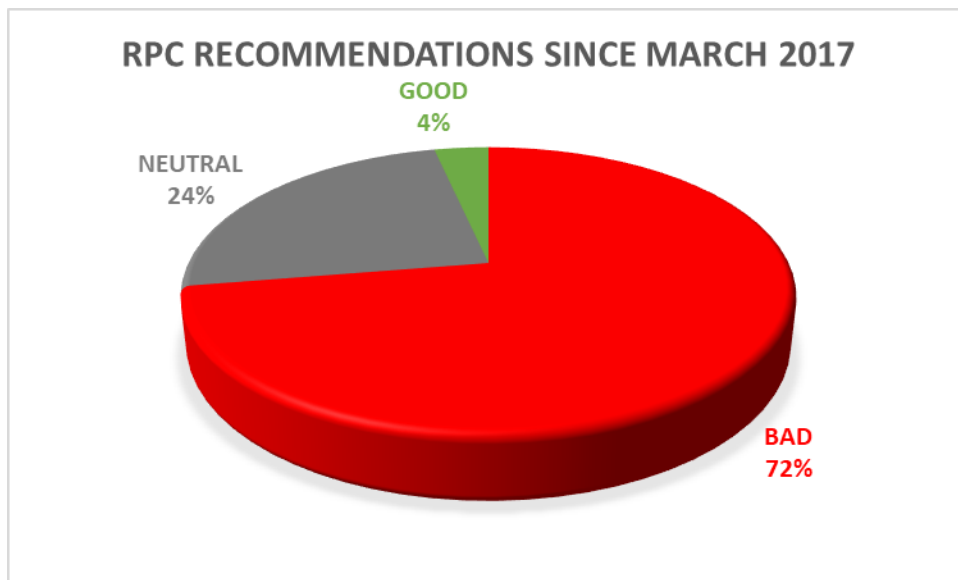


Royalty Policy Committee Recommendations – The Bad, The Ugly, (and one good one)

The Wilderness Society analyzed all 29 recommendations that the Royalty Policy Committee (RPC) has made since being re-chartered in March 2017, and the results are not pretty. The vast majority are designed to financially benefit the fossil fuels industry while shortchanging American taxpayers, cutting the public out of decision making and/or sacrificing the environment. This analysis includes the text of each recommendation and TWS' assessment of the context and potential impacts should the recommendation be followed by the Department of the Interior (DOI) and Bureau of Land Management (BLM).



Red – BAD = Recommendations that would shortchange American taxpayers, cut the public out of decision making and/or sacrifice the environment: 21 of 29 recommendations (72%)

Grey – NEUTRAL = Recommendations that we don't have enough information on, include some elements of concern, or are focused on Tribal lands: 7 of 29 recommendations (24%)

Green – GOOD = Recommendations that would fulfill the RPC's charter and benefit American taxpayers: 1 of 29 recommendations (4%)

[February 28, 2018 meeting \(Houston\):](#)

Recommendations - The RPC approved the following recommendations for submission to the Secretary of the Interior (the RPC summary document linked to [here](#) includes the recommendations – for details, see the pages noted for each recommendation):

1. **Create “evergreen” Payor Handbook which can be updated regularly and link to recent rules and decisions. – p. 92-94 – NEUTRAL**
 - a. Context and potential impacts: The Office of Natural Resource Revenue (ONRR) “collects, accounts for, and verifies, natural resource and energy revenues due to States, American Indians, and the U.S. Treasury,” including oil and gas royalties from leases on Federal and Indian lands.¹ The Minerals Management Service (the predecessor to ONRR) published the first Oil and Gas Payor Handbook in 2000. Since then, a variety of new regulations, statutes and decisions have been established, so the Payor Handbook needs to be updated. **Updating the Payor Handbook to make it consistent with current regulations makes sense, but we do not have enough details to determine whether there could be negative impacts to taxpayers from this RPC recommendation.**
2. **Pursue rulemaking to define simplified index price rules for Federal gas. – p. 95 – BAD**
 - a. Context and potential impacts: ONRR’s repeal of the 2017 Federal Valuation Rule resulted in reduced royalty collection. **This RPC recommendation would give industry nearly full control of valuations for Federal gas. The Federal government is responsible for setting prices for Federal gas in a way that provides fair return to American taxpayers.**
3. **Exclusively with regard to federal lands, Department of the Interior resolve an ambiguity in its current regulations by publishing a proposed rule to amend the regulation at 30 C.F.R. 1202.151(b) to reexamine language specific to the boosting of residue gas. – p. 96-98 – BAD**
 - a. Context and potential impacts: because it is more economical to them, companies have chosen to use a technology for converting raw gas into a marketable condition that requires the use of “residue gas” to pressurize the gas to market standards. **This RPC recommendation would allow industry to use residue gas without paying royalties on it. Residue gas is of economic value, and the public is entitled to a royalty on that value.**
4. **Reinforce the principle that arm’s length transactions are the best indication of market value by amending the regulation at 30 CFR 1206.257(c)(2)(i) to read: “The gross proceeds accruing to the lessee pursuant to a sale under its non-arm’s-length contract (or other disposition by other than an arm’s-length contract), provided that those gross proceeds are the equivalent to the gross proceeds derived from, or paid under comparable arms-length contracts for sale, purchases, or other dispositions of like-quality coal in the area.” – p. 103-105 – BAD**

¹ <https://www.onrr.gov>

- a. Context and potential impacts: The idea behind “arm’s length” sales is that one way to determine fair value for coal is to analyze the price at which the company that produces the coal sells it to the company that uses it. A strong and clear definition of “arm’s length” sales is crucial for establishing appropriate valuation. This is true in part because the coal industry has a long history of manipulating the system to reduce royalty payments, including by mischaracterizing transactions as “arms-length” when they are not – i.e., by selling coal to another company that is actually a subsidiary at less than market value. **By giving coal producers the power to choose their own preferred arm’s length sales as the basis for valuing coal, this RPC recommendation would allow companies to manipulate their chosen prices to produce results well below fair market value.**
5. Consider a Secretarial Order / Dear Payor Letter indicating that a company’s own arm’s length sales are preferential under coal benchmark 4. – p. 105 – **BAD**
 - a. Context and potential impacts: The idea behind “arm’s length” sales is that one way to determine fair value for coal is to analyze the price at which the company that produces the coal sells it to the company that uses it. A strong and clear definition of “arm’s length” sales is crucial for establishing appropriate valuation. This is true in part because the coal industry has a long history of manipulating the system to reduce royalty payments, including by mischaracterizing transactions as “arms-length” when they are not – i.e., by selling coal to another company that is actually a subsidiary at less than market value. **By dictating that a company’s own arm’s length sales are the preferred basis for valuing coal, this RPC recommendation would allow companies to manipulate their chosen prices to produce results well below fair market value.**
6. **Updated Solids Handbook indicating the same.** – p. 25 – **BAD**
 - a. Context and potential impacts: The idea behind “arm’s length” sales is that one way to determine fair value for coal is to analyze the price at which the company that produces the coal sells it to the company that uses it. A strong and clear definition of “arm’s length” sales is crucial for establishing appropriate valuation. This is true in part because the coal industry has a long history of manipulating the system to reduce royalty payments, including by mischaracterizing transactions as “arms-length” when they are not – i.e., by selling coal to another company that is actually a subsidiary at less than market value. **By dictating that a company’s own arm’s length sales are the preferred basis for valuing coal, this RPC recommendation would allow companies to manipulate their chosen prices to produce results well below fair market value.**
7. **Reduce timelines for project approval, including APDs, ROWs, sundries, lease nominations and unit agreements.** – p. 153-154 – **BAD**
 - a. Context and potential impacts: courts often find that BLM fails to adequately evaluate environmental impacts or plan for alternative land uses under the current guidelines; reducing timelines for project approval and other leasing and permitting activities would only result in further limiting opportunities for public engagement and shortcutting

environmental reviews. Rushing approvals is also unnecessary given that of the 25,742,991 million acres under lease in 2017, only 12,790,557 million acres were producing energy—meaning 13 million acres of publicly-owned minerals already leased are sitting idle. Industry also has a glut of drilling permits, with more than 7,950 approved, unused permits on the books as of October 2017. **This RPC recommendation would result in limiting opportunities for public engagement and shortcutting environmental reviews, and it is unnecessary given the glut of unused leases and drilling permits industry holds.**

8. Limit the federal nexus of wells without a majority federal interest. — p. 154-155 – BAD

- a. Context and potential impacts: BLM has a responsibility to taxpayers even if it has only a minority interest in the fluid minerals being accessed. In these situations, the government still receives a share of the royalty revenue and the NEPA process allows the agency to ensure appropriate measures will be put in place to limit waste of federally owned resources. **This RPC recommendation would eliminate BLM’s ability to ensure fair return to taxpayers for use of federally owned resources for wells without a majority federal interest.**

9. Improve land use planning and NEPA approvals. — p. 155-158 – BAD

- a. Context and potential impacts: courts often find that BLM fails to adequately evaluate environmental impacts or plan for alternative land uses under the current guidelines; reducing timelines for project approval and other leasing and permitting activities would only result in further limiting opportunities for public engagement and shortcutting environmental reviews. Rushing approvals is also unnecessary given that of the 25,742,991 million acres under lease in 2017, only 12,790,557 million acres were producing energy—meaning 13 million acres of publicly-owned minerals already leased are sitting idle. Industry also has a glut of drilling permits, with more than 7,950 approved, unused permits on the books as of October 2017. **This RPC recommendation would result in limiting opportunities for public engagement, shortcutting environmental reviews and opening additional wildlands and wildlife habitat to energy development. It is also unnecessary given the glut of unused leases and drilling permits industry holds.**

10. Revise and simplify Onshore Orders, 3, 4, and 5 to ensure more equitable and timely implementation. — p. 158-159 – BAD

- a. Context and potential impacts: BLM’s website states that Onshore Order 3, “establishes standards to ensure that oil and gas are properly and securely handled to prevent theft and loss, and to enable accurate measurement and production accountability;” Onshore Order 4, “establishes minimum standards for the accurate measurement of all oil;” Onshore Order 5, “establishes minimum standards for the accurate measurement of gas.” Onshore Orders 3, 4 and 5 were all made significantly less stringent between when they were proposed and finalized, and a review of industry comments on the proposed revisions shows that most industry requests were incorporated into the final rules. The

final rules also provide the BLM Authorized Officer a broad amount of discretion in applying the new requirements and include several exemptions especially for low producing/marginal wells. The requirements in these orders will ensure accurate measurement and reporting and additional accommodations to industry are unnecessary and inappropriate. **This RPC recommendation would weaken these important regulations, shortchanging American taxpayers to financially benefit the oil and gas industry.**

11. Set future OCS lease sales through 2024 at 12.5% royalty rate. – p. 160-162 – BAD

- a. Context and potential impacts: Congress never intended for onshore royalty rates to remain stagnant. That is why onshore royalties are set “at a rate of *not less than* 12.5 percent...”30 U.S.C. § 225(b)(1)(A) (emphasis added). This rate represents a floor which Interior must adjust upward as oil and production rises and to avoid the oil and gas industry enjoying windfall profits that rightfully belong to the American people. For instance, in 2009, Interior raised the offshore royalty rate from 12.5 percent to 18.75 percent, in response to rising oil prices. However, even though onshore oil production has nearly doubled since 2008, the onshore royalty rate has not changed. **This RPC recommendation would shortchange American taxpayers to financially benefit the oil and gas industry.**

12. Revise, clarify and simplify process for granting varying royalty rate for declining or particularly costly fields. – p. 160 – BAD

- a. Context and potential impacts: the Bureau of Safety and Environmental Enforcement can offer developers post-lease royalty relief for declining or particularly costly fields. **This RPC recommendation would prop up leases that are uneconomic to develop using current technology and under current prices by shortchanging American taxpayers with lower royalty rates for these fields.**

13. Increase offshore acreage available for oil and natural gas leasing. – p.160 – BAD

- a. Context and potential impacts: there is no demonstrated shortage in the availability of acreage for development. Reductions in royalty rates combined with increased access would further benefit oil and gas companies at taxpayers’ expense. **This RPC recommendation would expand leasing without rectifying critical flaws in the systems and agencies managing them, which would not serve in the public interest.**

14. Interior should conduct a lease sale in the 1002 area of the Arctic National Wildlife Refuge (ANWR) ahead of statutory deadlines. – p.161 – BAD

- a. Context and potential impacts: the Arctic National Wildlife Refuge is a vast refuge of coastal lands, boreal forests and alpine tundra supports an exceptional array of wildlife from musk oxen and Arctic fox to all three types of North American bear species and hundreds of bird species. It is one of the finest examples of large, intact wilderness left on Earth. **This RPC recommendation would speed development in the Arctic National Wildlife Refuge; the Refuge is an American treasure that should be permanently protected, not leased and drilled.**

15. **The Department of the Interior should contract for a study to compare the U.S GOM, Guyana and Mexico royalty rates, total revenue, block sizes and recent lease sales (last 3 years). – p. 164 – **BAD****
 - a. **Context and potential impacts: This RPC recommendation would tie U.S. royalty practices to those of other nations, potentially dictating U.S. policy based on concessions companies persuade other nations to give them, rather than providing fair market value as is required by law.**
16. **The Department of the Interior should contract to update the IHS-CERA 2011 study, for both onshore and offshore data. p. 164 – **BAD****
 - a. **Context and potential impacts: U.S. law requires that the government collect a fair return for federal oil and gas resources. Competitiveness with other nations is *not* the policy in federal law for setting the fiscal terms of oil and gas leases. This RPC recommendation proposes broad comparisons of U.S. offshore and onshore policies with other nations, including “emerging areas.” These studies are a radical step toward institutionalizing competitiveness with other nations’ policies and undermining a fair return for the American people.**

[June 6, 2018 meeting \(Albuquerque\)](#)

The RPC approved the following recommendations for submission to the Secretary of the Interior (the RPC summary document linked to [here](#) includes the recommendations – for details, see the pages noted for each recommendation):

1. **A Secretarial Order should be issued to plan a wind leasing program to bring at least 20 additional gigawatts from offshore wind to the United States over the decade beginning in 2024. This goal shall be achieved by leasing at least two gigawatts annually through at least four lease sales on the United States Outer Continental Shelf (OCS) of at least five hundred megawatts each. – p. 46-50 – **NEUTRAL****
 - a. **Context and potential impacts: This RPC recommendation would set a goal for leasing at least two gigawatts of offshore wind annually for 10 years on the OCS, which could help advance renewable energy goals. It is crucial that leasing is sited responsibly from an environmental standpoint. It seems like the stakeholder education program recommended by the RPC should also include environmental NGOs.**
2. **The Secretary should submit to Congress a legislative proposal to expand the Outer Continental Shelf Lands Act (OCSLA) to the U.S. Territories. – p. 51-53 – **NEUTRAL****
 - b. **Context and potential impacts: the RPC materials primarily frame this recommendation around potential offshore wind energy development, although it would include fossil fuels and other development covered by the OCSLA. The materials also state that this recommendation was supported by the Obama administration and is supported by the Trump administration. There could be clean energy benefits if this RPC recommendation results in increased offshore wind energy development, but we do**

not have enough details to determine whether there could be negative impacts to taxpayers or the environment from this RPC recommendation.

3. **The BLM should issue an Instruction Memorandum (IM) or other mechanism to update and clarify solar energy right of way, acreage rent schedules, megawatt (MW) capacity fees, lease and grant renewal process, bond requirements, and application priority for projects in six Southwestern states. - p. 54-57 – NEUTRAL**
 - a. Context and potential impacts: members of the solar industry are seeking changes to BLM’s policies and fees to increase the competitiveness of solar development on public lands compared to development on private lands via issuance of an IM. Issuance of an IM to update and clarify rent and fee requirements for solar energy rights-of-way and to provide further guidance on the implementation of the BLM Solar and Wind Energy Rule could help increase the competitiveness of solar development on public lands. However, some of the RPC’s recommendations would also undermine the BLM’s policies and goals that 1) focus and facilitate solar and wind development in lower-conflict Designated Leasing Areas (DLAs); and 2) focus agency resources on review of those applications for solar and wind projects outside of DLAs that meet criteria that show they are most likely to be successfully permitted and built. **This RPC recommendation could increase the competitiveness of solar development on public lands compared to private lands, but it could also undermine BLM’s efforts to incentivize development in lower-conflict Designated Leasing Areas.**
4. **A Secretarial Order should be issued to grandfather projects that were under construction, development, or for which an application had been accepted when the BLM issued its 2016 Competitive Processes for Solar and Wind Energy Development rule. - p. 58-59 – NEUTRAL**
 - a. Context and potential impacts: members of the wind industry are seeking the grandfathering of projects that were under construction, development, or for which an application had been accepted when BLM issued its Solar and Wind Energy Rule in 2016 via a Secretarial Order. **This RPC recommendation could provide appropriate consistency for developers if the proposed Secretarial Order is narrowly focused on grandfathering the Acreage Rent and MW Capacity Fee for projects that were under construction or development, and if the definition of “under development” is modified to only include those applications for which where BLM has certified that a completed application had been submitted and a plan of development had been accepted by BLM at the time the BLM Solar and Wind Energy Rule was adopted. However, it could also undermine BLM’s efforts to incentivize development in lower-conflict Designated Leasing Areas if it is written to broadly.**
5. **The Bureau of Safety and Environmental Enforcement (BSEE) should issue a Notice to Lessees and Operators to add specificity regarding factors such as enhanced oil recovery (EOR), high pressure/high temperature wells (HPHT), and reservoir depths, for royalty relief for late life or challenging assets. - p. 88 – BAD**
 - a. Context and potential impacts: the Bureau of Safety and Environmental Enforcement can offer developers post-lease royalty relief for declining or particularly costly fields.

This RPC recommendation builds on the similar recommendation from the February 2, 2018 meeting by adding more specificity. **This RPC recommendation would prop up leases that are uneconomic to develop using current technology and under current prices by shortchanging American taxpayers with lower royalty rates for these fields.**

6. **The BLM should issue an IM which directs field offices to issue categorical exclusions (CX) when Energy Policy Act of 2005 Section 390 criteria are met, unless specifically rebutted. – p. 60-61 – BAD**

- a. Context and potential impacts: BLM is allowed to use a categorical exclusion to exempt an Application for Permit to Drill from conducting NEPA analysis in certain circumstances, such as drilling within a developed field. Industry is already benefitting from these categorical exclusions and mandating their application is not only unnecessary but also poses an unacceptable risk to the management of our shared public lands and resources. **This RPC recommendation could shield tens of thousands of future oil and gas wells from public scrutiny and oversight, as well as from detailed environmental review. It would require BLM staff to use CXs, eliminating the common-sense backstop that use of CXs is subject to a “rebuttable presumption” that they apply, and eliminating the ability of BLM field staff to use their discretion and on-the-ground knowledge to determine when use of a CX is not appropriate.**

7. **The BLM should issue an IM to update the Fee/Fee/Fed IM to avoid unnecessary National Environmental Policy Act (NEPA) analysis of impacts to non-federal surface off-lease and analysis of horizontal wells that develop a minority of federal minerals. – p.83-85 – BAD**

- a. Context and potential impacts: applicable guidance (such as Instruction Memorandum 2009-078) already limits the contexts in which NEPA applies, but also recognizes that the presence of federal minerals may require the application of NEPA as well as the Endangered Species Act and National Historic Preservation Act. **This RPC recommendation risks needed environmental analysis by further narrowing this direction. Additionally, given the increased success and advances in horizontal drilling, this approach would encourage operators to avoid federal environmental reviews by locating federal wells on non-federal surface and/or mineral lands. Important federal interests in protecting air quality, threatened species, and cultural resources would not be protected.**

8. **The Department should issue guidance to NEPA planning staff that states project-specific NEPA documents should be scoped to the actual project impacts and limited to the best available information. – p. 83-85 – BAD**

- a. Context and potential impacts: This recommendation is unnecessary, in addition to being arguably beyond the scope of the RPC’s mandate. NEPA analysis is, by definition, limited to the scope of the impacts a proposed action will have and can rely on previous analysis to the extent it is still accurate and covers potential environmental consequences. **By seeking to preemptively limit analysis, this RPC recommendation is inconsistent with the requirements of NEPA to evaluate the direct, indirect and**

cumulative impacts of a proposed action and to rely on current, scientifically accurate information.

9. **The BLM should issue a full rulemaking process to revise Onshore Orders 43 CFR 3173, 3174, and 3175 by giving due consideration to applicable API and GPA standards. – p. 86-87 – BAD**
 - a. **Context and potential impacts:** BLM’s [website](#) states that Onshore Order 3, “establishes standards to ensure that oil and gas are properly and securely handled to prevent theft and loss, and to enable accurate measurement and production accountability;” Onshore Order 4, “establishes minimum standards for the accurate measurement of all oil;” Onshore Order 5, “establishes minimum standards for the accurate measurement of gas.” Onshore Orders 3, 4 and 5 were all made significantly less stringent between when they were proposed and finalized, and a review of industry comments on the proposed revisions shows that most industry requests were incorporated into the final rules. The final rules also provide the BLM Authorized Officer a broad amount of discretion in applying the new requirements and include several exemptions especially for low producing/marginal wells. The requirements in these orders will ensure accurate measurement and reporting and additional accommodations to industry are unnecessary and inappropriate. **This RPC recommendation would weaken these important regulations, shortchanging American taxpayers to financially benefit the oil and gas industry.**
10. **The Secretary should issue guidance that clarifies what items are not inherently federal functions and therefore, appropriate for tribes to manage in a Tribal Energy Resource Agreement (TERA). - p. 89-90 – NEUTRAL – TWS is not taking a position on RPC recommendations focused on Tribal Lands**

September 13, 2018 meeting (Denver): The RPC approved the following recommendations for submission to the Secretary of the Interior (the RPC summary document linked to [here](#) includes the recommendations – for details, see the pages noted for each recommendation)

1. **RPC recommends that the Secretary of the Interior pursue rulemaking to adopt all applicable provisions of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) and the Federal Oil and Gas Royalty Simplification Act of 1996 to include Federal coal by the provisions of each statute. The Secretary should also propose including Federal coal be included in the statute in his legislative proposals to Congress. -p. 40 – NEUTRAL**
 - a. **Context and potential impacts:** **This RPC recommendation could provide necessary and beneficial structure to the coal royalty program if it carefully extends routine administrative practices that currently apply in the oil and gas context to the coal industry. However, the details of the proposed changes should be disclosed so that public analysis and discussion can occur before implementation of the recommendation, including regarding whether any of the proposed changes result in substantively revising the way coal is valued and royalties are calculated. If such substantive changes exist, they should be set aside and proposed as separate items for**

public participation and committee discussion. Items determined to be purely administrative matters that would apply equally to oil, gas and coal should move forward.

2. **RPC recommends the DOI pursue rulemaking to define “Federal Gas Index Pricing” with a Marketable Condition Concept, consistent with the hypothetical presentation titled “Gas Index Pricing Options,”** dated August 2018, as presented to the RPC meeting of September 13, 2018. – p. 42-43 – **BAD**
 - a. Context and potential impacts: while a properly designed index pricing system could be good for both taxpayers and industry, this RPC recommendation would allow companies to pick from a variety of different ways to calculate the value of natural gas. Given the option, of course companies will pick whatever option is best for their bottom line. **This RPC recommendation would remove BLM’s authority to determine valuation for natural gas and hand it over to industry, which will shortchange American taxpayers.**
3. **To promote transparency, the RPC recommends that DOI publish well, lease, and monthly production data for royalty-bearing resources on Federal lands. Tribes should have the ability to opt-in. This information should not include data prohibited by law from being released.** – p. 45-46 – **GOOD**
 - a. Context and potential impacts: **this RPC recommendation would increase transparency regarding energy production on federal lands, which will help ensure American taxpayers get a fair return.**