



October 31, 2017

Office of the Executive Secretariat  
ATTN: Reg. Reform  
U.S. Department of the Interior  
1859 C Street, N.W., Mail Stop 7328  
Washington, DC 20240

Via e-filing on [www.regulations.gov](http://www.regulations.gov)

**Re: Comments on Regulatory Reform, Request for Comments, 82 Fed. Reg. 28,429 (June 22, 2017), DOI-2017-0003-0003**

Dear Docket Clerk:

GPA Midstream Association (“GPA Midstream”) appreciates this opportunity to submit comments to the U.S. Department of the Interior (“Interior”) regarding its regulatory reform initiatives and policies. 82 Fed. Reg. 28,429 (June 22, 2017). GPA Midstream has served the U.S. energy industry since 1921. GPA Midstream is composed of nearly 100 corporate members of all sizes that are engaged in the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as “midstream activities.” Such processing includes the removal of impurities from the raw gas stream produced at the wellhead, as well as the extraction for sale of natural gas liquid products (“NGLs”) such as ethane, propane, butane, and natural gasoline. GPA Midstream members account for more than 90 percent of the NGLs produced in the United States from natural gas processing. Our members also operate hundreds of thousands of miles of domestic gas gathering lines and are involved with storing, transporting, and marketing natural gas and NGLs.

### **Summary**

GPA Midstream supports Interior’s outreach to the regulated community in order to obtain its perspective on how Interior can best meet the requirements of Executive Order 13777. Through its members, GPA Midstream has identified numerous opportunities to revise, repeal, or replace existing U.S. Bureau of Land Management (“BLM”) and Bureau of Indian Affairs (“BIA”) regulations, orders, and practices that inhibit job creation, waste resources through regulatory confusion or arbitrary mandates, and impose costs that exceed any benefits.

#### **I. U.S. Bureau of Land Management Regulations**

##### *A. BLM’s Oil and Gas Measurement Rules Should be Significantly Revised*

In November 2016, BLM issued a trio of new regulations to replace Onshore Order Nos. 3, 4, and 5. 81 Fed. Reg. 81,356, 81,358 (Nov. 17, 2016); 81 Fed. Reg. 81,462 (Nov. 17, 2016); 81 Fed. Reg. 81,516 (Nov. 17, 2016) (“Nov. 2016 Rules”). Onshore Order No. 3 established site security standards for oil and gas leases on Federal and Indian lands to prevent theft and loss and enable the accurate measurement of production. Onshore Order Nos. 4 and 5 established minimum standards for the accurate measurement of oil production and gas production, respectively, from Federal and Indian lands. All three of the regulations replacing the Onshore Orders impose unnecessary obligations, including needless capital expenditures the prospect of replacing fully functioning and adequate equipment. None of these regulations will resolve BLM’s well documented challenges with managing the federal oil and gas program. As such, these new regulations are prime candidates for Interior’s efforts to revise or rescind inefficient, unnecessary, or wasteful regulations.

BLM has internal problems with managing the federal oil and gas program. BLM’s difficulties in ensuring the full collection of royalty revenues are well documented. For instance, a 2007 report from the Secretary of Interior’s Subcommittee on Royalty Management noted the inconsistent and outdated guidance documents on production accountability used by BLM’s field offices. 80 Fed. Reg. 40,768, 40,769 (July 13, 2015). The Government Accountability Office (“GAO”) identified a similar lack of clear BLM policies during reviews in 2010, 2013, and 2015, concluding that the policies fail to ensure accurate measurement and reporting of oil and gas production. GAO subsequently included the oil and gas program on its High Risk List. *Id.* at 40,769-70. A recent GAO report found that the program suffers from frequent employee turnover, understaffing, and poor training. GAO, Report to Congressional Committees, High-Risk Series, Progress on Many High Risk Areas, While Substantial Efforts Needed on Others, GAO-17-316 at 136-38 (Feb. 2017). BLM itself recognizes that its staff has found significant discrepancies in its own records. *See* 80 Fed. Reg. at 40,770 (“BLM inspectors sometimes drive out to remote locations to witness calibrations on meters that they believed were measuring production for purposes of determining royalty when, in fact, they were not. The inspectors may not discover the discrepancies until months or even years later, during audits when operators submit their production accountability paperwork and the meter information does not match.”); 81 Fed. Reg. 81,356, 81,358 (Nov. 17, 2016) (“For example … it is not uncommon for a BLM inspector, a lease operator, and field employees to all have different understandings of where the point of royalty measurement is on a given lease....”).

BLM’s November 2016 Rules do not address its internal issues, but instead imposes unnecessary and wasteful regulation on industry. In view of these well-documented issues with the program, the prudent approach would have been for BLM to correct its own deficiencies through internal reforms. However, instead of cleaning its own house by implementing internal reforms, BLM resolved to impose new and unnecessary requirements on industry by issuing the November 2016 Rules to repeal and replace the Onshore Orders.

The replacement for Onshore Order No. 3, 81 Fed. Reg. 81,356 mandated that operators, purchasers, and transporters obtain new Facility Measurement Point (“FMP”) numbers on all records. *See* 43 C.F.R. § 3170.7(g). This requirement is significant. Companies must modify their flow computer systems to track the new FMP identifiers. However, BLM established the FMPs as 11-character, alphanumeric tag names, despite the fact that no flow computer systems currently accommodate such tag names. Companies must also use a second tag name in the flow computer

system to track the existing tag names used by the industry for accounting purposes, requiring wasteful duplication efforts. Since no flow computers exist to meet BLM requirements, new computer systems will have to be designed. Companies will then have to obtain, by the same date, 66,000 new flow computers. This will take at least two years to implement. Further, by forcing the entire industry to bid on new flow computers at the same time, the rule will drive up prices. All the while, these companies will be forced to scrap existing systems that would be perfectly serviceable and functional without the rule's mandate. Although BLM allowed industry to use alternative identifying numbers, 81 Fed. Reg. at 81,374, producers must still obtain an FMP. This is an onerous obligation involving significant additional time and resources. Yet, creating a new tracking number will provide no benefit to the U.S. government as a mineral owner. It will not resolve the long-standing issues related to BLM's flawed management of the oil and gas program or lead to higher royalty payments. In fact, because BLM has no tracking database for oil and gas leases on Federal and Indian lands, imposing new costs on industry to create a new and unnecessarily complicated tracking number will be of no real value.

The two other final rules, 81 Fed. Reg. 81,462 and 81 Fed. Reg. 81,516, replace Onshore Order No. 4 (measurement of oil produced from Federal and Indian lands) and Onshore Order No. 5 (measurement of gas produced from Federal and Indian lands), respectively. These new rules require BLM to list approved hardware and software for oil and gas metering purposes by make, model, size, or software version. Transporters and operators may only use the BLM-approved equipment. To date, BLM has not developed this list and it is not known when it will be developed. BLM must first create a "Production Measurement Team" to review and approve new equipment that it believes would be reliable and accurate. The rule does not explain who will be on the Production Measurement Team,<sup>1</sup> what criteria it will use in reviewing and approving measurement technologies, or whether industry will be able to comment on either the review criteria or the ultimate equipment approvals. As written, the rule delegates rulemaking authority to a committee of unknown individuals with unknown qualifications to dictate technical standards to industry without any clear direction from BLM management or public input.

Once the Production Management Team creates this list of approved equipment, companies may have to discard their existing metering equipment, even though they are perfectly functional and accurate, and purchase BLM-approved equipment. Mass equipment replacements, if ultimately required by BLM, is wasteful and arbitrary, requiring midstream companies to needlessly expend time and money to install new systems, resulting in operational delays. The rules provide no real rationale for these arbitrary costs and burdens. In fact, the rules never provided any analysis of current equipment used by industry, much less makes any determination that this equipment is inaccurate or unreliable. Moreover, nothing in BLM's economic analysis of the rule states it will actually serve to generate additional royalty revenues. Thus, there will be no royalty benefits for the United States.

In sum, all three of the BLM regulations above should be reviewed and either rescinded or significantly revised. Each imposes needless, wasteful, and unnecessary costs through the forced

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<sup>1</sup> The final rule stated only that the Production Measurement Team will *not* include Interior's existing Oil and Gas Measurement Team that already has experience in this field. 81 Fed. Reg. at 81,464, n. 10; 81 Fed. Reg. 81519, n. 6. BLM never explained why it would create a new, separate, and redundant group for this purpose instead of relying on existing BLM resources.

retirement of perfectly functioning equipment while obligating industry to arbitrarily purchase new equipment to serve the same function. None of them, however, will provide any benefit to the United States as a mineral owner.

*B. The Department Should Review the Prior Administration’s Resource Management Planning Practices to Remove Undue Restrictions on Oil and Gas Development*

GPA Midstream’s members were significantly concerned about how BLM implemented several Resource Management Plans (“RMPs”) during the prior administration. BLM frequently used the RMP process to impose unnecessary obligations and burdens on oil and gas lease development that federal statutes and regulations did not require. This included imposing additional restrictions on surface operations or new mitigation measures *after* Interior had issued leases. These practices continue to discourage, or in some cases effectively prohibit, oil and gas development on Federal lands. Given that the current administration seeks to increase energy development on Federal lands, Interior should review and, where appropriate, rescind, policies implementing RMPs that unnecessarily encumber oil and gas development.

Federal policies should conform to federal law supporting multiple uses of federal lands. The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701, *et seq.* (“FLPMA”), establishes a Congressional policy that Federal land planning reflect a balance among multiple competing uses. This includes a directive by the Congress that “public lands be managed in a manner which recognizes the Nation’s need for domestic sources of minerals, food, timber, and fiber from public lands....” *Id.* § 1701(a)(12). RMPs create a framework for managing particular public lands based on an inventory of available resources in order to balance multiple uses of those lands.

The policies of the prior administration, however, demonstrated a pervasive opposition to energy development on Federal lands, violating Congress’ mandate to encourage and balance multiple uses. One way in which the previous administration manifested its opposition to development was through the unnecessary closure of large amounts of land to energy development or by severe restrictions on land use that had the same effect. An example of this is the RMP Amendment the BLM is preparing for the Tres Rios Field Office which identifies eighteen Areas of Critical Environmental Concern which will be subject to increased environmental review and restrictions on development. All but two of these were newly nominated during the last administration with the majority nominated by outside, anti-development groups working with BLM field staff. Another example is the Gunnison Sage-Grouse Rangewide Draft Resource Management Plan Amendment that is currently being considered. This has the potential to increase permit review timeframes and add additional regulatory burdens to pre-existing lease rights even if there are no sage grouse present. Lastly, in several instances the prior administration would implement draft plans or rules prior to finalizing them.

The Canyon of the Ancients National Monument RMP should be reviewed and amended to conform to federal law. The Canyon of the Ancients National Monument (“CANM”) is an example of an RMP that Interior should review and amend. Carbon dioxide, used for enhanced oil recovery, had been produced in Southwest Colorado decades before CANM’s creation in June 2000 by Presidential Proclamation under the Antiquities Act. 54 U.S.C. § 320301(a). That proclamation expressly stated that, “[b]ecause most of the Federal lands have already been leased

for oil and gas, which includes *carbon dioxide*, and development is already occurring, the monument shall remain open to oil and gas leasing and development....” 3 C.F.R. § 7317, Proclamation 7317, Establishment of the Canyons of the Ancients National Monument (June 9, 2000) (emphasis added). The carbon dioxide from what is now CANM contributes to the production of over 200,000 barrels of oil per day in New Mexico, Texas, and Utah. Proclamation 7317 directed the Secretary of the Interior to manage development in CANM “subject to valid existing rights....” *Id.* BLM’s 2010 Resource Management Plan, however, defied the proclamation’s directives.

The 2010 RMP effectively prohibits any new surface disturbance within CANM, even in previously disturbed areas where there would be no impacts to archeological or cultural resources. This ban is contrary to the directive requiring BLM to accommodate existing leases. Since it issued the RMP, BLM has prohibited the drilling of new wells and flow lines to transport carbon dioxide from federal to private lands. Because BLM refuses to manage the area with the balance required under FLPMA, much less in a way that honors pre-existing mineral rights under Proclamation 7317, carbon dioxide producers must create new facilities on private lands. This not only creates needless inefficiencies, but deprives the United States of royalty payments. BLM has even discouraged development on private lands where the United States owns the mineral rights, demanding that development undergo a modified environmental review process under the National Environmental Policy Act.

BLM has imposed other arbitrary restrictions in the CANM RMP that would needlessly block oil, gas, and carbon dioxide development. These include the RMP’s unwarranted Designation of Visual Resource Management Classifications that are incompatible with energy development. Other CANM RMP restrictions requiring review include air quality standards that are needlessly more stringent than either State or Federal air quality requirements, prohibitions on any activity that could potentially impact cultural resources even when those impacts could be mitigated, and unnecessarily stringent noise restrictions that can impede existing operations.

In short, GPA Midstream recommends that Interior take action under Executive Order 13,792 to amend the CANM RMP so that it complies with FLPMA’s command to ensure balanced multiple uses and that CANM remains “open to oil and gas leasing and development,” including carbon dioxide development, as required by Proclamation 7317.

### C. *BLM Should Eliminate Additional Reviews and Any Additional Conditions of Approval for Master Leasing Plans*

BLM’s decision to adopt Master Leasing Plans (“MLP”) in 2010 has added years of delay to the oil and gas leasing process without a commensurate environmental benefit. Interior should review the MLP process and either identify opportunities to streamline this process by eliminating duplicative environmental reviews or end the environmental review process altogether.

The MLP is not required by statute or regulation. Instead, Interior introduced the Master Leasing Plan by a May 17, 2010 internal BLM Instruction Memorandum – a policy memo that was never subject to public review or even published in the Federal Register announcing the policy. The policy memo asserts that it “establishes a process for ensuring orderly, effective, timely, and environmentally responsible leasing of oil and gas resources on Federal lands.” Unfortunately, it

has not achieved that asserted purpose. For one, instead of ensuring timely leasing, the MLP has resulted in wasteful and lengthy delays. Among other examples, GPA Midstream urges Interior to re-consider the Master Leasing Plans for areas in Montezuma and La Plata counties. The Tres Rios Field Office completed and published a Resource Management Plan in February 2015 and accompanying final Environmental Impact Statement (“EIS”) issued in September 2013. BLM developed these two documents over the course of nearly a decade’s worth of research and analysis and issued the final EIS after it prepared a draft EIS for public comment in December 2007 and published a supplemental draft EIS in August 2011, also subject to public comment. Yet, the Master Lease Plans for these areas continue to be reviewed by the State Director. Thus, environmental reviews for oil and gas leasing in Montezuma and La Plata counties continue nearly ten years after BLM issued the draft EIS and after two public comment periods collectively spanning 210 days.

Not only does the redundant Master Leasing Plan process introduce unnecessary delay, but creates significant uncertainty through the potential addition of new alternatives and Conditions of Approval. These would be in addition to those alternatives and avoidance and mitigation measures required by the final EIS and imposed outside of the National Environmental Policy Act (“NEPA”) review process. NEPA and the Federal Land Policy and Management Act dictate the process for environmental reviews of oil and gas leasing on Federal lands as established by Congress. The addition of yet another lengthy review process, which has never been sanctioned by Congress or incorporated into BLM’s regulations, only serves to diminish interest in oil and gas development on Federal lands, threatening royalty revenues for tax payers.

*D. BLM Should Rescind its Mitigation Policy of Imposing Endangered Species Act Restrictions on Private Lands Where the United States Owns Only Mineral Interests*

GPA Midstream supports Secretarial Order 3349, calling for a review of mitigation policies adopted by the Department under the Presidential Memorandum “Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment” (Nov. 3, 2015) and Secretarial Order 3330. We support common sense policies to ensure that impacts from oil and gas development on Federal lands on the environmental and listed species are mitigated, however, at least one BLM policy should be prioritized for review and rescinded. Current BLM policy 600 DM 6, Departmental Manual Release, Landscape-Scale Mitigation Policy, imposes compensatory mitigation measures on proposed development projects in habitat that are not occupied by an endangered species but may have the possibility of supporting the species at issue if certain habitat parameters are met. These include split-estate parcels whereby the surface is private and the federal government owns the mineral estate is Federal. The compensatory mitigation measures are not well defined by this Policy, so it is left up to individual wildlife biologists at each separate BLM field office to develop their own equations when determining compensatory mitigation. This, in turn, leads to uncertainty and inequity in the mitigation requirements and potentially extends an already lengthy permit process even further.

*E. GPA Strongly Supports Secretarial Order No. 3354 Enforcing a 30 Day Period for Processing Applications for Permit to Drill*

GPA Midstream strongly supports Secretarial Order 3354, which requires BLM to finally implement the legal mandate of the Energy Policy Act. Pub. L. No. 109-58. Section 366 of the Energy Policy Act amended Section 17 of the Mineral Leasing Act to require the Secretary to act on applications for permits to drill within 30 days of receiving a complete application, provided that National Environmental Policy Act requirements are satisfied. 30 U.S.C. § 226(p)(2). As the Department's own press release noted, the average time taken to process applications for permits to drill were 257 days in fiscal year 2016. U.S. Dep't of Interior, Zinke Signs Secretarial Order to Streamline Process for Federal Onshore Oil and Gas Leasing Permits (July 6, 2017). The same press release noted that, as of January 31, 2017, over 2,800 applications were pending, with more than 2,000 of those applications mired in five field offices. *Id.*

The order to comply with the Energy Policy Act appears to recognize that Federal and Indian lands compete with other mineral rights owners for development. BLM's history of long permitting times discourages onshore oil and gas development on Federal and Indian lands, especially when compared to State or privately owned lands, where State permits to drill are issued much more quickly. A Congressional Research Service report concluded that onshore oil and production on Federal and Indian lands declined between 2010 and 2014 while non-federal production saw substantial increases. Congressional Research Service, U.S. Crude Oil and Natural Gas Production in Federal and Non-Federal Areas (April 3, 2015). Simply put, the longer processing times and uncertainty involved in dealing with BLM makes development on Federal and Indian lands less attractive. This industry preference for developing other lands instead deprives the United States of royalty revenues, imposing real costs on taxpayers.

GPA Midstream hopes that enforcing the Energy Policy Act's 30 day deadline will make Federal lands more competitive, but implementing this goal may be difficult. Additional resources may be required at key BLM field offices. Without additional resources from Congress, BLM may be hard-pressed to manage its existing resources to meet the 30 day deadline. Further, BLM must guard against bureaucratic practices that merely provide the illusion of compliance with the Energy Policy Act. For instance, at the end of the 30 day period, field offices may defer decisions on permit applications that are not complete and require additional information. 30 U.S.C. § 226(p)(2)(B). Under BLM regulations, a "complete" application is defined at 43 C.F.R. § 3162.3-1(d)-(f). However, BLM personnel could potentially exploit ambiguities in these regulations to require additional materials for a "complete" application. For instance, one company was recently forced to sue BLM after a headquarters official illegally blocked the Price Field Office from issuing permits to drill until it completed greenhouse gas analyses that were not authorized under the Mineral Leasing Act. *EnerVest, Ltd. v. Jewell*, Memorandum Decision and Order Granting in Part and Denying in Part Motion for Immediate Mandamus Relief, Doc. # 20, Case No. 16-cv-01256-DN (D. Utah Dec. 30, 2016). Such practices not only fail to comply with the spirit of the Energy Policy Act, which clearly required BLM to expedite the *issuance* of permits, but add additional burdens and uncertainties that would further diminish the competitiveness of Federal and Indian lands. Therefore, GPA Midstream suggests that BLM track the number of permit applications that are granted within 30 days, as contemplated by the Energy Policy Act, and the number that are deferred as incomplete.

#### F. GPA Supports BLM's Intention to Rescind the Waste Prevention Rule

GPA Midstream strongly supports BLM's intention to rescind the Waste Prevention, Production Subject to Royalties, and Resource Conservation Rule ("Waste Prevention Rule"), 81 Fed. Reg. 83,008 (Nov. 18, 2016), as well as BLM's suspension of the Waste Prevention Rule's compliance dates. 82 Fed. Reg. 27,430 (June 15, 2017). The Waste Prevention Rule's flaws have been extensively discussed in comments by GPA Midstream, the American Petroleum Institute, and many others, as well as litigation instituted by three States and two trade associations. These flaws include, but are not limited to, BLM's lack of legal authority to effectively regulate air pollution, the rule's re-definition of "waste" to include unavoidable losses, arbitrary flaring limits and liquids unloading requirements imposed without regard to the wide array of individual lease circumstances, and the Waste Prevention Rule's lack of net benefits. GPA Midstream urges BLM to formally propose rescinding the Waste Prevention Rule as soon as possible.

## **II. Bureau of Indian Affairs Regulations: BIA Should Revise its 2015 Right-of-Way Regulations**

BIA's administration of rights-of-way involves a vital aspect of energy infrastructure development, allowing for the transportation of oil, gas, and natural gas liquids. For this reason, BIA should review and revise its final rule comprehensively updating and streamlining the process for obtaining BIA grants of rights-of-way on Indian lands. 80 Fed. Reg. 72,491 (Dec. 21, 2015). Although there are aspects of the final rule that GPA Midstream supports, there are three particular provisions that we believe should be reviewed and revised.

First, the final rule requires consent for all right-of-way renewals absent an agreement that specifically waives consent. In a process that is already costly, time consuming, and inefficient, requiring consent from all tribes or individual allottees does little more than provide an opportunity for the consenting parties to extract new concessions under the threat of unnecessarily protracting the renewal negotiations. For allotted lands, the applicant should be able to renew a right-of-way upon securing consent from a simple majority of individual owners. This would allow companies to avoid spending an inordinate amount of time and money negotiating with a small minority of owners in order to obtain a renewal.

Second, the final rule creates an unconventional, alternative measure of "fair market value" for purposes of determining compensation to include such considerations as "throughput fees, franchise fees, avoidance value, bonuses, or other factors." 80 Fed. Reg. at 72,513. Such a new and expansive set of considerations is contrary to BIA's stated goal of streamlining the right-of-way process. The established method of obtaining an appraisal of the fair market value for the right-of-way provides certainty and clarity for both the company seeking a renewal and the individual owners. The new alternative will slow negotiations by increasing the potential for disputes regarding, not just the fair market value, but the methodologies used for its calculation. This will only be exacerbated by the subjective and intangible nature of some of the factors allowed by the alternative, such as avoidance values, "bonuses," and "other factors." Rather than streamlining negotiations, the final rule creates several new grounds to prolong negotiations.

Third, even more fundamentally, the way the final rule's preamble defines a parcel subject to the rule is confusing and needs to be explained. Specifically, the preamble explains that a tract is considered to be "tribal land" whenever a tribe owns "any interest, fractional or whole," including where individual Indians own fractional interests, and that consent is required under 25

U.S.C. §§ 323 and 324. 80 Fed. Reg. at 72,497 (emphasis added). However, this explanation appears to differ significantly from the final rule's actual definition of "tribal land" under § 169.2. The regulatory definition is much narrower than the preamble explanation, defining tribal land as "any tract in which the surface estate, or an undivided interest in the surface estate, is owned by one or more tribes in trust or restricted status." GPA Midstream believes that BIA should confirm that the regulatory language controls over the preamble language. BIA should also resolve the continuing ambiguity in the regulatory definition. Specifically, "Indian land" is a term defined separately and differently under the regulations from "Tribal land." BIA should amend the definition of "Tribal land" to make clear that land in which individual Indians own even a fractional surface interest is "Indian land" or limit the definition of "Tribal land" to only those lands where a tribe owns a majority interest.

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GPA Midstream appreciates the opportunity to submit these comments on the Department of Interior's regulatory reform initiative and is standing by to answer any questions that the Department may have.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matt Hite".

Matt Hite  
Vice President of Government Affairs  
GPA Midstream Association