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U.S. House of Representatives

Committee on Natural Resources

Washington, DC 20515

June 17, 2020

The Honorable David Bernhardt
Secretary
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Dear Secretary Bernhardt:

Throughout the COVID-19 pandemic, the Department of the Interior (DOI) has continued to repeal and weaken environmental protections and provide preferential treatment to the oil and gas industry. On April 6, Members of Congress wrote to remind you of the tight legal restrictions that exist on unilaterally reducing royalties for oil and gas producers on federal lands and waters and urged you to protect taxpayer resources rather than serving narrow corporate interests at the public's expense.[1] While we appreciate the administration admitting that it cannot provide across-the-board royalty reductions in this situation,[2] we are concerned about the process DOI is using for case-by-case royalty relief and the secrecy surrounding its actions.

On April 21, the Bureau of Land Management (BLM) issued interim guidance (later finalized) to oil and gas operators, laying out instructions for how companies could apply for royalty relief during the COVID-19 emergency.[3] The guidance explained that applicants had to identify leases that were uneconomic at the current royalty rate, "but that would be economic with the royalty rate reduction," and specify "the requested temporary royalty rate." While we disagree with BLM's decision to grant royalty relief, we recognize that the guidance was at least consistent with the landmark 1986 Interior Board of Land Appeals (IBLA) decision regarding royalty rate reductions.[4]

However, it has come to our attention that BLM quietly changed its royalty relief guidance to make things easier for companies. These changes appear to violate the Mineral Leasing Act.[5] As was already explained in the April 6 letter, the IBLA has made it clear that in order to receive a royalty reduction under Section 39 of the Mineral Leasing Act (30 U.S.C. 209), the applicant must demonstrate "that a reduction of that rate is necessary to promote development of the lease."[6]

[1] April 6, 2020, letter from Members of Congress to Secretary Bernhardt regarding oil and gas royalty relief. https://naturalresources.house.gov/download/letter-to-bernhardt-opposing-oil-and-gas-royalty-cuts-april-6-2020
[2] M. Soraghan, "Trump rejects bid to halt oil royalty payments." *E&E News*, April 13, 2020.
[3] Interim guidance for Royalty Rate Reduction requests for Oil and Gas Leases during the COVID-19 national emergency. *Bureau of Land Management.* April 21, 2020. https://f.datasrvr.com/fr1/320/75150/BLM_interim_guidance_-_royalty.pdf?cbcachex=362326
[4] Peabody Coal Company, 93 IBLA 317 (1986).
[5] Regulatory and Process Information for Onshore Oil and Natural Gas Suspensions and Royalty Rate Reduction Applications Due to COVID-19 Impacts. *Bureau of Land Management.* https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/covid-royalty-rate-reduction-guidance
[6] Ref. 4, at 337.

BLM's April guidance met this standard by requiring companies to demonstrate that leases uneconomical to operate at the current rate would become profitable with a royalty reduction. However, among other changes, the updated June BLM guidance removed this key phrase, the enforcement of which is not legally optional. The following table shows some of the significant changes in the guidance (emphasis added to identify changes):

Original Guidance[7]	**Current Guidance**[8]
…the operator or payor must include the following (as required by regulations): • A simple economic analysis table that shows the lease(s) that are uneconomic at the current royalty rate, ***but that would be economic with the royalty rate reduction***. This table needs to include the relevant market oil price (i.e., West Texas Intermediate spot price or basin level price), the royalty rate, the production capability, and the operating costs (summarized for the lease). • ***The requested temporary royalty rate***. For example, a lessee might request BLM to reduce a 12 ½ percent royalty rate to 0.5 percent royalty rate.	…the operator or payor must include the following (as required by regulations): • A simple economic analysis table that shows the lease(s) that are uneconomic at the current royalty rate. This table needs to include the relevant market oil price (*i.e.,* West Texas Intermediate spot price or basin level price), the royalty rate, the production capability, and the operating costs (summarized for the lease). • ***A temporary determined royalty rate may be reduced to no lower than 0.5 percent.***

By removing the requirement that companies show that royalty reduction is necessary to develop the lease, BLM is not subjecting applicants to the standard needed to comply with the Mineral Leasing Act. This subverts one of the sole arguments for the public benefit of reducing royalties: that the royalty reduction is necessary to enable the lease to continue producing. Under the new guidance, all companies would be eligible for near-zero royalties whenever the price of oil goes below a certain point. This is a ludicrous outcome that provides an extremely generous subsidy to the oil and gas industry while robbing taxpayers and states of valuable revenue.

These changes fit a disturbing pattern of DOI doing financially costly favors for oil and gas companies at taxpayer expense while evading requests for information from Congress and the public. According to news reports, more than 1,000 applications for royalty relief and lease suspensions have been submitted to BLM,[9] and 12 royalty reduction applications from offshore companies have been approved by the Bureau of Safety and Environmental Enforcement

[7] Ref. 3
[8] Ref. 5
[9] H. Richards, "BLM flooded with royalty relief requests – sources." *E&E News,* May 20, 2020. https://www.eenews.net/energywire/stories/1063185335/search?keyword=BLM+royalty+relief

(BSEE),[10] but both agencies have stonewalled information requests from Congress and the press. BLM referred Congressional inquiries to its often inaccessible online database, LR2000, which is often many weeks out of date; for example, a royalty reduction approved on May 8 did not appear in the database until at least May 29.[11] BSEE refused to provide information to the Associated Press on the approved applications[12] despite the fact that this information is supposed to be freely available to the public – not hidden to avoid public relations embarrassments for oil and gas companies or DOI.

In order to allow the Committee on Natural Resources to carry out its oversight and legislative functions over oil and gas activities on federal lands, we request that you answer the following questions by July 1, 2020:

1. On what date did BLM change its Royalty Rate Reduction Guidance to remove the requirement that applications detail how their leases would be "economic with the royalty rate reduction"? Why did BLM make this change?

2. How is the new BLM guidance consistent with the 1986 IBLA decision that determined a royalty reduction must be "necessary to promote development of the lease"?

3. Why does it take days and sometimes weeks for data to get posted to LR2000?

4. Will BLM commit to providing a daily summary of the royalty relief data from LR2000 on BLM's website in a format that is easy for the public to locate and understand?

5. Please provide information on all applications for royalty reductions received by BSEE since March 15, including the name of the company, the identity of the lease, whether or not the application was approved, and the new royalty rates.

If you have any questions about this request, please contact the House Natural Resources Committee staff. Thank you for your attention to this matter.

Sincerely,

Raúl M. Grijalva
Chair
House Natural Resources Committee

Alan Lowenthal
Chair
House Subcommittee on Energy and Mineral Resources

Mike Levin
Member of Congress

[10] M. Brown, "Trump administration cuts oil, gas fees in hundreds of cases." *Associated Press*, June 10, 2020.
[11] Committee staff daily searches of LR 2000, May 20 – May 29, 2020.
[12] Ref. 10