

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

June 15, 2017

The Honorable Ryan Zinke
Secretary
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Secretary Zinke,

Today, in apparent contravention of the Administrative Procedures Act (APA), the Bureau of Land Management (BLM) published in the Federal Register a postponement of the effective date of portions of the BLM's rule on methane waste, titled *Waste Prevention, Production Subject to Royalties, and Resource Conservation* (Methane Waste Rule). As with the Department's postponement of the *Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform* (Valuation Rule) regulation on February 27, 2017, the authority claimed for postponement of the effective date is Section 705 of the Administrative Procedures Act,¹ a questionable interpretation of that section that, to my knowledge, the Department has made no effort to defend as of this date.

On February 28, 2017, I wrote to the Department of the Interior (DOI) asking for an explanation of the legal basis for the postponement of the Valuation Rule nearly two months after its effective date.² I have not received any response to my letter. On March 7, Ranking Member Cantwell of the Senate Committee on Energy and Natural Resources wrote to you challenging the legality of the postponement of the Valuation Rule. I have been informed that she has also not received a response.³ On April 27, California and New Mexico sued DOI over the delay of the Valuation Rule, claiming the action violated that APA.⁴ DOI has not submitted its opposition brief yet.

In today's announcement delaying components of the Methane Waste Rule, BLM appeared to implicitly admit that the Valuation Rule delay is unlawful by stating that the "compliance date has not yet passed and is within the meaning of the term 'effective date' as that term is used in Section 705 of the APA." I agree that the Valuation Rule was unlawfully postponed because the rule became effective on January 1, 2017. However, I do not agree that those portions of the Methane Waste Rule that have compliance dates in the future may be delayed without a notice and comment period. The compliance dates in the final Methane Waste

¹ 5 U.S.C. 705.

² Letter to Acting Secretary Haugrud from Rep. Raúl M. Grijalva, February 28, 2017.

³ Letter to Secretary Zinke from Sen. Maria Cantwell, March 7, 2017,.

⁴ *People of the State of California et al. v. U.S. Dep't of the Interior*, No. 3:17-cv-02376, (N.D. Cal. filed Apr. 26, 2017).

Rule were the end result of a full APA notice-and-comment process, and became binding as of January 17, 2017, the effective date of the Rule. Extending those compliance dates without another notice-and-comment period, and with only a cursory rationalization that is in large part based on written requests from oil and gas industry groups, is arbitrary and capricious.

As Senator Cantwell pointed out in her letter of March 7, “the courts have made it clear that section 705 does not allow agencies to grant stays based upon their own notions of what may constitute ‘justice.’” Only by applying the four-part test that courts use for preliminary injunctions may agencies assert their authority under Section 705 to delay effective dates, and BLM did not even attempt to show that the first test—likelihood for the plaintiff to succeed on the merits—was met.

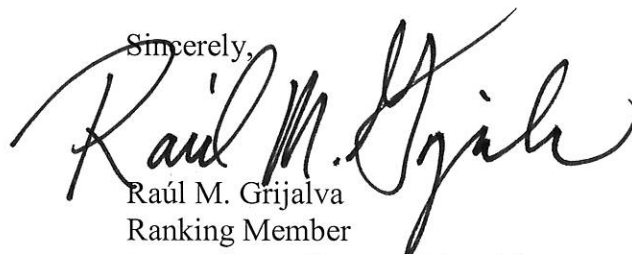
The Methane Waste Rule contains critical safeguards against the waste of natural gas and loss of royalty revenue, with co-benefits that include cleaner air and the mitigation of carbon pollution, and the bipartisan Congressional support of the rule was demonstrated by the fact that it was the subject of the only failed attempt to repeal a rule under the Congressional Review Act in the 115th Congress.⁵ Postponing the compliance dates contained in the Methane Waste Rule unlawfully deprives the American people of valuable revenue, wastes a non-renewable resource, and threatens people’s health by increasing the amount of harmful pollution in our air.

I reiterate my request for answers to the questions in my letter of February 28, and also request that you provide answers to the following no later than June 30, 2017:

1. Did DOI’s Office of the Solicitor provide a written opinion or memo regarding the legality of postponing the compliance dates in a rule after the effective date of that rule has already passed? If so, please provide a copy of that opinion or memo.
2. Did DOI or BLM perform a legal analysis of the Methane Waste Rule under the four-part test for preliminary injunctions? If so, please provide a copy of that analysis.

Thank you for your prompt attention to this request.

Sincerely,



Raúl M. Grijalva
Ranking Member
House Committee on Natural Resources

⁵ U.S. Senate Roll Call Vote #125, May 10, 2017.