

**Written Testimony of Mark Watson, Supervisor
Wyoming Oil and Gas Conservation Commission**

Before

**House Committee on Natural Resources:
Subcommittee on Energy and Mineral Resources**

**Re: Bureau of Land Management's proposed rule, entitled "Waste
Prevention, Production Subject to Royalties, and Resource Conservation"**

April 27, 2016

Thank you Madame Chairman Lummis, Ranking Member Lowenthal and members of the Subcommittee. My name is Mark Watson. I am the Oil & Gas Supervisor for the Wyoming Oil and Gas Conservation Commission (WOGCC) and thank the subcommittee for inviting the state of Wyoming to provide comments on the Bureau of Land Management's proposed rule "Waste Prevention, Production Subject to Royalties, and Resource Conservation."

The WOGCC has a proud history of regulating the oil and gas industry within the state of Wyoming and is accountable for the responsible and efficient development of the state's oil and gas resources, while protecting public health and the environment. Wyoming was one of the first states to implement comprehensive rules on hydraulic fracturing and these rules have been enforced on all private, state and federal minerals since 2010. In the last couple of years, we have also updated rules on baseline water testing, setback distances from drilling sites, increase in bonding requirements, and most recently, an update to our flaring rule. The majority of these rules are enforced on all private, state and federal minerals within the state of Wyoming.

Following are the WOGCC's comments regarding the proposed BLM rule:

Federalism Assessment

In response to comments under federalism assessment, the BLM noted that they do not believe the proposed rule will affect states. To justify this decision, the BLM noted the proposed rule would not have a substantial or direct effect on the states or the relationship between the national government and the states. The BLM then determined that this proposed rule will not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. To make a statement that the proposed rule will not impact the states is inaccurate. In 2014, Wyoming ranked 5th in the nation in oil production and 8th in the nation in natural gas production and 54% of oil production and 76% of natural gas production occurred on federal minerals. The proposed rule will have a direct and substantial impact on Wyoming and other states that produce federal minerals. The BLM should be required to perform a federalism assessment as required by Executive Order 13132. This rule will provide a disincentive to develop federal minerals and the BLM must discuss and evaluate the way in which this rule will impact the states.

Duplication of Regulations

The WOGCC is concerned the proposed rule will result in duplicative and conflicting rules and enforcement within the state. In Wyoming, emissions from the oil and gas sector are regulated by two agencies, based on statutory authority and expertise of personnel. The WOGCC regulates flaring and venting emissions through rules and statutes that address waste and conservation of resources. The WOGCC recently updated its flaring and venting rule in an attempt to reduce waste. The Wyoming Department of Environmental Quality, Air Quality Division (WDEQ-AQD) regulates air emissions with regards to oil and gas activity and their rules have been enforced for over two decades. Both the WOGCC and WDEQ-AQD have been successfully regulating air emissions in Wyoming and we resent the implication that the BLM can provide superior regulation and enforcement practices for air emissions in Wyoming.

The proposed rule is also duplicative with EPA's current and proposed rules regarding air emissions from oil and gas activities. The BLM's proposed rule primarily addresses waste of natural gas from existing production while the EPA, in 2012, adopted regulations to reduce emissions from new sources of oil and gas activity. In the preamble to the rule, the BLM acknowledges the EPA rule, "In 2012, the EPA adopted air pollution regulations for certain activities in the oil and gas production sector, and the EPA has recently proposed further regulations in that area, which would have the effect of reducing the loss of gas." The BLM also acknowledges the importance of "ensuring that its requirements do not subject operators to conflicting and redundant requirements" when compared to similar EPA regulations. Further, the White House recently announced that the EPA would begin developing regulations that will limit methane emissions from existing oil and gas development. The WOGCC suggests that the BLM suspend development of the current proposed rule in order to ensure that developing rules within the EPA and BLM do not subject operators to conflicting and duplicative regulations.

Statutory Authority

There are parts of BLM's proposed rule that clearly derive from BLM's statutory authority and is similar to Wyoming's rule on venting and flaring. However, there is a portion of the BLM's proposed rule that is designed to regulate air pollution (i.e. proposed emission standards for certain storage vessels), which is clearly a matter that has been delegated to the states and EPA by congress. The BLM claims authority to regulate non-methane emissions as part of its general land use oversight under the Federal Land Policy and Management Act (FLPMA, 43 U.S.C. 35 through 1787). This clearly conflicts with Congress's command that the EPA, not the BLM, prevent air pollution. Congress has clearly established the EPA as the federal agency responsible for managing, among other environmental issues, the prevention of air pollution.

Variance Process

In comments regarding previous BLM rulemaking, Wyoming requested an exemption process for those states that already had comprehensive rules in place. In an attempt to address those concerns, the BLM includes a section allowing for states to apply for a variance. The proposed rule on waste prevention is no different and includes a section on state or tribal requests for variances. A variance would only be granted if the state or tribal requirements exceeded those objectives of the BLM rule. However, the variance only allows the BLM to

implement stricter state or tribal rules and is not a legitimate variance in the context of cooperative federalism. It is dissimilar to EPA's primacy process and is subject to BLM's interpretation, which creates inconsistency in enforcement by the BLM.

Conclusion

In conclusion, Wyoming believes the proposed rule is beyond BLM's authority and it is the states who are best positioned to regulate air emissions from oil and gas development. This rule will slow oil and gas development on federal minerals as well as adjacent state and private lands that are often developed together.

Thank you for the opportunity to provide Wyoming's perspective. This concludes my testimony.