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

June 30, 2015

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The Honorable Neil Kornze
Director
U.S. Bureau of Land Management
1849 C Street NW, Room 5665
Washington, DC 20240

Dear Director Kornze:

As you are likely aware, on October 2, 2013, the President signed into law the Helium Stewardship Act of 2013 (“HSA” or “Act”). The Act sought to “address the impending closure of the Federal Helium program” and to “complete the privatization of the federal helium reserve in a competitive market fashion that ensures stability in the helium markets.”¹ Congress carefully crafted the HSA in a bipartisan manner that would ensure competitive access for *all stakeholders* to the federal helium supply. However, we are concerned that the U.S. Bureau of Land Management’s (“BLM”) interpretation of the HSA has led to results counter to the intent of the Act.

Prior to the enactment of the HSA, the BLM had offered helium for sale to two separate groups of helium users and suppliers. One group, collectively known as the refiners, operates the refineries connected to the federal helium pipeline and therefore controls access to the crude helium that is extracted from the federal helium reserve. The other group, known as the nonrefiners, are dependent upon the refiners to ensure the refinement and delivery of any helium procured from the Federal Helium Reserve, which can then be distributed to users and helium suppliers around the country. Prior to the HSA’s enactment, the BLM offered 94 percent of the helium to be sold annually to the refiners in an “allocated sale” and six percent in a “nonallocated sale” to the nonrefiners. In the first post-enactment helium sale, the percentage in the non-allocated sale was raised to 10 percent in recognition of Congress’ intent to create more competition in the market.

As you know, the HSA implemented a phased sales system in which the BLM would gradually replace the annual allocated and nonallocated sales with open auctions. These auctioned allotments would increase over time, such that by fiscal year 2021, all helium disbursed by the BLM would be auctioned to interested helium users and suppliers. Prior to 2021, the non-auctioned portion would continue to be offered for sale in a manner similar to pre-HSA sales. The only requirements for these sales were “. . . to maximize total recovery of helium from the Federal Helium Reserve over the long term; . . . to maximize the total financial return to the taxpayer; . . . to manage crude helium sales according to the ability of the Secretary to extract and produce helium from the Federal Helium Reserve; . . . to give priority to meeting the helium demand of Federal users in the event of any disruption to the

¹ H.R. Rep. No. 113-42, at 1, 8 (2013).

Federal Helium Reserve; and . . . to carry out this subsection with minimum market disruption.”² Importantly, the Act did not impose any limitation as to whom the BLM could offer helium for sale.

Rather than moving toward increased market competition of helium, BLM’s implementation of the HSA has unfortunately resulted in less. The first auction occurred on July 30, 2014, and generated \$15 million in revenue for the federal government. The average price per thousand cubic feet of helium purchased at the auction was \$161.³ Thirteen companies participated in the auction, yet only two refiners ended up purchasing all of the auctioned helium due to the “outrageously high” prices those parties bid for the helium.⁴ Two weeks after the auction, the BLM offered 100 percent of the remaining helium available in that fiscal year exclusively to the refiners in an allocated sale, pricing the helium at \$106 per thousand cubic feet.⁵ The BLM did not offer any helium for sale to the nonrefiners outside of the auction, interpreting the HSA as having the auction take the place of the nonallocated sales, despite the fact the HSA required the continued delivery of nonallocated sales volumes.⁶ An unfortunate consequence of this decision, coupled with the auction results, was “the number of companies purchasing helium from BLM for delivery in fiscal year 2015 compared with fiscal year 2014 decreased from eight to four” – a result counter to the intent of the HSA.⁷

Additionally, the Act envisioned the creation of a tolling system in which the nonrefiners would have access to reasonably priced tolling services. Specifically, the Act provided that no helium would be made available for sale or auction to a refiner unless that refiner “make[s] excess refining capacity of helium available at commercially reasonable rates to . . . any person prevailing in auctions . . . and . . . any person that has acquired crude helium from the Secretary from the Federal Helium Reserve by means other than an auction . . . after the date of enactment of the Helium Stewardship Act of 2013, including nonallocated sales.”⁸

However, the U.S. Government Accountability Office (“GAO”) recently concluded that the BLM “does not have full assurance that refiners are satisfying the tolling provision.”⁹ In its April report, the GAO highlighted that the BLM has not “obtained all relevant information about refiners’ efforts to satisfy the tolling provision, . . . defined or identified criteria for a commercially reasonable rate, . . . [nor] determined what to do if a refiner does not satisfy the tolling provision.”¹⁰ As such, the GAO concluded the “nonrefiners have raised concerns that BLM’s unwillingness to act . . . may result in less competition in helium auctions.”¹¹ Less competition in the auctions would directly translate into less revenue for the federal government.

² 50 U.S.C. § 167d(b)(1).

³ U.S. Government Accountability Office, Bureau of Land Management: More Information Needed to Implement the Helium Stewardship Act of 2013, GAO-15-394, at 11 (2015).

⁴ *Id.* at 12.

⁵ *Id.* at 15.

⁶ *See* 50 U.S.C. § 167c(e)(2)(B).

⁷ U.S. Government Accountability Office at 17.

⁸ 50 U.S.C. § 167d (b)(8)(B).

⁹ U.S. Government Accountability Office at 18.

¹⁰ *Id.* at 19.

¹¹ *Id.* at 18.

The Act states clearly that the BLM was to continue nonallocated sales and ensure refining access to the nonrefiners. Indeed, the enforcement language concerning the tolling provision specifically mentions “nonallocated sales” “after the date of enactment of the Helium Stewardship Act of 2013.”¹²

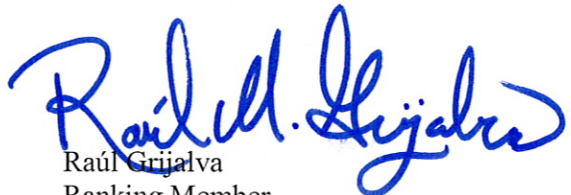
As such, we request the BLM to reinstate an annual nonallocated offer to sell helium to the nonrefiners. Such sale should be equal to ten percent of the non-auctioned helium, thereby keeping intact the proportions of the final allocated and nonallocated sales that occurred in fiscal year 2014. Furthermore, we reiterate the goals of the HSA, and urge the BLM to enforce the tolling provisions to ensure the refiners are offering excess refining capacity to the nonrefiners at commercially reasonable rates.

Through competition, the HSA was designed to ensure greater access to federal helium by additional parties and a better return to taxpayers for the sale of that helium. The BLM’s current interpretations of the Act, however, could potentially lead to results contrary to those goals. We hope that you will act to ensure that the federal helium program is managed in accordance with the full intent of the HSA. In recognition of the BLM’s recent Federal Register notice, “Crude Helium Sale and Auction for Fiscal Year 2016 Delivery,” which seeks input on several of the issues identified in this letter, we would appreciate a prompt reply to our concerns.¹³ Thank you very much for your attention to this letter.

Sincerely,



Rob Bishop
Chairman
Committee on Natural Resources



Raúl Grijalva
Ranking Member
Committee on Natural Resources

¹² 50 U.S.C. § 167d (b)(8)(B)(ii). *See also* 50 U.S.C. § 167c(e)(2)(B) (“... ensures timely delivery of helium acquired from the Secretary from the Federal Helium Reserve by means other than an auction . . . , including *nonallocated sales*”) (emphasis added).

¹³ 80 Fed. Reg. 33548 (June 12, 2015).