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ATTN: 1004-AE59
U.S. Department of Interior
Bureau of Land Management
Mail Stop 2134 LM
1849 C Street NW
Washington, D.C. 20240

Re: Comments on the U.S. Bureau of Land Management Proposed Rule to Replace Onshore Oil and Gas Order No. 3.

Ladies & Gentlemen:

On behalf of the Kansas Independent Oil & Gas Association (KIOGA), thank you for the opportunity to comment on the Bureau of Land Management's (BLM) proposed revisions to Onshore Orders No. 3.

The following comments are submitted on behalf of the Kansas Independent Oil & Gas Association (KIOGA). KIOGA represents nearly 3,500 independent oil and natural gas explorers and producers, as well as service and supply industries that support their efforts in Kansas. The oil and natural gas industry in Kansas supports over 118,000 jobs in Kansas, over $3 billion in family income, and over $1.4 billion in state and local tax revenue. The oil and natural gas industry is an important part of the livelihoods of Kansans throughout the state – folks who will be significantly affected by proposed change to Onshore Order Nos. 3. KIOGA appreciates this opportunity to provide comments on the BLM proposed rule to replace Onshore Oil & Gas Order No.3, Site Security and amending portions of 43 CFR Part 3160 and adding a new Part 3170.

The Kansas Corporation Commission (KCC) administers Kansas' comprehensive oil and gas regulations. These regulations include regulation of the drilling, producing, and plugging of wells; the restoration of drilling and production sites; the perforating and chemical treatment of wells, including hydraulic fracturing; the spacing of wells; operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; disposal of saltwater and oil field wastes through the Kansas UIC Program; and all other operations for the production of oil or gas.

Mineral ownership of Kansas lands upon which oil and gas development has occurred primarily consists of private lands. There are very few federal minerals subject to the proposed rule. Kansas has some split estate land ownership that could be adversely affected by the proposed rule. Unlike many western states that contain large blocks of unified federal surface and federal mineral ownership, the surface and mineral estates in Kansas are primarily private owned. Given Kansas' unique land ownership situation, the proposed rule to replace Onshore Oil and Gas Order No. 3 could have far-reaching adverse impacts on Kansas' ability to administer its oil and gas regulatory program.

Expanding the federal Approved Permits to Drill (APDs) to non-federal wells in federal units and communitization agreements (CAs) could adversely impact Kansas' ability to administer its oil and gas regulatory program. Current language in 43 CFR 3161.1 clearly states that only a subset of the regulations found in 43 CFR Part 3160 regarding site security, measurement and reporting of production apply to non-federal wells in units and CAs. However, under the proposed rule, all of Part 3160 regulations would apply to non-federal wells within units and CAs. Since the rule requiring APDs before drilling is located within Part 3160, operators would have to obtain federal APDs for non-federal wells within a unit or CA. Requiring operators to obtain federal APDs would result in a substantial increase in federal regulation of state and fee oil and natural gas operations, and would also result in a significant increase in the amount of time required to obtain authorization to drill a state or fee well, leading to loss and delay in revenue and payments due to states. Even in circumstances where the federal mineral ownership is small relative to other mineral ownership interests within the spacing unit, all the oil and gas operators within the unit must conduct operations in accordance with the rules and guidelines pertaining to the development of federal minerals under the proposed rule. In order to comply with the additional obligations imposed by the proposed rule, operations on spacing units that contain any federal minerals will be substantially delayed. These delays will substantially frustrate Kansas's efforts to produce nonfederal minerals. The proposed rule will impose federal requirements and permitting timelines on all wells drilled into the minerals of all owners in the spacing unit including state and fee minerals.

KIOGA strongly recommends that the proposed language in § 3161.1 Jurisdiction be revised as follows:

§ 3161.1 Jurisdiction.

The regulations in this part apply to:

1. All Federal and Indian onshore oil and gas leases;
2. All onshore facility measurement points where Federal or Indian oil or gas is measured;
3. Indian Mineral Development Act agreements for oil and gas, unless specifically excluded in the agreement;
4. Leases and other business agreements for the development of tribal energy resources under a Tribal Energy Resource Agreement entered into with the Secretary, unless specifically excluded in the lease, other business agreement, or Tribal Energy Resource Agreement; and
5. Site security measurement, reporting of production and operations, and assessments or penalties for noncompliance with such requirements on state or private tracts committed to a federally approved unit or communitization agreement as defined by or established under 43 CFR subpart 3105 or 43 CFR part 3180.

Commingling

The proposed rule would also restrict the instances in which BLM could approve commingling and establish a national, fixed procedure outlining the instances in which commingling would be permitted. With specific and limited exceptions, the rule would generally prohibit the commingling of production from federal or Indian leases, unit participating areas, or Communitized Areas (CAs), unless all the properties proposed for commingling are 100% federal or leased 100% by the same Indian tribe, and at the same fixed royalty rate. This would require non-federal oil or natural gas to be separated out and measured separately, which would reduce the efficiencies that would otherwise accrue to CAs. The situations in which a well could be drilled on a drilling and spacing unit that encompasses different ownership would be prohibited unless authorized by BLM under specific exceptions.

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 steams.

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.

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.

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.

The United States Supreme Court has well-established a ban on impermissible retroactively 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. If the BLM is not flexible on commingling, operators will be forced to abandon marginal wells and revenue will be lost to all parties.

New Recordkeeping 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 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 misinformation.

Conclusion

Ultimately, these proposed rule amendments would prevent Kansas from regulating the orderly development of the spacing unit for prevention of waste and protection of correlative rights of the various owners in the spacing unit. The proposed rule amendments would generate unnecessary costs and burdens for oil and natural gas producers for very little benefit. KIOGA urges BLM to withdraw these proposed rule amendments. Or, revise the proposed rule amendments so that the authority of the BLM is not expanded to include non-federal lands.

Sincerely,

Edward P. Cross

Edward Cross, President
Kansas Independent Oil & Gas Association