



July 31, 2017

Mr. Alex Herrgott
Associate Director for Infrastructure
Council on Environmental Quality
730 Jackson Place, NW
Washington, DC 20503

Re: Infrastructure and Regulatory Reform

Dear Mr. Herrgott,

GPA Midstream Association ("GPA Midstream") appreciates the opportunity to provide you with our comments on potential regulatory reforms to promote and preserve the country's vital infrastructure. We believe these reforms would promote the continued growth and development of essential American energy infrastructure. In particular, our comments raise three specific areas where regulatory reform could remove significant inhibitions on infrastructure development.

First, the U.S. Bureau of Land Management's recent regulations, replacing Onshore Order Nos. 3, 4, and 5 governing how oil and gas production from Federal and Indian lands is measured and secured, will impose needless equipment costs on the midstream industry without raising any additional royalty revenue for the United States. GPA Midstream believes these rules should be rescinded or significantly revised.

Second, proposed regulations by the Pipeline and Hazardous Materials Safety Administration ("PHMSA") threaten to impose substantial costs and burdens on onshore oil and gas gathering lines vital to moving crude oil, natural gas liquids, and natural gas to consumer markets. PHMSA is pursuing these regulations despite admitting that the agency has no data indicating that the proposed rules would lead to any public safety benefits. GPA Midstream believes that PHMSA should withdraw the proposed rules and, as discussed in more detail below, provide recommendations to Congress pursuant to current pipeline safety laws before attempting similar regulation in the future.

Third, States are exploiting loopholes in the Clean Water Act to block interstate natural gas pipeline projects for political reasons. This abuse of the Clean Water Act has now become one of the most potent obstructions to interstate infrastructure development. GPA Midstream

believes that a modest reform to the Natural Gas Act or the Clean Water Act could prevent States from blockading infrastructure projects deemed to be in national interest.

GPA Midstream has served the U.S. energy industry since 1921. Its membership, consisting of close to 100 corporations, are engaged in the gathering, processing, commonly referred to in the industry as “midstream activities.” These activities include the removal of impurities from raw gas to create merchantable pipeline gas, the extraction for sale of natural gas liquid products such as ethane, propane, butane, and natural gasoline, and the processing, transportation, and storage of crude oil. The infrastructure constructed and maintained by our members is vital to ensuring that Americans benefit from the technologies that have made our country one of the top producers of oil and gas in the world. This infrastructure, however, requires consistent growth and maintenance. This letter discusses three instances of regulatory barriers that impose unnecessary costs, delays, and complications that restrain midstream infrastructure development.

I. Regulations Replacing Onshore Order Nos. 3, 4, and 5 Should be Rescinded or Significantly Revised

A. Background

In late 2016, the U.S. Bureau of Land Management (“BLM”) issued regulations revising and replacing Onshore Order Nos. 3, 4, and 5. 81 Fed. Reg. 81,356, 81,358 (Nov. 17, 2016); 81 Fed. Reg. 81,462 (Nov. 17, 2016); 81 Fed. Reg. 81,516 (Nov. 17, 2016). These orders, dating back to 1989, are relatively obscure and BLM’s replacement of them has attracted virtually no scrutiny despite the Administration’s efforts to revise or rescind inefficient, unnecessary, or wasteful regulations. Onshore Order No. 3 establishes site security standards for oil and gas leases on Federal and Indian lands to prevent theft and loss and enable the accurate measurement of production. Onshore Order Nos. 4 and 5 established minimum standards for the accurate measurement of oil production and gas production, respectively, from Federal and Indian lands.

For years, internal Department of Interior bodies, the Government Accountability Office (“GAO”) and the Department of the Interior’s Inspector General have criticized BLM’s oil and gas program for its inability to ensure the full collection of royalty revenue. For instance, a 2007 report from the Secretary of Interior’s Subcommittee on Royalty Management criticized BLM’s various guidance documents on production accountability as outdated and inconsistent with some 31 field offices adhering to different policies, including those issued on their own. 80 Fed. Reg. 40,768, 40,769 (July 13, 2015). The GAO, through reviews in 2010, 2013, and 2015, identified a similar lack of clear BLM policies to ensure the accurate measurement and reporting of production, leading GAO to include the oil and gas program on its High Risk List in reports to congressional committees. *Id.* at 40,769-70. A recent GAO report found that, even after ten years of scrutiny, the program suffers from frequent turnover, understaffing, and poor training. GAO, Report to Congressional Committees, High-Risk Series, Progress on Many High Risk Areas,

While Substantial Efforts Needed on Others, GAO-17-316 at 136-38 (Feb. 2017). BLM itself has admitted that the program is disorganized and poorly managed. *See* 80 Fed. Reg. at 40,770 (“BLM inspectors sometimes drive out to remote locations to witness calibrations on meters that they believed were measuring production for purposes of determining royalty when, in fact, they were not. The inspectors may not discover the discrepancies until months or even years later, during audits when operators submit their production accountability paperwork and the meter information does not match.”); 81 Fed. Reg. 81,356, 81,358 (Nov. 17, 2016) (“For example ... it is not uncommon for a BLM inspector, a lease operator, and field employees to all have different understandings of where the point of royalty measurement is on a given lease....”). Instead of reforming the multiple deficiencies in the oil and gas program, BLM responded by imposing new and unnecessary requirements on industry. In November 2016, BLM issued the three new regulations referenced above to replace and repeal Onshore Order Nos. 3, 4, and 5.

B. The “Facility Measurement Point” Mandate

The replacement for Onshore Order No. 3, 81 Fed. Reg. 81,356 (Nov. 17, 2016), imposed a mandate for operators, purchasers, and transporters to include new Facility Measurement Point (“FMP”) numbers on all records. *See* 43 C.F.R. § 3170.7(g). This FMP requirement is significant. The BLM established the FMPs as 11-character, alphanumeric tag names. As originally proposed, companies would have been required to input the FMP into flow computers (at least one flow computer per well). After our members pointed out there were no flow computers capable of inputting an 11-character, alphanumeric tag, BLM removed that portion of the requirement.¹ However, the BLM still expects all producers to apply for a new FMP for all existing and new wells and measurement facilities – a requirement that increases the cost for all producers and yields no benefit to anyone other than BLM, and only because BLM has not kept an up-to-date database of royalty measurement systems. Producers have so many applications to fill out that on the first day applications could be submitted, the volume of applications shut down BLM’s website.

Again, to its credit, in its final rule, the BLM added a provision “to allow lessees, operators, purchasers and transporters, as an alternative, to use the lease, unit PA, or CA number, along with a unique equipment identifier, on their records.” 81 Fed. Reg. at 81,374. Although this alternative will be valuable to the midstream industry, it merely lightens the burden instead of eliminating it because the process of gathering the necessary information to obtain an FMP will still be an onerous duty. More importantly, imposing additional paperwork obligations of any sort will neither resolve BLM’s history of dysfunctional management nor lead to higher royalty revenues for the United States. Instead, it merely requires transporters and operators to

¹ A flow computer is similar to the water meter on the side of a house or the speedometer of a car. Flow computers use software programs to calculate the volume and mass of oil, gas, or natural gas liquids passing through a certain point.

provide information that BLM already has but fails to manage properly.² GPA Midstream believes that this rule, or at least the FMP requirements within it, should be rescinded.

C. The Metering Equipment Mandates Should Be Rescinded or Revised

BLM issued two other final rules, 81 Fed. Reg. 81,462 (Nov. 17, 2016) and 81 Fed. Reg. 81,516 (Nov. 17, 2016), to replace Onshore Order No. 4 (measurement of oil produced from Federal and Indian lands) and Onshore Order No. 5 (measurement of gas produced from Federal and Indian lands), respectively. As part of these new rules, BLM will eventually issue a list of approved hardware and software for oil and gas metering purposes by make, model, size, or software version. Transporters and operators may only use the BLM-approved equipment. To date, BLM has not developed this list. Once BLM creates this list, many operators may have to discard their existing metering equipment, even though the existing equipment is perfectly functional and accurate, and purchase BLM-approved equipment.

This type of top-down, one size fits all approach is precisely the type of excessive regulation that calls out for reform. Under the new rules, midstream companies have no way of knowing whether their current equipment will be “BLM-approved.” According to the final rule, BLM will create a “Production Measurement Team” to review and approve new measurement technologies that it believes to be reliable and accurate for nationwide use. The rule does not state who will be a part of the Production Measurement Team,³ what criteria it will use to select measurement technologies, or whether industry will be able to comment on the criteria. As written, the rule appears to delegate rulemaking authority to a committee of unknown individuals with unknown qualifications to develop standards inside a black box without clear direction from BLM management or any process for input from industry stakeholders. The rules do allow some possibility for some midstream companies to continue to use their existing equipment. However, the final rules’ method of making this determination creates significant uncertainty. At some point in the unspecified future, the Production Management Team will incorporate undisclosed relative density calculations into an existing gas “uncertainty calculator”⁴ and create a new oil

² BLM has no database for oil and gas wells on Federal and Indian lands. Thus, the regulations to replace Onshore Order No. 3 effectively impose expensive recordkeeping obligations on transporters and producers when it could create and manage a simple and effective database at a small fraction of the cost to industry.

³ The final rule stated only that the Production Measurement Team will *not* include Interior’s existing Oil and Gas Measurement Team that already has experience in this field. 81 Fed. Reg. at 81,464, n. 10; 81 Fed. Reg. 81519, n. 6. BLM never explained why it would create a new, separate, and redundant group for this purpose instead of relying on existing BLM resources.

⁴ In the final rulemaking for regulations replacing Onshore Order No. 4, BLM disagreed with the numerous comments objecting that these relative density calculations were never made publicly available while simultaneously admitting that “existing and previous versions of the uncertainty calculator do not account for the effects of relative density uncertainty because these effects have not been quantified.” 81 Fed. Reg. at 81,544.

uncertainty calculator.⁵ These uncertainty calculators will then judge whether BLM “could” approve existing measurement equipment. 81 Fed. Reg. at 81,464.

In all likelihood, industry will have to replace functional and accurate metering equipment, although neither BLM nor midstream companies know what type of equipment will be required. Such mass replacement of functional and accurate equipment is wasteful and arbitrary, requiring midstream companies to expend time and money to install new systems, resulting in operational delays. Yet, BLM provides no real rationale for these arbitrary costs and burdens. The final rules are driven by an underlying assumption that new equipment must be superior to existing equipment. In fact, BLM never provides any analysis of current equipment used by industry, much less makes any determination that this equipment is inaccurate or unreliable. Moreover, nothing in BLM’s economic analysis of the rule states it will actually serve to generate additional royalty revenues. Thus, there is no benefit at all to the United States as a royalty owner.

Instead, BLM’s sole purpose for imposing new costs and burdens on industry appears to have been to deflect the sustained criticism of its oil and gas program. While GAO reports have identified several shortcomings in how BLM manages its own policies, information, and staffing, GAO has not placed the blame on the metering equipment used by industry. In fact, the most recent GAO report released in February 2017 – issued four months *after* BLM published these final rules – stated that BLM was still *studying* the question of whether changes to metering system could improve data collection efficiency. *See* GAO, Report to Congressional Committees, High-Risk Series, Progress on Many High Risk Areas, While Substantial Efforts Needed on Others, GAO-17-316 (Feb. 2017) at 139-140. Even then, increasing data collection efficiency is not the same as realizing greater royalty revenues.

In short, BLM’s regulations are ripe for reform, before the rules impose these clear and undue burdens. Accordingly, GPA Midstream submits either the measurement equipment standards should either be repealed or revised to include a “grandfather” provision allowing companies to continue using existing equipment to allow replacement over time in the ordinary course of business.

II. PHMSA Proposal to Regulate Onshore Gas Gathering Lines Should be Withdrawn

The Obama Administration proposed new PHMSA regulations that would impose new and extensive burdens on gathering pipelines. 81 Fed. Reg. 20,722 (April 8, 2016). The comment period has closed on the proposal, and PHMSA is still in the process of deciding how

⁵ BLM estimates that it will take it two years to develop the oil uncertainty calculator, however, there are no deadlines committing it to meet this aspirational goal and unforeseen technical complications could extend the process even further. 81 Fed. Reg. at 81,464. Further, the Production Measurement Team is unfunded and it is not known whether it will ever begin work.

to proceed. GPA Midstream urges that as a matter of regulatory reform the proposed rulemaking should be formally withdrawn. If finalized, the proposed rules would substantially hinder the ability of oil and gas producers to transport their products from shale plays to downstream processing and refining operations, as well as impose significant and unjustifiable costs on the industry.

A. Background

Gathering lines are relatively small, low-pressure, intrastate pipelines that transport oil or gas directly from the wellhead downstream for collection and processing. The lines may be constructed of steel or plastic composites and, unlike large interstate pipelines, must be expanded and modified on a relatively frequent basis to keep up with area oil and gas drilling. Only about 10% of these lines meet the definition of a PHMSA “regulated” onshore gathering line. *See* 49 C.F.R. § 192.8(b) (defining “Type A” and “Type B” based on their construction material, pressure, and location).⁶ State agencies regulate the remaining majority of gathering lines. GPA Midstream members own and operate hundreds of thousands of miles of gathering lines, representing over 90 percent of all gathering lines in the United States.

B. PHMSA’s burdensome proposed reporting requirements should be removed from the proposed rule

The proposed rule would substantially expand PHMSA’s authority over gathering lines to such a degree that it is colloquially referred to as the “Mega Rule.” GPA Midstream has many concerns with the proposed rulemaking, which it detailed in its comments to PHMSA. *See* GPA Midstream Association Comments on Proposed Rule on Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines (July 6, 2017) (“GPA PHMSA Comments”) (attached to this letter). However, GPA Midstream’s most significant concern is PHMSA’s proposal to expand its regulatory authority to require expensive and burdensome reporting requirements without statutory authority, any coherent rationale, or an accurate understanding of the costs.

1. Congress intended PHMSA to exercise limited and risk-based regulation of onshore gathering lines

Congress charged PHMSA with formulating practicable regulations based on risk, as determined by pipeline safety data. *See* 49 U.S.C. §§ 60102(b); 60117(b)(2) (gathering line owners and operators must provide PHMSA information allowing it to determine whether and how gathering lines should be federally regulated). Given the history of States primarily regulating gathering lines, the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 required PHMSA to take several specific actions before it could issue any additional onshore gathering line regulations. Pub. L. No. 112-90 (Jan. 3, 2012). Specifically, PHMSA had

⁶ PHMSA pipeline regulations are highly technical in nature. This letter discusses the PHMSA proposed rule only in broad strokes so as to avoid, as much as possible, technical jargon and minutiae. Should you require more detailed information, GPA Midstream would be pleased to provide you with our comments on the PHMSA proposed rule and discuss the matter personally.

to perform an additional review of existing regulations and provide its findings and recommendations in a report to Congress. *Id.* § 21(b). Those recommendations had to specify, among other things, the economic and technical impacts of applying existing federal gathering line regulations to unregulated lines and a comparison of the costs to the public safety benefits. *Id.* § 21(b)(2)(B). In May 2015, PHMSA finally delivered a summary of existing regulations to Congress, but declined to provide any recommendations on the need for additional gathering line regulations. Instead, PHMSA ignored the 2011 legislation and issued the proposed rulemaking one year later.

2. PHMSA’s proposed reporting requirements

The proposed rule would expand PHMSA regulations over “Type A” gathering lines in Class 1 areas where those lines are greater than eight inches in diameter and operate at a pressure greater or equal to 20 percent of the line’s specific minimum yield strength. This is a substantial portion of currently “unregulated” gathering lines. The proposed rule would subject these lines to annual, incident, and safety-related condition reporting under 49 C.F.R., Part 191 with some exceptions. The Part 191 reporting requires the midstream industry to collect a significant amount of information that, in many instances, was never recorded or unavailable. For instance, due to their very low risk and unregulated nature, many of these gathering lines do not have complete records for wall thickness, outside diameter, yield strength, pressure testing results, and other design and construction parameters needed for compliance as they were either not recorded or that information was not transferred through mergers or acquisitions. Finding this data, to the extent it exists, could take many thousands of hours for the industry – and which the proposal would require to be done in six months.

Moreover, if this information does not exist in existing records, then collecting this information for the first time would involve enormous costs. As proposed, the rule would require the midstream industry to perform testing for the maximum allowable operating pressure (“MAOP”) on some 239,000 miles of previously unregulated gathering lines. By applying its demanding “reliable, traceable, verifiable, and complete” standard for record keeping – a standard usually reserved for “High Consequence Areas” – PHMSA seems to expect midstream companies to physically excavate gathering lines in order to obtain necessary reporting information.

3. PHMSA has grossly underestimated the costs and burdens its proposal would impose on the midstream sector

PHMSA sought to justify the proposed rulemaking by grossly underestimating the costs and overestimating the benefits. For instance, PHMSA’s Preliminary Regulatory Impact Assessment (“RIA”)⁷ completely excludes the cost to search records to find existing information needed to comply with reporting requirements. Although it does consider the “one time” costs of MAOP testing and excavation (referred to as “direct assessments”), it greatly underestimates these costs. PHMSA appeared to assume that, because an operator already has regulated pipelines, reporting on another 332,000 miles of pipeline will be at a minimal cost of \$5.06 per

⁷ PHMSA, Preliminary Regulatory Impact Assessment, Notice of Proposed Rulemaking – Pipeline Safety: Safety of Gas Transmission and Gathering Pipelines (Mar. 2016).

mile. Not only is this underestimated, but PHMSA entirely excludes the reporting costs for the remaining non-regulated 266,526 miles of gathering lines, which PHMSA inexplicably estimated to cost \$0.08 per mile. Based on information from GPA Midstream members, actual costs could run anywhere from \$187 per mile to nearly \$1,000 per mile, depending on the widely varying circumstances surrounding the gathering lines. *See* GPA PHMSA Comments at 23-24. This means that these costs will be several billion dollars, not a few million as PHMSA believes. PHMSA's RIA, in calculating the projected 15-year annualized cost, also seems to believe that gathering lines are relatively static in nature. It failed to understand that, with increased drilling activity, new gathering lines must be constructed or extended. With each build out of new gathering lines, the costs of compliance increase, but PHMSA never considered these costs.

4. PHMSA has failed to justify the proposed requirements – despite the clear direction by the Congress

Even if these costs and burdens were insignificant, PHMSA failed to identify any safety benefits to the public. PHMSA failed principally because it lacked relevant data – and then, rather than exercising its authority to gather data, the agency chose to make inaccurate assumptions and draw invalid conclusions from that inapt data.

In order for the RIA to show the proposed regulations as producing a benefit, PHMSA begins with its concern that gathering lines are being constructed in larger diameter and operating under higher pressures than in the past. It then assumes, without any data in support, that using pipelines that can accommodate higher pressure always creates a higher risk, even if gathering lines are routinely operated at a small fraction of that pressure. Despite the proclaimed concern about larger, high pressure gathering lines, PHMSA arbitrarily decided to regulate relatively small eight inch gathering lines operating at only 20% of specific maximum yield strength or more. The proposed rule attempted to justify these parameters by citing to a total of *three* incidents involving onshore gathering lines. Yet, even this meager sample of anecdotes fails to support PHMSA's rationale as two of the three involved excavation incidents – an issue not addressed by the proposed rulemaking. Further, solely on the basis that unregulated gathering lines are not regulated by the federal government, PHMSA assumed that relatively small, low pressure gathering lines actually have a *higher* incident safety rate than large, high pressure regulated transmission lines. RIA at 144. It did this despite admitting “PHMSA has no data upon which to establish ... baseline performance directly.” *Id.* PHMSA has the authority to gather this information from unregulated onshore gathering lines but chose not to exercise it. Therefore, GPA Midstream and other industry representatives provided PHMSA with safety incident data. This data not only demonstrated that unregulated onshore gathering line incidents are three times *lower* than transmission line incidents, but the number of safety incidents are declining. *See* GPA PHMSA Comments at 20.⁸ Instead of using the available safety incident information, PHMSA

⁸ This speaks only to the number of incidents, not their magnitude. A high volume, large diameter, high pressure transmission line has the potential to cause a significant impact during an incident. Unregulated onshore gathering lines are lower in volume, smaller in diameter, and have lower operating pressures. Even when these gathering lines suffer an incident, their potential impact radius is much smaller.

chose to rely upon thin anecdotes and baseless assumptions, effectively assuming a problem into existence. PHMSA has no actual data indicating that the proposed regulations will lead to any safety benefits to the public.

This unwarranted extension of PHMSA regulatory authority – at great cost and with no documented benefits – is a prime example of government regulation that should be stopped before it goes into effect. Yet, the proposed reporting obligation is only one of the proposed rulemaking’s defects that needlessly burdens energy infrastructure development with no corresponding benefit to the public. GPA Midstream’s comments explain in more detail how several other aspects of the rule are contrary to PHMSA’s authorizing legislation, impractical, inordinately expensive, and inhibit midstream functionality.⁹ Sensible regulatory reform would require PHMSA to withdraw this proposal – and acknowledge that it must first provide the required report to Congress before proceeding with a new proposal. Moreover, PHMSA should not propose any other regulation of onshore gathering lines until it fulfills its obligation to provide a report of recommended actions to Congress, as required by the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011.

III. State Impediments to Natural Gas Pipeline Projects

In order to take full advantage of America’s shale energy revolution, it is critical that new natural gas pipelines be constructed to transport new oil and gas production to customers and other end users. Without these pipelines, existing oil and gas wells must be shut in, new ones are never developed, and the country’s ability to meet its own energy needs suffers as a result. Despite this necessity, some states – those flatly opposed to any fossil fuel development – have exploited a loophole in the Clean Water Act to delay or outright veto the construction of new oil and gas infrastructure.

Section 401 of the Clean Water Act obliges States to certify that proposed projects which would discharge pollutants into federal waters within State borders (primarily dirt and sediment during construction activities) will comply with water quality standards. 33 U.S.C. § 1341. These water quality standards are proposed by the State and approved by the U.S. Environmental Protection Agency (“EPA”), making them federal in nature and enforceable through the Clean Water Act. Under Section 401, States must grant or deny an application for a Water Quality Certification “within a reasonable period of time (which shall not exceed one year)....” *Id.* § 1341(a)(1). If States do nothing before this time period expires, they waive the ability to grant or

⁹ As just one example, the proposed rulemaking would effectively eliminate the use of non-metallic pipeline materials, such as composites or polyethylene. These materials are indispensable for certain types of gathering lines due to their invulnerability to internal corrosion. They allow for the gathering of highly corrosive products such as aromatic hydrocarbons, hydrogen sulfide, carbon dioxide, and acidic brines. PHMSA proposed to eliminate these gathering lines without any evidence of public safety benefits. Further, it provided no discussion as to what materials could replace these anti-corrosive composites.

deny a Water Quality Certification and the project proponent may proceed with construction provided that it has obtained all other necessary approvals.

States have found several ways to exploit Section 401 in order to delay projects indefinitely or to block them outright without a legitimate basis. Many of the tactics we have observed include refusing to acknowledge that an application for a Water Quality Certificate is “complete” while either continuously demanding additional information or refusing to communicate with project sponsors for months on end. In some instances, after project sponsors have expended millions of dollars in additional environmental reviews and studies, States have only conceded that an application is “complete” after several years have passed. Objections to these practices are frequently met with threats to immediately deny applications. Other States have taken an extremely broad view of the Water Quality Certificate process. Instead of limiting their review to EPA-approved water quality standards, States have demanded the right to impose conditions on the project with respect to a wide array of other environmental issues, including wetlands, state-listed threatened or endangered species, soil compaction, noise, forest fragmentation, and other matters.

Where projects are constructed pursuant to the Natural Gas Act, project sponsors may appeal these improper practices to the U.S. Circuit Courts of Appeals. 15 U.S.C. § 717r. Unfortunately, this remedy has been wholly ineffective. For one, courts have not provided any relief when States have unlawfully delayed granting or denying a Water Quality Certificate application. Instead, the D.C. Circuit ruled that project sponsors have no standing to enforce their rights. *See Weaver’s Cove Energy v. Rhode Island Dep’t of Env’tl Mgmt*, 524 F.3d 1330 (D.C. Cir. 2008); *Millennium Pipeline Co., LLC v. Seggos*, Case No. 16-1415 (D.C. Cir. June 23, 2017). The court’s rationale in both cases has been that, if the pipeline companies are correct and that State agencies waived the right to grant or deny an application, then they are not harmed by the waiver and may begin construction immediately. Of course, given that these State agencies obviously disagree on this question, these decisions put companies in an untenable position: they may only have a court determine that the State waived its rights *after* the company has begun construction and the State brings civil or criminal charges and shuts down the operation.

Nor have courts provided relief when a State finally acts and denies an application. Although companies may appeal the State’s decision to a federal appeals court, the courts review the State’s action under the very deferential arbitrary and capricious standard. *E.g., Islander East Pipeline Co. v. McCarthy*, 525 F.3d 141 (2d Cir. 2008). This allows States to provide very little in the way of an official justification for denials and still pass judicial scrutiny. This is often necessary because the denials are frequently pre-textual and subservient to political or parochial considerations. For instance, New York Governor Andrew Cuomo, in his “State of the State” publication declared that “the State must double down by investing in the fight against dirty fossil fuels and fracked gas from neighboring states to achieve the goals outlined in the

Governor's Clean Energy Standard.”¹⁰ New York has denied or unlawfully delayed a Water Quality Certification for every new project transporting hydraulically fractured shale gas from neighboring Pennsylvania. These practices put parochial politics over the nation's infrastructure and energy needs.

GPA Midstream supports common sense reform in order to prevent these types of abuses. Legislative reforms could include minor changes clarifying that a State's time to begin review of an application begins upon receipt of an application (instead of a “complete” application) and confirming that a State's Water Quality Certificate review are restricted to EPA-approved water quality standards. Such common sense reforms will prevent recalcitrant States from putting their own narrow interests ahead of the national interest in promoting energy infrastructure that is essential for economic growth and provides American jobs.

GPA Midstream appreciates the opportunity to share our insights and ideas relating to infrastructure improvements as you work on improving our nation's infrastructure. If you have additional questions or if I can be of further assistance, please feel free to contact me at (202)279-1664 or by email at mhite@GPAglobal.org.

Respectfully Submitted,

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¹⁰ Andrew M. Cuomo, 2017 State of the State at 57-58, *available at*, www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2017StateoftheStateBook.pdf