

Congress of the United States
Washington, DC 20515

April 6, 2020

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

Dear Secretary Bernhardt:

In light of recent letters from Republican Members of Congress urging you to reduce royalties for oil and gas producers on federal lands and waters as a response to the COVID-19 pandemic, we write to remind you of the tight legal restrictions that exist on unilateral action in this area and urge you to ignore fossil fuel producer requests for special favors at taxpayer expense.

Recent House and Senate Republican letters calling for royalty cuts refer to Section 39 of the Mineral Leasing Act (30 U.S.C .209), which does have one phrase that – when taken entirely out of context – appears to grant the Secretary of the Interior broad discretion to reduce onshore royalty rates. Any ambiguity that may have once existed around that phrase was resolved in a landmark 1986 decision by the Interior Board of Land Appeals (IBLA).¹ In upholding a denial of a royalty rate reduction requested by a coal company under Section 39, the IBLA made it clear that in order to be given a royalty reduction, the Bureau of Land Management (BLM) must

*...make one of two alternative threshold determinations before its discretionary authority can be invoked: (1) that a reduction "is necessary to promote development," or (2) "the leases cannot be successfully operated under the terms provided therein." On the basis of material that an appellant is required to submit in its application, BLM must be able to find there is a reasonable probability operations would cease or development, recovery, or conservation of the resource would be jeopardized before it can even consider exercising its discretion to grant relief... Thus, 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.*² (emphasis added)

This statement makes it clear that blanket reductions are not permitted. Companies must make specific applications for royalty reductions and show that a reduction is necessary in order

¹ Peabody Coal Company, 93 IBLA 317 (1986).

² Ref. 1, at 327.

for a lease to continue producing. This is reflected in BLM regulations at 43 C.F.R. 3103.4–1, which requires companies to submit individual applications containing detailed financial information showing “that it is necessary to promote development or that the leases cannot be successfully operated” without such royalty reduction. As the IBLA decision makes clear, “The ultimate issue...is whether BLM may properly conclude...that granting a reduction would best serve the interests of the Government.”³ Note that it is the interests of the Government, and the taxpayers it represents, that are critical here, not the interests of individual oil and gas companies. These two sets of interests are not synonymous.

The Bureau of Safety and Environmental Enforcement (BSEE) regulations covering royalty reductions for offshore oil and gas have similar requirements. Companies requesting royalty cuts must specifically show that a reduction is necessary for operations on the lease to continue, such as showing that “the sum of royalty payments over the 12 qualifying months exceeds 75 percent of the sum of net revenues” for end-of-life leases,⁴ demonstrating that a “project is uneconomic without royalty relief” for leases issued after the year 2000,⁵ or meeting other specific circumstances on a case-by-case basis as outlined at 30 C.F.R. 203.80. Longstanding practice dating back to the Minerals Management Service emphasizes that “long-standing owners of active leases must prove that their oil and gas related projects require some form of new or added royalty reduction or suspension to make their project or continued operations economically viable.”⁶ (emphasis added)

Legal considerations aside, reducing oil and gas industry royalties is entirely unnecessary. It would do nothing but cheat the American taxpayer of potentially billions of dollars in revenue that will be needed to help struggling workers, rebuild stockpiles of medical supplies, and recover from the current crisis. Ill-considered offshore royalty cuts passed by a Republican Congress in 1995 have already resulted in an \$18 billion (and growing) loss for taxpayers – money that should be going to important national needs but instead is simply padding the profits of Big Oil at no discernible benefit to the public.⁷ Companies operating onshore on federal public lands are already paying significantly lower royalties than oil-producing states charge on their lands.⁸ It is unlikely that the small fraction of the cost of a barrel of oil that goes to royalty payments will make the difference between production being economic or uneconomic for a given lease, and in those rare cases where it might, companies should be required to demonstrate that conclusively.

³ Ref 1, at 321.

⁴ 30 C.F.R. 203.52(a)

⁵ 30 C.F.R. 203.2(b)

⁶ U.S. Minerals Management Service, document provided to the House Natural Resources Committee titled, “Outer Continental Shelf (OCS) Royalty Relief Programs,” November 4, 2009.

⁷ U.S. Government Accountability Office, *Offshore Oil and Gas: Opportunities Exist to Better Ensure a Fair Return on Federal Resources*, GAO-19-531, September 2019.

⁸ U.S. Government Accountability Office, *Federal Energy Development: Challenges to Ensuring a Fair Return for Federal Energy Resources*, GAO-19-718T, Testimony before the House Subcommittee on Energy and Mineral Resources, September 24, 2019.

If recent administration projections are accurate, hundreds of thousands of lives could be lost in the coming weeks due to the spread of coronavirus. The country is looking to this administration for careful, responsible leadership and new thinking about how to handle this pandemic. Cutting oil and gas royalties in a time of national crisis is nothing more than a callous favor to one of the world's most profitable industries at a time when millions of Americans are out of work and fearing for their health and safety.

A national emergency is not an opportunity to do favors for the oil and gas industry, especially favors that have no legal basis, policy rationale, or societal benefit. It is your job to protect the interests of the American people as a whole. Your responsibility in that regard is clear – you should reject Republican lawmakers' and fossil fuel corporations' pleas for a handout at taxpayer expense. The public is owed the royalties due for the extraction and production of public resources. That has not changed. A royalty cut now would only further deepen the public's already growing skepticism that this administration cares about general public welfare more than about the interests of a few favored industries.

Sincerely,



Raúl M. Grijalva
Chair
Committee on Natural Resources



Alan S. Lowenthal
Chair
Subcommittee on
Energy and Mineral Resources



Deb Haaland
Chair
Subcommittee on National Parks,
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Jared Huffman
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Joe Cunningham
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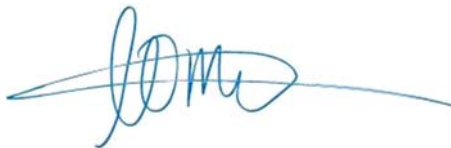
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