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From: [REDACTED]

To: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>;

CC: [REDACTED] <[REDACTED]>; Marty Durbin <[REDACTED]>; [REDACTED]  
<[REDACTED]>; Khary Cauthen <[REDACTED]>;

# Redacted

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**From:** [REDACTED]

**Sent:** Monday, March 13, 2017 11:52 AM

**To:** [REDACTED]

**Cc:** [REDACTED] Marty Durbin; Matthew Todd; [REDACTED] Khary Cauthen

**Subject:** Re: METHANE: Hearing shut-in well concerns, BLM rule backers ask why -- Monday, March 13, 2017 --  
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Sent from my iPhone

On Mar 13, 2017, at 5:29 AM, Carrie Domnitch <[REDACTED]@api.org> wrote:

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**From:** Reid Porter

**Sent:** Monday, March 13, 2017 7:38 AM

**To:** [REDACTED]

**Subject:** METHANE: Hearing shut-in well concerns, BLM rule backers ask why -- Monday, March 13, 2017 --  
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<http://www.eenews.net/energywire/2017/03/13/stories/1060051313>

## Hearing shut-in well concerns, BLM rule backers ask why

Pamela King, E&E News reporter

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### **METHANE**



Natural gas burns from a Colorado well. The state is widely expected to receive a broad variance under the Bureau of Land Management's Methane and Waste Prevention Rule, if the Senate fails to pass a resolution to repeal the regulation. Photo by WildEarth Guardians, courtesy of Flickr.

For those in favor of keeping the Bureau of Land Management's rule to curb natural gas releases on public lands, claims that the regulation would shut in marginal wells are puzzling.

Republican lawmakers, invoking powers granted under the Congressional Review Act, have proposed a measure to repeal BLM's Methane and Waste Prevention Rule, introduced last year by President Obama's Interior Department. The CRA resolution passed the House by a

221-191 vote, but uncertainty around the outcome of a Senate vote has delayed action in the upper chamber (*Energywire*, March 8).

Energy industry groups and local business associations have said the BLM rule could stifle output from small independent producers (*Energywire*, Feb. 21). The New Mexico Business Coalition (NMBC) has estimated that the rule could shutter as many as 21,000 natural gas wells in the state's northwest corner. Bringing each well into compliance could cost as much as \$50,000, according to NMBC President Carla Sonntag.

But the intent of BLM's rule was that the agency would honor legitimate requests for cost-based exemptions, said Alexandra Teitz, former counselor to BLM Director Neil Kornze. To apply for an exemption, an operator would simply submit information showing that compliance would be too cost-prohibitive, she said.

"The claim that the waste rule would cause widespread well shut-ins is refuted by the rule's own language. Every major requirement to reduce flaring, venting or leaks includes an exemption for any operator who shows that the cost would cause the operator to shut in a lease," Teitz said. "BLM included these exemptions to ensure that the rule would boost production, not harm it — but the exemptions are being conveniently ignored by those predicting shut-ins."

She indicated at least six exemptions outlined in BLM's final rule, all of which call for operators to be excused from compliance where they would be forced to "cease production and abandon significant recoverable oil reserves under the lease" (*see sidebar*).

But the rule's exemptions carry little meaning for industry, said Western Energy Alliance President Kathleen Sgamma. The regulation opens the door to BLM second-guessing companies' economics, she said.

Sgamma questioned whether firms would have to wait a year or two before their exemptions are approved. Until an exemption is granted, the operator would have to comply, she said.

"You might as well have shut in the well anyway," she said. "That carries serious implications. That's a lot of uncertainty."

Eric Waeckerlin, an attorney who has represented the Western Energy Alliance against the rule, said BLM failed to define "significant recoverable oil reserves," leaving interpretations of that threshold up to the states and the bureau's field offices.

"They haven't defined a key term in the regulation," Waeckerlin said. "Without that definition, it's hard to understand as an operator what's going to qualify for an exemption and what's not."

In its notice of proposed rulemaking, BLM said the previous standard — abandonment of

recoverable oil reserves — set in its Notice to Lessees 4A for approving venting or flaring of natural gas led to rubber-stamp approvals of exemptions.

"In particular, in some instances in the past, even small net costs have been viewed as meeting the test under NTL-4A, as any net cost might theoretically cause an operator to abandon a well earlier than it otherwise would have," BLM wrote. "In light of the BLM's statutory obligation to reduce waste of natural gas from venting, flaring, and leaks, however, the BLM believes that an operator must demonstrate more than a negligible economic impact in order to qualify for an exemption from the flaring limit."

While the methane rule was designed to set a more stringent threshold, it assigns no numerical value to its "significant recoverable oil reserves" standard.

Even taking into account a definition of that standard, the BLM rule excludes future wells and low-producing "stripper wells," which the bureau has said represent 85 percent of federal wells in production, said Mark Barron, a partner at the law firm BakerHostetler.

"In the end, the 'exemptions' that supporters of the rule laud apply to no more than 15 percent of the producing wells on existing leases and none of any wells driven on future leases," he said. "Using BLM's own math and the agency's explanations in the preamble, it's hard to argue that the 'exemptions' are anything more than symbolic."

Industry's cost arguments failed to compel a judge in the U.S. District Court for the District of Wyoming to grant a preliminary injunction on the BLM rule earlier this year (*Energywire*, Jan. 17). Judge Scott Skavdahl, an Obama appointee, found that the rule's implementation would not inhibit oil and gas production to the extent that it would irreparably affect state economic interests.

"[T]he Rule provides for several economic exemptions where an operator shows, and BLM concurs, that compliance with the Rule's requirements 'would impose such costs as to cause the operator to cease production and abandon significant recoverable oil reserves under the lease,'" Skavdahl wrote in his [decision](#).

He did, however, raise concerns about BLM's application of the "social cost of methane" metric in a rule designed to regulate resource conservation — a major point of contention between those who wish to trash the methane rule under the CRA and those who wish to keep it.

Skavdahl ultimately concluded that Interior was entitled to *Chevron* deference, which grants agencies the power to reasonably interpret ambiguous statutes.

## **Variances**

BLM also allows for variances in cases where its methane rule overlaps with U.S. EPA, state or tribal requirements.

"With respect to State, local, or tribal rules, the final rule allows a State or tribe to request a variance from a particular BLM regulation," the rule says. "If the variance is granted, the BLM has the authority to enforce the specific provisions of the State, local, or tribal rule for which the variance was granted, in lieu of the comparable provisions of the BLM rule."

In a Nov. 28, 2016, memorandum supporting the motion for preliminary injunction against the methane rule, lawyers for the states of Wyoming and Montana wrote that BLM had failed to address industry concerns about regulatory overlap. The attorneys questioned the language around BLM's role in cases where variances are granted.

"The Bureau's variance process included in its Venting and Flaring Rule would not mitigate these harms. If anything, it would exacerbate them," they wrote. "The variance process would not allow states to maintain sovereignty. Rather, it is a mechanism through which the Bureau improperly seeks to grant itself authority to enforce state regulations."

But BLM is unable to withdraw from its inspection and enforcement responsibilities, Teitz said.

"In essence, in granting a variance, the BLM is agreeing to substitute state requirements for BLM requirements for operators in a state," she said. "However, the BLM does not, and probably could not legally, abdicate its responsibilities under the Mineral Leasing Act and other laws to oversee production of federal and Indian minerals, prevent waste, and collect royalties, which it carries out through inspection and enforcement activities."

"Under a variance, the BLM would still be responsible for overseeing production of federal minerals, but the BLM would enforce the state standards rather than the BLM standards."

In his order denying the motion for preliminary injunction, Skavdahl noted the possibility of regulatory overlap.

"The Rule further empowers the BLM to enforce the state or tribal rules if the variance is granted, creating the potential for inconsistent or conflicting enforcement," he wrote.

Industry has expressed concern that the paperwork requirements for variance and exemption applications and for new planning requirements would be too onerous.

"It is particularly troubling because many of the rule's administrative and reporting components duplicate reporting requirements that already exist under state law," Barron said. "So what we are left with are compliance costs for paperwork that does not result in any incremental increase in environmental protection."

Where states and companies are eligible for variances and exemptions, the paperwork requirements don't appear to be overly burdensome, said Warren King, an energy specialist at the Wilderness Society and a former regulator within the Colorado Department of Public Health and Environment's Air Pollution Control Division.

"There's a lot of information BLM asks for, but in my experience, that wouldn't be anything an operator wouldn't already have on hand," King said.

### **State cases**

Because Colorado has its own methane regulations, the state is expected to be broadly excused from BLM's requirements.

But there are a few gaps between Colorado's Regulation 7 and the BLM rule that leave room for uncertainty, said American Petroleum Institute spokesman Michael Tadeo.

One key difference is the frequency of equipment leak checks. BLM requires semi-annual inspections, but Colorado has created a tiered system that lessens the burden on small producers, Tadeo said. Because Colorado's requirement is less stringent, there's some confusion as to whether the state's regulations could be considered less protective than the federal rule.

If BLM's rule superceded the state, that would constitute "another example of a 'one size fits all' solution to a problem that demanded more nuance," Tadeo wrote in an email.

Will Toor, a member of the Colorado Air Quality Control Commission, said he expected the state's oil and gas companies could enjoy a more equal competitive environment under the BLM rule.

"There's something to be said for having similar rules implemented beyond the state's borders," he said, noting that he was not speaking on the commission's behalf.

BLM's regulation, if it is allowed to stand, could add new protections for Colorado's tribal lands and place restrictions on flaring where there currently are none, said Dan Grossman, national director of state oil and gas programs for the Environmental Defense Fund.

In North Dakota, where state regulations reduced flaring from 30 percent to 10 percent of gas extracted from the Bakken Shale, the state is likely to receive a variance on federal flaring limitations, Grossman said.

"This rule was designed this way with the variance process so that states would have elbow room in the way they regulated oil and gas," he said.

By definition, passing a CRA resolution to eliminate the methane rule altogether removes

BLM from the discussion, since the statute says a regulation may not be reissued in "substantially the same form" as a disapproved rule.

The Western Energy Alliance has proposed a narrower regulation on natural gas capture, but because the CRA had only been invoked once prior to this year, determining whether a follow-up rule is substantially similar is uncharted territory (*Energywire*, Feb. 1).

If the federal government is blocked from addressing the issues that fall under the BLM rule, there would likely be a renewed call for states to tackle waste issues. But an act of Congress to allow BLM to go back and address leaking, venting and royalty issues seems unlikely, Grossman said.

"We would certainly want to be a part of those conversations, but we simply can't if the resolution passes," he said.

Reid