



To Flare or Not to Flare in North Dakota: BLM's Revised Environmental Assessment/ Decision Record Targets Flaring Mitigation at New Facilities

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On June 6, 2017, the Bureau of Land Management's (BLM) North Dakota Field Office (NDFO) issued a Revised Environmental Assessment/Decision Record (EA/DR) (available [here](#)) which identifies mitigation measures for future Applications to Drill (APDs) that have the potential to impact historic properties in accordance with the National Historic Preservation Act (NHPA). The EA is programmatic and defers decision-making to the site-specific level. The DR clarifies that mitigation measures would not be applied to pending and future Sundry Notice requests to flare at existing facilities. Rather, mitigation would be applied, as appropriate, to requests to flare at new facilities.

Potential mitigation measures include:

- Construction of a gathering pipeline which will ultimately be connected to a trunk pipeline;
- Liquefy the gas on location and store on location until it can be transported via truck to a pipeline injection location;
- Reinject the natural gas into a formation for possible future use;
- Reinject the natural gas into the reservoir for secondary enhanced oil recovery;
- Beneficial use on lease;
- Camouflaging of flare using vegetation or architectural structures;
- Reducing flare stack height;
- Restriction of active flaring at night; and
- Coordination with the appropriate surface management agency for future flaring requests within the viewshed of a cultural or historic property.

In summary, flaring mitigation will be determined on a case-by-case basis and will likely depend on the Trump Administration's ongoing review of regulations that potentially burden the energy industry.

In addition, the EA explains that royalty determinations for flared oil-well gas will be made on a case-by-case basis and will be supported by an evaluation of engineering, geologic, and economic data to be submitted with the flaring request. Notably, the BLM recognized that there are various reasons why an operator may request to flare, including economic reasons. However, the BLM's updates and revisions to NTL-4A in its "Waste Production, Production Subject to

Royalties, and Resource Conservation” Rule (more commonly known as the “Venting and Flaring Rule” and available [here](#)), effective on January 17, 2017, establish a new procedure for determining whether flared gas is subject to royalties which does not account for economic circumstances. These provisions were not included in the BLM’s recent postponement of certain Venting and Flaring Rule compliance dates (discussed below in this Newsletter). Accordingly, the EA appears to describe how royalties will be determined for the existing Sundry Notices listed in the EA appendix which were pending before the effective date of the Venting and Flaring Rule whereas, Sundry Notices dated on or after January 17, 2017 will be subject to the new royalty determination procedures.

For more information on this EA/DR, please contact [Bret Sumner](#), [Jim Martin](#), or [Nicole Blevins](#).