



August 30, 2016

The Honorable Sally Jewell
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240
E: Secretary_jewell@ios.doi.gov

Re: Transparency Improvements within Existing Rulemakings

Dear Secretary Jewell:

Taxpayers for Common Sense (TCS) and the Project on Government Oversight (POGO) appreciate the work the Bureau of Land Management (BLM) and the Office of Natural Resource Revenue (ONRR) are doing to update rules for the development of oil, natural gas, and coal from federal lands. We urge that the new rules include robust transparency provisions to improve the existing system of disclosure. While much information about federal resource development is publicly available from the ONRR website and the Extractive Industries Transparency Initiative (EITI) data portal, there is still too much data on different elements of the development process that is not readily available to the public.

There are reasons to make this data available to the public beyond the abstract value of more transparency. Revenues from the collection of royalties represent one of the largest non-tax income sources for the federal government. Fair and accurate collection is necessary to ensure taxpayers are receiving what they are owed. The BLM should use rulemakings already underway to improve the transparency of energy development programs to strengthen reforms.

Waste Prevention, Production Subject to Royalties, and Resource Conservation

In its proposed rule,¹ the BLM acknowledges deficiencies in its current system for providing information to the public about wasted gas from venting and flaring at specific sites. Operators must file a Sundry Notice with the BLM requesting approval to vent or flare gas. However, the Sundry Notice, documentation of the BLM decision, and the amount of gas vented and flared are not publicly available, except through a Freedom of Information Act (FOIA) request. Likewise, the amounts of gas released through leaks or during routine operation of equipment is not made public because the ONRR does not collect the data. Similarly, upon receiving an Application for a Permit to Drill (APD), the BLM must post information at the BLM field office 30 days before taking action. This information includes the company/operator name; well name/number; well location; and maps of the affected lands in the local office of the BLM. However, this information is not widely available. A member of the public can go to the appropriate state BLM field office to view the information. In some cases, BLM field offices make the information available on their websites.

The BLM has proposed requiring operators to measure (when gas losses are at least 50 Mcf per day) or estimate all quantities of gas flared and vented, including those that are deemed unavoidably lost, and report these quantities to the ONRR. This reform will certainly improve the accuracy of the data the ONRR is already collecting, especially in light of recent findings made by the Government Accountability Office. The GAO stated that the Department of the Interior (DOI) “does not provide specific instructions on how to estimate natural gas emissions, which results in operators using varying estimation methods that may be difficult to verify.”² But while the BLM has proposed clarifying reporting requirements to ensure operators report all volumes of gas vented or flared, the proposed rule does not indicate that the resulting data would be more accessible (i.e. without FOIA request) than it is now. Furthermore, data on amounts of gas leaked from storage vessels or pneumatic controllers and pneumatic pumps, which are significant sources of leaked gas, would still not be captured under the proposed rule.

In theory, the total amount of gas extracted from oil and gas wells and the amount of gas sold, minus the gas used in drilling operations or lost along the way, should be equal. Ideally, the BLM should be able to account publicly for every cubic foot of gas removed from federal leases. However, while aggregate data reported by federal lease holders for sales volumes, sales amounts, and royalties is available on the ONRR website, that’s not true for data reported by drilling operators for beneficial purposes, venting, flaring, and other disposition volumes of gas. While the BLM may intentionally withhold some information due to trade secret concerns, management decisions reduce public access and complete transparency. Most information on the operations of oil and gas leases is retained in BLM field offices or at the state level; virtually none of the information is available in a central location. In addition,

¹ Bureau of Land Management, Interior 43 CFR Parts 3160 and 3170. RIN 1004-AE14. Waste Prevention, Production Subject to Royalties, and Resource Conservation Proposed rule

² United States Government Accountability Office, “Interior Could Do More to Account for and Manage Natural Gas Emissions.” GAO-16-607. July 2016

although BLM may have concerns that trade secret laws could be interpreted to restrict release of information about individual gas wells and leases, there is no reason that BLM should not release aggregate data.

The BLM could take a first step toward improving transparency by collecting data from the field on a monthly basis. Each month, individual state offices should report the following: The number of venting and flaring authorization requests they have received; the number of requests granted and the justifications for the approvals; the volume anticipated to be lost monthly from those authorizations; and the total number of authorized releases and total volume of methane that was lost. These aggregate numbers would not raise trade secret questions, and the BLM should make this information available on its website. Data of this nature would provide an essential baseline for understanding the impact of venting and flaring on taxpayer and the environment, and would be consistent with the DOI's EITI initiative. The impact of policy decisions on venting and flaring could then be evaluated based on available public data.

Federal Coal Programmatic Environmental Impact Statement (EIS)

The Bureau of Land Management (BLM) has given the coal industry effective control over much of the current federal leasing process, allowing practices that do not establish fair market value. The federal coal program lacks transparency, which only perpetuates the status quo. As a consequence, taxpayers have sustained decades of revenue losses from the sale of federal coal.

Fair Market Value Calculations.

The LBA (Lease by Application) system eliminates the formal process that involved extensive public participation and directed the consideration of many facets of the coal resource, including the determination of Fair Market Value (FMV). Under the LBA system, it is difficult to verify the adequacy of BLM's FMV analyses because the data BLM uses is not publicly available. Before determining the FMV, the Secretary is to provide an opportunity for, and consideration of, public comments. But while the BLM does request public comment on FMV calculation and methodology, it does not share its valuation data or methodology, prohibiting substantive comments. By law, the Secretary cannot be required to make public a judgment on FMV public before a lease is issued. However, nothing in the law or regulations prohibit making FMV appraisals public *after* a sale. A more transparent process would allow the public to review FMV methodology and determine whether some approved bids are too low. The public cannot be asked to simply trust the BLM's methodology without any basis for that trust. More sunshine on the methodology would not reduce minimum bids and harm the government's competitive position.

The State of Montana, for example, releases its FMV calculations for public review and comment before lease sales. In the case of Montana's 2010 lease sale of the state-owned Otter Creek tracts, the Montana Department of Natural Resource

Conservation (DNRC) contracted with Norwest Corporation to prepare an appraisal of the FMV of the tracts. Norwest used BLM's Handbook H-3070-1, Economic Evaluation of Coal Properties, to calculate the value of the coal as \$0.0539 per ton or \$30.8 million using the Comparable Lease Sales Approach and \$0.0652 per ton or \$37.3 million using the Income Approach. Norwest noted that these values were lower than similar federal lease sales because of the lack of existing mining equipment and rail service at Otter Creek. The DNRC released the Norwest valuation and requested public comment in advance of the lease sale. The DNRC then used the appraisal and public comments to design a minimum bid package to secure fair market value for the coal leases. The winning bid by Ark Land Company, a subsidiary of Arch Coal, approved on March 18, 2010, was \$85,845,110 – significantly higher than the initial appraised FMV. The public review may have contributed to the higher bid, and certainly provided a more transparent process that could be a model for federal lease sales.

Royalty Rate Reductions.

In practice, the BLM has granted royalty rate reductions frequently, according to aggregate data obtained through Freedom of Information Act requests. According to data from the ONRR, nearly half of all leases awarded between 1990-2013 report royalty rates of less than 12.5 percent for surface mines and 8 percent for underground mines. However, it is impossible to determine how much coal has been sold at reduced royalty rates because the BLM has redacted data covering volumes sold, citing concerns of proprietary data. As a result, it is impossible for the public to know how much coal royalties have been lost because of decisions by the DOI to unilaterally grant royalty rate reductions. Just as BLM should regularly publish state-by-state aggregate data on oil and gas leasing, the agency should also publish aggregate data on coal rate reductions it awards and the amount of coal produced at reduced royalty rates.

As with natural gas, the BLM at a minimum could improve transparency by collecting data from the field on a monthly basis. Each month, individual state offices should report the following: The number of royalty rate reduction requests it has received; the number of requests granted and the justifications; and the volume anticipated to be valued at the reduced rate. In the past, the BLM has been reluctant to disclose any data because of lessees' concerns about trade secrets. But these aggregate numbers would not disclose any confidential data about individual mines and should be made publicly available on BLM's website. The data would provide an essential baseline for understanding the impact of royalty rate reductions on taxpayer revenue, and would be consistent with the DOI's Extractive Industries Transparency Initiative. The impact of policy decisions regarding rate reductions could then be evaluated based on available public data.

We appreciate your willingness to consider these recommendations. Policy review of BLM's management of energy resource development programs is long overdue. In addition to regulating specific practices, we urge you to take steps to improve

transparency so that the American public gets a fair return for its valuable natural resources.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Ryan Alexander". The signature is fluid and cursive, with a horizontal line underlining the first name.

Ryan Alexander
President
Taxpayers for Common Sense

A handwritten signature in black ink, appearing to read "Danielle Brian". The signature is cursive and elegant, with a large initial "D".

Danielle Brian
Executive Director
Project on Government Oversight

CC: Janice Schneider
Assistant Secretary, Land and Minerals Management

Neil Kornze
Director, Bureau of Land Management

Greg Gould
Director, Office Natural Resource Revenue