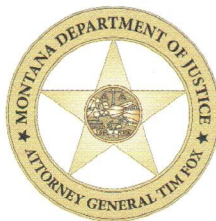


ATTORNEY GENERAL

STATE OF MONTANA

Tim Fox
Attorney General



Department of Justice
Joseph P. Mazurek Justice Bldg.
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

February 1, 2017

The Honorable Steve Daines
320 Hart Senate Office Building
Washington DC 20510

The Honorable Jon Tester
311 Hart Senate Office Building
Washington, DC 20510

The Honorable John Barrasso
307 Dirksen Senate Office Building
Washington, DC 20510

Re: Senate Joint Resolution 11 disapproving the flaring and venting rule, 81 Fed. Reg. 83,008 (November 18, 2016) under the Congressional Review Act.

Dear Senators,

On November 18, 2016, the Department of the Interior, Bureau of Land Management (“BLM”) issued its final rule, which was ostensibly to reduce the waste of natural gas from venting, flaring, and leaks during oil and natural gas production activities on federal and Indian lands. See 81 Fed. Reg. 83,008 (Nov. 18, 2016), *Waste Prevention, Production Subject to Royalties, and Resource Conservation* (hereinafter referred to as “the Rule”). Unfortunately the Rule may have the opposite effect.

As the chief legal officer of Montana I believe that the Rule, as written, impermissibly intrudes upon the sovereign authority of state oil and gas conservation commissions to define and control oil and gas waste, and it unnecessarily creates jurisdictional confusion over the specific regulatory standards that Operators of wells must meet. Montana law specifically prohibits waste and inefficient production of oil and gas. See, Sections 82-11-121 and 101(16), MCA. Moreover, because the Rule could impose increased capital costs upon the Operators of stripper wells with marginal production, the practical effect of the Rule in many instances would be to force Operators to prematurely abandon and plug those wells, with the concomitant effect of a reduction in royalties to the Federal government and severance tax revenues to the States.

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MONTANA DEPARTMENT OF JUSTICE

Legal Services Division ★ Division of Criminal Investigation ★ Highway Patrol Division ★ Forensic Science Division
Gambling Control Division ★ Motor Vehicle Division ★ Information Technology Services Division ★ Central Services Division

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Accordingly, the States of Wyoming, Montana, and North Dakota challenged the legal sufficiency of the Bureau of Land Management's flaring and venting rule in *State of Wyoming, et al. v. United States Department of the Interior, et al.*, Case No. 2:16-CV-0285, U.S. District Court for the District of Wyoming. Although the States have confidence in their legal assertions, no preliminary injunction has been issued in this case, which leaves the States and the Operators of oil & gas wells subject to sorting out confusing jurisdictional boundaries between State and Federal regulatory requirements.

Because the Rule results in bad law and bad policy, my office supports Senate Joint Resolution 11 to disapprove the Rule under the Congressional Review Act. I appreciate the opportunity to comment on this legislation and I look forward to hearing from you.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. FOX', with a long horizontal stroke extending to the right.

TIM FOX
Attorney General