

The Honorable Deb Haaland
Secretary
U.S. Department of the Interior
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Washington DC 20240



Laura Daniel-Davis
Principal Deputy Assistant Secretary - Land and Mineral Management
Office of the Secretary
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Tracy Stone-Manning
Director
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March 7, 2022

Curtail the Waste of Taxpayer-Owned Natural Gas from Oil and Gas Leases on Federal Lands

Dear Secretary Haaland, Deputy Asst. Secretary Daniel-Davis, and Director Stone-Manning,

Taxpayers for Common Sense (TCS) urges the Bureau of Land Management (BLM) to swiftly publish a new proposed rule to curtail the waste of taxpayer-owned natural gas from oil and gas leases on federal lands through a prohibition of routine venting and flaring of associated gas and establishment of a clear standard for imposing royalties on lost gas. The BLM must also take available actions in the interim under existing authority to limit venting and flaring to the extent possible, apply royalties to all wasted gas, and publish information on venting and flaring volumes. TCS is a non-partisan budget watchdog serving as an independent voice for American taxpayers. For nearly three decades TCS has advocated for responsible natural resource development on federal lands and waters that ensures taxpayers receive a fair return for the resources we collectively own.

Over the years, TCS has published voluminous research and educational materials on the issue of venting and flaring from BLM-managed leases in support of stricter standards for operators that would limit and prevent lost gas and impose royalties on vented and flared gas. This work includes research and reporting that informed and supported key components of the Methane and Waste Prevention, Rule published in November 2016 (81 FR 83008) and steadfast opposition to its rescission in 2018.

Opinions issued by two federal district courts in 2020 affirmed BLM's authority to regulate waste, but resulted in a reversion of the rules controlling operations on federal leases to antiquated standards. Operators of onshore leases are currently guided by the 1979 *Notice to Lessees and Operators of Onshore Federal and Indian Oil and Gas Leases Regarding Royalty or Compensation for Oil and Gas Lost* ("NTL-4A"). These widely critiqued and badly outdated regulations fail to prevent ongoing massive waste of public resources through venting and flaring of gas from oil and gas operations. The status quo is unacceptable from both the climate and taxpayer perspectives.

As anthropogenic emissions drive climate disruption, ecosystem collapse, and intensifying natural disasters, the associated costs to taxpayers are ballooning. Methane released by human activities is a highly potent greenhouse gas driving climate change. Compared to carbon dioxide, methane in the

atmosphere traps at least 25 times as much heat over a 100-year period, or more than 80 times as much heat over a 20-year period. Methane's shorter lifespan in the atmosphere also creates an opportunity to drive faster declines in gross accumulated greenhouse gases through near-term methane emission reduction. BLM can capitalize on that opportunity by tackling the egregious waste of publicly owned natural gas, the chief component of which is methane.

Venting and flaring of natural gas from onshore federal leases is an urgent problem that BLM must address. According to Oil and Gas Operations Report (OGOR-B) data obtained from the Office of Natural Resources Revenue (ONRR) through FOIA requests, operators reported venting or flaring a record high 44 billion cubic feet of natural gas in fiscal year (FY) 2019. Moreover, the portion of that gas charged a royalty declined from FY 2018. More recent data show the dollar value of royalties collected from vented and flared gas onshore has increased since FY 2019, potentially indicating a further rise in overall emissions. Contrary to oil and gas industry assertions, the problem is not going away on its own and BLM needs to act.

As BLM recognized in the preamble to its 2016 rule, the increase in gas waste from federal leases is largely attributable to operators flaring gas from oil wells instead of capturing it. Commonly, this flaring results from operators' rush to produce oil before establishing connections to infrastructure to capture gas, or without ensuring that the infrastructure has capacity available to take the gas. There is nothing in federal statute that grants operators the discretion to habitually discard one publicly owned resource simply because they prefer to market another. There is no reason, much less requirement, that federal lessees should be allowed to produce oil from federal lands in a manner that disregards consequences for other public resources. To the contrary, this wanton flaring of natural gas exemplifies the "undue waste" the Secretary of the Interior is required to prevent. The natural gas wasted on federal leases every year has a market value of hundreds of millions of dollars and the potential to power significant economic activity. Depriving the consumer market of this gas and taxpayers of the royalty revenue we are rightly owed on it is inexcusable.

As every court evaluating challenges to the various 2016-2020 Waste Prevention rules has acknowledged, the Secretary of the Interior acting through the BLM has clear authority and a statutory obligation "to prevent waste of oil or gas developed in the land" and to assess and collect royalties on the produced resources (30 U.S.C. 225, 226). This obligation requires the BLM both to issue a new methane waste prevention rule immediately and to reduce gas waste to the extent possible in the interim.

It is critical that updated waste prevention requirements prohibit operators of oil wells with associated gas from routinely venting or flaring that gas as a means of disposal. The extensive ongoing waste will only be avoided if produced gas is required to be used or preserved. Associated gas should be required to be sold for consumption, put to a useful purpose on-site, or reinjected, which either enhances oil production or retains the value of the gas for future extraction.

While the rulemaking is underway, there are important steps that BLM can take to immediately reduce waste and loss of revenues. Under the NTL-4A, operators can avoid paying a royalty on gas vented or flared from a federal lease only with prior authorization or in select other circumstances. Prior to 2016, the various BLM state offices rarely applied the requirements for prior approval, and inconsistently applied the terms "avoidably lost" and "unavoidably lost" when determining whether or not vented or flared volumes should incur a royalty.¹ Until a new rule is finalized and implemented, the BLM should standardize the application of NTL-4A guidance among its state offices so that operators must obtain

¹ GAO report "Interior Could Do More to Account for and Manage Natural Gas Emissions." GAO-16-607: Published: July 7, 2016. Publicly Released: July 21, 2016. <https://www.gao.gov/products/GAO-16-607>

prior approval for venting and flaring and incur a royalty in all circumstances except well completion and emergencies.

In addition, the BLM should also immediately improve the availability of venting and flaring data. TCS has obtained onshore OGOR-B data that detail venting and flaring volumes only through filing burdensome annual FOIA requests. The disposition of publicly-owned oil and gas should be a matter of public record. For comparison, the Bureau of Safety and Environmental Enforcement updates the OGOR-B datasets available for download from offshore federal lessees monthly. TCS understands that ONRR staff are working to provide disposition data on the RevenueData.doi.gov portal, but that is no excuse for allowing the data vacuum to continue in the interim. There is no reason that the BLM cannot work with ONRR to promptly disclose summary monthly venting and flaring data at the least. This data would not only increase accountability and improve transparency, but also create a far more robust factual basis for commenters to draw from during a rulemaking process.

Recently published statements by the BLM underscore the need for publicly available onshore venting and flaring volumes data. The “U.S. Methane Emissions Reduction Action Plan” published by the White House Office of Domestic Climate Policy in November 2021 states that the BLM “estimates that in 2019, approximately 150 billion cubic feet of methane were flared from operations that would be subject to the BLM regulation.” That volume is more than triple what was reported by operators in FY 2019, according to OGOR-B data. This suggests either significant underreporting by federal lessees or that the BLM has reason to believe some gas is not captured in properly reported volumes. The BLM should clarify the source of its estimate and release any related data.

We appreciate your commitment to address methane waste from operations on federal lands and look forward to a continued conversation on these critical issues to ensure taxpayers are protected.

Sincerely,

A handwritten signature in black ink, appearing to read 'SE' followed by a stylized flourish.

Steve Ellis,
President