



May 23, 2017

The Honorable Raul Labrador  
Chairman  
Subcommittee on Oversight and  
Investigations  
House Committee on Natural Resources  
U.S. House of Representatives  
1324 Longworth House Office Building  
Washington, D.C. 20510

The Honorable Mike Johnson  
Vice-Chairman  
Subcommittee on Oversight and  
Investigations  
House Committee on Natural Resources  
U.S. House of Representatives  
1324 Longworth House Office Building  
Washington, D.C. 20510

Dear Chairman Labrador and Vice-Chairman Johnson:

Thank you for reaching out to GPA Midstream Association for assistance in identifying burdensome government regulations and processes under the Subcommittee's jurisdiction that impact the midstream industry.

GPA Midstream has served the U.S. energy industry since 1921 as an incorporated non-profit trade association. GPA Midstream is composed of nearly 100 corporate members of all sizes that are engaged in the gathering of crude oil, and the gathering and processing of natural gas into merchantable pipeline gas, commonly referred to in the industry as "midstream activities." Such natural gas 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.

GPA Midstream recommendations center around four rules promulgated by the Bureau of Land Management (BLM) at the Department of the Interior. GPA Midstream identifies BLM Onshore Order 3, Onshore Order 4, Onshore Order 5, and the BLM Venting and Flaring rules as regulations in need of greater scrutiny by the Subcommittee.

### **ORDER 3**

BLM's Onshore Order No. 3 addresses Site Security. One of our major areas of concern is the creation of Facility Measurement Points (FMP). Specifically, we are concerned with the requirement that the FMPs be on all records. This will cause a significant change to GPA Midstream members' accounting systems. This could take at the very least two calendar years to fully implement. The stated reason for the creation of the FMP is the BLM's confusion regarding which well BLM was going to inspect. Requiring our members to modify accounting systems and make other changes to equipment because the BLM lacks the proper training or databases doesn't seem reasonable.

### **ORDER 4**

BLM's Onshore Order No. 4 deals with the measurement of crude oil. Onshore Order No. 4 includes requirements for the hardware and software related to the approved metering equipment (by manufacturer and type), overall measurement performance standards, and reporting and record keeping for crude oil. Only equipment approved by the BLM (please note there is currently no approved equipment; the development of an approved equipment list will require the hiring of additional BLM employees) would require affected parties to replace equipment that is functioning properly and measuring accurately. In effect, our members would be changing equipment out because the current equipment was built to an older standard, with no indication or expectation that the new measurement equipment will give a different answer. Change for the sake of change with no improvement is wasteful, will pose unnecessary costs on the midstream sector, and will cause operational delays.

#### **ORDER 5**

BLM's Onshore Order No. 5 deals with the measurement of natural gas. Onshore Order No. 5 includes requirements for the hardware and software related to the approved metering equipment (by manufacturer and type), overall measurement performance standards, and reporting and record keeping for natural gas. Only equipment approved by the BLM (please note there is currently no approved equipment; the development of an approved equipment list will require the hiring of additional BLM employees) would require affected parties to replace equipment that is functioning properly and measuring accurately. In effect, our members would be changing equipment out because the current equipment was built to an older standard, with no indication or expectation that the new measurement equipment will give a different answer. Change for the sake of change with no improvement is wasteful, will pose unnecessary costs on the midstream sector, and will cause operational delays.

#### **VENTING AND FLARING RULE**

BLM's "Waste Prevention, Production Subject to Royalties, and Resource Conservation" rule is costly and redundant. The midstream industry is already subject to Environmental Protection Agency Clean Air Act standards. Furthermore, industry has already taken steps to dramatically reduce methane emissions. Lastly, Congress has never granted BLM the authority to regulate air quality which is far outside their jurisdiction.

#### **ENDANGERED SPECIES ACT (ESA)**

The US Fish and Wildlife Service (USFWS) and National Marine Fisheries Service have recently implemented, or attempted to implement, several broad reaching policy and regulation changes that govern the manner in which the agencies apply ESA requirements to projects. Examples include policy and regulation changes for Candidate Conservation Agreements with Assurances, mitigation, compensatory mitigation, habitat conservation planning, and critical habitat designation. Some of these policy changes and related regulatory changes are currently under review as per President Trump's March 28, 2017 Executive Order, "Promoting Energy Independence and Economic Growth" and Secretary Zinke's subsequent Secretarial Order 3349. When combined with the constantly growing number of species being added to the endangered species list each year as a result of petitions and settlement agreements, industry's ability to construct projects in a timely and cost-effective manner is rapidly dwindling. ESA compliance is becoming increasingly complex and costly. Avoidance is also becoming increasingly difficult as species with large swaths of geographic coverage overlap to cover extremely large portions of the United States. The ESA should be amended to add a balancing component to allow for

economic and other considerations and put a halt to the growing trend of protecting species regardless of the social and economic costs. The petition-sue-settle approach to listing species should be stopped. Regulations and policies used to implement the ESA should be based on sound science, not speculative data, and be fully vetted through the Administrative Procedure Act process.

### **MIGRATORY BIRD TREATY ACT (MBTA)**

The USFWS has expanded their authority to regulate impacts under the MBTA over the years. On federally permitted projects, the agency has become more aggressive with demanding extensive field work, costly mitigation measures, rigid construction windows, and requiring “voluntary” payments in addition to normal mitigation measures. On federally permitted projects, these requirements are layered on top of similar requirements already being placed on projects to ensure ESA compliance. Recently, the agency took steps to develop an incidental take program under the MBTA. GPA Midstream believes the original intent of the MBTA was never to regulate non-purposeful take and that many of the species covered under the MBTA do not merit such extensive and costly protection measures. The ESA should be the instrument for regulating a protected sensitive species, not the MBTA. Continued use of the MBTA to set construction timeframes, mitigation requirements, and incidental take regulations on top of similar ESA requirements is unnecessarily burdensome, duplicative, and costly to industry. One option for the committee to consider is amending the MBTA to clearly provide that a “take,” within the context of the Act, refers to conduct directed at birds, such as hunting and poaching, and not acts or omissions having merely the incidental or unintended effect of causing bird disturbance, such as pipeline construction projects. Another option would be to provide a statutory permit mechanism allowing for the incidental take of migratory birds.

### **BUREAU OF INDIAN AFFAIRS (BIA) FINAL RULE REGARDING RIGHTS-OF-WAY ON INDIAN LAND**

This final rule went into effect on April 21, 2016. One of our major concerns with this is that the expiring rights of way (ROWs) don’t have any renewal provisions, so when they expire our members will have to apply for a new ROWs. Tribal consent is required and likely immune from condemnation. If the tribe has any interest in the allotted lands, we must obtain consent from the tribe for the entire allotment.

### **ESA COMPENSATORY MITIGATION POLICY**

On December 27, 2016, the U.S. Fish & Wildlife Service (USFWS) released its final Endangered Species Act (ESA) Compensatory Mitigation Policy (CMP). The final CMP changes USFWS’ compensatory mitigation requirements, creates substantive new obligations, and expands the jurisdiction of USFWS through interpretations of numerous statutes.

GPA Midstream appreciates the Subcommittee reaching out to us and hopes our insights can be helpful. We would also like to thank you for your efforts to try and shape a more effective and efficient federal government. If you have questions or if we can be of further assistance, please contact me at (202) 279-1664 or by email at [mwhite@GPAglobal.org](mailto:mwhite@GPAglobal.org).

Respectfully Submitted,

Matthew Hite  
Vice President of Government Affairs  
GPA Midstream Association