources. Approval of an Applications for Permit to Drill (APD) is not just a box-checking exercise – it requires expert evaluation of the lessee's plans. The proposed "Notification of Permit to Drill" would completely avoid this step, and effectively transfer authority over permit issuance to the lessee. At times the decision might be dictated solely by limitations on agency resources – particularly on those occasions when a temporary increase in the rate of permit applications might make it necessary for BLM staff to delay a decision. Additionally, by implementing such a short time limit on drilling applications, DOI would preclude public involvement in the decision making process, depriving taxpayers of a voice in the process.

Finally, this default issuance of a permit to drill would not comply with the requirements of the Administrative Procedure Act (APA). If such a permit were challenged in court, the APA would require that it be set aside if its issuance were arbitrary and capricious. This standard of review isn't very stringent, but it does require that the agency be able to articulate a substantive basis for the decision. A "default yes" on a permitting decision would not allow the BLM to point to any substantive basis at all for issuing the permit. TCS can't support creating a procedure that could so easily be challenged in court, which obviously would waste agency time and money.

Natural gas valuation. The Fair Return & Value subcommittee is recommending that DOI implement a replacement for the natural gas portion of ONRR's Valuation Rule – which is concerned with the way in which royalties are charged from energy production on federal lands, but was repealed by the current administration before it was allowed to take effect. The subcommittee's recommendation calls for a system that allows multiple ways to calculate royalties owed, and from which the payors or lessees can choose the calculation that suits them best. This system is inherently problematic, as payors or lessees will invariably choose the calculation that provides the lowest values and thus the lowest royalty payments, lowering taxpayer revenues. If adopted by DOI this recommendation would result in the removal of BLM's authority to determine valuation, handing power over to producers to self-regulate.

Energy production data transparency. The Fair Return & Value subcommittee's second recommendation asks DOI to release more data on energy production in federal lands and water. Our decades of experience with federal oil and gas data have driven home the serious lack of transparency in government data. As the committee notes, there are several DOI agencies involved in leasing and royalty with varying levels of transparency and completeness in the data they release to the public. Given that TCS has always called for greater transparency in accounting for production on federal lands and the associated royalty payments, including in our last comments to the RPC, we consider this a long overdue recommendation. We look forward to the DOI response to this recommendation.

<u>Proposed Areas for RPC Review</u>

The RPC should address the issue of vented, leaked, and flared natural gas. The waste of taxpayer-owned natural gas costs taxpayers hundreds of millions of dollars in revenues each year when royalty-free natural gas is leaked, vented, or flared from drilling operations on federal land. In 2016 oil and gas companies reported losing 25.4 billion cubic feet (bcf) of natural gas in 2016, bringing the total amount of gas lost over the decade 2007-2016 to 209.7 bcf. And by BLM's own admission, those volumes are under-reported. According to our recent analysis of Office of Natural Resources Revenue (ONRR) data, oil and gas companies have paid royalties on roughly 10 percent of the natural gas vented or flared on all federal lands in the last decade.

The BLM will publish a new rule to address the royalty treatment of lost gas later this month, but based on its draft released earlier this year we know that it will only perpetuate the problem. In particular, the draft rule proposes a new definition of "wasted oil and gas" in which taxpayer-owned oil and gas isn't wasted if the cost of capturing it is more than the value of the resources captured. Rather than carefully setting standards for when operators can reasonably be expected to prevent waste, the BLM would simply re-define what constitutes "waste." The definition of waste is universal – whenever assets or resources aren't put to their most productive use – and changing that definition would benefit industry at the expense of taxpayers. We urge this committee to examine the issue and propose a definition of waste that prioritizes the full recovery of taxpayer owned-resources, rather than the profits of oil and gas companies.

BLM's draft rule also contains language that would rescind gas capture requirements established by the 2016 rule entirely and replace them with a provision that defers to state and tribal regulations. The draft rule states that outside of specific circumstances "…vented or flared oil-well gas is royalty free if it is vented or flared pursuant to applicable rules, regulations, or orders of the appropriate State regulatory agency or tribe." This approach is an abdication of the BLM's responsibility to set consistent guidance for when venting or flaring publicly owned natural gas should incur a royalty, and would not result in a meaningful reduction in royalty-free flaring of associated gas on federal lands. The BLM is vested with the authority and obligation to ensure federal resources are developed in the taxpayer interest. State and tribal regulatory authorities do not share that obligation.

The RPC should discuss and evaluate the undervaluation of federal resources. Determining the value of federal resources is as important as when royalties should be imposed. Undervaluation of oil, gas, and coal resources is of utmost concern to taxpayers. ONRR attempted to address issues with the valuation of federal oil, gas, and coal in its 2016 rule, but that rule was repealed in a subsequent rulemaking last year. While ONRR's 2016 rule was not perfect, it would have addressed a number of our concerns with DOI's current valuation system. This includes the valuation of coal, and whether value is determined in non-arm's-length transactions. The rule also addressed the use of index prices in determining the value of natural gas, as well as what transportation allowances are appropriate in the valuing of natural resources. A direct result of the rule's repeal was a reduction in royalty collections.

This committee has addressed valuation in its recommendations at this meeting and at its past meetings, but in a way that would favor industry at the expense of taxpayers. The RPC's recommendations with respect to valuation of federal resources would only continue the problems of the current valuation system, undervaluing federal assets and deprive taxpayers of valuable revenues.

The RPC should consider increasing onshore and offshore royalty rates. While we were glad to see that DOI rejected the RPC's recommendation from the Houston meeting to lower offshore rates, we urge this committee to reevaluate its position on offshore royalty rates. Lowering the royalty rate would have dramatically reduced taxpayer revenues for decades to come. The RPC should focus instead on applying the 18.75 percent royalty rate across all offshore leases. Additionally, the RPC should propose an onshore royalty rate increase. According to the Congressional Budget Office "Raising the royalty rate for onshore parcels to 18.75 percent to match the rate for offshore parcels would generate $200 million in net federal income over the next 10 years…." And "…the subsequent decrease in production on federal lands would in all likelihood be small or negligible."

The RPC should recommend transparency in coal royalty rate decisions. The BLM has the power to grant royalty rate reductions to coal producers in certain situations. The process for doing so is not transparent. Only when prompted through a inquiry from Congress in 2013, did ONRR released a limited data set revealing that the BLM had granted nearly 30 royalty rate reductions to coal leases on federal lands in the prior two decades. Little is known about why these reductions were granted, how many coal leases have reduced royalty rates now, and how much this is costing taxpayers in lost royalty revenue. This body is tasked with reviewing the royalty policies of DOI and this obviously broken policy. The RPC should examine DOI's current practice of reducing royalty rates for coal leases and propose protocols to promote greater transparency in how reductions requests are reviewed and granted as well as the specifics of royalty reductions in the past.

The RPC should address millions of acres of idle oil and gas leases. At present, large sections of federal lands and waters set aside for oil and gas production sit idle, in part, because Interior policies don't do enough to encourage diligent development. At the end of fiscal year 2017, half of all onshore acres leased for oil and gas production sat idle. As of May of this year, the same was true for 70 percent of active offshore oil and gas leases. Some lag between a lease issuance and the beginning of exploration and development activities is expected. But allowing companies to lock up parcels of land without developing them contradicts the multiple-use principle that guides DOI's management of federal lands. It can also prevent more eager producers from bringing important energy resources to market.

Unfortunately, rather than preventing the stockpiling of idle federal lands and waters, current DOI policies encourage it. On state lands in states like New Mexico and Texas, rental rates are raised after three to five years if a lease is not yet in production. The BLM, however, sets its rental fees irrespective of a lease's producing status, and at rock bottom rates of $1.50 and $2.00 per acre. This committee should examine how the BLM could alter its rental pricing to better encourage oil and gas development on federal lands. To encourage offshore development, this committee should also explore setting a fee on nonproducing parcels – a policy suggested by legislators of both parties in years past. Setting such a fee could raise significant federal revenue for taxpayers. In 2016, The Congressional Budget Office estimated that a $6-per-acre fee on nonproducing leases would yield $200 million in revenue over 10 years, with a negligible effect on production.

The RPC should review noncompetitive leasing practices. In conducting lease sales of federal land for oil and gas exploration and development, BLM is able to offer leases in noncompetitive sales. These types of lease sales are not in the taxpayer interest as they commonly attract the minimum purchase price of federal leases allowed under federal law, $2 per acre. Lease sale bonus bids are an important source of non-tax revenue, and noncompetitive leases all but ensure that taxpayers receive the minimum amount of revenue from a lease sale. These parcels are also less likely to enter production than leases sold competitively, making many noncompetitive leases speculative – locking out federal lands from other uses without providing royalty revenues for the federal taxpayer.

Under its current leasing system, BLM allows Individuals and private companies to anonymously nominate federal lands for noncompetitive lease sale, reducing transparency and accountability. Companies are able to nominate parcels and acquire the leases noncompetitively. The number of noncompetitive lease sales offered by BLM has increased under the current administration. Given the royalty implications of lands leased noncompetitively, the Royalty Policy Committee needs to address this broken system.

The RPC should review leasing policies in Alaska that carry additional taxpayer liabilities and do not get taxpayers a fair return. The RPC's earlier recommendation to expedite the leasing of lands within the Arctic National Wildlife Refuge (ANWR) during the February meeting in Houston did not take into account potential revenues and liabilities that taxpayers face as the leasing process moves forward. The committee's recommendation ignores current market conditions and the interest (or lack thereof) in development of ANWR lands. This will likely lead to more undervalued oil and gas leases sitting idle and undeveloped. TCS has written extensively on leasing in ANWR, and our analysis has shown that drilling in ANWR will not provide nearly the amount of revenue for taxpayers that has been promised. Using extremely generous assumptions for industry interest and bidding rates – both well above historical averages in Alaska's North Slope region – taxpayers would receive less than five percent of what is currently expected. Instead of expediting oil and gas leasing in ANWR, DOI and the RPC should take a step back and look at the data.

The RPC should include more diverse, non-industry perspectives. To ensure that federal leasing and royalty issues are debated in a manner inclusive of diverse perspectives, and the RPC should incorporate additional non-industry affiliated members. To date, many of the recommendations that have been put forth by this committee have reflected the interests and concerns of industry and do not discuss or address the many taxpayer concerns regarding waste, mismanagement, and undervaluation of federal resources. It is important that industry be able to participate in the activities of this committee and to have their concerns heard, but based on the recommendations of the committee, industry is the only voice being heard. This committee presents a tremendous opportunity to address the broken systems currently employed by DOI in its administration of public lands. There is a large amount of work to be done that can benefit both industry and taxpayers alike, but taxpayers need a seat at the table and to be allowed to be heard.

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U.S. Department of the Interior
Bureau of Land Management
Office of Natural Resources Revenue
Attention: RPC
1849 C Street NW, MS 5134
Washington, DC 20240

Secretary Ryan Zinke
cc: Mr. Chris Mentasti, Office of Natural Resources Revenue

September 7, 2018

Dear Secretary of the Interior Ryan Zinke,

The Mountain Pact as well as the below listed local elected officials represent Americans who understand the importance of healthy public lands to the economic prosperity and cultural vitality of our communities.

The Department of the Interior is legally obligated to manage public lands under a multiple use mandate that ensures a balance of uses between recreation, energy development, conservation, and cultural traditions. However, current management practices have led to large swaths of national public lands being tied up by oil and gas companies, thus limiting the use of these lands by American taxpayers.

Public lands management and proper valuation of resources produced on these lands are crucial for mountain communities. The proposals being reviewed by the Royalty Policy Committee do not adequately address the issues of dominant oil and gas leasing practices on public lands. Our public lands are meant to be open to all Americans, not just the oil and gas industry, and they must be managed in a way that supports multiple uses while ensuring taxpayers are getting a fair share from responsible energy development.

By increasing royalty rates, minimum lease bids, and rental rates, taxpayers will receive fairer returns on the development of their natural resources. Additionally, leases must be managed in a way that doesn't allow for companies to speculate on leases that have a low likelihood of being developed, thereby detracting from other beneficial uses like wildlife conservation and

recreation on public lands. Overall, we need a sweeping review of the oil and gas leasing process that:

1. Increases royalty rates to match market prices and rates used by western states;
2. Increases minimum lease bids to discourage speculation and raise revenue;
3. Increases rental rates to encourage development, discourage speculation and increase revenue; and
4. Prioritizes leasing in areas that will generate the most revenues for taxpayers and will not impair other revenue-generating activities like outdoor recreation.

By following these guidelines, the Bureau of Land Management (BLM) can ensure management of our public lands in the best interests of mountain communities. Multiple use includes a wide variety of activities, from industrial development to wilderness preservation. Some areas are appropriate for oil and gas drilling, others should be left alone for the protection of wildlife habitat and natural ecosystem processes. Multiple use does not mean every use on every acre.

Please continue to follow common sense environmental safeguards, and respect voices from mountain communities that rely on healthy, well-managed public lands for economic stability, outdoor recreation, and cultural vitality.

Thank you for your time and your consideration.

Sincerely,

Anna Peterson, Executive Director, The Mountain Pact
Kalen Jones, Moab City Council Member, Moab Utah
Mayor Pro Tem Margaret Ann Mullins, Aspen City Council, Aspen, Colorado
Michael Lilliquist, Bellingham City Councilor, Bellingham, Washington
Mayor Pro Tem Hunter Mortensen, Frisco Town Council, Frisco, Colorado

Written Comments on Selected Recommendations Pending before the Department of Interior Royalty Policy Committee Meeting of September 13, 2018, in Lakewood Colorado

Dan R. Bucks
September 7, 2018

I commend the Royalty Policy Committee (RPC) for posting draft recommendations in sufficient time to enable public comments to be submitted prior to the meeting at which they will be considered. Thank you for doing so.

I would also urge the committee to make time available in the course of the September 13 meeting for brief comments and dialogue between the committee and the public as items are being considered. A general public comment period is useful and should be continued. However, an opportunity for more targeted and specific discussion should also occur at the time an item is under consideration. As a former public official with decades of experience administering, and even drafting, public participation policies, I would note that providing for both general and item-specific public comment periods is a standard public participation procedure. Item-specific comment periods focus on the matters at hand and typically provide useful information relevant to the items under consideration that cannot be reasonably be provided in a general comment period. Such comment periods also often afford time to committee members to ask questions of members of the public regarding matters important to the deliberations of the committee.

A. Comments on Fair Return and Valuation Subcommittee, Draft 08152018, Recommendation on Rulemaking to Define "Federal Gas Index Pricing" with a Marketable Condition Concept

Ostensibly, this recommendation is intended to advance the use of "simplified index prices rules" for federal gas. In fact, the recommendation fails to achieve that objective.

Using index pricing for natural gas valuation is a promising idea that, in a proper form, should be actively pursued. If done well, it can more reliably ensure that U.S. citizens are paid the right amount of royalties based on the fair market value of natural gas. Index pricing can also simplify valuation administration for both lessees and Interior and overcome costly complexities, delays and uncertainties in the process. It can close loopholes and reduce undue producer influence in the current self-reporting system that allows natural gas to be undervalued and royalties underpaid. Index pricing has the potential for making valuation a transparent, publicly verifiable and objective process determined by accurate market price data. Implemented correctly, index pricing would bring valuation decisions into the open and place the public that owns the minerals on an equal footing with producers in the process.

Unfortunately, the specific features of the recommendation will prevent index pricing from achieving its promise. As written, the recommendation is not so much about index pricing as it is about producer-chosen "valuation options," to which the draft devotes the greatest

attention. Thus, these comments will begin with a discussion of the producer-chosen "valuation options" and return later to the index pricing element of the draft recommendation.

Producer Control of Valuation Methods

The draft recommendation would allow producers to opt out of index pricing and determine their own valuation methods.[1] Instead of ending excessive producer influence through objective index pricing, the recommendation would put producers in control of the valuation process. Producers would be authorized to exercise "options that could be favorable to different payors depending on their resources and ability to define all the components in the equation." The reference to the ability of producers "to define all the components in the equation" is critical because it illustrates that producers would be able to tailor the specific details of the valuation options instead of choosing from a menu of pre-defined options.[2]

The following text further illustrates that the purpose of the recommendation is to place producers in charge of their own valuations:

> Having options for determining the valuation method would provide a choice. ***Payors would determine the method to pay*** and also have a level of confidence in the valuation process that would withstand audits and be compliant. (Emphasis added.)

Certainly, producers would withstand audits because they would have defined (including "all components in the equation") and tailored in advance their choice of valuation methods to fit their circumstances, financial interests, legal structure, contracting arrangements and accounting practices. Indeed, there would be no purpose for Interior to even conduct audits because producers would have given their own royalty return calculations their "seal of approval" in advance through their choice of valuation methods.

The draft recommendation's plain language gives producers the power to determine what they will pay in royalties without any constraint or guidance regarding those methods coming from Interior. Indeed, the stated intent of the recommendation is to enable different producers to choose different valuation options "favorable" to their respective interests, with a bias toward those producers that have the "resources and ability to define all the components in the equation." Apparently, larger and more profitable producers would be expected to benefit from this recommendation more than smaller and less profitable ones.

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[1] This interpretation arises from a plain reading of the committee draft. If there are other interpretations that rely on verbal understandings reached in secret discussions of the Fair Return and Value Subcommittee, those understandings should have been reflected in the draft language released by the subcommittee. The public cannot comment on that which is hidden from them.

[2] A menu of pre-defined options would also be problematic for reasons similar to those described here, but that approach is not commented on here because the text of the recommendation does not describe such a menu, let alone how it would operate in practice.

The "producer control" provisions in the draft recommendation would result in a corporate takeover of the valuation of the federal minerals to the detriment of the public interest. These provisions are highly objectionable and appear contrary to the intent if not the letter of the law. These "producer control" provisions would:

1. Improperly transfer public authority to value federal minerals from the Department of Interior to private parties—the producers themselves.
2. Disregard the legal requirement that the public receive royalties based on natural gas correctly valued at fair market value and, instead, allow producers to value gas to serve their private, financial interests.
3. Destroy any notion of equity and uniformity in gas valuation and royalty payments by allowing each producer to use different valuation methods as they desire.
4. Erode the already limited transparency under current royalty rules by creating the conditions for producers to claim that their choice and use of valuation methods is proprietary and should be kept secret from the public.[3]

Overall, the "producer control" provisions ignore the public interest in receiving a full and fair return on each amount of federal natural gas produced and undermines the rule of law necessary to ensuring that the public is properly served. Democracy requires adherence to the principles that:

1. the administration of the law is vested in public officials and agencies,
2. those officials and agencies, in turn, are responsible for faithfully executing the law,
3. governments should treat all persons equally, and
4. the public needs and has a right to sufficient knowledge necessary to hold accountable those public officials and agencies is fundamental to democratic governance.

The draft recommendation flies in the face of each these principles and would allow the administration of federal royalty laws for natural gas to be governed not by and for the people, but instead by and for natural gas producers.

There is little doubt that should these provisions in the proposal be adopted, producers of all other minerals extracted from federal lands would demand the same special powers to control the valuation of their minerals as natural gas producers.

The producer control provisions of this recommendation should be removed in their entirety. If they are not removed, the draft recommendation should be rejected.

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[3] The producers, under the recommendation, would be allowed to select valuation methods favorable to their interests and would be dependent on their resources and ability to define components in the equation. Thus, the valuation methods chosen by the producer will be intertwined with the producer's financial data and their legal and accounting methods. There is little doubt that under contemporary corporate practice where broad proprietary claims are frequently made that producers will, under the proposed recommendation, assert a right to keep their selection of valuation methods secret.

Industry Approval of Index Prices
With regard to index pricing itself—as opposed to the process for producers to opt out from index pricing—the recommendation does not appear to add content beyond the recommendation adopted by the RPC in Houston on February 28. Both the February 28 version and this latest one provide little explanation as to how the core features of index pricing would work. Neither version provides examples of price indices and the methods by which they are developed and maintained. The focus, instead, remains on the proposal to empower industry to approve the "standardized average single price" for each geographic area. That proposal turns index pricing on its head and away from being an independent, objective means of valuing natural gas through arm's length prices in the marketplace to a flawed, subjective measure with its outcomes determined by producers.

Apparently, the industry's concern is that index pricing—which measures the actual arm's length market prices in an area—may produce prices that are higher than those reflected in their self-reported proceeds. For lengthy and complex reasons, the self-reported proceeds method too often understates the market value of natural gas or other minerals and is, in reality, an inferior method of determining value for royalty purposes—even though it has been the dominant means of doing so. Index pricing, if done properly, is inherently superior to the producer proceeds method. Thus, the results of index pricing should not be compromised or conditioned by the inferior approach. From the perspective of establishing a valuation process that reliably produces a fair return of royalties to the public, allowing producers to intervene in the results of index pricing is a mistake.

The February 28 RPC recommendation to require industry approval of index prices was not released in sufficient advance of that meeting to allow written public analysis and comments on it. Accordingly, I produced an analysis of that recommendation in a document appended to my public comments to the committee on June 6, 2018, in Albuquerque, NM. That June analysis of the proposal for industry approval of index prices is incorporated directly below because it is relevant to the current draft recommendation:

> **Recommendation for Use of Index Pricing for Natural Gas**
>
> **Issue:**
> In conceptual terms, the use of index prices for valuing minerals extracted from federal lands is a potentially promising approach that deserves consideration if designed and implemented properly through a transparent and accountable public process. However, Royalty Policy Committee (RPC) recommendation for price indexing federal natural gas is deeply flawed and unacceptable. Index pricing is only as good as the index used. The RPC recommendation would require the industry to approve whatever price index or average price is used for each geographic area, giving it veto power over decisions that should be instead be made by Interior through a public process. Under the proposal, industry can steer the selection of prices for various geographic areas to those that understate the market value of natural gas. The proposal improperly surrenders Interior's authority to value

minerals to the industry and potentially short-changes the American people and local communities where the natural gas production occurs.

Discussion:
The RPC recommendation fails to provide certainty to the public that it is receiving royalties reflecting market value for the natural gas it owns. Instead, it enables for the natural gas industry to pay royalties on values that fail to yield a fair return. Indeed, one argument industry makes for their "industry veto" is that the 2017 valuation rules produced values they considered too high, a judgment the public can rightfully suspect is affected by corporate self-interest. Further, the proposal would average prices, which may only serve to dilute prices reflecting market value with those that do not and that were cherry-picked for that reason. The proposal is also fatally flawed because choices among prices would apparently be made in secret by the industry and Interior, thus shutting out the public that owns the natural gas from the process.

A proper index pricing system should involve Interior selecting the indices based on public input through a rule-making process. Citizens should have as much opportunity to comment on the selection of indices as the industry does. Further, if no sufficient index currently exists for an area, Interior should reserve the option of developing its own index through a price-reporting system it would create. Any Interior- established index should be also public in nature and subject to continuing public input on its validity and accuracy.

A proper system would be transparent and create certainty for the American people and producers alike that the right amount of royalty is consistently and reliably paid on the market value of natural gas. The RPC recommendation fails to achieve these standards and unacceptably grants governmental authority to private companies.

For the reasons stated above, any proposals to allow industry to approve prices or price indices used for royalty valuation purposes should be firmly rejected. The industry approval elements of the draft recommendation should be removed. If they are not removed, the recommendation should be rejected.

Marketable Condition Concept

The title of the current draft recommendation to the RPC refers to defining the federal gas index pricing with a "Marketable Condition Concept." No explanation is provided with the draft recommendation that directly defines what that term means. If the reference here is to the prior RPC recommendation to exempt residue gas used in processing natural gas, then that element should be removed for the reasons stated on pages 6-7 of my analysis of

the February 28 recommendations that I submitted to the June 6 RPC meeting. Those relevant pages are attached as an appendix to this document.[4]

Conclusion

The draft recommendation should not be accepted unless the provisions are removed that allow (a) producers to control natural gas valuation and (b) industry to approve index prices or indices. Those provisions inherently undermine the integrity and accuracy of an index pricing process and improperly give producers greater influence than the public in royalty administration. If both items (a) and (b) are removed, then the price indexing recommendation should be approved. As modified in this manner, indexing pricing for federal natural gas has great potential for improving the accuracy and integrity of the natural gas valuation process consistent with principles of democratic governance.

Item (c), the exemption for residue gas used in processing, if present in this recommendation, should also be removed. However, that removal is not integral to the natural gas indexing process. Unlike items (a) and (b), the removal of the residue gas exemption is not proposed here as a necessary condition for moving the natural gas indexing recommendation forward.

B. Comments on Fair Return and Valuation Subcommittee, Draft 08152018, Recommendation Promoting Transparency by Interior Publication of Federal and Offshore Production Data.

This recommendation of the Fair Return and Valuation Subcommittee represents an important step forward in transparency and should be approved. I commend the subcommittee for developing this recommendation.

RPC's work on transparency should not end here but should extend to recommending a path forward for Interior, by a future target date, to issue a quarterly report to the American people on mineral production, the market value of minerals produced, and mineral revenues paid for federal lands and offshore areas by lease or other logical and identifiable project-specific area. Respecting Tribal sovereignty, Tribal lands should be excluded unless individual Tribal governments direct the release of comparable reports for mineral production from their lands.

U.S. citizens can learn, by electronic means, what U.S.-based and foreign companies pay to Nigeria in royalties, taxes and other payments by project under transparency practices adopted by that nation. Other nations make similar information public. In addition, citizens can also find mineral valuation or payment information from certain state government sources. The blanket assertion that mineral valuation and royalty payment data are proprietary is belied by the release of valuation and/or public payment information in other governmental contexts.

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[4] That analysis is not directly incorporated at this point in the text because it is unclear what the meaning is of the "marketable condition concept" language in the title of this recommendation.

The American people deserve information on the production, market value, and royalties paid on minerals extracted from federal lands and offshore areas both as a matter of principle and to ensure governmental integrity. The public owns these minerals and has a right to know how and what they are being paid for them. More importantly, excessive secrecy has produced a century of neglect and failure by the Department of Interior to secure lease and royalty payments that reflect fair market value for minerals and even, at times, an accurate measurement of production. It is critical that the public have access to data on production, mineral values, and payments for federal and offshore minerals sufficient to hold Interior accountable for faithfully executing mineral management laws.

Interior should welcome this type of greater transparency as an opportunity to build trust with the American people and to gain their support for any necessary corrections and improvements in the minerals management process.

The RPC can build on the current draft transparency recommendations by moving forward with two steps:

1. Convening, in conjunction with a future meeting, an open forum with experts and advocates for transparency to discuss concrete measures that can be taken to improve greater public access to information regarding federal and offshore minerals, and
2. Moving forward with consideration of the expanded use of a truly objective and independent system of direct valuation of minerals using either publicly available or Interior-developed price indices—unencumbered by the negative provisions discussed earlier in Section A of this document.

The second point requires a brief note of explanation. One added benefit of an objective and independent system of valuing minerals through price indices is that it disentangles valuation processes from a producer's detailed financial records. An index price may or may not correspond to any specific data in a producer's records. While current proprietary claims for confidentiality of mineral reports and payments may be overstated, the validity of such claims are substantially eliminated, when the values assessed for payments are no longer taken directly from a producer's books and records.

The important point is simple: The discussion of the public availability of reports on mineral values, revenue payments, and production should move beyond "whether to do so" to "how it can be done." The RPC, with its current transparency recommendation, has made an important step forward and should continue to provide leadership in expanding transparency further.

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Appendix

Excerpt from Analysis of Royalty Policy Committee Recommendations, February 28, 2018, Houston, TX, Submitted to the Committee on June 6, 2018.

Recommendation on "Marketable Condition" Exempting Residue Gas from Royalties

Issue:
The Royalty Policy Committee proposes to grant the natural gas industry the unjustified gift of an exemption from public royalties for residue gas (methane), which companies use to place raw natural gas into marketable condition. Natural gas producers are required to bear all costs of placing its products in marketable condition, and those costs should not be shifted to the public as proposed by the Committee in this case. As a result of a company's own business choices, the gas used in processing plants is technologically necessary so that the company can market two streams of product: dry natural gas (methane) and natural gas liquids (non-methane hydrocarbons). Residue gas has economic value in performing this work, and Americans are entitled to a royalty on this value.

Discussion:
It is helpful to understand from the outset some natural gas definitions and the basic steps in bringing natural gas to a marketable condition.

Raw or wet natural gas extracted from wells is a varying combination of methane, natural gas liquids, water, and other contaminants. Wet gas is not in marketable condition. Processing of the natural gas removes water and contaminants, separates out natural gas liquids into a marketable form and yields residue gas which, when pressurized, is pipeline quality, dry natural gas in marketable condition. Processing gets rid of the junk and yields two marketable streams of products: dry methane gas and natural gas liquids.

One should be confused by the term "residue gas." It is not some type of waste gas. It is the valuable remainder or "residual" methane gas left after removal of contaminants and separation of the valuable natural gas liquids. As noted, residue gas, when pressurized to flow over pipelines, is the dry natural gas marketed to consumers to burn in boilers, furnaces, stoves, electrical generators and industrial applications of a wide variety.

Natural gas liquids (NGLs) are non-methane hydrocarbons of different types and uses. They include ethane, propane, isobutene, pentane and other products. They are used as feedstock for petrochemical products (plastics, anti-freeze, detergents, synthetic rubber), burned for space heating and cooking, and blended in vehicle fuels. As noted by the Energy Information Administration, higher crude oil prices have increased NGL prices, thus increasing their value.

Among other steps, the industry's current technology of choice is a cryogenic process that separates out NGLs in marketable condition and also yields dry methane as a residual. While it is the cost-effective technology of choice, it has the downside of reducing the

pressure of the dry methane below what is required for marketable condition. So the methane, which did not fully attain marketable condition earlier in the process, needs to be re-pressurized at this point to achieve all the marketability criteria simultaneously for the first time. Some of this same methane, or residue gas, is used to accomplish the pressurization needed for this last step to marketability.

Industry argues this is "double compression," and since the raw or wet natural gas was once at pipeline pressure when it entered the plant, they shouldn't have to bear the cost of pressurizing it again. The industry is wrong for two reasons:

1. First, when the wet gas enters the plant at pressure it is not otherwise in marketable condition and does not achieve that condition for the first time until the dry natural gas is pressurized after the separation of the NGLs. The industry is not and should not be allowed cost deductions until the dry natural gas meets all the marketability requirements simultaneously. Further, it is the marketplace, and not ONRR, that requires natural gas to achieve all the marketability criteria, including pipeline pressures, at the same time. The fact that the pressure fluctuates in the processing stages prior to marketability is irrelevant. The industry is cherry-picking points of pressure fluctuation to make a false and deceptive case for the royalty exemption.

2. Second, the downward pressure fluctuation is caused by the industry's choice of technology for separating out valuable NGLs in their marketable condition. The industry might choose other methods besides cryogenics to separate out the NGLs, but those other methods are apparently not as cost-efficient. It is the industry's business choice that causes the gas to lose pressure and requires it to be brought back to pipeline pressures before it fully attains marketability as dry natural gas.

To summarize: the point at which the industry first fully meets standards of marketable condition for its two product lines—NGLs and pipeline quality, dry natural gas—comes after the NGLs are separated out and the dry natural gas is brought back to pipeline pressures. The methane used for this final pressurization should not be exempt from royalties because this use occurs before producers fully and completely attain marketability of the dry natural gas for the first time.

ONNR's disallowance of a royalty exemption for residue gas is not the consequence of some imagined misinterpretation on its part. Industry is attempting to blame ONRR for what is merely the result of economic and technology realities created by industry's own business decisions. ONRR's stance on this issue is not even an interpretation, but is the necessary consequence of these realities. The industry's arguments are simply inconsistent with the facts and logic relevant to this issue.

Residue gas produced from federal lands and used in processing gas to place it in full, marketable condition performs a necessary function and is of economic value. The American people are entitled by law to a royalty on that value. The RPC recommendation should be firmly rejected.