

# United States Senate

WASHINGTON, DC 20510

June 19, 2017

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

Dear Secretary Zinke:

At the beginning of your confirmation hearing before the Senate Energy and Natural Resources Committee, you described yourself as “an unapologetic admirer of Teddy Roosevelt.”

One of President Roosevelt’s important legacies is a legislative accomplishment that occurred eleven years after he left office. His 1906 withdrawal of federal coal lands from settlement, following years of settlement fraud, prodded Congress to reform the disposal of federal fossil fuels. The resulting law, the Mineral Leasing Act of 1920, marked a fundamental shift in American natural resource policy. The new law changed natural resource extraction on public lands from a right into a privilege and created a royalty system. It also established an important requirement to avoid wasting oil and natural gas.

President Roosevelt’s own views on waste bear repeating: “To waste, to destroy, our natural resources, to skin and exhaust the land instead of using it so as to increase its usefulness, will result in undermining in the days of our children the very prosperity which we ought by right to hand down to them amplified and developed.” In this passage from a message to Congress, the president was not arguing to prohibit development. He was advocating “planned and orderly” development in place of “a haphazard striving for immediate profit.”

Your predecessor promulgated the Methane and Waste Prevention Rule (“Rule”) to implement the Mineral Leasing Act requirements that lessees “use all reasonable precautions to prevent waste of oil or gas” and comply with rules “for the prevention of undue waste.” The Rule is in the spirit of Roosevelt. It does not prohibit development but rather maximizes production and saves taxpayers tens of millions of dollars. It addresses the huge amounts of natural gas being wasted on federal lands every year: 115 billion cubic feet recorded by the Department of the Interior in 2014 alone.

We are disappointed with your actions to undo this Rule. On June 15, 2017, the Department published a notice in the Federal Register suspending parts of the Rule under a novel theory of administrative law. This action seems impossible to square with unapologetic admiration for Teddy Roosevelt. It also seems impossible to square with the Administrative Procedure Act (APA).

Section 705 of the APA authorizes agencies to postpone the effective date of regulations pending judicial review. We are unaware of instances in which an agency has attempted to suspend parts of a regulation under section 705 of the APA after the effective date of the regulation as a whole. The Department's June 15 notice claims that a compliance date within the Rule "is within the meaning of the term 'effective date'".

This claim equates the "effective date" of a rule as a whole with a "compliance date" by which an industry must comply with individual requirements established by the rule. The effect of this claim is to allow the Department, according to its whim, to suspend properly promulgated regulations with no public notice and comment nor any legal reasoning beyond an unsubstantiated claim that "justice requires" suspension of a rule that has already gone into effect. This could lead to all manner of improper giveaways and special relief for regulated industries. Under the Department's reasoning, merely filing a lawsuit in advance of a compliance deadline could suffice to suspend that deadline. Indeed, that seems to be the case here.

Earlier this year, we wrote to you to object to your suspension of the Office of Natural Resources Revenue's royalty valuation rule given that the Department had failed to suspend the rule before its effective date and had failed to meet the required four-part test used by courts to grant injunctions. The latter flaw applies in the current case as well.

Nowhere in the Federal Register notice last week did the Department make a finding that industry groups and States are likely to win their lawsuits, suffer irreparable harm if deadlines are not postponed, find the balance of equities tipped in their favor, and that suspending the deadlines is in the public interest. Perhaps recognizing the weakness of its legal position, the Department's notice indicates that the Bureau of Land Management intends simultaneously to conduct public notice and comment on suspending or extending the relevant compliance dates.

Apart from our disagreements with some of your policies, we are troubled that your agency continues to seek out new ways to circumvent administrative law. The suspension of parts of the Methane Waste and Prevention Rule seems particularly brazen given that on May 10 the Senate rejected a Congressional Review Act resolution to repeal the Rule. We urge you not to reward, in President Roosevelt's words, "a haphazard striving for immediate profit." Instead, you should allow the Rule to go back fully into effect.

Thank you for your consideration.

Sincerely,



Maria Cantwell  
United States Senator



Tom Udall  
United States Senator