



April 19, 2015

Mr. Gregory J. Gould
Director, Office of Natural Resources Revenue
U.S. Department of the Interior

Re: Comments of Michael C. MacCracken, Ph.D., on ONRR-2012-0004 "Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform" submitted through Mr. Armand Southall, Regulatory Specialist, P.O. Box 25165, MS 61030A, Denver, Colorado 80225

Comment 1: In explaining the proposed updates to these regulations in the Federal Register announcement, "Section II: Explanation of Proposed Amendments" indicates in the sixth paragraph that this revision is also proposing "other changes" to its regulations. I would like to suggest that, under this provision, the revision of these regulations should be considering the implications of the President's Climate Action Plan for these regulations. The President, along with leaders of leading nations around the world, has set the US on a course of cutting emissions of fossil-fuel-derived emissions of carbon dioxide over the next few decades with the goal of limiting global warming to no more than 2°C above preindustrial emissions. This is an important policy initiative of the Administration and I would suggest that an action governing the valuing and royalties relating to mining and extraction of fossil fuels from public lands has an obligation to consider relevant aspects of the President's Climate Action Plan as part of the regulation revision process.

Comment 2: In explaining the proposed updates to these regulations in the Federal Register announcement, Section III, sub-section 11 contends that:

This proposed rule would not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this rule is categorically excluded under: "(i) Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature." See 43 CFR 46.210(i) and the DOI Departmental Manual, part 516, section 15.4.D. We also have determined that this rule is not involved in any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA. The procedural changes resulting from these amendments would have no consequences with respect to the physical environment. This proposed rule would not alter in any material way natural resource exploration, production, or transportation.

Considering the citation to 43 CFR 46.210 and specifically the indicated reason for the exception: "(i) Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case," I would suggest that the effects of the combustion of fossil fuels on the climate, sea level, and ocean acidification cannot be dismissed



based on these criteria. Not only is the Administration implementing the President's Climate Action Plan based on scientific results thoroughly considered and reviewed by the Administration and its agencies, but the science has been internationally presented through the assessments of the Intergovernmental Panel on Climate Change (IPCC) that have been unanimously approved by the roughly 190+ nations assembled in this effort under United Nations auspices. That the specific significance of emissions from combustion of fossil fuels for the United States can be defined and quantified are also clear as a result of the series of assessments of the impacts of climate change on the United States and the Administration's promulgation and use of the so-called Social Cost of Carbon that provides specific guidance of the external costs of use of fossil fuels that should be used in regulatory processes. Multiplying the recommended values for the Social Cost of Carbon by the amounts of carbon-based fuels extracted from public lands under the auspices of the DOI makes clear that there is a quite large, significant, and specific cost to the environment and society from extraction of fossil fuels, and, recognizing that the royalty amount is important to setting the market price of the extracted carbon (both directly of the amounts from public lands and indirectly of the amounts from non-public lands), while I am a climate change scientist and not a lawyer, there just not seem to me to be a basis for bypassing the NEPA requirements for actions of significant significance, especially as this important factor has not been considered in the Environmental Impact Statements to justify the overall DOI policies in this area.

Considering the citation to 43 CFR 46.215 Categorical exclusions: Extraordinary circumstances, it states (in part) that:

Extraordinary circumstances (see paragraph 46.205(c)) exist for individual actions within categorical exclusions that may meet any of the criteria listed in paragraphs (a) through (l) of this section....

- (a) Have significant impacts on public health or safety.
- (b) Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (EO 11990); floodplains (EO 11988); national monuments; migratory birds; and other ecologically significant or critical areas.
- (c) Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102(2)(E)].
- (d) Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.
- (e) Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.
- (f) Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects....

Again, as a scientist, it is difficult to see how the proposed revision to the regulations of the royalties for extraction of fossil fuels, which in turn has an effect on the price and availability of fossil fuels from private lands, thus contributing to very significant and growing impacts that



affect the environment and society on local, regional, national and global scales. In that the DOI has not undertaken a full NEPA analysis that includes an up-to-date consideration of the environmental and societal impacts resulting from of emissions of carbon dioxide and methane that occur as a result of extraction and eventual combustion of fossil fuels from public lands (and is, indeed, resisting the call to do this in court in response to a recent legal filing), the assertion that the NEPA requirement can be avoided seems to me without merit.

Comment 3: As a suggestion for an appropriate step to begin to account for the impacts of climate change on the environment and society, I would offer the suggestion that augmenting this regulation's value-based royalty fee by the Social Cost of Carbon (SCC) would be a means for at least beginning to account for the scope of the impacts that the SCC is to date able to include. The royalty fee is intended to be a mechanism for reimbursing the public for the value of the fossil fuel resource that is extracted; that the subsequent use of these fuels then causes harm to the public also needs to be addressed by the payment of an appropriate amount. It makes no sense at all that no action would be taken to offset the harm from the proposed action—especially as the costs calculated in the SCC are large and growing, exceeding the value of the royalty. Arguably, in terms of the governmental accounting system, the public would be better off to have the fossil fuels left in the ground than extracted and combusted. Preparation of a full Environmental Impact Statement could serve to address these issues, but in the interim, the SCC should be an augmentation of the royalty fee.

Comment 4: In considering the basis for valuing the coal, oil and natural gas that is extracted for the purpose of calculating royalties due the US government/public, I would like to suggest that the relevant value should be considered the maximum of the value proposed to be used in the draft regulations and the value used by those corporations proposing or entitled to its extraction in their corporate bookkeeping and marketing to the public. There is no excuse for having the value be less than these companies are showing on their books and using in their presentations to investors and others.

Thank you in advance for full consideration of these comments.

Sincerely yours,

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