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Via Email: [therrell@blm.gov](mailto:therrell@blm.gov)

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RE: Draft Secretarial Order Revising Rules for Co-Development of Oil & Gas and Potash Resources in Southeast New Mexico

Dear Mr. Herrell:

We have reviewed the referenced draft Secretary's Order and offer the following comments.

#### **BACKGROUND INFORMATION**

- The Potash Area in Eddy and Lea Counties, New Mexico contains prolific oil and gas reserves as well as potash resources. The potash lessees currently hold leases covering 143,308 acres of federal lands in the Secretarial Area, but the Secretary has proposed a new secretarial 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 Secretarial Area. In 2008, five companies alone paid \$28,000,000.00 in royalties from oil and natural gas wells in the Secretarial Area. These figures represent only a small percentage of the total royalties presently attributable to current oil and gas production from the Secretarial Area, and they represent an exponentially smaller percentage of what would be paid if concurrent operations were expanded consistently with the science. 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 plays only:

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

Secondary recovery = 318 million BOE = \$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 new plays which have not been explored. In comparison, all of the potash mines in the Secretarial Area paid \$8,137,835.02 in federal royalties in 2008 from all mining activity in the Secretarial Area

- In 2009, a group of ten oil and gas stakeholders (“Stakeholders”) consisting of lessees of the majority of the federal oil and gas minerals in the Potash Area traveled to Washington to meet with officials of the Department of the Interior (“DOI”) and the Bureau of Land Management (“BLM”) as well as the Congressional delegations from New Mexico, Texas and Oklahoma. The Stakeholders made the trip after having been informed that the Secretary of the Interior planned to promulgate an entirely new secretarial order withdrawing the Potash Area from oil and gas development, replacing the currently applicable order entitled “*Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico,*” 51 Fed. Reg. 39,425 (Oct. 28, 1986) (“1986 Order”), corrected, 52 Fed. Reg. 32,171 (Aug. 26, 1987). The Stakeholders met with Deputy Secretary Ned Farquahar, among others, along with then Congressman Harry Teague. Rep. Teague sought from Mr. Farquahar the following specific assurances, which Mr. Farquahar 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 Secretarial Potash Area under the 1986 Order, and continue to allow the concurrent development and permitting of both potash and oil and gas development.
- The Stakeholders followed the 2009 visit with a trip in 2010 to report that the oil and 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 and gas in the 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. The science behind the old rules was antiquated and the JITC was going to study new casing designs, monitoring systems, as well as gas migration to attempt to shorten the required setbacks under the current rules.

## **2012 PROCESS**

- In early 2012, before the important work of the JITC had been completed, the Secretary issued an ultimatum to the JITC to rewrite the 1986 Order within a 4 month period or he would do it alone.
- The Oil and Gas Stakeholder members of the JITC knew that the Secretary had proposed in 2009 to redraft the 1986 Order to withdraw the entire Potash Area from oil and gas drilling based on an

unscientifically supported assumption and in direct contradiction to the actual experience in the field that oil and gas development in the Potash Area would constitute a hazard to potash mining operations being conducted for the extraction of potash deposits. Therefore, in response to the ultimatum, the JITC, consisting of representatives of oil and gas and potash, began negotiating the parameters of a new Secretarial Order. The JITC arrived at a Consensus Document which it submitted to the Secretary in April 2012. The Consensus Document sought to preserve the 1986 Order in all regards, as well as the body of law developed interpreting the 1986 Order, and to add a provision that would, consistently with horizontal drilling technology, 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 (most notably limiting the prospective bidders for competitive potash leases, and requiring oil and gas to prove up barren areas), 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 Potash Area to provide the valuable oil and gas resources to 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 indicating any Secretarial policy in favor of concurrent development of both resources. The Draft Order contains a new statement of policy retreating from the concurrent development approach of the 1986 Order and announces a new Secretarial policy to deny drilling in the entire potash area, subject to three exceptions, which are not mandated and which would be allowed solely in BLM’s discretion.
- We are disturbed by the Secretary’s determination to fast track this Draft Order, having only received input from a select group of oil and gas companies. The Secretary has not held any public meetings or hearings on the Draft Order. Such meetings should have been held in at least Carlsbad and Hobbs to secure appropriate public input into the need for the significant revisions to the rules providing for concurrent development of both potassium and oil and gas resources from the designated potash area. *See* FLPMA Section 103 (d). This Draft Order, if implemented, will have an effect on many oil and gas companies, county, municipal and state government, and many individuals whose livelihoods are dependent upon the extraction of both potassium and oil and gas resources. These stakeholders should be given more than 30 days to comment on and should be allowed to participate in meaningful discussions with the Secretary or his designate. There has been no consultation or coordination with Chaves, Eddy or Lea County, or the State of New Mexico. The economic impact to the Counties and to the State should be fully investigated before the Draft Order is finalized. In fact, this Draft Order represents a major federal action that requires full adherence to the National Environmental Policy Act, including appropriate Environmental Impact Statements, Environmental Analysis and the like. Part of the process involves public participation which has been wholly omitted or avoided. Specifically, the Draft Order fails to analyze and provide a detailed statement of how the Draft Order affects the “maintenance and enhancement of long-term productivity” of the Potash Area. *See* NEPA Section 102 (c) (iv). The Draft Order will significantly affect the ability of oil and gas producers to explore for, drill and produce oil and gas resources from the Potash Area and such decrease in oil and gas activity will have a dramatic adverse economic effect to Chaves, Eddy and Lea Counties, the State of New Mexico and the United States as a whole, not to mention the people

whose employment is directly tied to drilling and development of oil and gas in this part of New Mexico. The Draft Order fails to consider and weigh the long-term benefits of creating a potash preference against the short term (and long-term) benefits of the existing policy of concurrent development of both resources from the Potash Area as required by the Federal Land Policy & Management Act. See FLPMA Section 202 (c) (7). In addition, Section 202 (f) requires the Secretary to provide State and local governments, as well as the public, the opportunity to comment upon and participate in the formulation of plans and management of the public lands. No public hearings were held and a 45 day (originally 30 day) comment period is not participation in the formulation of the Draft Order, particularly by State and local governments. See FLPMA Section 103 (d). The Draft Order is contrary to the existing Carlsbad Resource Management Plan that recognizes the development of both resources in the Potash Area.

## EFFECT OF DRAFT ORDER

- Through nuanced language changes to the Consensus Document and the 1986 Order, the Draft Order effectively constitutes a withdrawal of the entire Potash Area from concurrent development of both resources, and it creates a potash reserve. The Order directs BLM to deny APDs in ALL 497,002.03 acres of the 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 1986 Order protects only areas known to contain sufficient mineralization of potassium so as to be capable of being mined at a profit. The Draft Order extends protection to the entire area. This is a defacto withdrawal. The wholly inadequate, ill-advised and unsupportable definitions of “Development Area” and “Drilling Island,” the mapping provisions, the buffer zone provisions, the policy statements and the purpose of the Draft Order should all be rewritten to allow for expanded concurrent development of both resources as required by the abundant caselaw and the intent of the JITC. These matters as well as others have been adequately covered in separate comments submitted by the Counties, IPANM and others, and those comments are incorporated herein. For these purposes it is sufficient to simply state that as written, the Draft Order reads as if it were drafted by the potash industry before the JITC ever met and agreed on the Consensus Document provisions, and the Draft Order constitutes nothing more than a retreat to unnecessary, unsupportable, and ill-conceived policies of the 1930’s.
- Through the improper mapping provisions as well as the unscientifically supportable definitions of resource mineralization, the Draft Order cedes the BLM’s duty to manage the Potash Area to the potash industry which essentially has the unilateral ability to preclude drilling by mapping the resources through the use of *well logs* in direct contravention of the Sandia E-Log Study and the industry accepted SME Handbook definitions. The definition of inferred resources in the Draft Order allows such resources to be designated through the use of well logs, a process that the Sandia well log study found was *not* scientifically supportable. Nonetheless, in view of the fact that the policy of the Draft Order is to deny APDs through the entire Potash Area, and that the definition of Development Area seeks to *limit* the impact of oil and gas drilling on *all* potash mineralization (whether or not commercial, and whether or not the minerals will ever be mined), the potash lessees can use well logs to map inferred resources throughout the entire Potash Area and preclude drilling thereby.
- The draft order limits the ability of citizens of the United States to acquire a potassium lease as the bidder must “intend to develop the potash resources ....” This prohibits citizens from securing a potassium lease for investment purposes. This proposed order is not the place to bury a provision that limits the rights of citizens of the United States to bid on, acquire, and assign a potassium lease. The Mineral Leasing Act of 1920 permits any citizen to acquire and hold

mineral leases. Any high bidder at a competitive potassium lease sale should be able to secure a potassium lease unfettered by any constraints.

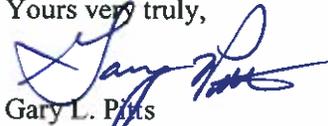
- The Draft Order assumes the scientifically invalid and unprovable existence of a safety hazard associated with concurrent development. While the Draft Order contains a provision requiring BLM decisions to be based on science, it is noteworthy and ironic that the Secretary has rushed the promulgation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

## CONCLUSION

Rather than encouraging concurrent development of both resources as contemplated and intended by the JITC in the Consensus Document, the 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 1986 Order, all without a rational basis or scientific justification. Perhaps most significant, by ignoring the Consensus Document, the 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 in good faith to agree on a plan to advance the best interest of the United States through concurrent development of both potash and oil and gas in the Potash Area. We assert that the promulgation of any order is premature at this time and that, in contrast to the 1986 Order and the Consensus Document, the Draft Order is not scientifically or technologically based or supportable. We respectfully urge the Secretary to honor and keep Mr. Farquhar's promises to the Oil and Gas Stakeholders and Rep. Teague in 2009, to withdraw the Draft Order and to allow the JITC to complete its important scientific work, and thereafter to promulgate, in an orderly and thoughtful process soliciting the participation of all affected industry members and the public, a rule that is scientifically supportable and rationally based.

We appreciate your consideration of our position.

Yours very truly,



Gary L. Pitts

Vice President and General Manager