



INDUSTRIAL COMMISSION OF NORTH DAKOTA

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U.S. Department of the Interior
Director (630), Bureau of Land Management
Mail Stop 2134LM, 1849 C St., N.W.
Washington, D.C. 20240
Attention: 1004-AE54.

Federal eRulemaking Portal: <http://www.regulations.gov>.

Dear Bureau of Land Management:

The North Dakota Industrial Commission (NDIC) appreciates this opportunity to provide comments on the Bureau of Land Management proposed rule entitled "Waste Prevention, Production Subject to Royalties, and Resource Conservation; Delay and Suspension of Certain Requirements" (BLM Proposed Rule) which would temporarily suspend or delay until January 17, 2019 certain requirements in the final rule published on November 18, 2016 (2016 Final Rule). For requirements in the 2016 Final Rule that are currently in effect, the BLM Proposed Rule would temporarily suspend their effectiveness until January 17, 2019. The BLM Proposed Rule will allow BLM sufficient time to review the 2016 Final Rule and consider revising or rescinding its requirements.

While the NDIC supports suspension and delay of the 2016 Final Rule requirements, the NDIC believes the length of the proposed suspension and delay should be longer, at least two years, to accommodate potential litigation that may follow adoption of the proposed rule.

The provisions of the BLM Proposed Rule proposed to be suspended include: (1) requirement to submit a waste minimization plan; (2) gas capture percentage requirements (compliance deadlines to be delayed one year); (3) section 3179.9 measurement requirements; (4) approval process for royalty free flaring transition period (new end date is January 17, 2019); (5) section 3179.101(a) well drilling provisions; (6) section 3179.102 well completion provisions; (7) pneumatic controllers requirements; (8) pneumatic diaphragm pump requirements; (9) storage vessel requirements; (10) downhole well maintenance and liquids unloading; and (11) leak detection requirements.

The NDIC also specifically recommends suspension of "*§ 3179.6 - When flaring or venting is prohibited: The operator must flare rather than vent any gas that is not captured with some exceptions.*" The section, in part, duplicates North Dakota's prohibition of venting natural gas.

The 2016 Final Rule allows venting in four explicit circumstances whereas the NDIC's rules and regulations do not provide explicit exceptions for venting but allow the NDIC to grant an exception only after notice and public hearing. Any exception granted by the BLM will likely create a direct conflict with North Dakota's ability to administer its oil and gas regulatory program.

The NDIC recommends that section 3179.6 of the 2016 Final Rule be suspended or delayed and BLM not adopt a rule that conflicts with the NDIC's regulations to prevent venting; rather the NDIC believes the BLM should actively participate in any hearings scheduled before the NDIC for venting exceptions on federal wells.

The NDIC provides the following specific comments on "the necessity of the proposed suspensions and delays, the costs and benefits associated with the proposed suspensions and delays:"

The primary reason that the BLM should postpone the 2016 Final Rule and consider revising or rescinding its requirements is that BLM over-stepped its bounds when it adopted the 2016 Final Rule requirements. The 2016 Final Rule exceeded the BLM's statutory authority, and because the estimated benefits of the stated authority and purpose of the rule – preserving the public's natural gas resources – is outweighed by the cost of implementing the rule; i.e., it will cost more to implement the rule than what is saved, the rule is arbitrary and capricious. The NDIC wishes to emphasize that the BLM must be careful to remain within the jurisdiction granted to it by Congress.

In addition, the imposition of the additional regulatory requirements under the 2016 Final Rule threatens the amount of royalties received by mineral owners and taxes paid to the State of North Dakota. While federal minerals in many states occur in large contiguous blocks; in North Dakota, smaller tracts of federal minerals are interspersed with state and privately owned minerals as explained below under North Dakota Split Estate. If permitting is delayed because one or more wells penetrate federal minerals, then development of all wells on the entire multi-well pad will be delayed. Federal minerals would therefore not be protected from drainage and the correlative rights of the state and private mineral owners would be violated.

Each year North Dakota collects more than \$90 million in royalties from the production of oil and gas on federal and Indian lands. Based on oil price projections from the Energy Information Agency, over the next 30 years North Dakota anticipates to collect more than \$6 billion in royalties from federal and Indian lands. The use of the 30-year projection represents the anticipated life of the resource as it is known today. Because North Dakota operates on a biennial budget, a single year of decreased revenue at the beginning of the biennium adversely impacts revenue for both fiscal years in that biennium. Likewise, because the state budget for the next biennium relies heavily on actual revenue from the previous biennium, decreased revenue in one year can adversely impact budget projections and corresponding appropriations for four years or more. As such, the decrease in revenue in the current fiscal year will in turn diminish North Dakota's revenue and appropriations for many succeeding years. In North Dakota, federal royalty revenue is shared with the counties in North Dakota. A decrease in federal royalty revenue will adversely affect critical funding sources for public services such as health districts, emergency management, human services, roads, schools, and law enforcement.

Finally, it is anticipated that the 2016 Final Rule will force many North Dakota oil and gas operators to refocus their planned drilling activities to spacing units that do not contain federal lands rather than confront the possibility that BLM will restrict production on new wells under section 3179.11. There are currently 20 companies with significant oil and gas operations on federal and Indian lands in North Dakota. The shifting of capital investment to state and privately owned lands, and the delay or loss of full development on federal and Indian lands will result in significant loss of oil and gas resources and associated revenues estimated at more than \$1 billion over the next two to five years. The displacement of numerous oil and gas operations due to implementation of the 2016 Final Rule will also result in the loss of employment. It is anticipated that North Dakota will lose more than 1,000 jobs from the relocation of oil and gas operations due to the implementation of the 2016 Final Rule. This estimate was derived from a study done by the North Dakota Department of Mineral Resources in conjunction with North Dakota State University Department of Agribusiness and Applied Economics, and the Vision West Project. This study looked at the average number of jobs per drilling rig and producing well in North Dakota. From this study it is possible to estimate how many of those jobs would be lost as a result of the reduction in capital investment expected from implementation of the 2016 Final Rule. This study looked at the impact of the 2016 Final Rule as a whole; luckily many of these job losses will be averted by suspending the January 17, 2018 deadline until the rule can be revised.

The State of North Dakota is ranked 2nd in the United States among all states in the production of oil and gas. North Dakota produces approximately 350 million barrels of oil per year and 400 billion cubic feet of natural gas per year.

The NDIC, Department of Mineral Resources, Oil and Gas Division has jurisdiction to administer North Dakota's comprehensive oil and gas regulations found at North Dakota Administrative Code (NDAC) Chapter 43-02-03. These regulations include regulation of the drilling, producing, and plugging of wells; the restoration of drilling and production sites; the perforating and chemical treatment of wells, including hydraulic fracturing; the spacing of wells; operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; disposal of saltwater and oil field wastes through the ND UIC Program; and all other operations for the production of oil or gas.

North Dakota Split Estate - North Dakota has a unique history of land ownership that has resulted in a significant portion of the state consisting of split estate lands that could be adversely affected by the 2016 Final Rule. Mineral ownership of North Dakota lands upon which oil and gas development has occurred consists of approximately 85% private lands, 9% federal lands, and 6% state lands. Many of the private lands in North Dakota upon which oil and gas development has occurred are split estate lands, with more than 30% of the potential development on private surface involving federal minerals and therefore subject to the 2016 Final Rule.

Unlike many western states that contain large blocks of unified federal surface and federal mineral ownership, the surface and mineral estates in North Dakota were at one time more than 97% state and privately owned as a result of the railroad and homestead acts of the late

1800s. However, during the depression and drought years of the 1930s, numerous small tracts in North Dakota went through foreclosure. The federal government, through the Federal Land Bank and the Bankhead Jones Act, foreclosed on many farms taking ownership of both the mineral and surface estates. Many of the surface estates were later sold to private parties with some or all of the mineral estates retained by the federal government. This resulted in a large number of small federally owned mineral tracts scattered throughout western North Dakota. Federally owned mineral tracts impact more than 30% of the oil and gas spacing units which are typically recognized as a communitized area (CA) by the BLM. There are a few large blocks of federal mineral ownership including the Dakota Prairie Grasslands in southern McKenzie and northern Billings Counties and the Fort Berthold Indian Reservation which the federal government has trust responsibility and manages the surface estate through the U.S. Forest Service or Bureau of Indian Affairs. See map, Exhibit 1. Even within these areas, federal mineral ownership is interspersed with a “checkerboard” of private and state mineral or surface ownership. Therefore, virtually all federal management in North Dakota’s oil and gas producing region consists of some form of split estate.

Given North Dakota’s unique land ownership situation, the 2016 Final Rule could have far-reaching adverse impacts on North Dakota’s ability to administer its oil and gas regulatory program. This is reflected in the preamble to the 2016 Final Rule which states:

“Of the vented and flared gas reported to ONRR, 15.2 percent came from wells extracting only Federal minerals; 9.0 percent from Indian ownership, and 75.8 percent from mixed ownership (some combination of Federal, Indian, fee (private) and State land). While all of the natural gas flared or vented from the Federal and Indian lands categories originates from the Federal and Indian mineral estates, only a portion of the natural gas flared or vented from the mixed ownership category originates from the Federal and Indian mineral estates.”

The 2016 Final Rule significantly and adversely impacts North Dakota, because the rule displaces North Dakota’s sovereign authority, and it improperly asserts BLM regulatory authority over vast stretches of state and privately owned minerals – solely because they are interspersed with a small number of federal tracts.

The potential adverse impacts of the 2016 Final Rule on North Dakota’s ability to administer its oil and gas regulatory program are many. Therefore, the NDIC supports suspension of the 2016 Final Rule with the recommended changes outlined in this letter, and the State of North Dakota intends to defend its sovereign jurisdiction over oil and gas regulation in any manner necessary.

Sincerely,

North Dakota Industrial Commission



Doug Burgum, Chairman
Governor



Wayne Stenehjem
Attorney General



Doug Goehring
Agriculture Commissioner

Northwest North Dakota Federal Minerals and Affected Drilling/Spacing Units

