

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

February 28, 2017

Mr. Jack Haugrud
Acting Secretary
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Acting Secretary Haugrud,

One of the most important functions of the Department of the Interior (DOI) is ensuring that companies extracting oil, gas, and coal from public lands pay their fair share of royalties due to the American people. Numerous reports over the past 10 years, including from DOI's Subcommittee on Royalty Management and the Government Accountability Office (GAO), have indicated that the entire system for valuing federal and Indian oil, gas, and coal, and collecting royalties on the sale of those commodities, needs comprehensive reform – to the point that GAO placed DOI's Oil and Gas management on its High Risk List in 2011, where it remains to this day.¹

As part of responding to the dozens of valuation and royalty-collection recommendations from the past decade, on July 1, 2016, the Office of Natural Resources Revenue (ONRR) published a final rule entitled *Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform*, with an effective date of January 1, 2017.² Among other provisions, the rule closed a loophole in the coal valuation regulations that allowed companies to sell coal at reduced prices to their own subsidiaries for the purposes of reducing the amount of royalties owed to the American people.³

Despite the fact that the rule became effective on January 1, 2017, ONRR published a *Federal Register* notice on February 27, 2017, announcing that the effective date of the valuation rule would be postponed indefinitely due to legal challenges pending against the rule, using the authority under 5 U.S.C. 705 of the Administrative Procedures Act (APA).⁴ The legality of this action is highly questionable. I am not aware of any situation where 5 U.S.C. 705 has been successfully invoked *after* the effective date of a rule. It appears that ONRR has used this

¹ Subcommittee on Royalty Management report to the Royalty Policy Committee, *Mineral Revenue Collection from Federal and Indian Lands and the Outer Continental Shelf*, December 17, 2007; U.S. Government Accountability Office, *HIGH RISK SERIES: An Update*, GAO-11-278, February 2011.

² 81 FR 43338 (July 1, 2016)

³ P. Rucker, *Exclusive: U.S. plans to plug coal royalty loophole padding export profits*, Reuters, October 23, 2014.

⁴ 82 FR 11823 (February 27, 2017)

provision to repeal an active and in-effect regulation in contravention of the notice-and-comment procedures required by the APA.


This unwarranted and potentially illegal delay of the valuation rule will not only result in the potential loss of taxpayer revenue; as ONRR itself recognized in a February 22, 2017, memo on this action, many companies have already taken significant steps to comply with the new valuation rule, and “it may be difficult” for companies to change their systems to comply with the prior rule. If future court action dismisses the industry complaints against the valuation rule, companies will be required to convert their systems *again* to the new rule, creating considerable uncertainty and expense for companies operating on public lands.

With the rule in full effect as of January 1, 2017, it became the role of the courts, and not ONRR, to adjudicate the challenges to the valuation rule. The fact that the first royalty reports under the new rule are not due until February 28, 2017, is immaterial; the rule has been in effect for two months, and cannot be unilaterally subverted by ONRR. In the light of this, I would like answers to the following questions at the earliest possible time:

1. Did DOI’s Office of the Solicitor provide a written opinion or memo regarding the legality of postponing the effective date of a rule after the effective date has already passed? If so, please provide a copy of that opinion or memo.
2. Please provide any examples that the Department has of other rules where 5 U.S.C. 705 has been successfully invoked to delay the implementation date of a rule after the effective date has passed.
3. Did DOI’s Office of the Solicitor review the February 22, 2017, memo from ONRR?
4. Please provide the surnaming page of the *Federal Register* notice that was published on February 27, 2017, showing the identity of those officials within DOI who reviewed and approved the notice.

Thank you for your prompt attention to this request.

Sincerely,



Raúl M. Grijalva
Ranking Member
House Committee on Natural Resources