

Eddy County
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August 21, 2012

**RE: Draft Order Proposed by Secretary of the Interior (Ken Salazar)
Regarding Areas of Limited Use for Potash Mining**

To Whom It May Concern,

The Designated Potash Area in Eddy and Lea Counties, New Mexico, contains immense oil and gas reserves as well as potash resources. The potash lessees currently hold leases covering 143,308 acres of federal lands in the Federally Designated Potash Area. Secretary Salazar has proposed a new Secretary's Order that would severely limit oil and gas development in the entire 497,000 acre area. In contrast, the oil and gas lessees currently hold oil and gas leases for 337,705 acres of federal lands in the Federally Designated Potash Area. An independent study of the untapped petroleum resources conducted by the Petroleum Resource Recovery Institute at New Mexico Tech in 2009 reflects the following with respect to existing operations only:

Primary recovery = 1.4 billion BOE (Barrels Oil Equivalent) = \$40-\$86 billion

Secondary recovery = 318 million BOE (Barrels Oil Equivalent) = \$16-\$32 billion

Projected State and Federal Revenue

Federal Government: \$2.5-\$5.2 billion (excluding State of New Mexico MMS royalty shares)

State of New Mexico: \$7.5-\$15.8 billion (including MMS royalty shares, state royalty and taxes other than Ad Valorem)

Lea and Eddy Counties: \$1.4-\$3.0 billion

In addition, the Petroleum Resource Recovery Study projects that there are equivalent potential reserves in future operations which have not yet been explored. Production of the oil and gas reserves, as well as the potash reserves, is of critical economic importance to Eddy County.

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Eddy County understands that in 2009, a group of ten oil and gas stakeholders ("Stakeholders") met with officials of the Department of the Interior ("DOI") and the Bureau of Land Management ("BLM") after having been informed that the Secretary of the Interior planned to replace the Secretary's 1986 Order by promulgating an entirely new Secretary's Order which would withdraw the Designated Potash Area from oil and gas development. The Stakeholders met with Deputy Secretary Ned Farquhar, along with then Congressman Harry Teague. Rep. Teague sought from Mr. Farquhar the following specific assurances, which Mr. Farquhar gave Rep. Teague:

- No rule change will be made by the Secretary before the scientific studies now under way are completed and finalized after peer review.
- Any change in policy will be based on defensible and validated science, including the gas migration and subsidence studies conducted for WIPP.
- That all stakeholders, including the State of NM, be given a fair and complete opportunity to be involved in any consideration of a change of rules.
- And, finally, that until that all occurs, the Secretary will allow the BLM to continue to manage the Secretary's Designated Potash Area under the Secretary's 1986 Order, and continue to allow the concurrent development and permitting of both potash and oil & gas development.

The Stakeholders followed the 2009 visit with a trip in 2010 to report that the oil & gas and potash industry was forming a Joint Industry Study Committee to conduct Phase II of a preliminary study prepared by Sandia National Labs which called for field studies to establish the safe distance between mining and oil & gas in the Designated Potash Area. Following the 2010 trip, the Joint Industry Study Committee drafted Phase II of the scientific work, and began establishing the parameters of their work together. Ultimately the Joint Industry Study Committee became the Joint Industry Technical Committee (JITC) and tasked itself to explore the safety issues associated with drilling near mines and mining near producing wells. .

Eddy County has learned that in early 2012, before the important work of the JITC had been completed, the Secretary issued an ultimatum to the JITC to rewrite the Secretary's 1986 Order within a 4 month period or he would do it alone. In response to the ultimatum, the JITC, consisting of representatives from oil & gas and potash, began negotiating the parameters of a new Draft Secretary's Order. The JITC arrived at a Consensus Document which it submitted to the Secretary in April 2012. The Consensus Document sought to preserve the Secretary's 1986 Order in all regards, and to preserve the body of law

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Interpreting the Secretary's 1986 Order, and to add a provision that would, consistent with horizontal drilling technology, and to mandate that BLM approve Drilling Islands and Development Areas in those areas containing commercial potash so as to allow for effective extraction of oil and gas while managing the impact on commercial potash resources. The Consensus Document also contained other provisions, but its thrust was to allow for these Development Areas, each containing a single Drilling Island, so that the operator could drill predominantly horizontally to recover oil and gas resources underlying commercial potash. This proposal would have the effect of increasing oil and gas production from the Designated Potash Area to provide the valuable oil and gas resources to the Eddy and Lea Counties, the State of New Mexico and the United States.

Notwithstanding the JITC Consensus Document, the Secretary drafted an order that significantly varied from the Consensus Document in a very pro-potash manner, and invited comments from the JITC. The JITC comments were submitted, and on July 12, 2012, the Secretary issued a draft order (<http://www.blm.gov/nm/st/en/info/potash.html>), ("Draft Order") which completely ignored the JITC comments and which removed all provisions that would have the effect of supporting any Secretarial policy in favor of concurrent development of both resources. The Secretary's Draft Order contains a new statement of policy retreating from the concurrent development approach of the Secretary's 1986 Order and announces a new Secretarial policy to deny drilling in the entire Designated Potash Area, subject to three exceptions, which are not mandated and which would be allowed solely in BLM's discretion. When he announced the publication of the Draft Order, the Secretary also announced a short 30 day comment period, and stated that the Order would absolutely issue in September. The Secretary did not contact any of the industry organizations, such as IPANM or NMOGA; nor did he set any public meetings to discuss or solicit comments about the Draft Order. The Secretary has now extended for 15 days the comment period to allow affected public, governments, counties and organizations to provide comments.

The Secretary's Draft Order is in essence a withdrawal of the entire Designated Potash Area from concurrent development of both resources. The Secretary's Draft Order simply ignores the potential for concurrent development. The Secretary's Draft Order directs BLM to deny APDs in all 497,002 acres of the Designated Potash Area, unless BLM determines one of three exceptions apply (Section 6, Paragraph e (1)). None of the exceptions are mandatory and each provides unfettered discretion on the part of the Authorized Officer of BLM or the nearest potash lessee. In contrast, the existing Secretary's 1986 Order protects only areas known to contain sufficient mineralization of potassium so as to be capable of being mined at a profit. The Secretary's Draft Order extends protection to the entire area. This is a defacto withdrawal and would have the effect of depriving Eddy County of the significant economic benefit of production of the important oil and gas reserves underlying the Designated Potash Area (and concomitant loss of jobs); such decision appears to be made without any scientific basis whatsoever. The curtailment of oil and gas production in the Designated Potash Area will have serious adverse economic

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impacts on Eddy County.

The Secretary's Draft Order assumes the scientifically invalid and unprovable existence of a safety hazard associated with concurrent development. While the Secretary's Draft Order contains a provision requiring BLM decisions to be based on science, it is noteworthy and ironic that the Secretary has rushed the promulgation of this order before the critical science has been completed; this was done even though the critical science was in the process of being completed before he began issuing ultimatums to the JITC. The Eddy County Commission believes that the Secretary's Draft Order is premature and is not scientifically based.

Rather than encouraging concurrent development of both resources as contemplated and intended by the JITC in the Consensus Document, the Secretary's Draft Order constitutes a retreat to policies that existed in the 1930s and 1940s, that fails to recognize advances in technology and engineering, and that eviscerates in one fell swoop an extensive and well-developed body of law that has been developed over the past twenty years interpreting and clarifying the Secretary's 1986 Order, all without a rational basis or scientific justification. Perhaps most significant, by ignoring the Consensus Document, the Secretary's Draft Order fails to recognize and appreciate the courage of the JITC participants in putting aside decades of hostility and litigation to come together to attempt a good faith plan to advance the best interest of the United States through concurrent development of both potash and oil & gas in the Designated Potash Area.

Eddy County requests that the Secretary wait to promulgate any new orders affecting concurrent development of oil & gas and potash in the Designated Potash Area until the science is completed, and to then use that science in the development of any future Secretary's Order.

Respectfully,



Roxanne R. Lara
Commission Chairperson