

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: New Mexico Oil and Gas 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 New Mexico Oil and Gas Association (NMOGA), I submit the following comments concerning the Proposed Order of the Secretary of Interior (PO) within the Designated Potash Area (DPA). NMOGA is a trade association representing 300 member companies producing over 90% of the oil and gas in New Mexico, including member companies holding federal oil and gas leases on the vast majority of the DPA.

NMOGA 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, NMOGA supports the framework agreed to by the JITC. NMOGA 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. NMOGA supports the comments submitted by the JITC dated August 3, 2012. The draft order subject to these comments makes several significant changes to the JITC proposal, which cause concern to the oil and gas industry.

Specifically, the Section 4.d of the draft order substantially alters the definition of co-development by qualifying that development of resources may occur at different times and from different places. NMOGA suggests the final PO definition should prospectively encourage and facilitate concurrent, cooperative development of both commercial potash and oil and gas resources without qualification as to location or duration.

NMOGA encourages the inclusion of Drilling Islands into Section 6.e.(1)(c) to allow for joint submission of agreed to single well locations and drilling islands by potash and oil and gas lessees. Furthermore, NMOGA suggests as part of the implementation guidance developed for

the PO, these agreements be incorporated into the planning process, be honored by BLM, and be binding upon successors in interest of both oil and gas and potash leases.

The substitution of “limiting” in place of “managing” in Section 4 (f) and Section 6(e)(2)(d)(i) appears to give preference to mitigating impacts to potash resources, and in NMOGA’s opinion, substantially alters the intent to cooperatively manage and develop both resources in a manner supported by data, new technology and agreement. Reverting to “managing” in the final order more closely reflects the spirit and intent of the JITC’s recommendations.

Finally, NMOGA offers some suggestions on moving forward with implementation of the PO once finalized. NMOGA suggests that a collaborative team from BLM in New Mexico along with affected potash and oil and gas interests work together to interpret, institutionalize and implement the PO to provide as much consistency, mutual understanding, and predictability as possible to guide orderly, concurrent development. Some form of internal guidance, whether policy through instruction memoranda, manual or handbook, seems appropriate in light of prior litigation and our perception of the historic, inconsistent application of policy with the DPA. Given the history of the DPA, to the extent implementation guidelines are developed, they should be included, as reference material, in the Carlsbad Resource Management Plan Revision. To the extent agreements can be reached on the location of drilling islands and individual well locations, these should be formally adopted, mapped, and incorporated as decisions in the revision to the Carlsbad RMP. The DPA will likely be a constant for all alternatives within the RMP, therefore it is appropriate to list a suite of management prescriptions regarding leasing and development of both resources consistent with the PO. The RMP revision process currently underway seems to be an ideal opportunity to provide the structure and certainty required to implement the new PO.

On behalf of the member companies of NMOGA, I appreciate the opportunity to comment on the draft Order, and look forward to the opportunity for our affected members to work cooperatively on the structured implementation of the same.

Sincerely,

Steve Henke

President, NMOGA

Cc: Jesse Juen, NMSO BLM