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August 10, 2012

Honorable Kenneth L. Salazar
Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

RE: Permian Basin Petroleum Association Comment Letter
Proposed Order of the Secretary of the Interior
Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

Dear Mr. Secretary:

On behalf of the Permian Basin Petroleum Association (PBPA), I submit the following comments concerning the Proposed Order (PO) of the Secretary of Interior within the Designated Potash Area (DPA). PBPA is a trade association representing approximately 900 member companies with operations in southeast New Mexico and west Texas.

PBPA appreciates the opportunity to comment and has numerous concerns.

The Proposed Order states "it is the policy of the BLM to deny approval of most applications within the Designated Potash Area." This new policy completely re-writes years of work and decisions from BLM and through the courts, and indeed, potentially impacts valid, existing agreements between oil and gas companies and potash companies. The PO withdraws all 497,000 acres of the Potash Area from oil and gas development unless an exception is granted by the BLM Authorized Officer, including applications to drill (APD) in known barren and unknown areas.

The Authorized Officer would have complete discretion to deny any APD in the Potash Area without any justifiable reason and effectively preclude any further development of oil and gas resources. This is a significant departure from current accepted practice by BLM. Concurrent development of oil and gas and potash will not occur. This policy change has the potential to negate an oil and gas operator's valid, existing lease rights and therefore, could also be interpreted as a taking.

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The Proposed Order allows the Authorized Officer to establish Development Areas as a means to develop Federal and non-Federal lands. The size and shape of the Development Area is determined by the Authorized Officer, along with the location of one or more drilling islands. Unitization of leases and/or communitization agreements will have to occur to allow oil and gas operations under these Development Areas. Forcing companies to unitize or participate in a communitization agreement favors operators who have the largest acreage position in an area, regardless of their activity in the area or their technical expertise in recovering oil and gas reserves in the potential hydrocarbon bearing formations. This greatly penalizes operators who will be mandated to join a unit or communitization agreement and not be allowed to drill for reserves under their valid, existing leases. On-going development work by the smaller operator could be halted while the unit operator could completely stop operations in the Development Area in favor of a higher potential area in their company's inventory. An operator's valid, existing lease rights could be negated by this policy change.

PBPA is aware and supportive of the efforts of the Joint Industry Technical Committee (JITC), and while not a party to the negotiations and consensus agreement submitted to you in April, PBPA supports the framework agreed to by the JITC. PBPA suggests that the final order be revised to more closely reflect the original consensus agreement forged over lengthy, complex negotiations carried out in the spirit of collaboration, as you had requested. As the JITC represented a significant majority of the respective industries' leasehold interests, I believe it most appropriate to accept their recommendations in their entirety, without modification.

The intent of the JITC Consensus Agreement is clearly stated that the 1986 Order be modified only to the extent necessary to include the items on which the JITC had reached consensus.

The Consensus Document specifically recommended only the following additions to the 1986 Order, stating that the proposed additions "represent the entirety of what the Joint Industry Technical Committee recommends for inclusion into the new Secretarial Potash Order for the management of co-development of oil and gas and potash within the Secretarial Potash Area:"

(i) APDs in barren areas and enclaves would continue to be managed and approved consistently with the 1986 Order. The Consensus Document proposed a new definition of "barren area" as areas "proven to contain potash quality values lower than the BLM's applicable thickness and cutoff grade for commercial potash."

(ii) Oil and gas operators would be given the right to define enclaves and barren areas to allow for APDs to be routinely processed consistently with the provisions of the 1986 Order, and would also be given access to existing data sufficient to allow the oil and gas operators to classify the potash in a particular area.

(iii) Drill islands would be established consistently with the provisions of the 1986 Order so as to allow drilling of all new vertical, directional and horizontal wells to support the development of oil and gas resources from an associated Development Area. Development Areas would be established to allow for development of oil and gas resources from drilling islands, utilizing unitization and communitization requirements as appropriate. In forming a Development Area, the BLM would consider current oil and gas ttechnology in consideration of the areal extent of the Development Area.

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(iv) All active potash operators, relevant stakeholders and other interested parties would be given notice of an APD.

(v) All future potash leasing would be limited to those parties whom the BLM determines have an "identifiable, substantial and genuine interest developing the potash resources and who intend to develop the potash resource in accord with the applicable diligence stipulations."

(vi) The JITC would be established with a "long-term role to study how concurrent development of potash and oil and gas can be safely performed in proximity to each other."

(vii) The BLM would select an outside technical institute to act as a science advisor to the JITC and to the BLM.

(viii) BLM would be required to update potash resource maps to reflect enclave, indicated, inferred, unknown and barren areas, and that areas where insufficient data exists to classify the potash mineralization be defined as unknown areas.

(ix) Safety buffers of ¼ mile for oil wells and ½ mile for gas wells will not be changed at this time, and specific language will be added to t he order to allow BLM to vary the buffers in the future on recommendations from the JITC with input from the science advisor.

The PBPA believes that it is premature to finalize this Proposed Order and as written, this Order would dramatically limit oil and gas development in southeast New Mexico.

Thank you for your consideration of these comments and the respectful manner they are submitted.

Regards,

Ben Shepperd
President
Permian Basin Petroleum Association

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