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U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

September 3, 2020

Mr. Casey Hammond
Principal Deputy Assistant Secretary
Exercising the Authority of the Assistant Secretary, Land and Minerals Management
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Dear Principal Deputy Assistant Secretary Hammond:

On August 31, 2020, the Bureau of Land Management (BLM) announced that it had finalized the *Non-Energy Solid Leasable Minerals Royalty Rate Reduction Process* rule (Rule) that will make it easier to provide royalty cuts for companies mining soda ash, potash, and other leasable minerals on public lands. This rule rests on a highly questionable legal foundation and is nothing but an unnecessary windfall for mining companies that will rob taxpayers of tens of millions of dollars.

Previous legislative efforts to provide royalty cuts to soda ash producers were extremely profitable for the producers themselves but did nothing to create jobs or improve the country's international competitiveness. The preamble to the Rule references in Footnote 2 the report to Congress required by the Soda Ash Royalty Reduction Act of 2006 (SARRA),[1] but fails to mention the key findings from that report:

> *"The royalty rate reduction does not appear to have contributed in a significant way to the creation of new jobs within the industry, to increased exports, or to a notable increase in capital expenditures to enhance production."*[2]

In fact, the report found that "domestic employment in the industry has dropped about 10 percent since FY 2006," the royalty reduction resulted in an estimated $150 million revenue loss over five years, "five times the loss in royalty revenues that was anticipated by Congress," and that states ended up losing over $62 million as a result.

[1] P.L. 109-338
[2] *U.S. Department of the Interior, Report to Congress, The Soda Ash Royalty Reduction Act of 2006.* https://www.taxpayer.net/wp-content/uploads/ported/images/2011_DOI_Report_to_Congress_on_SARRA_of_2006.pdf

BLM's own Regulatory Impact Analysis (RIA) for the Rule indicated that soda ash producers stood to gain $177 million,[3] while the preamble for the rule misleadingly states, "BLM cannot at this time assess the impact of specific royalty rate adjustments that may be implemented at a future date." To publish that statement in the *Federal Register* while hiding the true revenue impact in the supplemental material shows that BLM knows that this Rule is indefensible.

The preamble also states, "BLM does not anticipate that reduced royalties will increase the footprint on Federal leases or result in increased environmental impacts on public lands," despite the acknowledgement in Footnote 2 that because of SARRA, "production had shifted away from state and private land leases onto Federal leases." In fact, the RIA finds that while "total U.S. production increases from royalty rate changes have been marginal to non-existent,"[4] it estimates that even the smallest royalty cut would result in a 20 percent increase in production on federal land from producers moving their operations over from state and private lands.[5] While BLM feigns ignorance of the financial and environmental impacts of the Rule in the preamble, its own analysis shows that these impacts will be significant and harmful.

Another fundamental flaw in the Rule is the legal foundation that BLM uses as justification. Throughout the preamble, BLM insists that Section 39 of the Mineral Leasing Act provides blanket authority to reduce royalty rates across the board, and that previous BLM regulations simply tied the agency's hands with an "unnecessarily restrictive, inflexible, and burdensome" process. This argument has no legal merit. As reiterated in my April 6, 2020, correspondence to Secretary Bernhardt, the Interior Board of Land Appeals (IBLA) ruled in 1986 that Section 39 does not confer the type of broad royalty reduction authority that BLM is claiming. The IBLA made it clear that the requirements for royalty relief flow from the statute, not regulations:

> *"Any liberality in granting reduction requests, however, would seriously undermine Congress' intent in establishing a minimum production royalty"*,[6]
>
> *"the statute cannot be read to authorize reduction of a royalty whenever doing so would promote development; indeed, the statute only authorizes such action where it is necessary"*,[7] and
>
> *"Unless an applicant shows that these goals* [encouraging the greatest ultimate recovery of a resource and the conservation of natural resources] *cannot be met without a royalty reduction, the*

[3] U.S. Bureau of Land Management, *Regulatory Impact Analysis for the Proposed Rule to Provide Royalty Relief for Non-Energy Solid Leasable Minerals*, October 2019.
[4] *Ibid*, p. 32.
[5] *Ibid*, p. 35, comparing the share of federal production with a 4 percent royalty versus a 6 percent royalty, given the acknowledgement in the RIA that total U.S. production increases would be "marginal to non-existent."
[6] Peabody Coal Company, 93 IBLA 317 (1986), at 325.
[7] *Ibid*, at 327.

> *statute confers no authority on the Department to grant such a reduction."*[8]

It is not enough to argue that a royalty reduction would be beneficial for an industry. Of course it would. The question is whether it is beneficial for the nation and whether it is necessary. The royalty reduction rule makes it clear that BLM is not interested in answering that.

Since the Rule clearly runs counter to the relevant IBLA ruling on royalty reduction, I ask that BLM provide the Committee with a more comprehensive legal justification for the Rule, including a legal analysis of whether BLM believes the 1986 IBLA case was wrongly decided.

Sincerely,

Raúl M. Grijalva
Chair
Committee on Natural Resources

Cc: Mr. William Perry Pendley, Deputy Director, Policy and Programs, BLM
Mr. Michael D. Nedd, Deputy Director, Operations, BLM

[8] *Ibid*, at 328.