

November 26, 2013
Draft Guidelines and Procedures
for Administering the 2012 Secretarial Potash Order

The Bureau of Land Management Carlsbad Field Office seeks public comment on these proposed Guidelines and Procedures for Administering the 2012 Secretarial Potash Order. The BLM welcomes written, individualized comments of a factual nature on issues related to the implementation of the 2012 Secretarial Potash Order through these Guidelines and Procedures on or before December 31, 2013. Comments should be addressed to: ATTN: Potash Guideline Comments, James Stovall, Pecos District Manager, 620 E. Greene St., Carlsbad, NM 88220-6292.

Guidelines and Procedures
for Administering the 2012 Secretarial Potash Order

These guidelines apply to oil, gas, and potash leasing and development within the Designated Potash Area in Eddy and Lea Counties, New Mexico, as described in the 2012 Secretarial Potash Order, § 8.

I. Definitions

In addition to those definitions provided in the 2012 Secretarial Potash Order, § 4, the following definitions apply to these Guidelines and Procedures:

Active Workings or Mining Operations - All places in a mine that are ventilated and inspected regularly. Active Workings or Mining Operations include Active Mining Areas and all other workings that are needed for access, ventilation, infrastructure, and the servicing of the Active Mining Areas.

Active Mining Area - The area, on and beneath land, used or disturbed in activity related to the extraction, removal, or recovery of minerals or rock from its natural deposits. This term excludes preparation plants, areas associated with preparation plants and post-mining areas.

Abandoned Mine Workings - Excavations, either caved or sealed, that are deserted and in which further mining is not intended.

Gas Well - A Gas Well, as referenced in the 2012 Secretarial Potash Order and within these guidelines, is any well that penetrates the base of the Second Bone Spring Sandstone member of the Bone Spring Formation. The base of the Second Bone Spring Sandstone is encountered at a depth of 10,585 feet in the Devon Energy – Todd Federal 14 No. 1, API No. 30-015-20298 located in the NE/4 of SW/4, Section 14, T23S, R31E.

Oil Well - An Oil Well, as referenced in the 2012 Secretarial Potash Order and within these guidelines, is a well not penetrating the base of the Second Bone Spring Sandstone member of the Bone Spring ; however, the BLM may approve, as an oil well, a rat hole drilled 50 feet or less below the base of the Second Bone Spring Sandstone for the purpose of logging. The base of the Second Bone Spring Sandstone is encountered at a depth of 10,585 feet in the Devon Energy – Todd Federal 14 No. 1, API No. 30-015-20298 located in the NE/4 of SW/4, Section 14, T23S, R31E.

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Open Mine Workings - All underground mine workings that have an opening, large or small, and that are interconnected with other mine openings. Open Mine Workings include Active Mining Areas, Active Workings, and Abandoned Mine Workings.

Stranded Area - A lease, portion of a lease, or unleased area that cannot be drilled using available technology in the Permian Basin.

Three-Year Mine Plan – A Three-Year Mine Plan identifies all potash mining operations that will be conducted within three years.

II. Development Areas

Development Areas are established by the BLM and can be located anywhere within the Secretary's Potash Area. They are generally required to be established in areas of measured reserves, areas with indicated and inferred resources, and areas of unknown mineralization before a new well can be drilled.

Development Areas may include oil and gas leases on Federal, State and private lands. A Development Area may include all or part of an existing lease, unit, communitization area or other boundary. Development Areas will be established with the intent of supporting the effective development of oil and gas resources from the available Drilling Island(s) while managing the impact on potash resources.

A. Initiating the Establishment of a Development Area

A Development Area may be initiated by:

- The BLM. The BLM may initiate the establishment of a Development Area at any time.
- An applicant with an interest in the affected area. The BLM requires applicants consult with potentially affected mineral-rights holders prior to submitting a proposal for a Development Area to the BLM.

The BLM (in the case of a BLM-initiated process) or the Applicant (in the case of an applicant-initiated process) must provide notice to lessees and mineral rights owners with rights in or adjacent to the area proposed as a Development Area. Affected lessees and mineral rights owners have 30 days from the receipt of notice to provide comments on proposed Development Areas. There may be rare situations when the BLM may establish a Development Area without notice to all parties, such as when the BLM determines that potash lessees are not likely to be affected by the Development Area (for instance, in barren areas).

B. Procedures for Reviewing Proposed Development Areas

Certain principles will guide the BLM's consideration of any proposed Development Area. When establishing a Development Area, the BLM may:

- In most cases, establish Development Areas near open mine workings and areas designated in three-year mine plans prior to outlying areas. This allows greater flexibility for the

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- establishment of Development Areas under open mine workings and areas to be mined in the near future. However, the BLM may establish Development Areas in locations far removed from existing mines at any time.
- Consider oil and gas leases under areas restricted from drilling for any reason for inclusion in a Development Area. This may require creating larger Development Areas, even though they are farther removed from mining operations. It is the BLM's intention to limit the number of stranded areas in the Secretary's Potash Area no matter where they occur.
 - Strive to maximize the number of leases included within a Development Area.
 - Site Development Areas around locations available for Drilling Islands.
 - Generally designate one Drilling Island per Development Area; however, this will depend on the size, shape, and geologic features of the Development Area. In certain cases more than one Drilling Island may be designated per Development Area.
 - Establish the orientation of a Development Area such that oil and gas development can be accomplished under areas not open to vertical drilling.
 - Generally make Development Areas rectangular in configuration. Example: 2 miles by 4 miles or 2 miles by 3 miles.
 - Make the Development Areas larger when closer to the mines.
 - Consider timely comments from lessees, permittees, operators, owners or applicants whose rights in or adjacent to the area proposed as a Development Area may be affected.

The BLM may consider the following criteria, none of which are dispositive, when establishing a Development Area:

- Comments from affected lessees and operators.
- Locations allowing effective extraction of oil and gas resources while managing the impact on potash resources.
- Locations of existing Drilling Islands.
- Locations of potential Drilling Islands.
- Locations, size and shape of oil and gas leases.
- Locations of existing oil and gas wells.
- Three year mine plans.
- Long term exploration and mining plans provided by the potash industry.
- Locations of open mine workings.
- Locations of abandoned mine workings.
- Locations of solution mining activities.
- Locations of buffer zones .
- Locations of known geological structures, such as dikes, sills, faults, that would inhibit drilling.
- Locations of surface constraints, such as designated wildlife habitat, right-of-way corridors, buildings, and watersheds.
- Access corridors for mining when moving between ore bodies, mining areas or leases.
- The limits of available drilling and completion technology in the Permian Basin.

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C. Effective Date of Development Areas

The effective date of a Development Area, the date upon which drilling in the Development Area with an approved APD will be allowed, will be the first day following the effective date of an operating agreement for the Development Area that provides development opportunities for all mineral owners. The Authorized Officer retains discretion to permit exceptions.

D. Areas Where Drilling May Occur Outside of a Designated Development Area

At the Authorized Officer's discretion, the BLM may permit wells outside of an established Development Area in:

- Large areas known to be barren of mineralization.
- Areas where an individual lease can be developed in such a way as not to block other leases from development.
- Areas that the Authorized Officer deems highly developed for oil and gas, where drilling additional wells would not result in undue waste of potash deposits.

E. Treatment of Existing Wells Within Development Areas

Development Areas may include existing oil and gas wells that are not part of a Drilling Island established for the Development Area. These existing wells can operate as approved prior to the establishment of the Development Area and will not be required to comply with guidelines concerning participation agreements within the Development Area. These wells will not be converted into additional Drilling Islands unless the BLM determines that no undue waste of potash deposits will occur, the new Drilling Island will not adversely affect active or planned potash mining operations in the immediate vicinity, and the additional Drilling Island will promote the safe, orderly co-development of oil, gas, and potash resources.

F. Stranded Leases, Drainage, and Suspensions within Development Areas

Some areas within the boundaries of the Designated Potash Area are not accessible for oil and gas development within the limits of current horizontal drilling technology. These areas are primarily under open mine workings and within one mile of a three-year mine plan. Development Areas will not include these areas, unless deemed necessary to protect the undrilled portion of a lease from drainage. Drainage issues may be referred to the State of New Mexico Oil Conservation Division for consideration in accordance with its spacing rules.

Leases (or portions of a lease) that cannot be produced from a Development Area can be placed in suspense until such time as the lease can be produced. Development of the lease may occur when new technology permits or when the Authorized Officer finds that drilling a well will promote safe, orderly co-development of oil, gas and potash resources.

G. Modifying the Boundaries of an Established Development Area

The boundaries of an established Development Area will remain unchanged unless the Authorized Officer determines exceptional circumstances exist such that a change will benefit resource management. Changes to established Development Areas can be initiated by the BLM or by an applicant, in accordance with the criteria and principles applicable to establishing Development Areas.

III. Drilling Islands

The BLM will establish Drilling Islands prior to or concurrent with the designation of an associated Development Area. In limited cases, the BLM may establish a Drilling Island outside of a Development Area. In most cases, Development Areas will have a single Drilling Island.

When establishing a Drilling Island, the BLM may consider the criteria and principles associated with establishing a Development Area. In addition, the BLM may consider:

- Locations where no undue waste of potash deposits would occur because of prior resource development activities.
- Locations where there would be no impacts to potash.
- Locations that are barren of potash mineralization.
- Locations that contain lower-grade potash mineralization.
- Potential subsidence from open mine workings.
- The accuracy of the maps of potash resources.

When establishing a Drilling Island, the BLM will:

- Consider comments from affected oil and gas lessees, operators, and potash lessees.
- In cases where a proposed Drilling Island would be located outside of a Development Area, consider the joint recommendation, or lack thereof, of affected oil, gas and potash lessee(s).
- Make the Drilling Island as small as practicable, allowing effective oil and gas development while managing the impact on potash resources.
- Determine who the operator(s) of the Development Area will be. When possible, Drilling Islands will be designed to facilitate multiple operators.
- Develop stipulations and conditions on how the Drilling Island will be developed. These stipulations may include only allowing one operator to drill at a particular time.
- Approve APDs such that use of the Drilling Island can be effectively managed.
- Require an operating agreement as provided in Section III.C. that provides development opportunities for all mineral owners within the Development Area. This requirement is intended to reduce operational conflicts.
- Notify affected lessees and mineral owners.

Upon designating or modifying a Drilling Island, the BLM will issue a Notice to Lessees in the associated Development Area informing the lessees that future drilling within the Development Area will only be from the designated Drilling Island. Once a Drilling Island is established, it will not be modified, except in

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exceptional circumstances and at the discretion of the Authorized Officer in accordance with the criteria for establishing a Drilling Island.

IV. Mine Plans

All mine operators must submit a mining and reclamation plan as required by 43 CFR Part 3592. This mining and reclamation plan includes all life-of-mine plans. A separate Three-Year Mine Plan, required by the 2012 Secretarial Potash Order, identifies all potash mining operations that will be conducted within three years. Potash mine operators shall submit these plans annually for approval by the BLM. The BLM will review the plans, make changes as required, and approve the plans for use.

Three-Year Mine Plans shall be submitted annually on or before March 1. Supplemental plans may be submitted at any time for informational purposes. Three-year mine plans shall identify all mining conducted in the past, all active mine areas and all mining activities that are projected for the next three years. The submitted plan can include mining activities projected for a period greater than three years, but the plan must clearly distinguish mining activities that are projected to occur within three years from mining activities that are projected to occur more than three years into the future. Only the three-year projection will be used to determine the one-mile buffer. The BLM may use the additional data to help identify possible locations for Drilling Islands while managing impacts on resources. Three-year Mine Plans may be submitted more than once a year if significant changes occur in mine planning.

V. Buffer Zones

Buffer zones are established and maintained by the BLM and will be reviewed at least annually. The Authorized Officer may adjust the Buffer Zones in individual cases when the facts and circumstances demonstrate that such adjustment would enhance conservation and will not compromise safety.

Buffer zones around oil wells or Drilling Islands containing only oil wells – An initial ¼-mile buffer zone will be established around all operating oil wells. Potash mining will not be allowed within the buffer zone unless the Authorized Officer determines that adjustment of the buffer zone would enhance conservation and will not compromise safety and mining within the buffer zone will not cause geologic forces generated by mining to damage the well.

Buffer zones around gas wells or Drilling Islands containing gas wells– An initial ½-mile buffer zone will be established around all operating gas wells. Potash mining will not be allowed within the buffer zone unless the Authorized Officer determines that adjustment of the buffer zone would enhance conservation and will not compromise safety and mining within the buffer zone will not cause geologic forces generated by mining to damage the well.

Buffer zones around plugged and abandoned wells. Buffer zones may be reduced for plugged and abandoned wells that the Authorized Officer determines are adequately plugged and abandoned. For such wells, the buffer zone may be reduced to 200 feet or less surrounding the well at the discretion of the Authorized Officer.

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Buffer Zones around Three-year Mine Plans – The BLM will establish an initial one-mile buffer zone in which Drilling Islands will not be established around those areas where approved potash mining operations will be conducted within three years consistent with the Three-Year Mine Plan submitted by a potash mine operator in accordance with Section 6.d.(8) of the Potash Order. The Authorized Officer may establish a Drilling Island within this one-mile buffer with the consent of the affected potash mine operator or lessee. The one-mile buffer will not extend into known barren areas more than ¼-mile from any oil well or ½-mile from any gas well.

Buffer zones around open mine workings. – An initial ¼-mile buffer and ½-mile buffer will be established around open mine workings. No new oil or gas wells will be drilled within a ¼-mile buffer zone measured from the edge of open mine workings. Between ¼ mile and ½ mile of the edge of open mine workings, Drilling Islands may be established for oil wells. Beyond the ½-mile buffer zone measured from the edge of open mine workings, Drilling Islands may be established for oil and gas wells. Those portions of open mine workings that cannot be separated from a Three-Year Mine Plan because they are used for access and ventilation, are susceptible to subsidence, or are adjacent to measured ore reserves will be managed to promote the safe, orderly co-development of oil, gas and potash resources. Those portions of open mine workings that are adjacent to known barren areas are subject to the ¼- and ½-mile safety buffers unless encumbered by a Three-Year Mine Plan.

VI. Access to Designated Potash Area Data, Maps and Surveys

The BLM will maintain a GIS map, updated with data necessary to implement this order. Data will be available for inspection as provided by applicable law and in the 2012 Potash Order, §§ 6.e.(6)(c) and 6.e.(8).

Data the BLM will maintain includes:

- The boundary of the Designated Potash Area.
- Boundaries of established Development Areas.
- Operators of Development Areas.
- Boundaries of Drilling Islands.
- Operators of Drilling Islands.
- Oil and gas well locations, both plugged and operating.
- Core hole data, including assays. Assay data may be used by the BLM or lessees to approve drilling plans designed to identify barren areas but core hole data for core holes 1.5 miles beyond identified barren areas typically is eligible for exemption from disclosure under the Freedom of Information Act (“FOIA”).
- Buffer zones.
- Areas included within three-year mine plans. This information typically is eligible for exemption from disclosure under FOIA.
- Areas included within long-term exploration or mining plans provided by the potash industry.
- Potash resource data (Measured, Indicated, Inferred, Barren, and Unknown Areas).
- Oil and gas leases.
- Potash leases.

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- Mine workings by ore zone, both current and abandoned, may qualify for exemption from disclosure under FOIA, but can be released by the BLM if the mine lessee grants a written waiver. The BLM will maintain a composite open mine workings layer map that will be available for public disclosure.
- Mine shafts.
- Known geologic features.

VII. Appeals and Dispute Resolution

A party that has been adversely affected by a final decision made pursuant to these guidelines may appeal the final decision to the BLM New Mexico State Director by filing a notice and statement of appeal with the State Director within 30 days of receiving notice of the final decision. A party shall be deemed to have received notice upon actual receipt of notice or seven days after the date upon which notice was mailed, whichever is earlier. Any adversely affected party may request an administrative review before the State Director either with or without oral presentation. Such request, including all supporting documentation, shall be filed in writing with the State Director within 30 days. However, upon request and showing of good cause, an extension for submitting supporting data may be granted by the State Director. Supporting data shall include all factors or circumstances relevant to the particular case. Any party who is adversely affected by the State Director's decision may appeal that decision to the Interior Board of Land Appeals as provided in 43 C.F.R. Part 4.