

United States Senate

WASHINGTON, DC 20510

May 10, 2017

The Honorable Ryan Zinke
Secretary
Department of Interior
1849 C Street NW
Washington, DC 20240-0002

Dear Secretary Zinke:

In the course of reviewing and taking comment on the “Waste Management Production Subject to Royalties, and Resource Conservation” (Methane Waste Prevention Rule), released by the Bureau of Land Management (BLM) on November 15, 2016, we have determined that sufficient concerns exist with the final regulation and request that you take the necessary steps to promulgate a revised or new rule. Put simply, we believe the BLM erred in its development of the rule and failed to adequately consider credible concerns raised by industry stakeholders and tribes with active oil and gas production on federal and Indian lands.

The BLM stated the rule was intended to update “30-year old regulations governing venting, flaring, and leaks of natural gas, and [to] help curb waste of public resources, reduce harmful methane emissions, and provide a fair return on public resources for federal taxpayers, tribes and states.”¹ Unfortunately, in issuing the rule, we believe the BLM overreached and created some areas of duplication – and in the case of Indian lands, the BLM improperly included lands that are not federal lands without proper consultation. Therefore, significant modifications to the rule must be pursued.

On March 28, 2017, President Trump issued Executive Order 13783 on “Promoting Energy Independence and Economic Growth” that, among other things, directs the Department of the Interior (DOI) to review this rule and determine if it should be revoked or revised. We agree with the Administration’s call to review this rule – and ask that in reviewing the rule the Administration meet with affected industry stakeholders, tribes, and state regulators on making the necessary revisions. And, while we agree that this rule contains significant flaws, as elected officials, we have a responsibility to our constituents to ensure that taxpayer-owned resources are not unnecessarily wasted. These resources belong to the American taxpayer and various Indian tribes, and it is the responsibility of the BLM to manage these valuable resources in a manner that delivers the best return for the taxpayer and tribes.

The independent and non-partisan Government Accountability Office (GAO) has stated on at least two separate occasions that the Department of the Interior’s regulations were not sufficient to protect against waste and ensure the best return for the American taxpayer. GAO found in a 2013 report that, “Interior changed certain offshore lease terms — including raising royalty rates twice in response to changing market conditions. For onshore resources, which are subject to many of the same market conditions, Interior has considered but not made changes to royalty rates ... Interior officials are currently unable to make timely adjustments to onshore royalty rates. Current regulations generally provide for a fixed onshore royalty rate that limits Interior’s flexibility to make timely adjustments.”² In a July 2016 report, GAO found that while Interior had made efforts on the collection and reporting of data related to royalty-bearing oil and gas production, there had been limited guidance on how operators should address emissions.³ The report stated “[a]s a result of these limitations, Interior may not have a consistent accounting of natural gas emissions from onshore federal leases, and does not have the information it needs to reasonably ensure it is minimizing waste on these leases.”⁴

BLM developed this rule in response to GAO findings about wasted public resources. These findings are further substantiated by the fact that, between 2009 and 2015, oil and gas wells on federally-owned lands vented or flared

¹ “Interior Department Announces Final Rule to Reduce Methane Emissions & Wasted Gas on Public, Tribal Lands.” Press Release. Department of the Interior. November 15, 2016.

² “Oil and Gas Resources: Actions Needed for Interior to Better Ensure a Fair Return.” GAO, Report to the Chairman, Committee on Energy and Natural Resources, U.S. Senate. December 2013.

³ King, Pamela. “Dumping Interior rules means tossing waste safeguards.” Energywire, 27 February 2017

⁴ “Oil and Gas Resources: Interior Could Do More to Account for and Manage Natural Gas Emissions.” GAO, Report to Congressional Requesters, July 2016.

approximately 462 billion cubic feet of natural gas into the atmosphere, a substantial loss of royalties to the American taxpayer. Given these findings of waste, there is a clear and corresponding need to improve the methods used to ensure a better return for taxpayers. Therefore, we urge you to modify the Methane Waste Prevention Rule in a manner that ensures an adequate return of royalties to the Treasury, while also preventing an unnecessary decline in oil and gas production on public lands. It is our understanding that you have several tools at your disposal to pursue a thoughtful and effective regulation that can achieve these goals. Those tools include: (a) requesting that the District Court of Wyoming, the court currently consider this rule in a pending lawsuit, actually remand the rule back to BLM to reconsider the issues raised by the lawsuit⁵; (b) begin the process of revising the rule by issuing both a rule suspending enforcement and a replacement rule to correct the inherent flaws in the current rule; or (c) use your enforcement discretion to issue guidance indicating that the BLM does not intend to enforce certain portions of the rule until the rule is fully reconsidered.

We appreciate your willingness to review and address this rule, and we look forward to working with you to fix the current rule – making it more responsive and efficient for industry and state regulators while preventing waste and ensuring the maximum return for the American taxpayer.

Sincerely,



Heidi Heitkamp
United States Senator



Joe Manchin III
United States Senator

⁵ *Wyoming v. Department of Interior*, NO. 16-CV-00285 (D.Wy filed Nov. 18, 2016)