



INSTITUTE FOR 21ST CENTURY ENERGY
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August 23, 2013

Mr. Neil Kornze
Director
Bureau of Land Management
U.S. Department of the Interior
Mail Stop 2134 LM
1849 C Street, NW
Washington, DC 20240

RE: RIN 1004-AE26
Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands

Dear Mr. Kornze:

The Institute for 21st Century Energy (Institute), an affiliate of the U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector and region, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system, is pleased to submit written comments on the Bureau of Land Management's (BLM) revised proposed rule regarding hydraulic fracturing on federal and Indian lands (proposed rule).

The mission of the Institute is to unify policymakers, regulators, business leaders, and the American public behind common sense energy strategy to help keep America secure, prosperous, and clean. The Institute believes that domestically produced oil and natural gas is, and will remain essential to America's economy and global competitiveness. We support the environmentally sound production of the nation's resources and realize that effective, transparent, and predictable regulation is a key part of maximizing the value of our resources.

It is critical that our state and federal regulations protect the environment while also allowing the economic recovery of resources. Redundant or inefficient regulations not only do not add to public safety or environmental protection, they act to reduce the economic value of our nation's resources through the loss of jobs, government revenue, and economic growth, all of which are especially critical to our nation right now.

BLM has failed to make a case that a rule is necessary to regulate hydraulic fracturing on federal and Indian lands. The documentation prepared for the economic

analysis demonstrates that states are regulating hydraulic fracturing and protecting the environment. In BLM's analysis, state regulatory programs address hydraulic fracturing with various levels of regulation and BLM did not show significant adverse impacts that would require correction. Regarding Indian lands, BLM did not show an assessment of the regulatory programs on Native American lands; therefore, BLM cannot reasonably make a judgment that additional regulations are necessary.

BLM noted in its assessment that the states surveyed comprise 99.4% of the wells spudded on federal and Indian land in 2011. While the states have different levels of regulatory specificity regarding hydraulic fracturing, BLM does not present a clear case that states are missing fundamental components. In fact, it is clear from the brief narrative that all of the states appear to be ahead of BLM on managing produced water with strict requirements for wastewater storage. Most states have modified well construction requirements or are actively reviewing current practices. BLM makes a general statement that not all states have updated construction standards as a rationale to impose new regulations on all operators in all states with federal lands, without regard to the fact that in many areas this would impose costs with no additional benefits.

While BLM has made changes to its original proposed rule, which appear to make the requirements less costly to comply and administer, this does not solve the issue that the rule is fundamentally unnecessary and BLM has not established a basis to increase the regulatory requirements on oil and natural gas wells on federal and Indian lands.

Shale oil and natural gas production has been one of the few bright spots in the lackluster economic growth of the past few years. The federal government should be doing everything possible to increase economic activity, including support for responsible development of our nation's oil and natural gas resources for the benefit of all Americans.

Shale Oil and Natural Gas – Energy and Economy

U.S. natural gas production has risen from 53 billion cubic feet (BCF) per day to 66 BCF per day from 2007 to 2012. This 25% increase was driven by shale gas production. Shale gas development has changed the outlook for the United States from being a natural gas importer to now looking forward to exporting excess natural gas supply.

The technology that enabled unconventional natural gas development has been used to increase oil production as well, reversing a long-term decline. From 1970 to 2008, oil production declined from 9.6 million barrels per day (MBD) to 5 MBD. Because of shale oil developments, U.S. oil production is now growing. Based on Energy Information Administration data, in July 2013, production was 7.5 MBD, the highest level since 1991.

According to *America's New Energy Future*, a study produced by IHS, the renewal of domestic oil and natural gas development because of shale extraction has created 1.75 million jobs and will contribute nearly 3 million jobs by 2020. In addition to jobs created directly and indirectly because of new production, the economic benefits go far beyond the well site. Abundant natural gas supply is providing a competitive advantage to American manufacturing.

Energy intensive manufacturers are expanding operations and making plans for new investments. The American Chemistry Council has identified 97 new manufacturing projects with an estimated \$71.7 billion in new investment, which will create 1.2 million jobs related to facility construction and another 537,000 permanent manufacturing jobs. These new projects will increase federal, state, and local tax collections by an estimated \$34 billion.

An example of a more immediate benefit, competitive natural gas prices are in turn lowering operating costs for domestic fuel manufacturers, providing a competitive advantage. This has allowed refiners to operate at higher capacities and increase refined product exports. In 2011, for the first time since 1949, the United States was a net refined product exporter. The value of refined product exports in 2012 was \$117 Billion, 7.5% of total exports.

Energy can provide a competitive advantage for many sectors of the U.S. economy as long as investment continues in exploration and production. Effective and predictable policies and regulations, which allow the market to work and do not delay permitting or create uncertainty, are essential.

Production Costs Matter

The development of shale oil and natural gas production has been an incredible success for the United States. Over the past few years the application of the technology has become more routine and understood. Industry has adapted practices to improve efficiency and success and to ensure the protection of health, safety, and the environment. The increased production has resulted in lower natural gas prices in North America, which has greatly benefited consumers. However, these price pressures have also resulted in decreased exploration in some basins, particularly dry gas production areas. Global oil prices make drilling in liquids rich production areas more attractive, so drilling has increased in these areas.

This market reaction highlights the price sensitivity of oil and natural gas development. When the cost of development increases or the price of commodities decline, exploration declines. The cost of regulation will have a predictable effect on future exploration and ultimately, production. There is tremendous industry support for regulations that improve the environment or protect health and safety. However, when regulations are duplicative or do not add to the protection of health, safety, and the environment, economic activity is reduced without a public benefit. BLM has failed to

demonstrate that its proposed rule on hydraulic fracturing will measurably add public benefits, but history demonstrates it will likely to slow or impede drilling activity.

Role of Land Management vs. Regulation

BLM is charged with managing the federal lands of the United States. The BLM mission states, “It is the mission of the BLM to sustain the health, diversity, and productivity of the public lands for use and enjoyment of present and future generations.” A key focus of this mission is to maintain both productivity and health (environment) of the land. BLM can best accomplish this mission by being an effective and efficient steward for the taxpayers of the United States.

The role of regulators is to ensure the protection of health, safety, and the environment by setting minimum performance standards and ensuring compliance with the requirements. For onshore oil and natural gas, states have taken the lead in regulating oil and natural gas exploration and production activities for decades. BLM acknowledges the state role in regulating oil and natural gas. In Wyoming, Colorado, and North Dakota, like many states, operators must obtain a state permit, regardless of federal requirements.¹ As such, BLM rules duplicate existing states requirements. Therefore, BLM must first make a determination that a real deficiency exists in state programs, which requires more stringent requirements on federal lands, before proposing a new rule.

BLM has made no determination that state regulatory programs are inadequate. Thus, BLM is increasing operating costs and reducing production without benefit to the long-term interest of Americans, counter to BLM’s mission. As a prudent manager of federal lands, BLM should withdraw the proposed rules on hydraulic fracturing.

Specific Failures of the Draft Revised Rule

The revised rule has a number of issues, which both in general and in specific areas are problematic, difficult to implement, and offer questionable benefits. The rule adds new costs by requiring additional paperwork both for permitting and follow-up reporting, however, the rule is lacking measurable performance standards that would make it transparent and consistent. For example, requirements for the cement evaluation logging provide different options to demonstrate cement integrity, however, an objective standard defining adequate cement bond is absent. Operators have little assurance in advance that a cement job is adequate under this proposed rule until after BLM reviews the log and makes a determination. This significantly increases regulatory uncertainty in addition to operating costs.

With respect to cement evaluation, BLM has focused a great deal of effort adding requirements to verify the surface casing cement bond. This is in addition to the common practice and typical state regulatory requirement that key aspects of the surface casing cementing be monitored. As noted in BLM’s state regulatory summary, states accept the

¹ Wyoming, Colorado, and North Dakota represented 50% of wells spudded started in 2011.

physical observation (many times with a State inspector present) that the surface casing is adequately cemented. States then focus more detailed inspection, including the use of various Cement Evaluation Log (CEL) tools, on the intermediate and production casing, since observation has a more limited effect. BLM has not demonstrated that the observation standard is not sufficient for demonstrating surface casing cement integrity. The intermediate and production cases are the most immediate and important component for ensuring a fracture treatment is contained to the production zone. This is a specific example of the BLM rule adding requirements without a clear need or a benefit.

BLM's decision to provide for the use of FracFocus to fulfill disclosure requirement for chemical use in well development is a positive change to the originally proposed rule. However, BLM is proposing to require nine different sets of information, only one of which can be submitted via FracFocus, severely diminishing the benefit of this change. Much of this information will duplicate information that is required to be submitted to state regulators as part of the well completion process. BLM has not demonstrated a need for duplicating this information. BLM should instead pursue a greater coordination with State regulatory agencies as a more efficient means of collecting the data.

In addition, BLM has added a number of information requirements to the permitting process. This includes specific information on water handling and disposal plans. Operators are required to follow state laws on water handling and disposal, so this duplicative information should not be required as part of the application. In the case of water treatment, technology is advancing rapidly and new options based on regional service providers can occur in fairly short timeframes, in some cases, within the average time that it takes for BLM to process a permit application. Consequently, BLM may be causing operators to use less than optimal processes because they are necessarily committed to following plans previously approved in the BLM permitting process.

The most effective rules are outcome focused rather than process based. BLM's hydraulic fracturing rule is focused on process rather than encouraging innovation to improve health, safety, and the environment at lower cost.

Economic Analysis – Inconsistent and Inadequate

The economic assessment completed for this revised rule draft is fundamentally flawed. The analysis first assumes that operators do not incur additional costs if their operations would employ the new requirement without the rule. However, BLM then uses the entire universe of wells to calculate the benefits of avoiding a contamination event because of improved well construction. This is a contradiction in methodology that reduces costs attributed to industry and overemphasizes benefits in an attempt to justify the rule.

Additionally, BLM does not provide a clear basis for determining the risk factors. BLM's analysis states that the reference document for contamination costs does not

provide data for hydraulic fracturing. The lack of data is invariably the result of no known incidents of contamination from hydraulic fracturing existing. BLM's assumption for both minor and major incidents appears to be arbitrary and not based on actual well failure data. BLM attempts to address this failure by providing a qualitative, rather than quantitative, analysis of avoided failures. The qualitative analysis is no more than speculation that additional CEL requirements will avoid minor or major events. This is especially evident when considering that the state regulatory structure, which is focused on the highest priority components of well construction to prevent environmental damage, has been successful. BLM fails to demonstrate that its proposed additive measures will increase protection and reduce risk.

Regarding calculated benefits as a result of drilling fluid storage, BLM contends that the revised rule will result in an estimated six additional pits being required to add liners. However BLM offers no evidence of the existence of a single un-lined pit. In the data section of the economic analysis, BLM acknowledges that all of the primary federal lands states require pit liners as well as the fact that it is the industry practice to line pits. BLM further acknowledges that its assumptions regarding unlined pits are potentially exaggerated. BLM then goes on to use the exaggerated assumptions for unlined pits as a basis to calculate the benefit of lining those unsubstantiated six pits that are not currently lined. This is another example of BLM attempting to claim illusory public benefit resulting from the revised rule which have already been achieved through state regulation and industry practice.

BLM's additive measures do little, if anything, to increase environmental protection and reduce risk, and in some instances such as water treatment, actually prevent greater protection. However, the proposed rule as revised still significantly increases operating costs for oil and natural gas operators. An independent analysis conducted by John Dunham & Associates projects that the cost of the revised rule could be as high as \$346M annually, or an estimated annual cost of \$96,000 per well. This is a cost that will make a difference. Even if this additional cost doesn't reduce the number of wells drilled, it may reduce the expenditures on new technology that could further reduce environmental impacts. There are always consequences when costs rise. Such unintended consequences are ignored in BLM's economic analysis.

Conclusion

BLM's proposed hydraulic fracturing rules remain flawed, even after the revisions. While the revised rule does reduce economic impact, the rule fails to add environmental value commensurate with the cost. The rule adds requirements intended to reduce the risk of a contamination event, however, state regulations already protect underground sources of drinking water. The additive requirements of the BLM proposed rule have not been shown to further reduce risk, but the requirements clearly increase the cost of drilling wells. Increased well cost means less wells drilled and lower oil and natural gas production, reducing potential federal government royalties, decreasing job

growth, and harming the economy. The Institute believes the proposed rule should be withdrawn.

The new energy abundance in America means greater energy security, millions of new jobs, and economic growth. The shale oil and natural gas developments of the past few years have occurred almost exclusively on private lands under state regulatory authority. State regulatory programs have rapidly updated requirements to adapt to new technology and public concerns. The U.S. government should open public lands to shale oil and natural gas development and accept the proven state regulatory standards. Costly regulatory initiatives that increase operating costs without additional benefits will dissuade producers from greater development of federal lands. Americans deserve effective land management, which maximizes oil and natural gas production while protecting the environment.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Harbert', written in a cursive style.

Karen A. Harbert