March 6, 2024

The Honorable Pete Stauber
Chairman
US House Natural Resources Committee
Subcommittee on Energy
& Mineral Resources
1324 Longworth House Office Building
Washington, DC 20515

The Honorable Alexandira Ocasio-Cortez
Ranking Member
US House Natural Resources Committee
Subcommittee on Energy
& Mineral Resources
1332 Longworth House Office Building
Washington, DC 20515

Re: Support for H.R. 7377 the "Royalty Resiliency Act", and H.R. 7375, a bill to amend the Mineral Leasing Act to improve the assessment of expression of interest fees, and for other purposes.

Dear Chairman Stauber and Ranking Member Ocasio-Cortez:

The American Exploration and Production Council (AXPC) appreciates this opportunity to provide a letter of support for the above-referenced legislation. AXPC is a national trade association representing the leading independent oil and natural gas exploration and production companies in the United States. AXPC companies support millions of Americans in high-paying jobs and invest a wealth of resources in our communities. Dedicated to safety, stewardship, and technological advancement, our members strive to deliver affordable, reliable energy to consumers while positively impacting the economy and the communities in which we live and operate.

As part of this mission, AXPC members understand and promote the importance of ensuring positive environmental and public welfare outcomes and responsible stewardship of the nation's natural resources. AXPC's members are committed to being good stewards of federal and Indian resources and operating in compliance with all federal requirements.

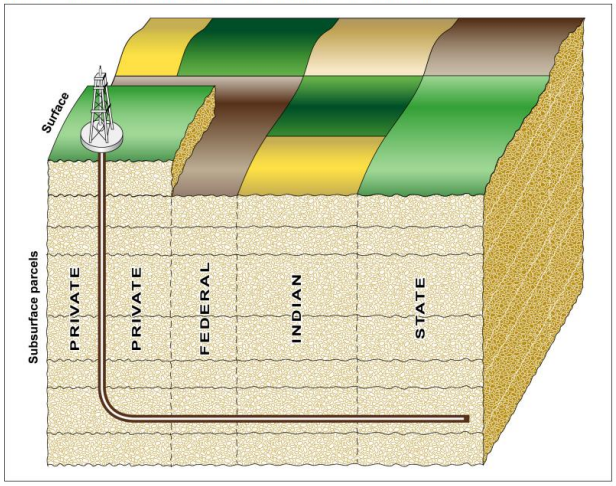
AXPC member companies produce more than half of U.S. onshore production each year, including many active operations developing federal minerals that require compliance with federal laws administered by the Department of Interior (DOI), which includes working with the Bureau of Land Management and the Office of Natural Resources Revenue. Our members work hard every day to fulfill our obligations to develop oil and gas resources prudently and responsibly on public lands. Federal oil and natural gas exploration and production activities contribute billions of dollars to federal and state governments, support millions of jobs and local economies, and are conducted under some of the most stringent safety and environmental regulations in the world.

AXPC writes this letter in strong support of both: Congressman Wesley Hunt's H.R. 7377 the "Royalty Resiliency Act", and Congresswoman Harriet Hageman's bill H.R. 7375, To amend the Mineral Leasing Act to improve the assessment of expression of interest fees, and for other purposes.

I. H.R. 7377 the "Royalty Resiliency Act" is narrowly designed to rectify a very specific technical problem resulting in wrongful overpayments to the Federal Government.

Development of onshore oil and gas resources from public and Indian lands is complex. Domestic onshore oil and gas development is governed by a framework of federal, state, tribal, and local laws and regulations. Several federal agencies—including Interior's Bureau of Land Management (BLM), Bureau of Indian Affairs (BIA), and the Office of Natural Resources Revenue (ONRR)—and state regulatory agencies have responsibility for oversight and management of oil and gas development on federal or Indian lands. Oftentimes an oil and gas well will obtain production from several different leases located adjacent to one another, particularly through the use of horizontal drilling. The following illustration provided by the Government Accountability Office helps illustrate this situation:[1]

Figure 4: Example of a Horizontal Wellbore Traversing Mineral Parcels with Different Owners



Source: GAO.

Wells are drilled in conformance with state rules governing well spacing and density. Many oil and gas producing states have issued minimum acreage requirements for oil or gas wells, which dictate the amount of acreage typically drained by the well from the producing formation.[2] Congress recognized the importance of state conservation statutes, and state expertise on these matters, and accordingly amended the Mineral Leasing Act to allow federal lessees to conform to state well spacing orders through the issuance of what is commonly called a "communitization agreement".[3]

In effect, communitization is the federal equivalent of pooling the lands contained in a spacing/proration unit under state law. The common thread of all federal communitization

[1] Government Accountability Office (2014). Oil and Gas. Updated Guidance, Increased Coordination, and Comprehensive Data Could Improve BLM's Management and Oversight. Retrieved at GAO-14-238, OIL AND GAS [hereinafter GAO-14-238].

[2] *See* Angela L. Franklin, *Communitization Agreements in the 21st Century,* Federal Onshore Oil and Gas Pooling and Communitization, Paper 3-4 (Rocky Mt. Min. L. Fdn. 2006) [hereinafter *Communitization Agreements*].

[3] *See* Mineral Leasing Act, Pub. L. No. 696, § 17(b), 60 Stat. 952 (1946).

agreements is that at least one federal or Indian lease or tract must be covered by the communitization agreement.[4] The production from that federal or Indian lease is then "communitized" (i.e., pooled) with production from other leases that may be federal, Indian, state, or fee.

The purpose of the communitization agreement is to manage how the production revenues are shared from a well that develops multiple leases. The agreement identifies production allocations among mineral rights owners for the distribution of royalties and should be approved before operators can correctly distribute royalty payments for federal and Indian leases.[5] The communitization agreement typically defines an individual's or entity's share of the revenue from the area covered by the agreement as an acreage-based pro-rata calculation. This is accomplished by the use of a recapitulation chart contained as an exhibit of the agreement. The recapitulation exhibit lists each lease (shown as a separate tract) included within the boundary of the communitized area. The recapitulation exhibit then shows the number of acres included in each tract and states what percentage of acres each tract contributes to the entire communitizated area. For example, for a communitization agreement that covers a total of 1280 acres that is encumbered by two different leases, one fee/private lease consisting of 1120 acres and one federal lease consisting of 160 acres, the recapitulation formula would be:

R E C A P I T U L A T I O N:

Tract No.	No. of Acres	Committed Percentage of Interest in Communitized Area
1 Fee/Private Lease	1120.00	87.5000%
2 Fed Lease	160.00	12.5000%
	1280.00	100.0000%

The operator of the wells within this 1280-acre communitized area would calculate and pay royalties using the recapitulation formula. The operator would pay royalties to ONRR on the federal lease by multiplying the federal lease royalty rate by 12.5% of the oil production that is sold or removed from the 1280 acres, and it would pay royalties on the fee/private lease ***to the private lessor*** by multiplying the fee/private lease royalty rate by the remaining 87.5% of the production from the 1280 acres. This formula is not difficult to calculate, and BLM reviews and approves many communitization agreements without requesting changes to the proposed allocation of production contained in the recapitulation exhibits.

DOI is responsible under existing law to approve these revenue-sharing agreements. The BLM is responsible for reviewing and approving communitization agreements for the development of federal leases and oftentimes both BIA and BLM review communitization agreements for the development of Indian leases. ONRR is then responsible for enforcing the payment of royalties of communitization agreements that cover federal or Indian royalties. Proposed agreements are

[4] *Id.* at 3-5.

[5] *Id.*

typically submitted to BLM by the operator prior to the date of first production or first sales. The Federal Oil and Gas Royalty Management Act (FOGRMA) of 1982 (30 USC § 1701 et seq.) provides that DOI must then issue all determinations of allocations of production for communitization agreements within 120 days of a request for determination.[6] However, in reality, BLM frequently take one – two years to review and approve communitization agreements and in some cases much longer than that. This is particularly the case in BLM's busier state offices. As a result of these delays, approval of a communitization agreement may delay production and historically delayed royalty payments to the federal government, tribal nations, and individual Indian oil and gas resource owners.[7] Once approved, the communitization agreement is backdated under BLM guidance to be effective on the date of first production or first sales.[8]

FOGRMA does not provide oil and gas operators with any real remedy if BLM fails to meet its 120-day deadline to issue a determination on the allocation of production contained within a proposed communitization agreement. In contrast, FOGRMA allows ONRR to assess significant penalties against operators if they fail to timely pay royalties on production from federal and Indian leases. And ONRR uses its authority under FOGRMA aggressively to ensure that operators are aware of potential penalties. The statute sets forth civil penalties of up to: (1) $500 per violation for each day any individual refuses to comply with any mineral leasing law requirement, refuses to comply with the terms of any lease, or fails to permit an authorized inspection or a lease; (2) $5000 per day per violation if corrective action is not taken within 40 days after due notice of a violation; (3) $25,000 per violation for each day any individual either knowingly prepares misleading reports, knowingly diverts oil or gas resources from any lease site without authority, or deals with any oil or gas resource having reason to know that the resource was stolen or unlawfully divested. The Act provides for the imposition of criminal penalties in addition to the civil penalties and it also requires the Secretary to charge interest on late royalty payments or on any underpayment due the Secretary.

In past years, ONRR has sometimes asked that operators pay 8/8th (i.e., 100%) of the value of production coming from federal leases proposed to be included in a communitization agreement until BLM eventually approves the proposed communitization agreement. More recently, ONRR is demanding even more – that it receives 100% of the production from the ***entire communitized area***. So, in the above example, ONRR would demand that it receive 100% of the royalties for the entire 1280-acre tract, even though the federal lease only makes up 12.5% of the communitized area. Again, some BLM offices are taking two years to review these proposed agreements. Whereas, had the communitization agreement been approved, the operator would have been responsible for paying only the applicable federal royalty percentage (i.e., 12.5% of the production from the federal lease contained in the communitized area). This results in a gross overpayment to the federal government that can take several years to recoup.

Once BLM finally approves the communitization agreement, the operator may then pursue a repayment or offset for the overpaid amount from ONRR. This has resulted in the BLM taking longer and longer to approve proposed communitization agreements, allowing the federal

---

[6] 30 U.S.C. § 1721(l).

[7] GAO-14-238, p. 37.

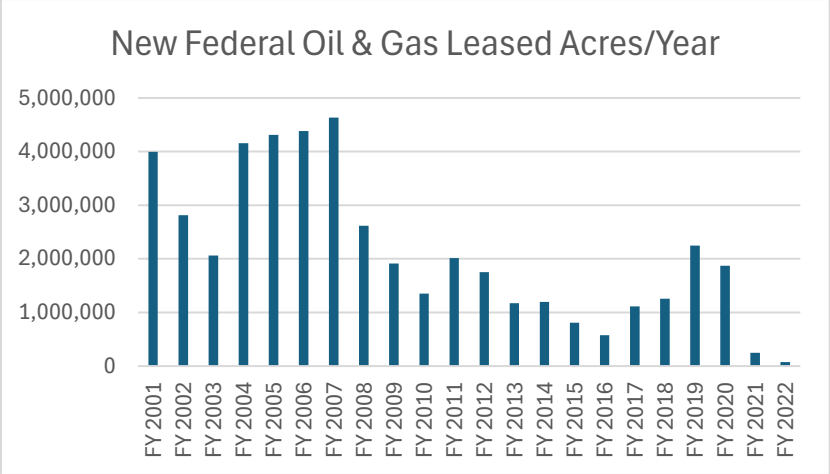
[8] *See* BLM Policy Manual 3160-9 Communitization, at 1(1)D.

government to hold money that it is not actually entitled to obtain under the terms of the federal and Indian oil and gas lease agreements or the communitization agreements. The amount of money at issue is not inconsequential and can amount to hundreds of millions of dollars for some of the most active operators on federal lands. This ties up capital that operators could otherwise use for their operations.

As a result of this unfair situation, AXPC strongly supports the proposed legislative fix which properly incentives BLM and BIA to timely review communitization agreements in and which would allow operators to pay royalties on the proposed communitization agreement payment formula without penalty until BLM officially approves the proposed communitization agreement. As proposed, the legislation would amend Section 1721(j) of FOGRMA to specifically allow operators to report and pay royalties on the proposed allocation formula contained in the communitization agreement submission until BLM makes a determination on the submission. After BLM makes a determination, the operator would have three months to amend its royalty reports without additional interest accruing. This is a reasonable solution to a grossly unfair stance currently taken by DOI and would better incentivize BLM to meet the 120-day statutory deadline to review these agreements already enacted by Congress.

II. AXPC supports Congresswoman Hageman's H.R. 7375, To amend the Mineral Leasing Act to improve the assessment of expression of interest fees, and for other purposes.

The Inflation Reduction Act broadly requires entities to pay a $5 per acre fee for the acreage they nominate for oil and gas lease sales, regardless of whether the acreage is ever offered for sale by the BLM. This provides an odd incentive for the BLM to encourage acreage nominations for upcoming lease sales but then fails to provide any incentive for the BLM to follow through with actually offering the acreage at the sale. Over the past several years, we have seen extreme reluctance from BLM to hold lease sales. BLM published data shows that the number of new acres leased by the BLM significantly decreased in fiscal years 2021 and 2022:[9]



[9] Data obtained from Oil and Gas Statistics | Bureau of Land Management (blm.gov).

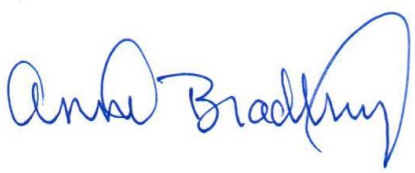
A better solution is to require BLM to collect the expression of interest fee at the time the acreage is offered for sale. This would incentivize BLM to actually hold lease sales after acreage is nominated by interested parties.

Moreover, the company that nominates the parcel is not guaranteed to receive that parcel at the end of the lease sale process. If the expression of interest fee is required to be paid at the time of sale, this would help ensure that the company that gets the benefit of obtaining the lease also pays the expression of interest fee associated with the leasing process. It is fundamentally unfair to compel one party to pay for property that another party receives.

As a result, AXPC supports the proposed legislation which seeks to make these narrow edits to the express of interest fee provisions contained in the Mineral Leasing Act following the passage of the Inflation Reduction Act.

AXPC appreciates the opportunity to submit this letter of support. Please do not hesitate to contact me if you have any questions or would like additional information.

Sincerely,



Anne Bradbury
President & CEO
American Exploration & Production Council

CC:

The Honorable Bruce Westerman
Chairman
House Natural Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

The Honorable Raúl M. Grijalva
Ranking Member
House Natural Resources Committee
1332 Longworth House Office Building
Washington, DC 20515