August 24, 2026

Via Regulations.gov

Steve Pearce, Director
U.S. Department of the Interior
Bureau of Land Management
1849 C St. NW, Room 5646
Washington, DC 20240

Re: Oil and Natural Gas Associations' Comments on Bureau of Land Management's ("BLM") Proposed Rule, Royalty for Oil and Gas Lost from Onshore Federal and Indian Leases, 91 Fed. Reg. 37906 (June 24, 2026), RIN 1004-AF33, Docket ID: BLM-2025-0235 ("Proposed Rule")

Dear Director Pearce:

The American Petroleum Institute ("API"), the American Exploration & Production Council, the Alaska Oil and Gas Association, the New Mexico Oil and Gas Association, the Petroleum Alliance of Oklahoma, the Utah Petroleum Association, and the Petroleum Association of Wyoming (collectively "the Associations") appreciate the opportunity to submit comments on the above-referenced BLM Proposed Rule on behalf of our members, many of whom hold and operate federal onshore and Indian oil and natural gas leases and would be directly impacted by the Proposed Rule.

The Proposed Rule appropriately aims to substantially reduce unnecessary and inappropriate regulatory and administrative burdens imposed by BLM's 2024 rule entitled "Waste Prevention, Production Subject to Royalties, and Resource Conservation" (89 Fed. Reg. 25378 (Apr. 10, 2024)) ("2024 Rule"), which is already the subject of litigation and a preliminary injunction. In contrast to the 2024 Rule, the Proposed Rule promotes American energy dominance and implements the will of the American people by crystallizing the mandates of the One Big Beautiful Bill Act ("OBBB") and policy objectives under Executive Order ("E.O.") 14154 (Unleashing American Energy) and Secretarial Order 3418. In recent years, "burdensome and ideologically motivated regulations have impeded the development of

[America's energy and natural] resources, limited the generation of reliable and affordable electricity, reduced job creation, and inflicted high energy costs upon our citizens." E.O. 14154, 90 Fed. Reg. 8353 (Jan. 20, 2025). Now more than ever, U.S. energy security is paramount. Amending BLM's regulations governing royalty owed on oil and natural gas lost from federal onshore and Indian leases would help bolster oil and natural gas-related activities at home, stimulate the American economy, provide jobs, and break the shackles of U.S. dependence on foreign sources of energy. Moreover, oil and natural gas production occurring domestically (including on federally-managed lands) is preferable to other locations that have a more significant environmental footprint.

The Associations generally support the Proposed Rule given its emphasis on shifting toward a more flexible, workable, and streamlined regulatory framework. Overall, the Proposed Rule responds to many concerns the Associations raised regarding BLM's 2024 Rule. It would remove or scale back numerous prescriptive requirements, eliminate several costly compliance and monitoring programs (including Waste Minimization Plans ("WMPs") and the Leak Detection and Repair ("LDAR") program), streamline royalty determinations, and restore flexibility to operators. It would no longer impose royalties, assessments, or penalties for the loss of natural gas that is in fact unavoidable, including due to midstream pipeline capacity and processing constraints. Several sections would be reorganized or streamlined to improve regulatory clarity and reduce administrative burdens while maintaining BLM's regulatory focus consistent with the proper scope of its statutory authority.

The Associations' comments focus on reinforcing proposed changes, recommending additional clarifications where appropriate, and suggesting further revisions that enhance regulatory certainty, reduce unnecessary compliance obligations, and ensure the final rule remains legally durable and administratively workable.

Most importantly, we urge BLM to revisit and consider removing, or at minimum substantially narrowing, the Proposed Rule's technical provisions regarding new venting and flaring measurement points ("VFMPs") and associated reporting, which could inadvertently undercut BLM's stated aims and significantly increase reporting and operational burdens with little corresponding benefit. Presently, operators must report on a monthly basis only high-pressure flaring, which typically is at a single point at a facility and is upstream from a BLM-approved facility measurement point ("FMP") where produced natural gas is measured for royalty purposes (*see* 43 C.F.R. § 3170.3, subpart 3175). By contrast, the Proposed Rule as written—namely its proposed definitions of "Type 1" and "Type 2" equipment and "VFMP" in § 3179.10, and its proposed §§ 3179.43, 3179.50, 3179.51, 3179.60, and 3179.61— could impose novel requirements to measure or estimate and then report flared, vented, and combusted natural gas volumes at dozens of points at each facility, even where such volumes would not be expected to be large or royalty-bearing. BLM thus should abandon those proposals in a final rule. Consistent with the Proposed Rule's stated rationale, BLM's statutory authority, and court holdings, any final rule should focus on royalty rather than emissions.

BLM should promptly issue a final rule adopting this Proposed Rule with the clarifying modifications suggested herein.

THE ASSOCIATIONS' INTERESTS

API is the only national trade association representing all facets of the oil and natural gas industry, which supports more than 11 million U.S. jobs and nearly 8 percent of the U.S. economy. API's approximately 600 members operate throughout the U.S. onshore and the Outer Continental Shelf, and include large integrated companies, as well as exploration and production, refining, marketing, pipeline, and marine businesses, and service and supply firms. They provide most of the nation's energy and are backed by a growing grassroots movement of Americans. API has long worked collaboratively with BLM and other Department of the Interior agencies, the Environmental Protection Agency, states, and others to support the continued safety of industry workers and protection of the environment. API has developed more than 800 industry standards to enhance operational and environmental safety, efficiency, and sustainability.

AXPC is a national trade association representing 34 leading independent oil and natural gas exploration and production companies in the United States. AXPC companies support millions of Americans in high-paying jobs and invest a wealth of resources in our communities. Dedicated to safety, stewardship, and technological advancement, AXPC's members strive to deliver affordable, reliable energy to consumers while positively impacting the economy and the communities in which we live and operate. As part of this mission, AXPC members understand and promote the importance of advancing positive environmental and public-welfare outcomes and responsible stewardship of the nation's natural resources. AXPC's members are committed to being good stewards of federal and Indian resources and operating in compliance with all federal requirements. AXPC member companies produce more than half of U.S. onshore production each year.

AOGA is a professional trade association whose mission is to foster the long-term viability of the oil and gas industry in Alaska for the benefit of all Alaskans. AOGA's 14 member companies account for the majority of oil and gas exploration, development, production, transportation, refining, and marketing activities in Alaska.

NMOGA is a coalition of oil and natural gas companies, individuals, and stakeholders dedicated to promoting the safe and environmentally responsible development of oil and natural gas resources in New Mexico. Representing over 1,000 members, NMOGA works with elected officials, community leaders, industry experts, and the general public, to advocate for responsible oil and natural gas policies and increase public understanding of industry operations and contributions to the state. New Mexico's oil and natural gas activity is concentrated in two areas: the Permian Basin in the southeast and the San Juan Basin in the northwest. New Mexico is one of the United States' leading producers, ranking 2nd in annual oil production and 9th in annual natural gas production. New Mexico is attracting interest and attention from around the globe, as the Permian Basin undergoes a resurgence of production and investment activity.

The **Petroleum Alliance of Oklahoma** is the largest oil and gas trade association in the Mid-Continent and the only trade association in Oklahoma to represent all sectors of the state's oil and natural gas industry. Representing more than 1,700 individuals and member companies, the Alliance's membership includes oil and natural gas producers, service providers to the oil and natural gas industry, midstream companies, refiners, and other associated businesses. Our members include companies of all sizes, ranging from small, family-owned companies to large, publicly traded corporations. Our members are responsible for 83% of all operated crude oil and natural gas production in Oklahoma. When non-operated production is considered, we estimate our members produce, transport, process, and refine more than 97% of Oklahoma's crude oil and natural gas. Additionally, our members have operations, assets, or interests in most of the United States' oil and natural gas producing regions as well as internationally. Our members develop private, state, and federal minerals and operate on federal lands in Oklahoma and in other states.

UPA is a statewide oil and gas trade association established in 1958 representing companies involved in all aspects of Utah's oil and gas industry. UPA members range from independent producers to midstream and service providers, to major oil and natural gas companies widely recognized as industry leaders responsible for driving technology advancement resulting in environmental and efficiency gains. UPA members operate extensively on federal lands and have a long history of stewardship and conservation.

PAW represents companies involved in all aspects of responsible oil and natural gas development in Wyoming, including upstream production, oilfield services, midstream processing, pipeline transportation and essential work such as legal services, accounting, consulting and more.

GENERAL COMMENTS

The Associations refer BLM to, and incorporate by reference, our submitted comments on prior regulatory proposals related to the subject matter of the Proposed Rule.[1]

Together with their member companies, the Associations are committed to ensuring a strong, viable U.S. oil and natural gas industry capable of meeting the energy needs of our nation in an efficient and environmentally responsible manner. Toward those ends, the Associations support BLM's efforts to promote efficiency and eliminate unnecessary barriers to energy production on America's federal lands. In particular, the Associations generally support BLM's proposed changes implementing the OBBB, in addition to recent Executive Orders. *See* Pub. L. No. 119-21, 139 Stat. 72 (2025); 90 Fed. Reg. at 8353. The Proposed Rule is a marked improvement on and appropriately corrects misplaced amendments to BLM's regulations adopted in 2024 and prior to that date. The Associations herein suggest further amendments for BLM's consideration in its final rule to optimize clarity and utility in implementation.

The Proposed Rule respects the following foundational concepts:

1. BLM must operate within the bounds of its statutorily granted authority.

[1] *See, e.g.*, API *et al.* Jan. 30, 2023 Comments on BLM's Proposed Rule for the 2024 Rule, RIN 1004-AE79, Docket ID: BLM-2022-0003; API *et al.* Apr. 4, 2016 and April 22, 2016 Comments on BLM's Proposed Rule for Waste Prevention, Production Subject to Royalty, and Resource Conservation, 81 Fed. Reg. 6616, RIN 1004-AE14 (Feb. 8, 2016).

2. Onshore federal and Indian oil and natural gas should remain a viable and attractive investment option with balanced, predictable, and equitable management.

3. Stifling regulatory and financial burdens have prevented BLM from issuing and companies from procuring and developing oil and natural gas leases and have disincentivized investors.

4. Federal agencies like BLM have been bogged down by unnecessarily duplicative processes that waste time and stretch agency resources. Agencies should not waste American taxpayer dollars on ineffective, inefficient processes.

5. The United States is experiencing—and may, for the near future, continue to experience—energy insecurity as a result of global developments and conflicts.

6. Environmental goals and efficient oil and natural gas leasing processes can coexist.

Federal onshore and Indian oil and natural gas production is critical to American energy dominance both domestically and globally. The U.S. is a global leader in both energy production[2] and emissions reductions.[3] Oil and natural gas exploration and development on federal and Indian lands provide enormous benefits to our nation and its citizens—for our economy, our environment, and our national security. Because of the vital importance of energy production on federal and Indian lands, overreaching land management regulations place our domestic energy supply at risk. Reduced production on federal and Indian lands also harms local communities that depend upon the jobs and revenues generated by lawful energy development.

The U.S. oil and natural gas industry produces and delivers nearly 70% of the energy our country uses. Our nation and the world will continue to need reliable, affordable oil and natural gas - energy that will serve as the foundation for broader opportunities for decades to come. Oil and natural gas production on federal and Indian lands thus is a crucial part of the nation's program for energy security and economic strength. Likewise, the oil and natural gas industry is essential to supporting a modern standard of living by providing communities with access to affordable, reliable, and cleaner energy. The industry's top priority remains public health and safety, and our member companies have well-established policies in place for proactive community engagement and feedback aimed at fostering a culture of trust, inclusivity, and

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[2] According to the Energy Information Administration, the United States is ranked first globally in total energy production from both natural gas and from petroleum and other liquids. U.S. Energy Info. Admin., *Total Energy Production from Natural Gas*, https://www.eia.gov/international/rankings/world?.pa=287&u=2&f=A&v=none&y=01%2F01%2F2021.

[3] According to EPA, "Between 1970 and 2020, the combined emissions of the six common pollutants (PM2.5 and PM10, SO2, NOx, VOCs, CO and Pb) dropped by 78 percent. This progress occurred while U.S. economic indicators remain strong." EPA, *Progress Cleaning the Air and Improving People's Health* (May 1, 2023), https://www.epa.gov/clean-air-act-overview/progress-cleaning-air-and-improving-peoples-health#pollution.

transparency. In this regard, it is crucial to bear in mind that oil and natural gas development on federal and Indian lands promotes investment in rural areas where state, local, and tribal economies depend on the industry for jobs, continued economic prosperity, and state severance taxes and local taxes generated from these projects.

Just as importantly, the Associations' members support the health and sustainability of federal and Indian lands and resources. The oil and natural gas industry employs technology and strategies as part of its support for environmental stewardship - taking measures to prioritize protecting public health and the environment, while working to deliver plentiful energy. Measures for the protection of species, habitats, and groundwater are all part of the Associations' members' approach to oil and natural gas development, and projects are designed, managed, and operated to identify and address potential environmental impacts associated with activities ranging from initial exploration to eventual closure. The Associations' members make unparalleled efforts to improve the compatibility of their operations with the environment while responsibly and economically developing energy resources and supplying high quality products and services to consumers. Indeed, across these varied operations, the Associations' members are working continually to reduce impacts to air, water, and land resources, including to protected species and habitats. At the same time, the Associations' members implement and improve innovative practices and technology while continuing to bolster research that looks for new ways to further enhance environmental performance.

In addition, the Associations' members monitor, compile, and report emissions data per government regulations and on a voluntary basis as appropriate, conduct studies with academic institutions, and work closely with state and federal regulators. This type of collaboration has resulted in improved habitat and species health. For example, modern energy production methods and technologies have resulted in a 70% reduction in surface disturbance when compared to historical practices.[4] The industry also works with many stakeholder groups to understand wildlife migration patterns and routes in areas where operations occur. In particular, oil and natural gas production on BLM-managed lands provides immense value for the nation. BLM manages approximately 245 million acres of surface estate on public lands in the United States (more than any other federal agency).[5] BLM also manages the federal government's onshore subsurface mineral estate (approximately 700 million acres).[6]

The Congressional Research Service ("CRS") recently explained the enormous importance of oil and natural gas production on federal lands to the federal government, the

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[4] *See* David H. Applegate & Nicholas Owens, *Oil and Gas Impacts on Wyoming's Sagegrouse: Summarizing the Past and Predicting the Foreseeable Future*, 8 HUMAN–WILDLIFE INTERACTIONS 284, 289–90 (2014), https://www.researchgate.net/publication/267765279_Oil_and_Gas_Impacts_on_Wyoming%27s_Sagegrouse_Summarizing_the_Past_and_Predicting_the_Foreseeable_Future.

[5] The White House, *Department of the Interior*, *in* THE BUDGET FOR FISCAL YEAR 2024 (2023), https://www.whitehouse.gov/wp-content/uploads/2023/03/int_fy2024.pdf.

[6] BLM, *About the BLM Oil and Gas Program*, https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/about#:~:text=The%20BLM%20manages%20the%20Federal,benefit%20of%20the%20American%20public.

states, local communities, and the nation as a whole.[7] Production of oil and natural gas from onshore federal lands represents almost 10% of total domestic production of crude oil and natural gas. CRS found that total revenues from oil and natural gas leases on onshore federal lands exceeded $4.2 billion in fiscal year 2019. This substantial return for the taxpayer is comprised of royalty and interest payments, bonuses, rentals, and other sources. In turn, these funds were disbursed to states (more than $2 billion), the Reclamation Fund (more than $1.5 billion), and the U.S. Treasury ($444 million), among other recipients.[8]

More recent data published by DOI's Office of Natural Resources Revenue ("ONRR") shows that, for fiscal year 2025, federal leases generated more than $14 billion in revenues (from bonus bids, royalties, rents, and other sources).[9] For fiscal year 2025, ONRR disbursed over $4.0 billion in funds collected from leasing activities on federal lands and waters to 34 states.[10] As stated by CRS, "[f]ederal revenues from oil and natural gas production on federal lands support a range of federal and state programs and activities."

Relevant benefits also extend beyond direct proceeds from BLM onshore oil and natural gas leases. The Associations refer BLM to and incorporate by reference the attached analysis of "Economic Benefits of Onshore Federal Oil and Natural Gas Leasing."[11] Based on reliable modeling, in fiscal year 2022, onshore federal oil and natural gas development supported nearly 250,000 jobs, generated $19.4 billion in labor income, and contributed $36.7 billion to U.S. Gross Domestic Product ("GDP"). More broadly, between fiscal year 2013 and fiscal year 2022, onshore federal oil and natural gas leasing supported an average of 190,000 jobs, generated $13.4 billion in labor income, and contributed $24.2 billion to GDP each year.

The Proposed Rule largely preserves and enhances these far-ranging benefits from oil and natural gas leasing on federal and Indian lands. It would remedy unjustified and ill-advised constraints and uncertainty that the 2024 Rule imposed. Vague rules and standards create substantial uncertainty, undermine investor confidence, and reduce the value and reliability of partnerships with federal agencies and Indian mineral owners on shared efforts to responsibly operate on and around federal and Indian lands and resources. Instead, with the exception of its VFMP-related proposals that BLM should not adopt, and other clarifications requested herein. the Proposed Rule largely would fulfill enduring directives to BLM for "improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends." E.O. 13563. Reduction of unnecessary costs and burdens generated by the Proposed Rule would help ensure

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[7] BRANDON S. TRACY, CONG. RES. SERV., R46537, REVENUES AND DISBURSEMENTS FROM OIL AND NATURAL GAS PRODUCTION ON FEDERAL LANDS (2020), https://crsreports.congress.gov/product/pdf/R/R46537.
[8] *Id.*
[9] DOI, *Interior Announces $14.61 Billion in Fiscal Year 2025 Energy Revenue* (Nov. 24, 2025) [*hereinafter FY 2025 Announcement*], https://www.doi.gov/pressreleases/interior-announces-1461-billion-fiscal-year-2025-energy-revenue.
[10] *Id.*
[11] Economic Benefits of Onshore Federal Oil and Natural Gas Leasing from 2013-2022 Septembr 2023.pdf.

these important resources and benefits remain available to the American people for years to come.

SECTION-BY-SECTION COMMENTS

For ease of reference, the Associations' comments below follow the same organization of sections as in the Proposed Rule. Many of the modifications to sections in the Proposed Rule do not include any substantive changes to BLM's existing regulations. The Associations are not providing any comment on those sections, and generally support those modifications.

The Associations offer comments on certain sections with proposed changes to the Proposed Rule's regulatory text for BLM's consideration in a final rule. For clarity, throughout these comments, the Associations provide suggested regulatory text revisions in redline format to facilitate BLM's consideration:

- Recommended language for removal is indicated in ~~strikethrough text~~, except where the Associations recommend deletion of a provision of the Proposed Rule in its entirety.
- Recommended language for addition is indicated in underlined text.

References herein to existing regulatory sections are to title 43 of the Code of Federal Regulations unless specified otherwise.

I. § 3162.3-1 DRILLING OPERATIONS AND PLANS

The Proposed Rule removes the 2024 Rule's requirement that an application for permit to drill ("APD") for an oil well include either a waste minimization plan ("WMP") or a self-certification addressing the capture of 100 percent of associated natural gas. The Associations support these changes for the same reasons stated in BLM's preamble to the Proposed Rule and in our prior comments on BLM's proposal for the 2024 Rule. The 2024 Rule added requirements for information that often are not reasonably available when an operator submits an APD, including proprietary information from midstream pipeline companies and extraneous information that is untethered to BLM's authority. It is utterly unrealistic and arbitrary to expect individual operators and BLM to figure out the available capacity of every segment of every midstream gathering system at the exact time every future well is drilled. In any event, such information could change before becoming operative in the field within the 2-year term of approved APDs. The existing provisions further give BLM overly broad discretion to defer or even deny an APD based on vague or subjective criteria. Nor do they ensure adequate due process for operators or exempt APDs involving private or state minerals. BLM in its 2024 Rule additionally underestimated the burden of the WMP or self-certification requirement.

BLM now also appropriately recognizes the inherent flaws in these provisions. Pipeline-capacity constraints have somewhat eased, compliance with the requirements is costly, and no statute gives BLM such authority. Moreover, operators already have a strong economic incentive to capture and market associated natural gas as practicable. The Proposed Rule therefore properly eliminates unnecessary and burdensome requirements for APDs and removes a troubling means by which APD processing and decision-making, and thus production, could be unduly delayed under the guise of "waste prevention."

II. SUBPART 3179

A. § 3179.1 Purpose

The Associations support the Proposed Rule's revised purpose statement. The revised language would better align the regulations with the statutory focus on orderly and efficient development of federal and Indian mineral resources and proper compensation of their owners, rather than improperly regulating broader environmental and other concerns addressed under other statutory programs administered by other agencies.

As multiple federal courts have observed in cabining BLM's prior rules adopted in 2016 and 2024, BLM's undue waste prevention and royalty authority does not extend to matters that Congress has assigned to other agencies or statutory regimes. *See North Dakota v. Dep't of Interior*, No. 1:24-CV-00066, 2024 WL 4164939, at *8 (D.N.D. Sept. 12, 2024) ("Plaintiffs have shown they are likely to succeed on the claim that the 2024 Rule is arbitrary and capricious."); *Wyoming,* 493 F. Supp. 3d 1046, 1086-87 (D. Wyo. 2020) (invalidating BLM's 2016 adopted regulations, vacated on appeal for mootness). Those analyses are particularly relevant in light of the April 9, 2025 Presidential Memorandum, "Directing the Repeal of Unlawful Regulations," which directs agencies to identify and prioritize the repeal of regulations that do not reflect the best reading of their authorizing statutes or that relied on the now-defunct *Chevron* framework.[12] The memorandum specifically invokes recent Supreme Court decisions, including *Loper Bright*, emphasizing that agencies must act within the authority Congress has conferred upon them.[13]

The Proposed Rule appropriately refocuses the regulations on BLM's statutory responsibilities and more accurately reflects both the scope of the agency's authority and the intended function of these regulations. In particular, the revised language properly recognizes the importance of regulatory efficiency and reducing unnecessary burdens while continuing to ensure that the United States and Indian mineral owners receive appropriate compensation for avoidable losses.

Although we support this revised purpose statement, we continue to also support the broader policy objectives reflected in the existing regulations, including the emphasis on the responsible development of federal and Indian oil and natural gas resources, promoting worker safety, conservation, and proper public land management. These objectives, however, are more appropriately advanced through other statutory and regulatory authorities and industry practices.

The Associations also support this section's proposed express clarification that the Proposed Rule will supersede the prior rules governing resource conservation and compensation for lost oil and natural gas. Specifically, beyond the 2024 Rule, the Proposed Rule would

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[12] Memorandum on Directing the Repeal of Unlawful Regulations, The White House (Apr. 9, 2025), https://www.whitehouse.gov/presidential-actions/2025/04/directing-the-repeal-of-unlawful-regulations/.

[13] *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

supersede: (1) *Waste Prevention, Production Subject to Royalties, and Resource Conservation*, 81 Fed. Reg. 83,008 (Nov. 18, 2016); (2) *Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements*, 83 Fed. Reg. 49,184 (Sept. 28, 2018); and (3) the portions of the 1980 rule addressing venting and flaring of produced natural gas, avoidably and unavoidably lost gas, and waste prevention, including *Royalty or Compensation for Oil and Gas Lost; Revocation of Certain Provisions Contained in Notices to Lessees and Operators (NTL-4A)*. This clarification would help eliminate uncertainty regarding which requirements govern and would provide operators with a more coherent and administrable regulatory framework. Relatedly, see our below comment under "Miscellaneous" supporting the Proposed Rule's approach in lieu of simply repealing the 2024 Rule.

B. § 3179.2 Scope

The Associations support BLM's proposed administrative changes to this section, which logically follow from other aspects of the Proposed Rule. In addition, consistent with our prior comments to BLM, we recommend that BLM entirely remove paragraph 3179.2(a)(4) which applies to "[w]ells, equipment, and operations on State or private tracts that are committed to a federally approved unit or CA," and expand the exemptions in (b) to exclude mixed-ownership unit agreements and communitization agreements ("CAs") from the scope of these regulations. A federal court rejected BLM's prior regulatory efforts to encompass State and private tracts committed to federally approved units and CAs because they had no explained statutory basis and effectively infringed on traditional state regulatory authority. *See Wyoming*, 493 F. Supp. 3d at 1081-85. The 2024 Rule presents the same issue in pending litigation in another court, and that court's preliminary injunction opinion already has expressed similar concerns about preserving non-federal authority. *North Dakota*, 2024 WL 4164939 at *6, 9-10. The Proposed Rule thus should avoid extending operational requirements to state and private interests absent a clear statutory basis.

Yet, as written, the Proposed Rule continues to extend subpart 3179 beyond the proper scope of BLM's authority by applying its requirements to certain non-federal and non-Indian interests and making it difficult for operators to determine when the regulations apply. In a final rule, BLM should exempt from this scope provision any operations on lands other than where the United States or Indian mineral owners hold a 100 percent mineral interest.

C. § 3179.10 Definitions and acronyms

The Associations concur with most of BLM's proposed changes to its regulatory definitions, many of which align with our previous comments to BLM. The Associations, however, request that BLM's final rule clarify certain definitions, and we also refer BLM to our comments below on the Proposed Rule's operative sections utilizing these terms, and to other definitions set forth in other Proposed Rule sections.

BLM's proposed "Type 1" and "Type 2" equipment dichotomy is ill-defined and risks (likely unintentionally) overly broad application of the Proposed Rule's lost gas measurement and reporting obligations utilizing those defined terms and components thereof like gas "that would normally go to sales." On one hand, the Associations appreciate BLM's proposal to remove the existing defined terms "high-pressure flare" and "low-pressure flare," for the reasons stated in the Proposed Rule's preamble. The Proposed Rule's preamble explains that the proposed term "Type 1 equipment" would replace "high-pressure flare" while continuing to describe equipment handling natural gas that would normally go to a sales line. It further provides that the proposed "Type 2 equipment" defined term would replace "low-pressure flare."

On the other hand, BLM's proposed solution is incomplete and itself problematic. For one, the Type 1 definition expressly refers to gas "that would normally go to sales," while the Type 2 definition does not include a comparable limitation of gas that does *not* normally go to sales. In any event, that term as utilized in the Proposed Rule remains vague and susceptible to BLM overreach. During implementation of the current regulations, the Associations understand that BLM has interpreted "high-pressure flare" to include flares handling natural gas that has no available market and therefore would never be routed to sales. That interpretation effectively reads the limiting phrase "that would normally go to sales" out of the definition. The Proposed Rule's definition of Type 2 equipment also appears to be underinclusive. As a result, the Proposed Rule could result in Type 1 treatment for nominal losses of gas from equipment that is required for process safety or other purposes. The Associations believe that such broad applicability of the Type 1 equipment definition is not BLM's intent.

An alternative definitional approach based on specific types of equipment or points in the production flow process would enhance regulatory simplicity and consistent implementation. The Associations thus recommend that BLM in a final rule adopt the below substitute definition for "Type 1 equipment":

Recommended Revision:

> *Type 1 equipment* means a flare, combustor, or engineered vent stack designed for venting, flaring, or combustion of gas that would actually go to sales without requiring compression or processing. Type 1 equipment excludes a vent line, flare, or combustor <u>designed for gas that would not normally go to sales,</u> including, but not limited to, an open-air pipe, open-air flare stack, flare pit, enclosed flare, combustion device generally used on oil storage tanks or other low-pressure equipment, <u>crankcase vents, compressor rod packing and other seals, incomplete combustion from engines, flares, or burners, water tank emissions, dehydration unit vents, fugitive equipment leaks, or sources of temporary emissions associated with start-ups, shutdowns, and maintenance.</u> Type 1 equipment also excludes equipment downstream of a BLM-approved FMP.

Under this revised approach, BLM's subpart 3179 regulations would cover equipment other than flares, combustors, and engineered vent stacks designed to emit gas to the atmosphere in lieu of going to sales, while other categories of equipment would be excluded completely. These changes would confirm in the regulatory text that Type 1 equipment *only* includes equipment handling natural gas that *actually*, under normal operating conditions, goes to a sales line and could have associated royalties owed. For covered equipment types, the regulation then would look to the first stage of gas separation or pressure, based on the source of the gas. Equipment downstream of an FMP would be clearly excluded as well, as additional reporting obligations on such gas sources would be duplicative, overly burdensome, and of little royalty benefit. The Associations believe these suggested changes are consistent with the intent of the Proposed Rule.

The above "Type 1 equipment" definition subsumes and obviates the proposed definition of "Type 2 equipment." The Proposed Rule utilizes the term Type 2 equipment only once, as a non-exclusive example of an oil storage tank source of unavoidably lost gas in § 3179.41(b)(6). If BLM nonetheless prefers to retain the term "Type 2 equipment," then BLM could simply define it as "any equipment from which gas is lost that does not meet the definition of Type 1 equipment." This would be consistent with the existing definition of "low-pressure flare" as any "flare that does not meet the definition of high-pressure flare." Alternately, BLM could separate into a new Type 2 definition the exclusions from the above-suggested new Type 1 definition. As further suggested below, BLM in a final rule additionally should clarify that any source other than Type 1 equipment cannot result in avoidably lost, royalty-bearing gas and need not be measured, estimated, or reported on operators on a monthly basis.

Finally, as further discussed below, BLM's proposed definition of VFMP is overly broad. At minimum, rather than repeat the phrase "would normally go to sales," it should utilize the term "Type 1 equipment" (as further refined per the suggestion above). However, even with this clarification, the proposed scope of VFMPs could result in countless VFMPs and significantly increased reporting burdens for both lessees and BLM. The proposed VFMP definition and framework should not feature in a final rule.

D. § 3179.30 Incorporation by Reference

The Associations appreciate BLM's proposal to incorporate by reference in its regulations the API Manual of Petroleum Measurement Standards ("MPMS") Chapter 22.3, *Testing Protocol for Flare Gas Metering* ("API 22.3"). API's manual provides an established, industry-accepted framework for measuring flared natural gas, including guidance on meter application and installation, calibration, operation, and flow calculations. The regulations' incorporation of this standard would improve their technical foundation, promote regulatory consistency, and improve measurement accuracy. However, we recommend that BLM remove the proposed reference in this paragraph to "IBR approved for § 3179.50(b)(2)(i)." That cross-reference is incorrect, as it appears intended to reference proposed § 3179.50(c)(2)(i). Moreover, consistent with our comments below on proposed new § 3179.50, the Associations recommend that BLM omit § 3179.50(c)(2) (including its subparagraph (i)) from a final rule. Incorporation by reference of API 22.3 would still provide the intended benefits to BLM's implementation of its regulations.

Also consistent with our comments below on proposed new § 3179.50, the Associations request that BLM in a final rule add a new paragraph (a)(2) that incorporates by reference API MPMS Chapter 14.10: ("API 14.10"). This standard addresses measurement of flow to flares and includes application and installation considerations, calibration, operation, and calculations. (A final rule could then list paragraph (a)(3) as "[Reserved]".)

E. Removal of Current § 3179.40 Reasonable precautions to prevent waste

The Associations support the Proposed Rule's elimination of this section requiring operators to "use all reasonable precautions" to prevent waste and enabling BLM to require additional "reasonable measures" as conditions of APD approval or during ongoing operations. Such imposed measures appear open-ended and "may reflect factors including, but not limited to, relevant advances in technology and changes in industry practice." This provision grants BLM overly broad discretion to impose undefined and subjective operational requirements that extend beyond the agency's statutory authority and contravene lease rights. This regulation is unnecessary for operators to comport with the well-established underlying principle of reasonable and prudent operations and therefore should be removed as proposed.

F. § 3179.40 When lost production is subject to royalty

Although this provision is primarily a technical revision that reorganizes and relocates existing regulatory language, it appropriately preserves the longstanding principle that unavoidable losses are not subject to royalties. As we explained in our prior comments, again incorporated by reference, unavoidable losses are an inherent part of oil and natural gas operations and should remain royalty-free. The Proposed Rule maintains and improves upon this well-established approach while also improving the organization of the regulations.

G. § 3179.41 Determining when a loss of oil or gas is avoidable or unavoidable

The Associations generally support the proposed changes and reorganization in this section, many of which adopt our prior comments to BLM, which again we incorporate by reference. The current regulations list 13 operations or sources of unavoidably lost gas and rely on several separate sections for limits and procedures. The Proposed Rule lists 12 operations or sources, consolidates numerous allowances and conditions into § 3179.41(b), removes two categories, adds one category, and revises several limits. Overall, the Proposed Rule would increase certainty and efficiency by establishing clear rules that largely obviate the need for submission and adjudication of Sundry Notices for flaring, rescinding arbitrary limits on royalty-free flaring, recognizing the economic and operational realities operators face in capturing and marketing natural gas volumes while pursuing maximum recovery of more valuable oil resources, and sharply reducing after-the-fact second-guessing by BLM. We additionally offer the below comments on certain proposed paragraphs of subsection (b) (numbered per the Proposed Rule).

1. Well drilling, subject to § 3179.100.

The Associations support the Proposed Rule's revisions governing unavoidable losses during drilling operations. Replacing a case-by-case negligence determination under existing § 3179.80 with a clear, time-based standard of up to 17 days under proposed redesignated § 3179.100 governing emergencies, would reduce regulatory uncertainty and improve the administrability of the rule. See also our comments below on proposed § 3179.41(b)(4) regarding the scope of emergencies under proposed § 3179.100.

2. New completions and recompletions.

The Associations support the Proposed Rule's revisions to the provisions governing royalty-free loss of natural gas during initial production. The proposal would adopt many of the Associations' key recommendations by increasing the royalty-free limit from 20,000 Mcf to 50,000 Mcf, removing the 60-day cap on extensions and the 30,000 Mcf cap for remote exploratory wells, allowing additional time or volume when justified, and aligning the requirements more closely with prior NTL-4A standards. By contrast, the existing regulatory limits appear not to be based on quantitative data or substantiated evidence.

The Associations also support BLM's associated proposal to remove current § 3179.81 following relocation of its substantive provisions to proposed §§ 3179.41(b)(2) and (c).

3. Tests of existing completions.

The Proposed Rule would extend the initial allowable testing period to 48 hours while retaining operators' ability to request BLM approval for additional time. This would be a beneficial change, consistent with our previous recommendation that BLM provide operators with greater flexibility than the existing 24-hour limit, recognizing that well testing often requires additional time depending on operational conditions.

4. Emergency situations, subject to § 3179.100.

The Proposed Rule would add needed simplicity and flexibility for royalty-free flaring during a qualifying emergency under proposed § 3179.100, which in turn would amend existing § 3179.83. Taken together, the Proposed Rule would retain the existing regulations' initial 48-hour period for emergencies, but then allow BLM to grant up to 15 additional days when emergency conditions persist. Rather than requiring BLM to make a post hoc unavoidable loss determination case-by-case, the Proposed Rule provides that royalties would apply after the authorized emergency period expires. The proposal also would revise the definition of an "emergency situation" by removing the vague and subjective criteria that it be "temporary, infrequent, and unavoidable" and omitting overinclusive exclusions other than "scheduled maintenance," and by instead including situations where "the loss of gas is necessary to avoid danger to human health, safety, or the environment." In doing so, the Proposed Rule would appropriately preserve operators' ability to respond promptly to emergencies while providing additional flexibility and a more streamlined administrative process.

BLM has separately provided for unavoidably lost natural gas in emergencies since at least NTL-4A. Recently, however, BLM has appeared to unduly constrain those circumstances, often after-the-fact based on 20-20 hindsight. Emergency situations warrant flexibility, and operators need additional time when emergency conditions persist. The revised framework also would provide greater certainty by establishing a clear point at which royalty obligations begin.

The Proposed Rule does not expressly identify severe weather events or natural disasters as qualifying emergencies. Nevertheless, the proposed definition of "emergency situation" appears sufficiently broad to encompass such events. In its final rule, BLM should consider expressly clarifying that severe weather events and natural disasters also constitute emergencies.

5. Oil storage tank losses.

In previous comments, we explained that the 2024 Rule's provisions on oil storage tank vapors at § 3179.90, and the corresponding limitations on unavoidably lost natural gas in § 3179.41(b)(7), improperly regulate air emissions rather than royalty management, duplicate existing federal and state air quality requirements, and impose unnecessarily prescriptive operational standards. The Proposed Rule largely corrects these shortcomings. By eliminating § 3179.90, removing the $1,000 civil assessment for open hatches, relying on the existing equipment requirements in § 3174.5(b), and continuing to classify normal operating losses from oil storage tanks compliant with § 3174.5(b) as unavoidable under § 3179.41(b), BLM more appropriately focuses on matters within its statutory role in avoidable loss determination and royalty administration. If BLM concurs with our comments on proposed § 3179.10 that would obviate separately defining "Type 2 equipment," BLM here should consider omitting the phrase "including when Type 2 equipment is installed at the storage tank."

6. Downhole well maintenance or liquids unloading, subject to § 3179.104.

The Associations support the Proposed Rule's revisions to this paragraph and to proposed § 3179.104 that would amend existing § 3179.91 governing lost natural gas associated with downhole well maintenance and liquids unloading. The Proposed Rule's substantive improvements include extending the royalty-free period from 24 hours to 48 hours, expressly including gas that is combusted (not just vented or flared), and removing the separately specified requirement that operators "minimize" associated gas losses from such operations. The remaining operational provisions are otherwise largely unchanged.

These revisions are consistent with the Associations' recommendations prior to the 2024 Rule. BLM now would properly provide operators with greater flexibility in conducting routine well maintenance activities and eliminate prescriptive operational requirements that are difficult to administer. By replacing the 2024 Rule's broad and inherently subjective gas-minimization requirement with a clearer, more objective regulatory framework while providing operators with additional time to complete maintenance activities, the Proposed Rule affords greater regulatory certainty without compromising BLM's ability to oversee unavoidable losses.

7. Leaks.

The Associations support BLM's proposed expansion of this unavoidable loss category for leaks by cross-referencing an operator's obligation under § 3162.5-3 (unchanged by the Proposed Rule) to perform operations and maintain equipment in a safe and workmanlike manner. This standard would replace the separate LDAR inspection, repair, annual-update, and recordkeeping requirements, and current § 3179.41(b)(9)'s associated limitations on unavoidably lost natural gas per, under the 2024 Rule's §§ 3179.100, 3179.101, and 3179.102, which would be wholly eliminated from BLM's regulations.

Consistent with its comments preceding the 2024 Rule, the Associations strongly support the Proposed Rule's wholesale elimination of the LDAR program, which has been legally and practically questionable since its inception. The Proposed Rule appropriately recognizes that LDAR requirements unnecessarily impose substantial administrative burdens. Moreover, they largely duplicate federal and state air quality programs that already regulate leak detection and emissions, thereby creating overlapping compliance requirements without providing meaningful additional waste prevention benefits. No parallel BLM program for LDAR is legally permissible or necessary. The Proposed Rule would continue to require operators to properly operate and maintain their equipment, while enabling BLM and operators to rely on existing Environmental Protection Agency ("EPA") and state LDAR programs where applicable.

Also, please note that § 3179.100(d) currently requires that "[f]or leases in effect on June 10, 2024, the operator must submit a statewide LDAR program to the state office no later than December 10, 2026." BLM has now proposed to eliminate this requirement, but if BLM does not finalize this Proposed Rule in the immediate future, operators will be obligated to start preparing and potentially even submitting the currently required, but soon to be eliminated, statewide LDAR programs. Accordingly, the Associations request that BLM issue a Direct Final Rule suspending this requirement until it is appropriately addressed in the final rule.

8. Pipeline capacity and midstream constraints.

The Associations strongly support the Proposed Rule's revised treatment of losses resulting from pipeline capacity constraints, midstream processing interruptions, and similar events that prevent produced natural gas from being transported to market. These events are generally outside an operator's control and should not result in royalty liability for a reasonable and prudent operator that has connected its well to midstream infrastructure. As the Proposed Rule also observes, pipeline capacity constraints earlier experienced in certain areas have been alleviated to a degree. Ongoing agency efforts to streamline permitting processes should enhance capacity as well.

The Proposed Rule retains a key feature of the 2024 Rule by eliminating the prior case-by-case process under NTL-4A requiring operators to submit Sundry Notices to demonstrate that such natural gas was uneconomic to capture and market. Utilizing a clear regulatory determination instead provides operators with greater certainty, removes unnecessary administrative burdens on both industry and BLM, reduces disputes and appeals, and appropriately recognizes that interruptions in gathering, transportation, and processing infrastructure are often beyond the operator's control.

However, the 2024 Rule drew lines that were arbitrary and overly stringent. As the Associations previously commented, existing § 3179.70(a)'s declining monthly fixed Mcf-per-barrel flaring limits and associated production restrictions lack support, ignore operational realities, and fail to recognize that operators cannot control the availability or performance of third-party pipeline and processing infrastructure. Exacerbating these problems, existing § 3179.70(b) provides for BLM-ordered curtailment or shut-in of production in vaguely and narrowly defined circumstances "as necessary to avoid the undue waste of Federal or Indian gas." As we further emphasized, operators already have a strong economic incentive to capture and market natural gas whenever it is technically and economically feasible. Where flaring results from pipeline capacity constraints, midstream processing outages, or similar events, the resulting losses should be treated as unavoidable and not subject to royalties.

The Proposed Rule largely would remedy these flaws in the 2024 Rule. It would wholly eliminate § 3179.70, including its associated monthly flaring caps and other prescribed actions. Proposed § 3179.41(b)(10) instead recognizes that gas which cannot be transported or marketed because of pipeline capacity constraints, midstream processing failures, or similar events is an unavoidable loss for operators that connected their wells to midstream infrastructure, without imposing fixed monthly volume limitations. These revisions would more accurately reflect the practical realities of oil and natural gas production while remaining consistent with BLM's authority to distinguish between avoidable and unavoidable losses. By recognizing pipeline capacity and midstream processing constraints as unavoidable losses for operators that connected their wells to midstream infrastructure, the Proposed Rule would appropriately focus royalty obligations on circumstances within the operator's control rather than penalizing operators for infrastructure limitations that they cannot reasonably prevent. The Associations therefore support these revisions and strongly encourage BLM to adopt them in the final rule.

9. Unmerchantable poor-quality gas

Consistent with their prior comments, the Associations support the Proposed Rule's creation of a new unavoidable loss category for unmerchantable natural gas that cannot be sold because it does not meet pipeline or processing specifications. We appreciate BLM's acceptance of this recommendation.

Natural gas may be rejected for reasons entirely outside an operator's control, including excessive hydrogen sulfide, carbon dioxide, oxygen, or other constituents that prevent the gas from meeting pipeline quality specifications. Natural gas composition is dictated by the producing reservoir, operators often have limited ability to alter that composition at the well site, and pipeline quality specifications are established primarily for safety and operational reasons. Such rejected gas should thus be recognized as an unavoidable loss as the operators have no control over whether it meets applicable pipeline specifications.

Under the Proposed Rule, operators may vent, flare, or combust natural gas on a royalty-free basis when the gas is unmerchantable, provided they can furnish a gas analysis and documentation upon request from BLM demonstrating that a midstream company or gas processor rejected the gas. The documentation requirement would provide an objective means of demonstrating that the gas could not reasonably be transported or marketed, and ensure that royalty-free treatment is limited to circumstances in which the gas is genuinely unmerchantable. This approach appropriately balances regulatory accountability with the practical realities of natural gas production and recognizes that an operator should not incur royalty liability when gas cannot be marketed because of reservoir characteristics or third-party pipeline specifications beyond the operator's control. The Associations therefore support and encourage BLM to retain this proposed additional category of unavoidably lost natural gas in its final rule.

Finally, the Associations recommend that BLM in its final rule consider adding a final (13th) category of unavoidably lost natural gas:

Recommended Revision:

<u>(13) All gas sources that do not meet the definition of Type 1 equipment.</u>

This addition would align with other aspects of the Proposed Rule focusing on loss of gas from Type 1 equipment, as defined in proposed § 3179.10 with our recommended clarifications above, and clarify that other sources will not be deemed to generate royalty-bearing lost gas volumes.

H. § 3179.42 Prior approvals regarding royalty-free flaring

The Associations support the Proposed Rule's establishment of a transition period for BLM royalty-free flaring approvals that are in effect as of the effective date of a final rule. The Proposed Rule would extend that transition period to 12 months after the effective date of a new final rule before the new rule's revised requirements would apply. This is a favorable and practical change. By establishing a one-year transition period, the Proposed Rule would provide operators additional time to evaluate existing approvals, make any necessary operational or administrative adjustments, and implement the revised regulatory requirements in an orderly manner. The transition period also reduces the potential for unnecessary compliance burdens and disruptions associated with implementing a new regulatory framework.

The Associations also support proposed § 3179.42(b) clarifying that the changes in a final rule would not apply to flaring that occurred before the effective date of the final rule.

I. § 3179.43 Data submission and notification requirements

The Proposed Rule appropriately would update the Sundry Notice and reporting requirements tables to reflect the proposed revised regulatory framework while eliminating reporting obligations associated with removed provisions. Updating the reporting tables to align with the revised regulatory requirements would improve clarity and make the regulations easier for BLM and operators to implement. The Associations also support BLM removing the LDAR reporting requirements in existing Table 3, which would be consistent with the Proposed Rule's elimination of the separate LDAR program and reduce unnecessary administrative burdens.

The Associations disagree, however, with the proposed new VFMP and reporting requirements as discussed below under proposed §§ 3179.50, 3179.51, 3179.60, and 3179.61, and correspondingly urge BLM to remove the associated references in proposed § 3179.43. Moreover, BLM should remove proposed § 3179.43's references to proposed new § 3179.50(c)(2), consistent with our recommendation below to remove those latter paragraphs.

J. Removal of Current § 3179.50 Safety

We support BLM's proposed removal of existing § 3179.50's required flare ignition systems, venting restrictions, flare siting requirements, and $1,000 immediate assessments for natural gas vented from a flare. Consistent with the Proposed Rule, we have consistently maintained that any such requirements are outside BLM's authority and are more appropriately administered under the Clean Air Act and applicable EPA and state air-quality programs. Courts have found likewise, including most recently in preliminarily enjoining the 2024 Rule. *North Dakota*, 2024 WL 4164939 at *7-8 ("[T]he 2024 Rule offers no rationale why flaring is more economically productive than venting…. BLM has no congressional mandate to protect local public health and safety, at least in terms of its gas waste management authorization."). The utility of these requirements is also limited by their inapplicability to facilities not located on federal or Indian surface estate. Removing these prescriptive operational and emissions-related requirements will also reduce the potential for duplicative or inconsistent enforcement across regulatory programs.

K. Proposed New § 3179.50 – Measurement of oil-well gas volume at Type 1 equipment

BLM proposes to move the measurement requirements of existing § 3179.71 to a redesignated § 3179.50 (following removal of that existing section on "Safety" as noted above), with certain modifications. As under the 2024 Rule, the Proposed Rule would require measurement of vented, flared, or combusted gas at high-pressure flares (redesignated as "Type 1 equipment") with volumes of 1,050 Mcf per month or greater over the averaging period. Operators may estimate or measure lost natural gas volumes from Type 1 equipment below that threshold. Operators would still have to use approved orifice or ultrasonic meters and the API 22.3 testing standard. The Proposed Rule would simplify (from three compliance tiers to two) the implementation schedule for installing measurement equipment, eliminate the separate natural gas sampling requirements by allowing operators to report gas quality using existing gas FMP analyses, and permit operators to commingle natural gas from multiple leases without prior BLM approval.

The Associations support BLM's efforts to simplify the measurement and reporting framework by consolidating requirements, eliminating duplicative natural gas sampling obligations, and allowing operators to commingle natural gas from multiple leases without prior approval. These changes appropriately reduce unnecessary administrative burdens while maintaining accountability.

However, aspects of the proposed measurement framework warrant additional clarification and revision by BLM in a final rule. Specifically, in a final rule, BLM should revise § 3179.50(c), remove its paragraphs (1) and (2) (and all subparagraphs under (2)), and move the text of paragraph (3), so that § 3179.50(c) would provide:

Recommended Revision:

(c) Type 1 equipment requiring measurement must use ~~either orifice plates and orifice meter tubes, or ultrasonic meters~~ <u>metering technologies in accordance with API MPMS 14.10</u>. Operators must evaluate the production facility to determine which type of vent, flare, or combustion equipment is safe for the facility.

These modifications would expand the measurement technology allowed to measure natural gas at Type 1 equipment to better align with industry standards. By limiting operators to orifice plates and ultrasonic meters, the Proposed Rule offers an unnecessarily narrow list of acceptable technologies for measuring natural gas at Type 1 equipment. Requiring specific metering technologies may not be appropriate for every facility configuration and could interfere with site safety. See also our above comments on clarifying the scope of Type 1 equipment under proposed § 3179.10. With these revisions, § 3179.50 would better accomplish BLM's stated objective of reducing unnecessary compliance burdens while preserving accurate measurement and reporting of natural gas that would normally be routed to sales.

L. § 3179.51 Required reporting of vented, flared, or combusted gas volumes

BLM proposes to relocate existing § 3179.72 to a new § 3179.51, with certain revisions. The existing regulation requires operators to report avoidable and unavoidable flared natural gas volumes to ONRR using the ONRR Oil and Gas Operations Report ("OGOR," Form ONRR-

4054), report gas quality (Btu) based on flare gas sampling, and maintain records of flaring events, emergencies, and manual downhole liquids unloading operations. The Associations concur with BLM's proposed amendments in this section to permit the use of existing FMP gas analyses rather than separate flare gas sampling, and to remove the current recordkeeping requirements for individual flaring events. The Associations generally support reducing duplicative reporting and recordkeeping requirements, as well as aligning reporting obligations with existing production measurement data and reporting systems.

Other aspects of proposed § 3179.51 are more problematic, particularly when coupled with the Proposed Rule's other provisions on VFMPs. The existing regulation requires reporting on "flared volumes," which take place at a single point at designated facility locations per § 3179.72. In contrast, § 3179.51(a) of the Proposed Rule would expand required reporting to include all vented, flared, and combusted natural gas volumes, whether measured or estimated, irrespective of any threshold. And under subsection (b), operators would report these volumes using approved VFMP numbers.

As currently written, the Proposed Rule could have the likely unintended consequence of requiring production accounting for potentially dozens of additional emission points (designed primarily for excess pressure control such as pressure safety valves) at thousands of individual oil and gas facilities that process federal and Indian minerals. Importantly, these "venting" and "combustion" locations (identified in the Proposed Rule as VFMPs) do not emit at quantities that would be significant from a royalty payment basis (e.g., vented emission volumes are estimated as less than one percent of flared volumes in New Mexico). In addition, because of the very low volumes, intermittent nature, and inherent safety features of these types of equipment, measurement is often impractical and volumes would need to be estimated, complicating the auditability of OGOR reporting.

The significant increased reporting burden on the OGOR for individual federal and Indian leases is not recognized in the Proposed Rule. Operators currently may only be using one line on the OGOR for flaring for each lease every month. Under the Proposed Rule, they would need to report every separate VFMP volume with a line item. That might add 20+ lines per lease, each needing a designated VFMP number and volume. OGOR reporting requirements thus could increase by orders of magnitude.

Addition of VFMPs could also significantly complicate OGOR reporting depending on how site measurement is done at oil and natural gas locations. In particular, the Proposed Rule fails to adequately address the interrelationship of the proposed VFMP reporting requirements and existing FMPs. For some operators, FMPs would be located upstream of most VFMPs, which means volumes measured at VFMPs would already be included in the measurements at FMPs for production accounting purposes. The proposal does not explain how operators should report these volumes without creating double counting or requiring adjustments to FMP measurements. In these instances, would operators be required to report VFMP volumes as none would be royalty-bearing? Would producers now have to reduce the FMP measurement by the volumes measured at the VFMPs in the OGOR reporting? Moreover, because existing regulations generally prohibit any operator deductions from volume measurements at an FMP without prior written approval from BLM, implementation of the VFMP framework could require additional approvals, modifications to production accounting systems, and complex reconciliation with ONRR reporting. These approvals and modifications to production and revenue accounting systems would create substantial burdens. BLM's final rule should clarify how these reporting systems are intended to interact and avoid needless administrative burdens.

Before adopting the added reporting and VFMP requirements in any final rule, BLM must closely analyze these substantial burdens and reconcile them with the overall stated purposes of the Proposed Rule. It is not evident how these proposed provisions advance the purposes in proposed § 3179.1. At minimum, BLM should revise proposed § 3179.51(a):

Recommended Revision:

(a) The operator must report all vented, flared, or combusted volumes, measured or estimated, and both avoidable and unavoidable losses, <u>from Type 1 equipment,</u> using all applicable ONRR reporting requirements.

This change appears to be consistent with BLM's intent, per the definition of VFMP in proposed § 3179.10 as "a point where gas produced from a Federal or Indian lease, unit PA, or CA that would *normally go to sales* is estimated or measured before or as it is vented, flared, or combusted" (emphasis added), and inclusion of the same phrase in that provision's proposed definition of Type 1 equipment. While helpful, however, this clarification would not entirely solve the above-identified problems with these aspects of the Proposed Rule.

M. § 3179.60 Standards for creating an operator-assigned VFMP; § 3179.61 Applying for a venting or flaring measurement point number

These companion provisions would require operators to self-assign a unique VFMP for "each piece of type 1 equipment," and then obtain VFMP approval by BLM via Sundry Notice. BLM proposes staggered deadlines over a 3-year period for VFMP applications to BLM. At bottom, this proposal would create a reporting framework that did not previously exist. And as discussed above, the Proposed Rule does not adequately contemplate the enormity of this onerous endeavor. BLM estimates less than 8,000 total VFMP applications over a 3-year period (91 Fed. Reg. at 37916), when the actual numbers of VFMPs could easily dwarf that estimate. The Proposed Rule offers no assurance that BLM would be capable of promptly processing and approving VFMP Sundry Notices, and a backlog similar to flaring Sundry Notices under NTL-4A is reasonably foreseeable. And the ensuing reporting for each of those VFMPs would drastically expand the scope of OGORs and associated burdens to prepare and review them. We understand from our members that BLM has experienced delays in processing and approving FMPs under 43 C.F.R. subpart 3175; adding a brand-new VFMP program would only further strain BLM's staff and resources. Accordingly, BLM should reexamine the entire VFMP concept and consider omitting it in a final rule.

If BLM elects to retain the VFMP concept in any form, the Associations offer additional comments to, at minimum, narrow its scope and improve its workability. First, BLM should ensure consistency throughout the rule regarding when reported volumes must be measured versus when they may be estimated. Proposed § 3179.51 recognizes that reported vented, flared, and combusted volumes may be either measured or estimated, depending on the applicable measurement requirements. The final rule should use consistent terminology throughout the

VFMP provisions to avoid any implication that all reported volumes must be measured where the regulations otherwise permit estimation.

Second, BLM should ensure that the VFMP requirements consistently identify the source of the natural gas quality and volume data. Several provisions reference existing gas FMP analyses, while others refer generally to VFMP reporting. The final rule should clearly specify when operators may rely on existing FMP data and avoid creating conflicting or duplicative reporting requirements.

Finally, the VFMP framework should be expressly limited to Type 1 equipment. If BLM retains the VFMP concept in a final rule, then per our comments above on proposed § 3179.10, BLM at minimum should utilize the term "Type 1 equipment" in the definition of "VFMP." In any event, because the Proposed Rule would establish VFMP numbering based on Type 1 equipment classifications, BLM should make clear that the VFMP numbering and reporting requirements do not extend to sources outside the definition of Type 1 equipment. And because the Proposed Rule is concerned with royalty, VFMP measurement and reporting would have little value if applied to gas lost from sources downstream of a BLM-approved FMP.

N. Removal of Current § 3179.92 Size of production equipment

This existing regulation consists of a single sentence: "Production and processing equipment must be of sufficient size to accommodate the volumes of production expected to occur at the lease site." The Associations concur with BLM's proposal to remove this section because it not administrable. Notwithstanding this vague and unnecessary provision, operators inherently are economically driven to maximize efficiency by right-sizing equipment to expected levels of production.

MISCELLANEOUS

As discussed above, the Associations support BLM's proposed wholesale deletion or replacement of several provisions adopted in BLM's 2024 Rule, including, but not limited to, existing §§ 3179.40, 3179.50, 3179.70, 3179.80, 3179.81, 3179.83, 3179.90, 3179.100, 3179.101, and 3179.102. To avoid duplication and confusion, we refer BLM to our above section-by-section comments on proposed § 3179.41 and other sections overlapping with these topics.

In response to BLM's specific request for comment regarding "whether the Department should instead rescind the 2024 Rule in its entirety" (91 Fed. Reg. at 37907), BLM should not pursue that alternative in lieu of the Proposed Rule. The Associations share BLM's stated concerns regarding the greater uncertainty and less desirability of returning to an earlier set of regulations, and agree that the Proposed Rule offers a comprehensive and superior regulatory framework going forward. As BLM explains in the preamble, simply rescinding the 2024 Rule could inadvertently resuscitate earlier problematic requirements for lost oil and gas. Moreover, given that a final rule would apply only to oil and natural gas production occurring after its future effective date, BLM should also continue working cooperatively with operators to efficiently and flexibly resolve unavoidable loss treatment for previously lost volumes.

* * *

Thank you for the opportunity to provide these comments. The Associations and their members remain committed to working with BLM on the subject matter of the Proposed Rule. Please do not hesitate to contact us if you have any questions.

Sincerely,

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