



May 31, 2013

Mr. Tommy Beaudreau
Acting Assistant Secretary, Land and Minerals Management
U.S. Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Dear Acting Assistant Secretary Beaudreau:

On behalf of America's Natural Gas Alliance (ANGA), the American Exploration & Production Council (AXPC) and the Independent Petroleum Association of America (IPAA) (together, the "Associations") thank you for the opportunity to comment on the Bureau of Land Management's (BLM) proposed revisions to Onshore Orders 3, 4 and 5.

ANGA is an educational and advocacy organization formed by North America's leading independent natural gas exploration and production companies. ANGA represents 26 of North America's largest independent natural gas exploration and production companies and the leading developers of the shale plays now transforming the clean energy landscape. Many of our members have significant lease holdings on federal lands and we are keenly interested in the Agency's efforts to revise its Onshore Orders. ANGA is dedicated to increasing appreciation for the environmental, economic and national security benefits of clean, abundant, affordable and dependable natural gas.

AXPC is a national trade association representing 32 of America's largest and most active independent natural gas and crude oil exploration and production companies. AXPC's members are "independent" in that their operations are limited to the exploration for and production of natural gas and crude oil. Moreover, its members operate autonomously, unlike their fully integrated counterparts, which operate in additional segments of the energy business, such as downstream refining and marketing. AXPC's members are leaders in developing and applying the innovative and advanced technologies necessary to explore for and produce crude oil and natural gas, both offshore and onshore from unconventional sources, and that allow our nation to add reasonably priced domestic energy reserves in environmentally responsible ways.

IPAA represents 9,000 independent oil and natural gas producers and service companies across the United States. Independent producers develop 95 percent of domestic oil and gas wells, produce 68 percent of domestic oil and produce 82 percent of domestic natural gas. A recent analysis has shown that independent producers are investing 150 percent of their domestic cash flow back into domestic oil and natural gas development borrowing funds to enhance their already aggressive efforts to find and produce more energy. IPAA is dedicated to ensuring a strong, viable domestic oil and natural gas industry, recognizing that an adequate and secure supply of energy is essential to the national economy.

We appreciate the Agency's recent effort to engage stakeholders through the April 24 - 25 BLM Operator Forum and the opening of an informal comment period. We understand the BLM's intent to review and update these orders to ensure that the regulations reflect changes in resources, technologies, business practices and federal statutes. We hope the recent outreach efforts are the start of a productive dialogue between the Agency staff and measurement experts within our industry and that the proposed revisions will ultimately reflect requirements that achieve the Agency's objectives in a cost-effective and minimally disruptive way. We encourage the agency to take the additional time necessary to ensure the regulations are consistent, fair, and prudent so that they do not cause uncertainty, impose unnecessary economic burdens, or have the unintended consequence of forcing operators to abandon production. We encourage the agency to extend the level of stakeholder participation; specifically, public comment and formal review to the Enforcement Handbook the Agency has indicated will be published at the same time as the proposed Onshore Orders.

Based on the level of information BLM has provided to stakeholders, we are only able to provide high-level comments in the text that follows, including critiques and suggestions for BLM to consider as it revises the Onshore Orders to improve the verifiability and accuracy of federal royalty measurement. These comments are preliminary in nature, based on the presentations provided during the Operator Forum and **we look forward to further dialogue with the Agency as it prepares its proposed revisions for submission to OMB.**

FMP Designation/Classification

BLM's plan to require facility measurement point (FMP) designation for each meter and tank requiring royalty calculation and the requirement that operators gain FMP approvals for all existing equipment within 18 months is overly burdensome and unworkable both from an operator and BLM resource standpoint. According to BLM's website, there are over 66,000 existing onshore wells on federal lands. If we apply very conservative assumptions that each well has only one completion associated with it and only one FMP associated with royalty calculation, then the BLM would need to process over 3,600 applications a month. Considering the limited funding and staff, as well as additional anticipated staff burden (e.g. BLM proposed hydraulic fracturing rule), ANGA does not believe BLM has the appropriate resources to accomplish the necessary approvals.

Furthermore, the requirement that every data point used for royalty calculation be designated as an FMP is unnecessary and overly burdensome. Many of the wells feed into common locations. If the royalty interest is the same for multiple wells feeding into a common location then only the common location should be designated as an FMP. The act of creating FMP designations for each allocation meter in these instances will add additional administrative burden with no value to BLM or the operator.

There are several options available to BLM that would make these provisions more reasonable:

- BLM could significantly expand the phase-in period to obtain FMP approvals for existing wells.
- BLM could also only require FMP designation for sales points provided that every well feeding into that point has the same royalty interest -- for wells that have a different royalty interest, a measurement point for that well or group of wells could be designated a FMP. Where additional

products are stripped at downstream facilities (i.e. natural gas liquids), then the BLM royalty could be based on the allocations determined by the processing plant.

- Where an additional measurement point is required due to differences in royalties, FMP designation should only be required if the cost of measurement facilities are economically justified, as determined by weighing the net revenue of the well against the cost of the proposed measurement facility (including installation and expected maintenance). Where net revenue fails to cover the cost of facility installation and operating costs (*e.g.*, calibration, maintenance, etc.) during a set period – say 6 months – that FMP should be designated uneconomic and exempted.

Commingling

The proposed changes to Onshore Orders 3, 4 & 5 require that commingling, both surface and downhole, be approved by the BLM. This process will add additional administrative burden and will be detrimental to royalty revenue. The wells that will be impacted the most are marginal wells that economically cannot support separating the flow streams.

Surface commingling

Surface commingling is often done to reduce surface impact, reduce emissions and to streamline operations. If the BLM opposes surface comingling, they will be in direct opposition to the goal of EPA's NSPS OOOO for oil and gas wells and will force operators to disturb pristine lands to build measurement sites. Furthermore, this position conflicts with many operator's initiatives to reclaim pad sites after all drilling and completion activities are completed.

There are several options available to BLM that would alleviate the problems with the planned commingling changes. For example, BLM could give blanket surface commingling approval where royalty interest among the commingled wells is the same. The mechanism for approving surface commingling should be the FMP and, per the FMP suggested improvements above, if all wells feeding one measurement site have the same royalty interest, additional measurement sites are unnecessary. Also as suggested above, economics should dictate whether additional measurement sites are appropriate.

Downhole Commingling

Downhole commingling allows operators to reduce the number of wellbores necessary to develop multiple resources. In some cases, individual zones will not justify the drilling and completion cost and cannot be developed unless multiple zones are opened within the same well for production. If the BLM does not allow downhole commingling, many wells cannot economically produce and operators will not be able to drill new wells or shut in existing production leading to a loss of revenue to the BLM. Even if the individual zones can support separating the individual flow streams, most wells are not set up mechanically to do so.

There are again, multiple ways BLM could improve its regulatory requirements. BLM should allow all downhole commingling on existing wells. For new wells, downhole commingling should be allowed where the royalty interest of the commingled zones does not vary. BLM could minimize administrative burden by allowing for electronic filing and approval for downhole commingling and, where royalty interests among commingled zones are the same, grant automatic approval. Where royalty interests are not the same, an allocation method should be supplied to the BLM. If an allocation method is specified per a lease agreement, the BLM should approve the method immediately.

Commingling (immaterial liquids production)

Although most gas production is metered on a single well basis (not commingled), liquid hydrocarbons are often captured in commingled vessels and then allocated based on gas-liquid-ratios (i.e. GORs, yield, etc.) or periodic field tests. Setting separate production tanks for each FMP (or well stream), as suggested by proposed BLM Onshore Order 3, would result in significant and unjustified cost to operators of gas wells that produce only a small amount of sellable liquids. BLM can address this issue by grandfathering commingling of oil/condensate tanks for wells that produce below some predetermined daily hydrocarbon liquid volume or gas to liquid ration or BLM could consider an FMP volume hierarchy based upon GOR or yield. Either option would prevent excessive retrofits for small liquid volumes associated with gas wells.

Existing Commingling Agreements and Site-Specific Approvals

If an existing commingling agreement or site-specific approval is in place, the BLM must honor the agreement or prior approval. The revised Order may not rescind any approvals granted under the terms of the Order prior to the adoption of the revised Orders. The United States Supreme Court has well-established a ban on impermissible retroactivity of statutes and regulations that burden private rights. *Landgraf v. USI Film Products*, 511 U.S. 224, 270 (1994); *Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 45 (2006); *Elim Church of God v. Solis*, No. C10-1001, 2011 WL 5873264 (W.D. Wash 2011). A regulation has an impermissible retroactive effect when it “takes away or impairs a vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past.” *INS v. St Cyr*, 533 U.S. 289, 321 (2001). Specifically, the Court rejects new regulations or statutory provisions that affect existing contractual and property rights both which are matters that require predictability and stability. *Landgraf*, 511 U.S. at 270.

At a minimum, if BLM is unwilling to honor existing commingling agreements or site-specific approvals, it should consider a staged implementation of updating or revising commingling, allocation, and off-lease measurement agreements. For example, a tiering system could be applied to the roll-out of the program.

FMP (volume)	Revised Agreements
Tier 1 (“very high”)	1 st year (365 days)
Tier 2 (“high”)	2 nd year (730 days)
Tier 3 (“low”)	3 rd year (1,095 days)

Tier 4 (“marginal”)	4 th year (1,460 days)
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If the BLM is not flexible on commingling, operators will be forced to abandon marginal wells and revenue will be lost to all parties.

Potential Inconsistency With Other Regulatory Proposals

BLM should ensure that its proposed changes to Onshore Orders 3, 4, and 5 do not undermine regulatory proposals from other federal agencies (or even BLM Field Offices) and/or state agencies. By illustration, BLM’s White River Field Office recently proposed to require that eighty percent of well pads use three-phase gathering systems in the Preferred Alternative for its Draft Resource Management Plan Amendment. Requiring that eighty percent of the production be routed through such systems is not attainable because of topographical and technical limitations, and it will be even more difficult to achieve given the stricter guidelines in BLM’s proposed Onshore Orders. Another example relates to the Colorado Department of Public Health and Environment’s (CDPHE) draft air emission rules. The CDPHE proposed revisions to Regulation 7 require operators to install best available control technology (BACT) to reduce volatile organic compound (VOC) emissions at production facilities. One of the proposed BACT options is to install centralized liquid gathering or three-phase gathering systems. BLM’s proposed revisions regarding FMPs, commingling, and off-lease measurement requirements could contradict the requirements and objectives of the CDPHE rulemaking. BLM should ensure that its revisions to the Onshore Orders provide adequate flexibility to avoid conflicting with other regulatory requirements and objectives.

Meter Requirements

The proposed changes to Onshore Orders 3, 4 & 5 require that all wells making more than 100 thousand cubic feet of gas per day (Mcfgpd) be measured by electronic flow meters. This could provide problematic where existing wells have a Barton chart recorder already installed. The cost to replace these meters will be thousands of dollars per well. Furthermore, electronic flow meters require an electric power source such as a solar panel and battery. These power sources could also cost thousands of dollars per well. To avoid excessive burden from these new requirements, BLM could, for example, only require electronic flow meters be for new wells making more than 100 Mcfgpd, and they could grandfather existing wells.

Sampling and Meter Tube Testing Requirements

The proposed changes to Onshore Orders 3, 4 & 5 require gas sampling on a “dynamic” basis and regular meter tube inspections. Both of these could be problematic. BLM does not consider weather conditions. Sites that experience harsh winter weather could have conditions which are difficult to navigate and unsafe to employees trying to procure samples or perform inspections. Dynamic sampling could require sampling dates which must be complied with in unfavorable weather.

Meter tube testing poses both practical and economic concerns for operators. Older meter tubes are welded together making inspections impossible without replacing the piping. Pipe replacement along with the inspection will be costly. Furthermore, testing of the meter tube will require that the wells be shut in during the testing procedure. Many of the weaker wells will require swabbing to restore production. This will cost the industry thousands of dollars per well. As with all portions of the rule, BLM should consider unintended consequences associated with imposing these requirements. It should also consider the cost of the provisions versus the benefit gained, and for these particular requirements should include the negative revenue (loss) incurred due to production shut-in during the inspection time, both in man hours and due to reduced flow, and the cost associated with some level of presumed equipment damage due to continual dismantling of the meter tube.

The following are a list of suggestions for sampling and meter tube testing requirements:

- Sampling should be done based on volume and not dynamically. For low volume wells (< 100 Mcfgpd), yearly sampling will be sufficient. For all other wells, semi-annually sampling will be sufficient. BLM could break this down further into additional tiers, adjusting the sampling frequency accordingly. The principle is that volume (and thus royalty “at risk”) should dictate frequency so that it is a reasonable, predictable and manageable rate.
- Meter tube inspection and gas sampling should only be required on FMPs.
- BLM should follow API guidelines for meter tube inspection frequency.
- Meter tube inspection will only be required for new wells that make over 1,000 Mcfgpd. Wells that make less than 1,000 Mcfgpd will not require tube inspections.
- If no change in the gas analysis has occurred for a period of one year, the requirements for the analysis will be reduced to once per year.
- BLM should consider allowing standard guidelines that use technological advancements, such as electronic bore scopes, to document and determine the need for invasive maintenance.

Record Retention Requirements

A primary concern is the burden of the proposed record keeping requirements and the potential for fines related to *de minimis* data errors and/or any failure(s) to comply with BLM requests; especially if the opportunity to remedy without incurring a fine or penalty is unavailable (i.e. an immediate assessment situation). Considering the increasingly large number of wells that would fall under the revised onshore orders in the proposed FMP model, we anticipate a substantial increase in personnel costs to staff up for data tracking and document retrieval. We question whether this will truly improve measurement accuracy and verifiability or simply lend itself to an increase in and penalties.

The number of documents required to support the increased verifiability and accuracy proposed in the orders, and the ability to track and retrieve them, is substantial. Additionally, the ability to ensure all of these documents have the correct FMP reference is concerning since the suppliers of this data have varying levels of capability. Operators should not be subject to recordkeeping violations or penalties as a result of supplier mis-information.

Conclusion

ANGA, IPAA, and AXPC appreciate the opportunity to provide comments to BLM regarding its proposed revisions to Onshore Order Numbers 3, 4 and 5. The proposed revisions will substantially impact our member companies' operations on federal lands. ANGA, IPAA, and AXPC look forward to continued dialogue with BLM as the Agency moves forward with its proposed revisions.

Sincerely,



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