Anderson, Michael D

From: Wilson, Hazel A
Sent: Wednesday, November 14, 2012 10:43 AM
To: Cardinale, Richard
Cc: Barlan, Bryce; Farquhar, Ned; Royal, Pam
Subject: RE: SO - Potash
Attachments: SO Potash -11-13-12.docx

Attached is the copy that was in the surname package you received yesterday. The content is the same as Friday's with the addition of Barbara Fugate's change sent late Friday evening and my formatting changes.

If would be helpful if you use the attached draft to make any changes.

Thanks much.

From: Cardinale, Richard
Sent: Wednesday, November 14, 2012 10:32 AM
To: Wilson, Hazel A
Cc: Barlan, Bryce; Farquhar, Ned; Royal, Pam
Subject: RE: SO - Potash

Hazel,

We just completed our review and have provided our surnames. Bryce Barlan, our BLM analyst is going include a track changes copy with our edits. You had advised yesterday that Exec. Sec. was aware that this document was evolving. The track changes copy reflects our recommended edits (Ned's Bryce's and mine), which has been reviewed by Ned Farquhar. Bryce will send you the electrons with the track changes so that you will have them as the document evolves. Bryce is going to bring the package to Pam right now.

Question: Is the hard copy that you delivered to us yesterday the same version that Janet Lin sent out last Friday evening at 5:21 PM?

Rich

From: Wilson, Hazel A
Sent: Wednesday, November 14, 2012 10:23 AM
To: Cardinale, Richard
Subject: SO - Potash

Rich,

Just checking on the A/S –LM surname on the subject SO. Pls. advise. Thanks much.

ORDER NO.

Subject: Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

Sec. 1 **Purpose and Effect.** (b) (5) [redacted]

Sec. 2 **Authority.** (b) (5) [redacted]

Sec. 3 **Order Revised and Superseded.** (b)(5) [redacted]

Sec. 4. **Definitions.**

(b) (5) [redacted]

(b) (5)

[redacted]

(b) (5) [redacted]

Sec. 5 **Status of Lands.** (b) (5) [redacted]

Sec. 6 **General Provisions.**

a. Issuance of Oil and Gas Leases. (b) (5) [redacted]

(b) (5) [redacted]

b. Reinstatement or Renewal of Oil and Gas Leases. (b) (5) [redacted]

c. Potash Leases.

(b) (5)

[redacted]

d. Delineation of Resource Areas. (b) (5) [redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

e. Oil and Gas Drilling.

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

Sec. 7 **Regulatory and Administrative Matters.**

(b) (5)

[redacted]

(b) (5)

[redacted]

Sec. 8. **The Designated Potash Area Legal Description.**

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

Sec. 9 **Administrative Provisions.** (b) (5)

Secretary of the Interior

Date: 202-208-4586

Anderson, Michael D

From: Lin, Janet H
Sent: Thursday, November 29, 2012 2:49 PM
To: Farquhar, Ned; Cardinale, Richard
Subject: Attaching potash comment responses version
Attachments: 2012.11.14 DMR surnamed potash comment responses -same as P.Allard 3.12 pm but with one comment per pg.docx

Ned and Rich: Sorry this took so long - Phil is out, so I am sending you the latest version surnamed by the Solicitor's office. With all the back and forth - Phil is the one who knows what is absolutely current, so finding a copy was surprisingly difficult. This should be the final or very close to it. He will be in tomorrow, and I will verify.

Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico
Comments on Proposed Secretarial Order

Comment Number: 1	**Definition: Co-Development**

Comment Summary: Delete Section 4.d. (definition of "Co-development") or, at a minimum, delete the last sentence of Section 4.d., which reads: "Co-development may require that the development of the resources occur at different times and from different places." The Joint Industry Technical Committee (JITC) fully debated this issue and neither the potash nor the oil and gas industry supports inclusion of this sentence as it could be used to term limit Drilling Islands and provide a vehicle to postpone or delay permits for drilling or mining.

Several commenters suggested that if a definition must be provided, it should read: "Co-development is the concurrent development of oil and gas and potash resources within the Designated Potash Area as a result of a cooperative effort between the potash and oil and gas industries, as regulated by the BLM, to support production of both potash and oil and gas (from the same lands) simultaneously."

Commenter(s): AAPL, Chaves County, COG Operating, Coll Brothers, Eddy County, HEYCO, IPANM, JITC, Lea County, Lynx, Manzano, McClellan, NMOGA, PBPA, Yates

Response:

The BLM has revised the section in response to the comments by deleting the sentence, "Co-development may require that the development of the resources occur at different times and from different places" for the following reasons:

- The sentence is not needed as the BLM already has this authority through the Federal Land Policy and Management Act of 1976 (FLPMA) (see, e.g., 43 U.S.C. 1702(c), definition of "multiple use," and 43 U.S.C. § 1732(a)), and the Minerals Policy Act of 1970, 30 U.S.C. § 21a. Additional guidance on the "coordinated management of the various resources without permanent impairment of the productivity of the land" (43 U.S.C. 1702(c)) will be provided at the implementation stage.
- Additionally, Section 6.e.(2)(d) of the Order provides the BLM the authority to determine "the appropriate designation of a Development Area in terms of location, shape and size."

The BLM does not accept the suggestion to alter the definition to include the term "simultaneous," which could cause confusion given the discussion of that term in prior litigation related to the DPA. See In the Matter of Yates Petroleum Corp., IBLA 92-612, ALJ Order on Remand (July 7, 2003) at 57.

Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico
Comments on Proposed Secretarial Order

Comment Number: 2	**Joint Recommendation- Drilling Islands**

Comment Summary: Section 6.e.(1)(c) refers only to single well sites. It is important to be able to establish Drilling Islands as well as single well sites even if Development Areas are not established when both the oil and gas operator and affected potash lessee support the proposal. Amend Section 6.e.(1)(c) to include the language put forth by the JITC:

(1) Drilling within the Designated Potash Area

(c) ~~a single well site established under this Order by the approval and in the sole discretion of the Authorized Officer, provided that such site was jointly recommended to the Authorized Officer by the oil and gas lessee(s) and the nearest potash lessee(s).~~ a Drilling Island or single well site established under this Order by the authorization of the Authorized Officer, provided that such site was jointly recommended to the Authorized Officer by the oil and gas lessee(s) and the nearest potash lessee (s).

Commenter(s): AAPL, COG Operating, HEYCO, JITC, NMOGA, PBPA, Yates

Response: The BLM has added the term "Drilling Island" to Section 6.e.(1)(c) as there may be circumstances that make it appropriate to establish a Drilling Island that is not inside a Development Area (new Drilling Islands inside Development Areas are covered by Section 6.e.(1)(a)) or to allow a single well site to be expanded to accommodate additional drilling at a later time. The factors that make a location suitable for a single well are the same factors that make it appropriate for a Drilling Island. The BLM has retained the phrase "in the sole discretion of the Authorized Officer" to make clear that a joint recommendation does not bind the BLM, which retains the ultimate decision making authority. Section 6.e.(1)(c) now reads:

(1) Drilling within the Designated Potash Area

(c) a Drilling Island, not covered by (a) above, or single well site established under this Order by the approval and in the sole discretion of the Authorized Officer, provided that such site was jointly recommended to the Authorized Officer by the oil and gas lessee(s) and the nearest potash lessee(s).

In order to make the definition of "Drilling Island" at Section 4.g. consistent with this revision, the word "usually" in that definition has been moved, to read:

An area established by the BLM, usually associated with and within a Development Area, ...

(The phrase in the proposed definition read: "An area established by the BLM associated with and usually within a Development Area . . . .) The definition of a Drilling Island has also been revised in response to other comments. See Comment 16.

Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico
Comments on Proposed Secretarial Order

Comment Number: 3	**Agreements between Potash and O&G**
Comment Summary: The BLM will not honor agreements between the potash and oil and gas lessee in the draft Order, but will allow a joint recommendation for a single well site, which will only be approved at the discretion of the BLM. Any existing incentive for the industries to cooperate has been removed.	
Commenter(s): HEYCO	
Response: Agreements between private parties are not binding on the BLM, nor is the BLM in a position to interpret or enforce such agreements. However, as the commenter notes, the BLM will consider a joint recommendation, which provides incentive for cooperation between potash and oil and gas lessees. The BLM must retain discretion to accept or reject recommendations, as it cannot delegate to third parties its responsibilities under FLPMA and other statutes, as well as potash and oil and gas regulations, to manage the resources in a manner which not only maximizes recovery but benefits both present and future generations.	

Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico
Comments on Proposed Secretarial Order

Comment Number: 4	**Access to Data**

Comment Summary: The proposed Order allows record owners to withhold existing core data from oil and gas operators engaged in the design of core acquisition programs to establish Barren Areas. Amend Section 6.e.(8)(c) to reflect the language put forth by the JITC:

(8) Access to Maps and Surveys
(c) In order for an oil and gas or potash operator to establish and design a core acquisition program for the purposes of proving a Barren Area, those records of core analyses in the area of the planned program that are necessary to design that program should be provided in a timely fashion by the ~~owner of the records~~ BLM to the operator of the planned program subject to the data management protocols as referenced in 6.e.(6)(c). ~~Record owners are encouraged to comply as fully as possible with this paragraph so that the best available science may be used to define Barren Areas.~~ The BLM will use all data available to it when delineating Barren Areas~~, even if some of the data was not available to the operator of the core acquisition program designed to prove the Barren Area~~.

Other commenters add: The draft Order allows the BLM to maintain as secret all core data that will be utilized in establishing Barren Areas. Moreover, the provision does not require disclosure of economic thickness and grade information. Data exchange has been basically eliminated from the Order.

Commenter(s): AAPL, COG Operating, HEYCO, JITC, NMOGA, PBPA, Yates

Response:

The BLM has modified Section 6.e.(8)(c) in response to the comment. The revised section reads:

(8) Access to Maps and Surveys
(c) In order for an oil and gas or potash operator to establish and design a core acquisition program for the purposes of proving a Barren Area, those records of core analyses in the area of the planned program that are necessary to design that program should be provided in a timely fashion by the BLM to the operator of the planned program to the extent allowed by law, subject to the data management protocols as referenced in Section 6.e.(6)(c), and consistent with 43 C.F.R. Part 2 and sections 3503.41- .43. The BLM will use all data available to it when delineating Barren Areas.

The additions to the suggested text refer to existing regulations that govern the release of potentially confidential information. The BLM will develop data management protocols through Instruction Memoranda that will identify a process for data sharing. This process will be designed to protect the relative equities of the requesting party and the owner of the record. These protocols and processes will also be consistent with law and regulations related to records management.

While the BLM will release data under this provision to the extent allowed by law, if the BLM has access to data that it is prohibited by law from releasing, it is nevertheless obligated to take that data into account when delineating Barren Areas.

Comment Number: 5	**"Managing" v. "Limiting" Impacts**

Comment Summary: The JITC fully debated the language it put forth regarding establishment of development areas in Sections 4.f. and 6.e.(2)(d)(i). The JITC, with support from both the oil and gas and potash industries, recommended that development areas will be established to "allow effective extraction of oil and gas resources while ***managing*** the impact on potash resources."

In the proposed Order, "managing" has been replaced by "limiting." The effect of this change is to place the BLM in the role of limiting, rather than managing, the effect of oil and gas development on all potash, whether or not commercial.

Change the word "limiting" to "managing" in Sections 4.f. and 6.e.(2)(d)(i).

Commenter(s):
AAPL, COG Operating, IPANM, JITC, Lea County, NMOGA, PBPA, Yates

Response:

The BLM has accepted the substitution of "managing" for "limiting" in the two places where the word is used: Sections 4.f. and 6.e.(2)(d)(i). The use of the word "limiting" in the proposed Order was not intended as a substantive alteration. The word "managing," accurately reflects the BLM's mandate to allow for concurrent operations in prospecting for, developing, and producing oil and gas and potash deposits within the Designated Potash Area. It preserves the BLM's flexibility in the establishment of Development Areas. This change is consistent with FLPMA's definition of multiple use, 43 U.S.C. 1702(c).

Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico
Comments on Proposed Secretarial Order

Comment Number: 6	**Notice to Affected Parties**

Comment Summary: The proposed Order omits important notice requirements to some affected parties. Notice of proposed drilling should be given to all affected potash interests, oil and gas interests, and surface rights owners. Amend Section 6.e.(7) to the following:

e. Oil and Gas Drilling
(7) Notice to ~~Potash Lessees~~ Affected Parties. An applicant for an APD, or a proponent of a plan of development for a unit or communitization area or a proposal for a Development Area or a Drilling Island, will provide notice of the application, plan, or proposal to the potash lessees and potash operators in the Designated Potash Area and to the owners of the oil and gas rights and surface owners affected by such application, plan or proposal. A list of ~~current~~ the affected potash lessees and potash operators will be available and maintained by the Carlsbad Field Office, BLM. The BLM will assist to the extent possible in identifying the oil and gas and surface owners affected by the application, plan or proposal. This notice should be prior to or concurrent with the submission of the application, plan or proposal to the BLM. The BLM will not authorize any action prior to this notice.

Commenter(s):
AAPL, COG Operating, JITC, NMOGA, PBPA, Yates

Response:

The BLM has accepted the proposed language, with modifications, as it reflects the intent of the Order to notify all potentially affected parties, as listed in the paragraph. Because the list of potash lessees and operators that the Carlsbad Field Office maintains is a list of current lessees and operators, we have retained that description of the list. The revised provision reads:

e. Oil and Gas Drilling
(7) Notice to Affected Parties. An applicant for an APD, or a proponent of a plan of development for a unit or communitization area or a proposal for a Development Area or a Drilling Island, will provide notice of the application, plan, or proposal to the potash lessees and potash operators in the Designated Potash Area and to the owners of the oil and gas rights and surface owners affected by such application, plan, or proposal. A list of current potash lessees and potash operators will be available and maintained by the Carlsbad Field Office, BLM. The BLM will assist to the extent possible in identifying the oil and gas and surface owners affected by the application, plan, or proposal. This notice should be prior to or concurrent with the submission of the application, plan or proposal to the BLM. The BLM will not authorize any action prior to this notice.

Comment Number: 7	**Authorities**

Comment Summary: Section 6.e.(2) includes language that suggests DOI may include non-federal lands in a Development Area; and that DOI may therefore prohibit owners of mineral fee or leasehold interests from developing oil and gas resources unless they are in accordance with the proposed Order's drilling restrictions and unitization requirements. It is unclear if this is DOI's intent and, if so, if DOI actually has this authority.

Commenter(s): HEYCO, NMOCD,

Response:

The revised Order specifically limits its reach to the orderly development of oil and gas and potash deposits owned by the United States because the Federal government does not have authority to regulate non-Federal mineral estates. (See Sections 1 and 3, restricting the reach of the Order to "oil and gas and potash deposits owned by the United States.") The sentence in section 6.e.(2) that states "A Development Area may include ... non-federal lands," is simply an acknowledgement that in this area of mixed ownership, a Development Area that is established based on geologic, operational, and safety considerations may include such lands. The revised Order does not apply to the non-Federal lands, but the Federal lessees and operators are on notice that further actions under State law may be required to effectuate the purposes of the Development Area with regard to lands over which the Department of the Interior does not have jurisdiction. The revised Order does not prohibit or in any way direct the owners of non-Federal mineral estates. However, it is recognized that cooperation with the non-Federal mineral estate owners and the State of New Mexico is necessary. The provisions in Sections 6.e.(4) and (5) establish a framework to work cooperatively with non-Federal mineral estate holders and the State of New Mexico in entering into the necessary agreements to effectuate the purposes of a Development Area with mixed mineral ownership. It may also be to the benefit of the private interest holder to develop the private interest by way of a Drilling Island located on Federal land. The Order is written so that this arrangement would be permissible.

Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico
Comments on Proposed Secretarial Order

Comment Number: 8	**Regulatory Conflict**

Comment Summary: There is a potential for conflicting determinations regarding APD approvals by the State of New Mexico and DOI. This is due to the differences between the New Mexico Oil Conservation Division (NMOCD) and BLM regulatory frameworks.

Commenter(s): NMOCD

Response:

Section 6.e.(5).(b) of the proposed Order reads:

> The BLM will cooperate with the NMOCD in the implementation of that agency's rules and regulations. In that regard, the Federal potash lessees may protest to the NMOCD the drilling of a proposed oil and gas well on Federal lands provided that the location of said well is within the State of New Mexico's "Oil-Potash Area" as that area is delineated by NMOCD Order No. R-111, as amended. However, the BLM will exercise its prerogative to make the final decision about whether to approve the drilling of any proposed well on a Federal oil and gas lease within the Designated Potash Area.

This section was carried over verbatim from the 1986 Order. Nevertheless, because the BLM agrees with the NMOCD that the wording of the section is not precise and could create confusion, it has deleted all but the first sentence of this section from the revised Order. This deletion has no effect on the ability of any person to seek relief from the NMOCD under its rules and regulations, nor is this deletion or any provision of the Order intended to add or detract from the authority of the NMOCD or of the Secretary in relation to the State of New Mexico.

The following language has been deleted from 6.e.(5).(b):

> The BLM will cooperate with the NMOCD in the implementation of that agency's rules and regulations. ~~In that regard, the Federal potash lessees may protest to the NMOCD the drilling of a proposed oil and gas well on Federal lands provided that the location of said well is within the State of New Mexico's "Oil-Potash Area" as that area is delineated by NMOCD Order No. R-111, as amended. However, the BLM will exercise its prerogative to make the final decision about whether to approve the drilling of any proposed well on a Federal oil and gas lease within the Designated Potash Area.~~

Comment Number: 9	**Implementation of Order**

Comment Summary: The BLM and affected potash and oil and gas interests should form a team to implement the Order to guide orderly, concurrent development. Some form of internal guidance, whether policy through instruction memoranda, manual or handbook would be appropriate. The Carlsbad RMP should include: the implementation guidelines developed by the team; agreements regarding the location of drilling islands and individual wells; and management prescriptions regarding leasing and development of both resources.

Commenter(s): NMOGA

Response:

The BLM will incorporate the substance of the revised Order in the Carlsbad Resource Management Plan (RMP), a revision of which is scheduled to be completed in 2014.

The BLM intends to work closely with affected potash and oil and gas lessees and operators in managing the DPA under the revised Order and agrees that orderly implementation of the Order will be facilitated by cooperation between the two industries. The BLM will develop internal guidance through Instruction Memoranda, Information Bulletins, Notices to Lessees, and manuals and handbooks to promote orderly co-development, while also adhering to existing regulations in the administration of the Order. The BLM will use an open process to develop this internal guidance.

The Draft RMP is scheduled to be released for review in mid-2013. Management prescriptions regarding leasing are ordinarily included in land use plans, so we expect they will be included in the Draft RMP. Implementation guidelines, and individual drilling island and well site decisions, are normally made outside of RMPS, but are subject to the land use allocations made in RMPs. The public will be encouraged to comment on the Draft RMP following its publication.

Comment Number: 10	**Order Not Scientifically Based**

Comment Summary: The proposed Order is not scientifically or technically based or supportable. The Secretary should await the imminent completion of valid scientific studies, and thereafter base the determination of Secretarial policy on such science. Sandia must be able to complete its gas migration study and any additional required safety related tests.

Commenter(s):
Chaves County, Coll Brothers, Eddy County, EOG, Fasken, Featherstone, Hanson, HEYCO, IPANM, Lea County, Lynx, Mack Energy, Manzano, McClellan, Mewbourne, Yates

Response:
The studies related to concurrent development of potash and oil and gas resources that were funded by the BLM and conducted by Sandia National Laboratories have been completed. Although, as is often the case with scientific studies, some of the results were inconclusive, BLM has determined that it is in the public interest to finalize the Order at this time. With regard to Buffer Zones, the Order provides at Section 6.e.(3) that BLM may revise the zones based on science, engineering, and new technology.

The BLM will continue to use sound science to inform its decision making. This is made explicit in the revised Order at Section 7.d.:

> The BLM will obtain and use the best science available when administering this Order consistent with Departmental Manual chapters 305 DM 2 and 305 DM 3. The BLM will comply with the requirements of Secretarial Order 3305 on Scientific Integrity. The BLM has previously used Sandia National Laboratories to provide unbiased technical assistance in administering the Designated Potash Area and may continue to do so, if the BLM, consistent with all applicable laws, so chooses.

The BLM will continue to consult with the JITC and scientific advisors to address issues in the DPA. The BLM will incorporate any additional advances in science and technology in its administration of the Order, including guidance through Instruction Memoranda, Information Bulletins, Notices to Lessees, and other means as necessary to promote orderly co-development.

Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico
Comments on Proposed Secretarial Order

Comment Number: 11	**Lack of Concurrent Development**

Comment Summary: The proposed Order precludes concurrent development of the potash and oil and gas resources by denying the industries equal access. The proposed Order gives preeminence to potash and restricts oil and gas development in the entire Potash Area, regardless of the commerciality of the potash. The draft Order states it is the policy "to deny approval of most applications for permits to drill oil and gas wells from surface locations within the Designated Potash Area," unless the BLM determines one of three exceptions apply (Section 6.e.(1)). None of the exceptions are mandatory and each provides unfettered discretion on the part of the BLM or nearest potash lessee.

A proposed well would be an "exception" to a rule rather than evaluated independently on its own merits.

The policy has moved to the pre-1951 potash reserve concept. Furthermore, the lack of concurrent development of the resources constitutes a FLPMA violation.

Commenter(s): Eddy County, EOG, Fasken, Hanson, IPANM, Lea County, Lynx, Manzano, Mewbourne, McClellan, PBPA, Yates

Response:

The revised Order is designed to encourage concurrent development of potash and oil and gas resources. Far from moving back to the pre-1951 era, the revised Order takes advantage of technological advances in horizontal drilling capabilities to extend the Drilling Island concept found in the 1986 Order, and adds the concept of Development Areas, which may be located throughout the DPA. These provisions are designed to allow oil and gas drilling in a manner that also protects known or potential potash deposits. Extending the Drilling Island concept to areas with Inferred, Indicated, or Unknown potash resources was originally recommended by the JITC.

The revised Order allows Development Areas to be proposed anywhere in the DPA, including those areas known to have commercial deposits of potash (the enclave designation). The revised Order provides that BLM will determine whether to establish a new Development Area and Drilling Island when it processes an APD. Development Areas will be established with more flexibility when further away from current and near-term traditional potash mining operations. Drilling Islands that already exist in the enclave are recognized. Areas around existing wells in the DPA might also be candidates for expansion to Drilling Islands, with associated Development Areas established around with them The revised Order also permits routine processing of Applications for Permit to Drill (APDs) in already known Barren Areas or areas proven to be Barren by additional core hole drilling. The Order further provides for possible Drilling Islands outside of Development Areas or for single well sites if they are jointly recommended by oil and gas and potash lessees.

While these provisions differ from those in the 1986 Order, they do not close or withdraw the lands from oil and gas exploration. These provisions should lead to more cooperative development that may maximize the production of both resources. The provisions in the Order fully comply with the requirements of FLPMA, the Mineral Leasing Act, and the implementing regulations.

Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico
Comments on Proposed Secretarial Order

Comment Number: 12	**Effect on Small Operators**

Comment Summary: The proposed Order does not consider the substantial negative impact it will have on the ability of small independent oil and gas companies to explore for, drill and produce oil and gas from their federal oil and gas leases within the Potash Area. The proposed Order essentially prevents smaller companies from the opportunity to develop their resources by the provisions providing for forced unitization, consolidation of operatorship, and essentially requiring expensive horizontal or deviated well bores to penetrate prospective oil and gas formations from Drill Islands.

Commenter(s)
Fasken, Manzano, McClellan, Yates

Response:

Under the 1986 Secretary's Potash Order, oil and gas development within the DPA has been restricted. Within the known potash reserves ("enclaves"), which make up 44.97 percent of the DPA, the 1986 Order provides for the same type of Drilling Islands, or drilling from Barren Areas, that the revised Order will extend throughout the DPA. Currently, inaccessible leases within the enclaves are suspended or have been unitized and held by production when leases are constrained by proximity to open mine workings or known potash reserves. Therefore, BLM expects the revised Order's effect on operations within the enclaves to be less noticeable than its effect on operations within the DPA but outside of the current enclaves. The revised Order's focus on Development Areas and Drilling Islands will have differential impacts on oil and gas operators depending on the location of the proposed Drilling Islands and their proximity to specific leases, the size of the lease, the financial assets of the lessee, drilling and development strategies, etc.

In most cases, the establishment of Development Areas and Drilling Islands throughout the entire DPA will require that zones are developed through horizontal drilling and hydraulic fracturing. In general, this methodology is a more efficient method of developing the Delaware and Bone Springs Formations, resulting in more complete extraction of the resource, less surface disturbance, and consolidated infrastructure. Over 90 percent of the oil and gas wells in those formations in southeastern New Mexico are now being developed through horizontal drilling and hydraulic fracturing. However, the cost of a horizontal well is significantly more than a conventional vertical well. While this may create difficulties for some smaller operators who do not have the financial or technological means to support individual horizontal drilling to reach their leases, the BLM expects that increased unitization and consolidated operations may mitigate these potential difficulties. A smaller lessee's costs would be proportional to its acreage within a Development Area, and the additional recoverable reserves from the newer methodology would be a net benefit. We also note that the revised Order does not preclude vertical wells in appropriate locations and it is more efficient to access some formations with vertical wells.

Under the revised Order, individual operators may not be able to develop their leases in their preferred method. However, they would have opportunities to develop their resources within the parameters of the Order and to participate in unit agreements. Economic impacts on individual companies will be situation-specific based on the size of the Development Area and proximity of Drilling Islands to their individual leases. While the BLM receives copies of unit operating agreements, the BLM is not a party to these agreements among companies. Based on individual circumstances, some operators may benefit from these agreements while others may not.

The overall end result of the proposed revision to the Secretary's Potash Order is that more areas within the DPA will be made available for oil and gas extraction while protecting potash reserves and open mine workings throughout the DPA. While the BLM expects the revision to the Order to benefit the overall

economic outlook for both industries, the exact economic effects and impacts specific to certain companies remains unknown.

Comment Number: 13	**Lack of Public Participation**

Comment Summary: A meaningful opportunity for participation from all affected parties and governmental entities has not been provided. The Secretary has not held any public meetings or hearings on the draft Order. The process leading to the proposal of the draft Order has been inexplicably and unnecessarily fast tracked in a manner that has discouraged public involvement as well as the involvement of companies and entities that will be directly affected by the promulgation of a new order.

Commenter(s): Chaves County, Coll Brothers, Eddy County, EOG, Hanson, HEYCO, IPANM, Lea County, Lynx, Manzano, McClellan, Mewbourne, Strata, Yates

Response:

On July 13, 2012, BLM published in the Federal Register a Notice of Availability of the proposed Secretary's Order, announcing the opening of a 30-day public comment period. In response to requests for additional time to review the proposed Order, BLM then extended the comment period for an additional 15 days.

The initial conceptual framework for a revised Secretary's Order was provided by the JITC following a request from Secretary of the Interior Ken Salazar. The JITC is an industry committee established in 2011 and comprised of membership from both the potash and oil and gas industries. The JITC is not a Federally chartered organization and the BLM is not a member. The oil and gas membership is comprised of large, medium, and small companies that are responsible for the majority of production and operations within the DPA. The potash members of the JITC represent all of the current potash production in the DPA.

The BLM received 28 written comments on the proposed Order, ranging in length from one sentence to 26 pages. The commenters included oil and gas and potash operators and lessees (both JITC members and non-members); industry trade associations; Eddy, Lea, and Chaves counties; the New Mexico Oil Conservation Division; a New Mexico state representative; and individuals. BLM carefully considered all comments and made several revisions to the proposed Order in response to comments. BLM also consulted with seven Federally recognized tribes with tribal interests within the DPA and met with members of the New Mexico State legislature and representatives of Eddy and Lea Counties.

The BLM believes that affected parties and governmental entities have been provided sufficient meaningful opportunity to review and comment on the proposed Order.

Comment Number: 14	**Redraft the Purpose**

Comment Summary: It is recommended that the Purpose of the draft Order be redrafted to be consistent with the language of the 1986 Order, which mandated, rather than simply "fostered", concurrent development. By using the term "fostered," the proposed Order is consistent with the notion that drilling is not mandated anywhere in the Potash Area:

> This Order revises and supersedes the Order of the Secretary of the Interior dated October 28, 1986 (51 FR 39425), and provides *procedures and guidelines for fostering* more orderly co-development of oil and gas and potash deposits owned by the United States within the Designated Potash Area . . . .

Commenter(s): Yates

Response:

The BLM accepts the comment and has deleted the term "fostering" from the Purpose and Effect section of the draft Order due to its potential ambiguity. The new section reads:

> Sec. 1. **Purpose and Effect**. This Order revises and supersedes the Order of the Secretary of the Interior, dated October 28, 1986 (51 FR 39425), corrected August 26, 1987 (52 FR 32171), and provides procedures and guidelines for more orderly co-development of oil and gas and potash deposits owned by the United States within the Designated Potash Area through safe, concurrent operations.

Comment Number: 15	**NEPA**

Comment Summary: The draft Order represents a major federal action that requires full adherence to the National Environmental Policy Act, including appropriate environmental and economic analysis, as well as public participation.

The draft Order fails to analyze and provide a detailed statement of how it affects the "maintenance and enhancement of long-term productivity" of the Potash Area. (See NEPA Section 102 (c)(iv).)

Commenter(s): Lea County, Yates

Response:

The revised Order is primarily an administrative action addressing the concepts designed to promote productive co-development of resources and is therefore not a major Federal action. Pursuant to 43 CFR 46.210(i), Federal actions that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the National Environmental Policy Act (NEPA) process, either collectively or case-by-case, are categorically excluded from the NEPA process under 43 CFR 46.205(b), unless any of the extraordinary circumstances under 43 CFR 46.215 apply. This revised Order does not trigger any of those extraordinary circumstances. As an administrative modification, the revised Order provides direction to the BLM, but will not lead to surface disturbance or direct environmental consequences. The revised Order does not lease any lands for oil and gas or potash or approve any development plans. The environmental impacts of mineral development in the area will be analyzed under NEPA in subsequent documents accompanying decisions to issue leases or to approve development plans.

Although we have concluded that this action may be categorically excluded under NEPA, the BLM elected to prepare an Environmental Assessment (EA) in order to aid its decision-making process. The EA evaluated possible environmental and economic impacts of the Order and is available on BLM's website at http://www.blm.gov/nm/st/en/info/potash.html.

Existing statutes and regulations already require BLM to regulate the impact of oil and gas operations on other uses and users of the public lands. In addition to the requirement in FLPMA that the Secretary take any action necessary to prevent unnecessary or undue degradation of the public lands (including interests in those lands), the Mineral Leasing Act and the BLM's existing regulations and onshore orders allow the BLM to impose conditions of approval on permits to drill and require protection of other mineral resources, other natural resources, environmental quality, life, health, safety, and property in or on the public lands. See 43 U.S.C. 1732(B) 1702(e); 30 U.S.C. 226(g); 43 CFR 3101.1-2, 3162.1, 3164.1, and Onshore Oil and Gas Order No. 1, 72 Fed. Reg. 10305, 10335, para. III.F.a.3 (2007). The revised Order applies those authorities to the specific conflicts between oil and gas development and potash mining in the area in a way that will be predictable and practical, but does not irrevocably commit any resources to any use.

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Comment Number: 16	**Definition: Drilling Island**

Comment Summary: The definition of "Drilling Island" is inadequate. Add the following language, originally included in the JITC's Consensus Document, to the definition of a Drilling Island, Section 4(g): "the size and shape of a Drill Island defines the areal extent of wellbore penetrations of the potash formations and is to be as small as practical to allow effective oil & gas development while managing impact on potash." This definition underscores the commitment to development of both oil and gas and potash.

Commenter(s): IPANM, Manzano, McClellan, Yates,

Response:

The BLM accepts the comment and has revised the definition of "Drilling Island" to include the suggested language from the JITC's Consensus document with some small clarifying modifications. The full definition now reads:

> An area established by the BLM, usually associated with and within a Development Area, from which all new drilling of vertical, directional, or horizontal wells that newly penetrate the potash formations can be performed to support the development of oil and gas resources. The size and shape of a Drilling Island defines the area where wellbore penetrations of the potash formations will be allowed; this area is to be as small as practical to still allow effective oil and gas development while managing impacts on potash.

The added sentence incorporates into the definition concepts found in the Order at Section 6.e.

We have also moved the word "usually" to be consistent with the revision to Section 6.e.(1)(c), allowing for a Drilling Island not associated with a Development Area. See response to Comment 2.

The Drilling Island boundary is administratively approved through the decision of the BLM, as provided at Section 6.e.

Comment Number: 17	**Definition: Indicated and Inferred Resources**

Comment Summary: Indicated and Inferred Resources should not be defined, as the terms are pertinent only to the task of properly mapping potash resources, and for those purposes, the terms must be defined as they are customarily defined by the Society of Mining Engineers.

The definition of "Inferred Resources" as contained in the draft Order incorrectly allows well logs to be used. The use of well logs in defining inferred resources would allow the potash industry to expand inferred resources in a manner that is not scientifically supported.

Commenter(s): Eddy County, EOG, Fasken, Hanson, HEYCO, IPANM, Lynx, Manzano, McClellen, Mewbourne , Yates

Response:

Because the terms "indicated resources" and "inferred resources" are used in the Order, along with "barren area," "measured reserves," and "unknown area" (all of which are defined), BLM believes it is useful and appropriate to include definitions for these two terms. The BLM based its definitions on the definitions that were first developed by the United States Geological Survey (USGS) and the Bureau of Mines, which it determined are the most appropriate to these circumstances. The definitions provided by the Society of Mining Engineers are conceptually quite similar to the USGS definitions. It is appropriate for the BLM to use the standards defined by the USGS, the premier science bureau of the Department.

The use of well logs to determine "Inferred Resources" is appropriate. Well logs can be used to show the presence of potassium, but cannot be used to identify the minerals that contain the potassium. Using the well logs and the understanding of the Saludo Formation developed over the past 80 years one can infer the presence of potash, but not be able to determine the mineralogy, grade, or economic value of the inferred resource. Well logs provide indirect measurements of potassium and can support the mineral classification of the lands.

Comment Number: 18	**Configuration of Buffer Zones**

Comment Summary: Section 6.e.(3) of the draft Order removes from the State and local offices of the BLM the authority for configuring buffer zones and places it in the sole discretion of the BLM Director; this means buffer zones and their dimensions are established as a matter of policy and cannot be challenged or changed without action from the Director.

Commenter(s): Yates

Response:

The Secretary, through his Orders, gives direction to his Bureau Directors. A great deal of discretion is often provided to Directors on how to implement Orders. Generally the Secretary is reluctant to specify in a Secretary's Order decision-making levels within a Bureau because it limits the discretion of Directors.

Section 6.e.(3) of the revised Order will be implemented through Section 9, which specifically authorizes the Director to re-delegate responsibilities granted to him as appropriate, and Section 7(c) and Section 7(c), which authorizes the Director to use broad discretion in implementing the Order .

As a general matter, the BLM seeks to delegate authority to the lowest level in the organization practical for the efficient management of the public lands and greatest service to the public. Most BLM authorities are derived from the Secretary and delegated through the Assistant Secretary to the Director. BLM authorities, for purposes of re-delegation within the BLM, are generally derived from the Director. The delegation of authority is documented through Secretary's Orders, the Departmental Manual (235 DM with regard to the BLM), and section 1203 of the BLM Manual. The term "Authorized Officer," defined in 43 CFR Part 3000, identifies the individual who can make decisions. The Authorized Officer can make decisions because he or she has been properly delegated the authority needed to make such a decision. This term is also defined in the Order.

Section 6.e.(3) of the Order provides that buffer zone dimensions will be revised based on science, engineering, and new technology. Revision of the buffer zones is not a matter of policy.

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Comment Number: 19	**Mapping Process**

Comment Summary: Section 6.d.(9): Delineation of Resource Areas: This provision requires potash lessees to annually provide maps of potash resources and three year mine plans, and further requires the BLM to review the information and make revisions to the boundaries of the reserves as indicated on the potash company submittals. The draft Order merely requires the BLM to accept maps submitted by the potash industry, and does not require the BLM to independently verify the information or review the sources relied upon by the potash company. Thus, the potash industry, rather than the BLM, has the ability through the mapping process to effectively preclude all oil and gas operations in the Potash Area.

Commenter(s): Yates

Response:

In response to this comment, the BLM has added the words "Upon verification" to the section. Section 6.d.(9) now reads:

> The Authorized Officer will annually review the information submitted under this requirement and make any revisions to the boundaries of Measured Reserves, Indicated Resources, Inferred Resources, Barren Areas, and Unknown Areas. Upon verification, the Authorized Officer will commit the initial findings to a map(s) of suitable scale and will thereafter revise that map(s) as necessary to reflect the latest available information.

It is the BLM's standard practice to review the data that is submitted in order to verify it before using the data for mapping purposes.

Comment Number: 20	**Defacto Withdrawal**

Comment Summary: The draft Order is a substantial change in the administration of concurrent development within the Potash Area. The 1986 Order only protects the areas known to contain sufficient potash of sufficient grade and thickness to be mined and marketed at a profit (enclaves). The draft Order extends protection to the entire Potash Area of 497,002.03 acres, and therefore constitutes a defacto withdrawal.

The draft Order violates Section 1714 of FLPMA as the Secretary has not followed the withdrawal procedures set forth therein and considered "the economic impact of the change in use on individuals, local communities, and the Nation." FLPMA Section 204 (c)(2).

Commenter(s): Eddy County, EOG, Fasken, Hanson, HEYCO, IPANM, Lea County, Lynx, Manzano, McClellen, Mewbourne, PBPA

Response:
The revised Order does not close the area, withdraw it from oil and gas development, or create a potash reserve in the DPA. Oil and gas leasing may still occur and, in fact, additional leasing is anticipated. As a result of the revised Order, leases that are currently under suspension because they are located within areas of known potash reserves (enclaves) may be brought out of suspension and developed using current technologies and implementation of the Development Area concept.

The revised Order is designed to encourage concurrent development of potash and oil and gas resources. The revised Order takes advantage of technological advances in horizontal drilling capabilities to extend the Drilling Island concept found in the 1986 Order, and adds the concept of Development Areas which may be located throughout the DPA. These provisions are designed to allow oil and gas drilling in a manner that also protects known or potential potash deposits. Extending the Drilling Island concept to areas with Inferred, Indicated, or Unknown potash resources was originally recommended by the JITC.

The revised Order allows Development Areas to be proposed anywhere in the DPA, including enclaves known to have commercial deposits of potash. Development Areas will be established with more flexibility when further away from current and near-term traditional potash mining operations. Drilling Islands that already exist in the enclave are recognized and additional drilling at these locations could be considered. Areas around existing wells in the DPA might also be candidates for expansion to Drilling Islands, with associated Development Areas established around with them. The revised Order also permits routine processing of APDs in already known Barren areas or areas proven to be barren by additional core hole drilling. The revised Order further provides for possible Drilling Islands outside of Development Areas or for single well sites if they are jointly recommended by oil and gas and potash lessees.

While these provisions differ from those in the 1986 Order, they do not close or withdraw the lands from oil and gas exploration. These provisions should lead to more cooperative development that may maximize the production of both resources. The provisions in the revised Order fully comply with the requirements of FLPMA, the Mineral Leasing Act, and the implementing regulations.

Comment Number: 21	**Unlawful Leasing Restriction**

Comment Summary: Section 6.c.(3) 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.

The draft Order creates a monopoly on who may bid on and hold potassium leases in direct conflict with the Mineral Leasing Act of 1920, leasing regulations and anti-trust laws.

There is no similar protection granted, nor should there be, to parties acquiring oil and gas lessees.

Commenter(s): HEYCO, IPANM, Manzano, McClellen

Response:

Section 6.c.(3) states:

> Before being allowed to participate in a competitive lease sale, all bidders must certify in writing that they have an identifiable, substantial and genuine interest in developing the potash resources and that they intend to develop the potash resources in accordance with applicable diligence stipulations.

The BLM has been including a diligence stipulation on potassium leases since the mid-1990s. This stipulation ensures that the potash resources owned by the United States are developed in a timely fashion. This provision in the Order ensures that bidders are aware of that stipulation and are willing to comply with it.

The provision has no effect on a bidder who wishes to acquire leases as investments with the expectation that a separate entity will perform the actual operations on the lease, as such a bidder clearly has an interest in developing, and intends to develop, the potash resources through the third-party operator. The provision does not create any sort of monopoly, as any entity with an interest in potash development may bid on a potash lease.

This provision is consistent with the Mineral Leasing Act of 1920, BLM regulations, and anti-trust laws.

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Comment Number: 22	**Establishment of Development Areas/ Drilling Islands/Barren Areas**

Comment Summary: Under the draft Order, DOI is free to determine that development of potash mineralization is a priority over development of oil and gas mineralization in the Potash Area. There is no provision in the draft Order that affirmatively requires or mandates the BLM to form a Development Area or a Drilling Island, or approve an APD in *any* area of the Potash Area (whether or not an enclave). Furthermore, the draft Order does not require the BLM to establish the Barren Areas within the Potash Area.

Commenters also expressed concern about the ambiguity associated with determining the size and shape of the Development Areas.

Commenter(s): HEYCO, IPANM, Lynx, Manzano, McClellean

Response:

Pursuant to the Order, the BLM will continue to work cooperatively with both the oil and gas and the potash industries. When the BLM leases a mineral, it is important that the lessee have access to the leased mineral in a manner that limits waste of any mineral and prevents dangerous conditions for all users of the lands. The Order does not abrogate any rights under any mineral lease. The revised Order does not specify the number or locations of Development Areas, Drilling Islands, or Barren Areas, or the number of permits to drill that will be issued because the Order is not a mineral development plan. Rather, it is a way forward for both industries and the BLM to provide for concurrent production of the minerals with reduced delays and expense of administrative challenges and judicial litigation. The various types of areas and the locations of Drilling Islands will be delineated based on the best geological information and the best economic and technological capabilities of the two industries.

See also Response to Comment 11.

This Order will be in place for a substantial period of time and needs to enable the BLM and the industries to adapt to new technology and to respond to specific resource conditions.

Comment Number: 23	**NM State Legislature Review**

Comment Summary: The draft Order may have a significant impact on State revenue generated from oil and gas extractions, which is estimated to be responsible for up to 40% of the state's revenue. Given the potentially detrimental fiscal effects to the state, the New Mexico State Legislature should have further opportunity to review and comment on the Order. The draft Order should be held in abeyance until the conclusion of the next session of the New Mexico State Legislature in March of 2013. Additionally, complete documentation needs to be made available to the New Mexico Legislative Finance Committee and to executive agencies of the state government.

Commenter(s): Dennis Kintigh (State Representative- Chaves, Lincoln, and Otero Counties)

Response:

In order to inform its decision-making process in revising the Secretary's Order, the BLM prepared an Environmental Assessment (EA) that includes socioeconomic analysis sections addressing the importance of mineral development in the DPA to both the local and state economies. As stated in the EA, the BLM expects that the overall result of the revised Order will be that more areas within the DPA will be made available for oil and gas extraction while protecting potash reserves and open mine workings, and that the designation of Development Areas and Drilling Islands will result in more efficient extraction of oil and gas resources.

The analysis in the EA projects that increased use of horizontal drilling and hydraulic fracturing should result in higher extraction rates of petroleum resources and an overall increase in economic benefits to the oil and gas industry as a whole, with a concomitant increase in subsequent royalty payments to the state of New Mexico and the Federal Treasury. The BLM also expects that potash production will remain stable. Thus, the BLM's expectation is that, far from having detrimental effects on the state's economy, the revised Order will actually result in an increase in revenue to the State of New Mexico from its share of Federal mineral royalty payments. In light of this, BLM has determined that delaying the issuance of the Order until after the conclusion of the next session of the New Mexico State legislature is not warranted.

Comment Number: 24	**General**

Comment Summary:

- Please do not allow more oil and gas and potash destruction of Southeast New Mexico. (Jurney)
- The Proposed Secretarial Order and changes to Policy Statements have emerged as ill timed, regressive, divisive and counterproductive documents which are both legally and scientifically flawed. (Featherstone)

Commenter(s): Olen Featherstone, Charles Jurney

Response:

The BLM disagrees with these assertions. The BLM manages public lands under a complex multiple-use mandate from Congress, and must consider a wide variety of factors in land management decisions, including industry interest, conservation values, and protection of the environment, as well as other potential uses of the public lands, such as outdoor recreation. These lands and resources belong to the public and, as directed by law, the BLM places a high priority on requiring that mineral leasing and development are conducted in an environmentally-sound manner while balancing other uses and resource values. The purpose of the revised Secretary's Order is to encourage better coordination and management of the development of oil and gas and potash, consistent with the BLM's obligation to promote multiple use. The BLM believes that such coordination will benefit Southeast New Mexico.

The revised Secretary's Order is designed to further promote the efficient development of potash, oil, and gas resources, while minimizing conflict between the industries and ensuring safety of operations. The initial conceptual framework for a revised Secretary's Order was provided by the JITC following a request from Secretary of the Interior Ken Salazar in January 2012. The JITC is an industry committee established in 2011 and comprised of membership from both the potash and oil and gas industries. The JITC is not a Federally chartered organization and the BLM is not a member. The oil and gas membership is comprised of large, medium, and small companies that are responsible for the majority of production and operations within the DPA. The potash members of the JITC represent all of the current potash production in the DPA. In addition to the careful consideration given to the JITC's recommendations, the BLM made the draft Order available to the public, with a 45-day public comment period, to provide all interested parties with the opportunity to comment. Finally, any subsequent decisions made pursuant to the revised Secretary's Order would be guided by NEPA analysis incorporating consideration of environmental impacts and sound scientific information.

Comment Number: 25	**Safety**

Comment Summary:
A significant body of law related to the 1986 Order requires safety determinations to be made on a well by well basis.

Many oil and gas wells have been mined through as potash mines advanced into areas of past oil and gas production. There have been no incidents of gas leaking into a mine as a result of oil and gas wells, even in areas where mining has proceeded through existing wells. The draft Order ignores the fact that the oil and gas industry has drilling methods that can successfully and safely drill through voids such as abandoned or inactive potash and coal mines.

Commenter(s): Fasken, HEYCO, IPANM

Response:

The revised Order has not altered the oil and gas lease stipulations that prohibit operations that would constitute a hazard to potash operations and provide for requirements preventing the infiltration of oil, gas, or water into potash formations, mines, or workings. These safety determinations will continue to be made on a well-by-well basis. In addition, the revised Order requires a case-by-case analysis of any proposed Development Area or Drilling Island as well as any new APDs within the DPA. The revised Order provides the opportunity to expand oil and gas drilling within Development Areas using updated drilling methods and technology. Safety will be a principal consideration in establishing and managing Development Areas. The revised Order is consistent with all safety provisions of the 1986 Order while also providing the opportunity for companies to take advantage of new drilling methods and technologies.

The Order requires the BLM to use the best available science as it makes its decisions. As the potash and oil and gas industries continue to work together, the BLM expects that additional progress will be made in understanding the full safety implications of oil and gas development in the potash area. The BLM commends the excellent safety record established in the DPA, which is the result of a sustained effort by multiple parties. As all parties are aware, a continued focus on safety is required.

Comment Number: 26	**Administration of APDs**

Comment Summary: The BLM has represented for many years that the Potash Order should be rewritten to provide clear instructions in the administration of issuing permits to drill oil and gas wells in the Potash Area, with the thought that the Order, when rewritten, would provide significant drilling opportunities for oil and gas companies. Simplified instruction to allow the BLM to approve more oil and gas APDs within the Potash Area has not been incorporated into the draft Order. In fact, the draft Order states it is the policy "to deny approval of most applications for permits to drill oil and gas wells from surface locations within the Designated Potash Area." Section 6.e.(1).

Commenter(s): HEYCO, Lea County

Response:

The purpose of the revised Order is to provide procedures and guidelines for more orderly co-development of oil and gas and potash deposits owned by the United States within the DPA through safe, concurrent operations. As this Order will be in place for a substantial period of time, it has been written in a manner to enable the BLM and the industries to adapt to new technology and respond to specific resource conditions. The BLM will issue guidance through Instruction Memoranda, Information Bulletins, Notices to Lessees, and other means as necessary to provide instructions and promote orderly co-development.

The BLM expects that the overall result of the revised Order will be that more areas within the DPA will be made available for oil and gas extraction while protecting potash reserves and open mine workings, and that the designation of Development Areas and Drilling Islands will result in more efficient extraction of oil and gas resources.

Comment Number: 27	**Veto over APDs**
Comment Summary: Giving potash lessees a veto on every APD is defacto unlawful delegation of authority.	
Commenter(s): HEYCO, Yates	
Response: Potash lessees do not have a veto over APDs. It is not clear what language in the proposed Order led to this concern. To the extent the concern relates to Section 6.e.(1)(c), if an oil and gas lessee that wishes to drill outside of an established Development Area cannot obtain the agreement of the nearest potash lessee, it can propose that BLM establish a new Development Area and Drilling Island under Section 6.e.(1)(a), in the area in which it wishes to drill. Under the revised Order, the BLM has great discretion in establishing the location, shape, and size of Development Areas and Drilling Islands associated with them. Some other specific concerns that may have led to these comments have been addressed through modifications of the revised Order. For example see the response to comment 4 addressing the availability of data, comment 5 addressing the use of the word "limiting," and comment 19 about the verification of submitted data. We note that the decision to authorize an APD remains with the BLM.	

Comment Number: 28	**Challenge Denial of APDs**
Comment Summary: The draft Order policy statements and definitions completely remove any likelihood that an aggrieved oil and gas operator could successfully challenge the denial of any APD for any proposed location anywhere in the Potash Area.	
Commenter(s): HEYCO, Lynx	
Response: If the commenter is concerned about inability to access oil and gas under a Federal lease, the revised Order would not prevent a lessee from gaining the benefits of its lease either through unitization or through other approved drilling operations. If the commenter is concerned about the policy favoring unitization found in Section 6.e.(4) of the revised Order, BLM notes that the section provides that, when there is a compelling reason for another operating system, a Federal oil and gas lease (or a portion thereof) need not be unitized or included in a communitization agreement. If the commenter is concerned about the appeals process, BLM notes that the revised Order does not modify the appeals process. The denial of an APD remains a decision that may be reviewed by the State Director. (43 CFR 3165.) The BLM may not make decisions that are arbitrary or capricious. Parties that are adversely affected by BLM decisions may challenge them. If the State Director (in the case of State Director review), the IBLA, or a court with jurisdiction holds that a BLM decision was arbitrary or capricious, the BLM decision would be reversed or remanded.	

Comment Number: 29	**Inconsistent with Previous Policy**

Comment Summary: The draft Order completely rewrites years of work and decisions from the BLM and through the courts. The draft Order must continue in the context of the documents which preceded its publication. Even items of consensus that were listed by the JITC from the 1986 Order have been ignored.

Yates and other commenters would like to preserve the enclave policy from the 1986 Order.

Commenter(s): Eddy County, EOG, Fasken, Featherstone, Hanson, HEYCO, IPANM, Mewbourne, Yates

Response:

The revised Order retains many of the provisions of the 1986 Order, including the stipulations for oil and gas and potash leases. The long history of contentious litigation related to the 1986 Order, along with the advent of new technology that makes possible new approaches to the concurrent development of potash and oil and gas in the DPA, led to the agency's determination that it was in the public interest to revise the 1986 Order.

The BLM gave careful consideration to the consensus items received from the JITC and incorporated them as appropriate in the revised Order. The BLM also carefully considered comments it received requesting changes to the proposed Order that some commenters believed were more consistent with the consensus items, and made several revisions to the Order in response to those comments.

The enclave policy in the 1986 Order generally limited drilling in areas of measured potash reserves to Barren Areas or Drilling Islands. Because the revised Order expands the Development Area/Drilling Island concept throughout the DPA, there is no need to single out areas of measured reserves (enclaves). The BLM believes that the revised Order will lead to orderly development of oil, gas, and potash, as well as additional resource recovery.

Comment Number: 30	**Economic Impacts**

Comment Summary: Oil and gas companies in the Potash Area pay substantially higher royalties to the Federal Government, State of New Mexico, and Lea and Eddy Counties than potash companies. Furthermore, the total amount of royalties paid from *current* oil and gas production in the Potash Area is but a small percentage of what would be paid if concurrent operations were expanded consistently with science.

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 gave a dramatic adverse economic effect to Chaves, Eddy and Lea Counties, the State of New Mexico, and the Federal Government.

In addition to lost revenues, Yates and others commented that the draft Order would also result in undue waste of oil and gas resources.

Commenter(s): Eddy County, EOG, Fasken, Featherstone, Hanson, HEYCO, IPANM, Lea County, Manzano, McClellen, Mewbourne, PBPA, Yates

Response:

In order to inform its decision-making process in revising the Secretary's Order, BLM prepared an Environmental Assessment (EA) that includes socioeconomic analysis sections addressing the economic importance of mineral development in the DPA. As stated in the EA, the BLM expects that the overall result of the revised Order will be that more areas within the DPA will be made available for oil and gas extraction while protecting potash reserves and open mine workings, and that the designation of Development Areas and Drilling Islands will result in more efficient extraction of oil and gas resources.

The EA concludes that increased use of horizontal drilling and hydraulic fracturing should result in higher extraction rates of petroleum resources. BLM expects that some leases that are currently under suspension because they are located within areas of known potash reserves (enclaves) may be brought out of suspension and developed using current technologies and implementation of the Development Area concept.

Overall, the EA predicts an increase in economic benefits to the oil and gas industry as a whole, with a concomitant increase in subsequent royalty payments to the state of New Mexico and the Federal Treasury. The BLM also expects that potash production will remain stable. Thus, the BLM's expectation is that, far from having detrimental effects on the local or state economies, the revised Order will actually result in an increase in revenue.

Comment Number: 31	**Coordination with Local Governments**
Comment Summary: The Secretary and/or BLM are required to coordinate with local governments impacted by the proposed rule. FLPMA requires land use planning, including the draft Order, to be coordinated with State and local governments. The draft Order was published without coordination with the State of New Mexico, Chaves, Eddy and/or Lea Counties.	
Commenter(s): Chaves County, Coll Brothers, Eddy County, Lea County, Lynx	
Response: The BLM disagrees with the commenters' assertions. The revised Order is a modification to the Secretary's 1986 Order, and does not constitute a rulemaking. The BLM made the draft Order available to the public, with a 45-day public comment period, to provide all interested entities with the opportunity to comment. The BLM received comments from Eddy, Lea, and Chaves Counties and from a New Mexico state representative, among others. See Response to Comment 13. The DPA is located in Eddy and Lea Counties. The BLM met at separate times with representatives of Lea County and Eddy County. Both of those meetings also included members of the New Mexico State legislature whose districts include those counties. The BLM also met separately with additional members of the New Mexico State legislature whose districts include Eddy, Lea, and Chaves Counties. The BLM will incorporate the substance of the revised Order into the Carlsbad RMP, scheduled to be completed in 2014.	

Comment Number: 32	**Adopt JITC Consensus**
Comment Summary: The DOI/BLM should adopt the JITC recommendations verbatim.	
Commenter(s): Chaves County, Coll Brothers, Lea County, PBPA	
Response: The BLM has the responsibility for the content of any revised Order. As such, the BLM must consider a wide variety of factors in land management decisions, including industry interest, conservation values, and protection of the environment, as well as other potential uses of the public lands. The BLM carefully considered the comments that the JITC submitted regarding the proposed Order and incorporated them as appropriate in the revised Order. The JITC comments were not incorporated word for word, but the revised Order reflects most of the concepts identified by the JITC.	

Comment Number: 33	**Prior Commitment Made by DOI**

Comment Summary: In 2009, a group of ten oil and gas stakeholders accompanied Representative Teague to a meeting with Deputy Assistant Secretary Ned Farquhar. Mr. Farquhar gave the group the following assurances:

- 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 gas migration and subsidence studies conducted for the 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.

Commenter(s):
Eddy County, EOG, Hanson, Manzano, McClellen

Response:

The studies, which were under way in 2009 and were funded by the BLM and conducted by Sandia National Laboratories, have been completed. The BLM agrees that the Order should incorporate all available science and Section 7.d. of the revised Order provides for that. That section states that the BLM will obtain and use the best science available when administering the Order and will comply with the requirements of Secretarial Order 3305 on Scientific Integrity. It further provides that the BLM may continue to use Sandia National Laboratories to provide unbiased technical assistance in administering the DPA. Sandia National Laboratories continues to conduct studies related to concurrent development of potash and oil and gas, and many are expected to continue for a number of years. When appropriate, the BLM will adjust its administration of the DPA as new science becomes available.

See Comment Response for Nos. 13 and 31 regarding stakeholder participation.

The BLM also notes that the commenters' summary of Mr. Farquhar's statements is not correct.

Comment Number: 34	**Biased Technology Requirements**

Comment Summary: The requirements and expectations of the oil and gas industry to utilize the most up to date technology and techniques in developing oil and gas, and not to require any advancement in the potash industry's technology is completely biased. The Order needs to address this issue and mandate a technological requirement on other mining interests as well. If the companies use new technologies in mining it could lead to more of the oil and gas resources being protected and available for development, benefitting both the state and federal governments with the additional production and resulting royalties.

Commenter(s): Strata

Response:

The BLM disagrees that the revised Order is biased. The revised Order applies concepts based on technological advances that have already been achieved in oil and gas drilling. The BLM intends to encourage the use of new technology in potash development as well as oil and gas development. For example, the BLM recently approved the first solution mine for potash in the Carlsbad area.

Section 7.d. of the revised Order requires the BLM to obtain and use the best science available when administering the Order:

> The BLM will obtain and use the best science available when administering this Order consistent with Departmental Manual chapters 305 DM 2 and 305 DM 3. The BLM will comply with the requirements of Secretarial Order 3305 on Scientific Integrity. The BLM has previously used Sandia National Laboratories to provide unbiased technical assistance in administering the Designated Potash Area and may continue to do so, if the BLM, consistent with all applicable laws, so chooses.

When appropriate, the BLM will incorporate additional advances in science and technology into its administration of the revised Order. The BLM intends to issue guidance through Instruction Memoranda, Information Bulletins, Notices to Lessees, and other means as necessary.

Comment Number: 35	**JITC not Representative**
Comment Summary: The JITC is not representative of the oil and gas industry.	
Commenter(s): Fasken, Strata	
Response: The BLM realizes that the JITC does not represent all oil and gas companies that might have interests in the DPA. The BLM sought input from all interested parties and the general public, including oil and gas companies not represented by the JITC, through the Notice of Availability of the proposed Order published in the Federal Register on July 13, 2012. Thus, the agency has had the benefit of a wide range of views. The BLM notes that the oil and gas companies that are members of the JITC include large, medium, and small companies that are responsible for the majority of production and operations within the DPA. Members of the JITC represent over 72% of the oil production and 94% of the gas production in the DPA. The BLM also notes that the oil and gas companies that are not members of the JITC that submitted comments critical of the proposed Order produce 1% and 2% of the oil and gas, respectively, in the DPA.	

Comment Number: 36	**Designation of Single Operator**

Comment Summary: The proposed Order requires forced unitization with designation of a single operator for each development area (Section 6.e.2.b.ii). This means that small independent companies do not have the opportunity to take over the operatorship of certain horizons and develop what the larger companies have no desire to. The proposed Order does not consider units with existing sub-operators in the Potash Area and how well they are cooperating. (Strata recounts its successful history working as a sub-operator with Chevron as the unit operator, stating that the success would not have been possible under the proposed Order.)

Commenter(s): Strata

Response:

Since 1951, it has been the BLM's policy to require unitization within the DPA. Unit Operators may propose, and the BLM may consider, requests for designations of sub-operators for portions of unit agreements or specific horizons. The revised Order does not preclude approval of sub-operators, nor require termination of currently approved sub-operators.

Some horizons may be best developed via vertical wells rather than using horizontal drilling technology. The revised Order does not preclude drilling of vertical wells by smaller operators when appropriate. These vertical wells may be co-located within a Drilling Island or may be located within a Barren Area.

Of the total Federal acreage within the DPA, 45% is currently within a Federal unit. Pursuant to the Mineral Leasing Act, the oil and gas leases include a term that requires the lessee to subscribe to a unit plan that the Secretary deems necessary for proper development and operation of an area, field, or pool. See 30 U.S.C. 226(m); BLM Oil and Gas Lease Form 3100-11, Sec. 4. The revised Order does not add to the BLM's existing authority to require unitization when and where it is appropriate.

Comment Number: 37	**Cost of Exploratory Work**
Comment Summary: The proposed Order places a new costly burden on oil and gas companies to take steps to discover whether or not there is recoverable potash located in areas of oil and gas interest (Section 6.e.(6)). In fact, that burden should be placed on the federal government or the potash industry that will benefit directly from any information that oil and gas companies find regarding resources in these currently "unknown" potash resource areas.	
Commenter(s): Strata	
Response: Core drilling to determine if an area is barren is optional and can be conducted by either industry. One of the reasons for the concept of Development Areas with Drilling Islands was to provide an alternative to this process. When a Development Area is designated, a Drilling Island will be established from which the oil and gas resources can be developed while minimizing the impacts to potash resources. When drilling from a Drilling Island, there is no need for an oil and gas company to make any determination regarding the existence of potash resources. If a company wishes to drill somewhere other than a Drilling Island then it may elect to drill core holes to determine whether potash mineralization is present. The policy is not intended to be restrictive or burdensome, but rather to provide an additional option to oil and gas lessees.	

Comment Number: 38	**Shared Drilling Island**

Comment Summary: The creation and location of a Development Area and Drilling Island should be a cooperative decision among companies. As is the current policy, all companies within a Development Area should be allowed to operate their own acreage from a mutually agreeable shared surface location if they choose not to enter into a Unit Agreement.

Commenter(s): Strata

Response:

Since 1951, the Secretary's Order has required the BLM to place stipulations requiring unitization on all oil and gas leases issued in the DPA. The 1986 Order did not distinguish between vertical and directional or horizontal wells. In fact, the BLM commonly expanded Drilling Islands where only vertical drilling was proposed.

The intent of the revised Order is to enable the maximum technically feasible development of the oil and gas resources while managing any adverse effects on the future mineability of the potash resource. Current horizontal drilling technology has provided operators the opportunity to develop oil and gas reserves from beneath areas of measured potash reserves (enclaves) while minimizing impacts to potash resources. While these horizontal well APDs are proposed well-by-well, the Development Area concept would allow coordinated development of multiple wells from a central surface location.

Smaller lessees would be able to participate in the drilling program in a Development Area, whether through a communitization or unit agreement, proportionally to their acreage in the Development Area. We agree with the commenter that the identification and location of a Development Area should be, to the extent possible, a cooperative decision among the operators in the context of managing the impact to potash resources while providing for access to the leased oil and gas. Note that the BLM cannot unilaterally require unitization in Development Areas that contain private or state minerals. Similarly, the NMOCD does not have the authority to require communitization of Federal minerals. Thus, unitization or communitization (pooling) is best done through cooperation of the mineral lessees.

An added benefit of a communitization or unit agreement is consolidation of surface access and infrastructure so as to reduce the footprint of the overall operations. Individual well development by operators would require multiple facilities and access, which might result in greater costs, and possibly delays in obtaining approval for surface impacts.

There could be circumstances where there is no advantage to unitization, but there are benefits from using one Drilling Island to access more than one lease. The Order does not prevent the BLM from authorizing such a situation. However, it is anticipated that unitization of Development Areas will be the most common approach to oil and gas lease development within the DPA.

Comment Number: 39	**Establishment of Barren Areas**
Comment Summary: The BLM is not qualified to establish Barren Areas.	
Commenter(s): Mack Energy	
Response: The BLM disagrees with the commenter. It is the BLM's responsibility under the Mineral Leasing Act and FLPMA, as well as potash and oil and gas regulations, to manage the Federally-owned potash and oil and gas resources in the DPA. This responsibility within the DPA clearly includes the establishment of Barren Areas. The BLM will use concrete, objective data to determine whether or not an area is barren of potash ore. The BLM is committed to using the best science available and maintaining the highest standards in making this determination according to such data and pursuant to the legal authorities cited. The BLM is well-qualified to make decisions with respect to Barren Areas and other matters under the revised Order.	

Comment Number: 40	**Definiton: Development Area**
Comment Summary: In addition to changing the word "managing" to "limiting," the proposed Order deletes the word "commercial" from the definition of a development area contained in the JITC Consensus Document. The effect of this change is to place BLM in the role of limiting rather than managing, the effect of oil and gas development on all potash, whether or not commercial.	
Commenter(s): Yates	
Response: As explained in the Response to Comment 5, the BLM has changed the word "limiting" to "managing" in response to comments. The BLM decided to delete the word "commercial" from the definition of "Development Area" in the revised Order because of the potential for this term to lead to misunderstanding. This is important since the revised Order is designed to provide a certain level of protection to areas of Indicated and Inferred Resources until such time as those areas are shown to be either Barren Areas or areas of Measured Reserves. The BLM has the obligation to manage resources so that they are used in the combination that will best meet the present and future needs of the American people. The BLM does not want the Order to imply that only the areas in which potash is already known to exist in sufficient thickness and quality to be mineable under existing technology and economics are subject to careful management.	

Comment Number: 41	**Legal Description of DPA**
Comment Summary: The commenter suggested a number of revisions to the legal description of the DPA in Section 8 of the proposed Order.	
Commenter(s): Mack Energy	
Response: The BLM has not changed the legal description or boundary of the DPA from that of the 1986 Order as it was corrected in 1987. The legal description does include some private and state lands that are not under the jurisdiction of the BLM and thus are not governed by the Order, but these lands are included so that the legal description does not become too lengthy and cumbersome. As the commenter notes, some portions of the described area are barren of potash and contain existing oil and gas wells, but these circumstances were also true of the 1986 Order and will not prevent the revised Order from being a helpful tool in the management of oil, gas, and potash resources in this area. The commenter stated that some identified sections were included in the revised Order, but not included in the 1986 Order. BLM again reviewed the revised Order and found no changes from the 1986 Order, as corrected in 1987. It is not the intent of the revised Order to increase the size of the DPA or otherwise change its administrative boundaries.	

Anderson, Michael D

From: Howarth, Robert
Sent: Thursday, November 29, 2012 9:52 AM
To: Cardinale, Richard
Subject: SO Potash
Attachments: 2012 11 15 Final Potash SOdvedits.docx.docx

Rich, I believe this is what you are looking for.

Rob

Robert Howarth
Deputy Director for Correspondence, Document Production, and FOIA Management
Office of the Executive Secretariat and Regulatory Affairs
Department of the Interior
1849 C Street, NW
Washington, DC 20240
202-208-3181
202-208-4451 (direct)
202-208-549-8961 (cell)

ORDER NO.

Subject: Oil, Gas, and Potash Leasing and Development within the Designated Potash Area of Eddy and Lea Counties, New Mexico

Sec. 1 **Purpose and Effect.** (b) (5) [redacted]

Sec. 2 **Authority.** (b) (5) [redacted]

Sec. 3 **Order Revised and Superseded.** (b) (5) [redacted]

Sec. 4. **Definitions.**

(b) (5) [redacted]

(b) (5)

[redacted]

(b) (5) [redacted]

Sec. 5 **Status of Lands.** (b) (5) [redacted]

Sec. 6 **General Provisions.**

a. Issuance of Oil and Gas Leases. (b) (5) [redacted]

(b) (5) [redacted]

b. Reinstatement or Renewal of Oil and Gas Leases. (b) (5) [redacted]

c. Potash Leases.

(b) (5)

[redacted]

(b) (5)

[redacted]

e. Oil and Gas Drilling.

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

Sec. 7 **Regulatory and Administrative Matters.**

(b) (5)

[redacted]

(b) (5)

[redacted]

Sec. 8. **The Designated Potash Area Legal Description.**

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

Sec. 9 **Administrative Provisions.** (b) (5) [redacted]

Secretary of the Interior

Date: .

Anderson, Michael D

From: Haugrud, Jack
Sent: Thursday, November 15, 2012 12:40 PM
To: Farquhar, Ned; Lin, Janet H; Barlan, Bryce; Hawbecker, Karen; Fugate, Barbara; Cardinale, Richard; Allard, Phil; Blank, Harvey
Cc: Burke, Marcilynn; Tompkins, Hilary C
Subject: Potash - Proposed Decision Memorandum
Attachments: Potash Order Decision Memo for Secy (SOL 11 15 2012).docx

Internal Deliberative Document
Attorney-Client Communication
DO NOT DISCLOSE

I spoke briefly with the Secretary yesterday evening, and (b) (5) [redacted] but I do not have a redline version that shows the precise areas where revisions were made. But I did not change anything substantively.

DECISION MEMORANDUM FOR THE SECRETARY

FROM: Mike Pool, Acting Director

CC: David Hayes, Deputy Secretary
Marcilynn Burke, Acting Assistant Secretary, Land and Minerals Management
Hilary C. Tompkins, Solicitor

SUBJECT: Proposed Final 2012 Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

I. INTRODUCTION

The Bureau of Land Management (BLM) has prepared a proposed final "Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico."

The proposed final 2012 Secretary's Order would supersede the current Secretary's Order that addresses management of the oil and gas and potash resources in the designated area. The revisions in the new Order are designed to promote the efficient development of potash, oil, and gas resources, while minimizing conflict between the industries and ensuring the safety of operations. Industry representatives from leading oil and gas and potash interests have been working together to identify and propose an acceptable path forward. The opportunity to finalize a Secretary's Order that has the potential support of both industries is historic, particularly in light of the long and contentious history of the area.

The proposed Secretary's Order was made available for public comment from July 13 to August 31, 2012. The BLM received 28 comment letters that contained 41 distinct comments on the proposed Order. After careful analysis of these comments, the BLM made several changes to the proposed Order and prepared the proposed final 2012 Secretary's Order.

The BLM also conducted government-to-government tribal consultation meetings with seven tribes beginning on July 17; none of the tribes expressed any adverse opinions about the proposed Order.

II. BACKGROUND

Potash is a potassium-bearing mineral used primarily for fertilizer. The Carlsbad Mining District has a unique geology that contains potash, oil, and gas deposits. Oil and gas is found in formations below the potash-bearing formations, so oil and gas wells must be drilled through the potash formations. If a well casing fails, gas could enter the mine workings and endanger miners. The potential for such a breach also could increase potash operating costs because

enhanced ventilation and specialized equipment would be needed before mining could continue. These conflicts have led to litigation; numerous cases have been appealed to the Interior Board of Land Appeals and to federal court.

While there has been a long history of litigation, substantial mineral development has occurred in the past, as evidenced by the fact that a total of 4,959 wells (approximately 2,295 active oil wells, 577 active gas wells, 33 water injection wells, and 2,054 dry holes and abandoned wells) are currently located within the area covered by the Order. Historically, there have been seven major potash mining operations in this area with thousands of miles of interconnected underground mine workings. Currently, two companies operate four potash mines in the area. In addition, about 2,500 potash core holes have been drilled within the area.

The Designated Potash Area (DPA) was established by a Secretary's Order in 1939, which originally withdrew approximately 43,000 acres from oil and gas leasing and development to protect potash deposits. Exploration by several companies continued after 1939 and the potash area was expanded by a 1951 Order, which lifted the withdrawal and authorized concurrent development by the oil and gas and potash industries. To achieve concurrent development, the 1951 Order, and later Orders in 1965, 1975, and 1986, imposed protective stipulations in new leases issued for both oil and gas and potash, to avoid conflicts as much as possible. The DPA currently covers a total area of approximately 497,002 acres and includes 350,617 acres of BLM-managed land where leasing of oil and gas and potash occurs.

In 2011, potash and oil and gas companies formed a Joint Industry Technical Committee (JITC) with the objective to "establish how both Potash Mining and Oil and Gas Production will operate when their activities are in close proximity so as to allow safe, concurrent development of both minerals." The JITC formulated a consensus document to recommend a new method for the BLM's management of orderly concurrent development of oil and gas and potash within the DPA. The proposed 2012 Secretary's Order is consistent with the principles set forth in the consensus document.

In developing the proposed final 2012 Secretary's Order, the BLM prepared an environmental assessment (EA) under the provisions of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq. In this EA the BLM determined that the 2012 Secretary's Order would be consistent with the land use plans for the DPA. The EA evaluated the potential environmental effects of continuing to operate under the 1986 Secretary's Order (the No Action Alternative) and operating under the 2012 Secretary's Order (the Proposed Action). The EA noted that any surface disturbing activities approved under the procedures of either the 1986 Secretary's Order or the 2012 Secretary's Order would be subject to further site-specific evaluation under NEPA, but determined that the new emphasis on Development Areas, Drilling Islands, and unitization of oil and gas development would tend to focus the surface activities of oil and gas development in certain areas, consolidate facilities, and reduce the amount acreage required for access routes. This would have a beneficial effect on the natural environment.

As discussed in the EA, the overall environmental effect of the proposed revision would result from focusing surface activities within designated Development Areas and Drilling Islands. While the intensity of surface use in these Drilling Islands would be greater than that associated with an individual well pad or typical lease operation, there are several environmental benefits that can be realized through opportunities for centralized facilities. In addition, the focus on unitization and development of units primarily through horizontal drilling could ultimately

reduce the number of oil and gas surface locations within the DPA. Consolidating activities in Drilling Islands may reduce habitat fragmentation and reduce impacts to potash resources by preventing undue waste due to reducing the areas requiring safety Buffer Zones for mining activities. In addition, wells currently producing outside of Development Areas and Drilling Islands would be allowed to produce until they are no longer serviceable. After production is complete these well locations would be reclaimed. Over time, the result would be a reduction in scattered or dispersed wells. Therefore, the overall surface disturbance acreage and habitat fragmentation impacts should be less through the use of the Development Area and Drilling Island concepts.

Based on the analysis in the EA, the BLM has evaluated whether approval of the proposed final 2012 Secretary's Order could result in a significant adverse impact to the human environment. For the reasons noted above, the EA shows that there would not be any significantly adverse impacts to the human environment from approving the proposed final Order. To the contrary, the impact of mineral development (which would be subject to additional NEPA review) is expected to be reduced under the proposed final 2012 Secretary's Order because of the consolidation of surface activities and better coordination between the oil and gas and potash industries.

III. SUMMARY OF PROPOSED ORDER

Under the proposed final 2012 Secretary's Order, the BLM would manage the DPA under a plan of co-development, mostly through the establishment of Development Areas with associated Drilling Islands. The BLM believes that the proposed final Order provides tools that would lead to more effective management of the DPA. In particular, the proposed final Order would lead to more careful development of oil and gas resources from Drilling Islands. The proposed final 2012 Secretary's Order should also lead to enhanced conservation of potash resources.

The proposed final Order would introduce the term "co-development," defined as the concurrent development of oil and gas and potash resources in the DPA in the context of a cooperative effort between industries under the guidelines of the Order. Under the new Order, the BLM would establish "Development Areas" where oil and gas wells could be drilled from one or more "Drilling Islands." The Drilling Island concept was first introduced in the 1975 Secretary's Order. In most cases, a single Drilling Island would be established for each Development Area, but if circumstances so dictated, the BLM could establish additional Drilling Islands. Drilling Islands would be situated in such a manner that extended reach horizontal wells could access oil and gas within the associated Development Area. Emerging technologies associated with horizontal drilling and production allow for the oil and gas industry to develop these resources in a manner that has less impact on potash resources and the environment, in some cases allowing the bottom hole location to be safely located below measured potash reserves.

The BLM expects that expanding the use of Drilling Islands and designating Development Areas that encompass many different leases over large areas would result in a greater recovery of potash and oil and gas resources. In addition, under the proposed final 2012 Secretary's Order, the BLM could authorize drilling from areas proven to be barren of potash or, in the BLM's sole discretion, from a single well site or a Drilling Island outside of a Development Area that was jointly recommended to the BLM by the oil and gas lessee and the nearest potash lessee.

Historically, the BLM managed one Application for Permit to Drill (APD) at a time and few horizontal or directional wells were developed. Under the proposed final 2012 Secretary's Order, the BLM would still review each APD for approval. However, any APD decisions would be informed by and incorporate analysis and factual information developed by the BLM in the agency's review of plans for Development Areas. Most drilling would occur from Drilling Islands within an associated Development Area. The number of wells on each Drilling Island would vary. It is reasonable to expect that some Drilling Islands would accommodate only 15 to 50 wells while others could support 150 wells or more.

The BLM envisions that, under the proposed final 2012 Secretary's Order, the oil and gas leases in a Development Area would be unitized and developed by a unit operator, or operated under a communitization agreement. This should lead to more orderly development of the oil and gas resources in the Development Area and minimize impacts to surface resources due to a reduction in the number of drill pads and associated roads, power lines, and other ancillary facilities. Moreover, the resulting reduction in the number and spacing of oil and gas drilling locations where wells penetrate the potash formation is expected to minimize impacts to potash resources and enhance the safety of underground potash miners. This would also allow some currently inaccessible oil and gas leases to be taken out of suspension and put into production.

The proposed final 2012 Secretary's Order would retain several important features of the 1986 Order, including the boundaries of the DPA established in the 1986 Order, as corrected in 1987. The new Order would also retain the language of the 1986 Order for stipulations for oil and gas leases and potash leases issued, reinstated, renewed, or readjusted in the DPA.

IV. POSITIONS OF COMMENTING PARTIES

The JITC is composed of a number of oil and gas companies and potash companies, along with Sandia National Laboratories. The potash company members of the JITC hold all of the potash leases in the DPA. The oil and gas company members of the JITC are responsible for approximately 85% of the oil and gas production in the DPA. All but one JITC member (OXY) signed a consensus document in April 2012 containing a general outline for a proposed management plan for the DPA. The proposed final 2012 Secretary's Order is consistent with the key concepts suggested by the JITC. While one JITC member (Yates Petroleum) later submitted comments criticizing the proposed Order, the other members of the JITC (including OXY) proposed very few edits to the proposed Order, most of which have been incorporated into this proposed final Order.

The companies representing the remaining 15% of oil and gas production in the DPA have declined to participate in the JITC. Some of these companies (who in total account for approximately 3% of the oil and gas produced in the DPA) commented that the proposed Order would adversely affect the oil and gas industry. The BLM expects that the proposed revision would benefit the overall economic outlook for both industries and give access to leases that cannot be developed under the 1986 Order. The BLM is committed to working with all lessees in implementing the proposed final 2012 Secretary's Order, if it is approved.

New Mexico Governor Susana Martinez and staff for Senators Bingaman and Udall and Representative Pearce have been briefed by the BLM and the JITC on the possibility of a new 2012 Secretary's Order. Industry has briefed Texas Senators Hutchinson and Cornyn and reports that the two Texas Senators are supportive of the JITC recommendations. Tom Bemis, New

Mexico Cabinet Secretary for Energy, Minerals, and Natural Resources, and Ray Powell, New Mexico State Land Office Commissioner, have also been briefed by the JITC on the consensus that it reached. The New Mexico Oil Conservation Division (NMOCD) commented on the proposed Order that the language in one section potentially could cause conflict due to differences between NMOCD and BLM regulatory frameworks. The BLM adopted a change to the proposed final 2012 Secretary's Order that addresses this concern. Eddy, Lea, and Chaves Counties submitted comments expressing concern that the proposed Order was in essence a withdrawal of the entire DPA from concurrent development and requesting coordination with local governments. The BLM has met with the Eddy and Lea County commissions to discuss the proposed final 2012 Secretary's Order to further explain how the BLM would approach the implementation of the 2012 Secretary's Order. The county commissioners with whom the BLM met indicated that these meetings aided their understanding of how the BLM would manage the development of both resources in the DPA.

The BLM's Carlsbad Field Office consulted with seven federally recognized tribes that have interests within the DPA in June, July, and August of 2012. The BLM made initial contact with tribes in the form of a letter informing them of the proposed revision and soliciting their concerns and input. The BLM sent a second letter, which included a copy of the draft revision to the 1986 Secretary's Order, to the tribes on July 9, 2012, and held face-to-face meetings with the various tribes in July and August 2012. The BLM arranged these meetings to discuss the proposed revision of the 1986 Secretary's Potash Order and other projects. The tribes did not express any adverse opinions regarding the substance of the proposed Order, but were very concerned that the BLM continue to follow the Native American Graves Protection and Repatriation Act (NAGPRA) and immediately notify the tribes if any human remains and associated funerary items are discovered. The proposed final 2012 Secretary's Order would not affect the BLM's continuing commitment to fulfill its responsibilities under NAGPRA. The tribes did not identify any areas of traditional cultural importance within the DPA.

V. RECOMMENDATION

I recommend that you approve the proposed final 2012 Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico.

VI. DECISION BY THE SECRETARY

I have decided to issue the proposed final 2012 Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

Dated:_____

_____
Ken Salazar

Anderson, Michael D

From: Allard, Phil
Sent: Thursday, November 15, 2012 10:39 AM
To: Wilson, Hazel A; Howarth, Robert; Iudicello, Fay
Cc: Fugate, Barbara; Hawbecker, Karen; Barlan, Bryce; Lin, Janet H; Kornze, Neil G; Cardinale, Richard
Subject: SO on Potash
Attachments: 2012 11 15 Final Potash SO.docx; 2012.11.14 BBF redline of ASLM edits - Potash Order.docx

Both Mike Pool and Jack Haugrud have surnamed this version and it incorporates the greater part of ASLM's edits. This is the version that went to Hilary Tompkins for review this morning. This means, I believe, that it is the closest to a final of the Order that we have at the moment.

I have attached both a clean version and a track changes version of the document.

Phil

ORDER NO.

Subject: Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

Sec. 1 **Purpose and Effect.** (b) (5) [redacted]

Sec. 2 **Authority.** (b) (5) [redacted]

Sec. 3 **Order Revised and Superseded.** (b) (5) [redacted]

Sec. 4. **Definitions.**

(b) (5) [redacted]

(b) (5)

[redacted]

(b) (5)

Sec. 5 **Status of Lands.** (b) (5)

Sec. 6 **General Provisions.**

(b) (5)

c. Potash Leases.

(b) (5)

[redacted]

d. Delineation of Resource Areas. (b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

e. Oil and Gas Drilling.

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

Sec. 7 **Regulatory and Administrative Matters.**

(b) (5)

[redacted]

(b) (5)

[redacted]

Sec. 8. **The Designated Potash Area Legal Description.**

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

Sec. 9 **Administrative Provisions.** (b) (5) [redacted]

Secretary of the Interior

Date: 202-208-4586

ORDER NO.

Subject: Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

Sec. 1 **Purpose and Effect.** (b) (5) [redacted]

Sec. 2 **Authority.** (b) (5) [redacted]

Sec. 3 **Order Revised and Superseded.** (b) (5) [redacted]

Comment [b1]: [redacted] (b

Sec. 4. **Definitions.**

(b) (5) [redacted]

Comment [b2]: (b) (5) [redacted]

(b) (5)

[redacted]

Comment [b3] (b) (5) [redacted]

(b) (5) [redacted]

Sec. 5 **Status of Lands.** (b) (5) [redacted]

Sec. 6 **General Provisions.**

a. Issuance of Oil and Gas Leases. (b) (5) [redacted]

(b) (5) [redacted]

b. Reinstatement or Renewal of Oil and Gas Leases. (b) (5) [redacted]

Comment [b4]: " (b) (5) [redacted]

c. Potash Leases.

(b) (5) [redacted]

d. Delineation of Resource Areas. (b) (5) [redacted]

(b) (5) [redacted]

(b) (5)

[redacted]

e. Oil and Gas Drilling.

(b) (5)

[redacted]

Comment [b5]: ([redacted] ⌈⌋ [redacted] b [redacted])

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

Comment [b6]: ([redacted] b) (5) [redacted]

Comment [b7]: (b) (5) [redacted] (b) (5) [redacted]

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(b) (5)

[redacted]

Sec. 7 **Regulatory and Administrative Matters.**

(b) (5)

[redacted]

(b) (5)

[redacted]

Sec. 8. **The Designated Potash Area Legal Description.**

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

Sec. 9 **Administrative Provisions.** (b) (5) [redacted]

Secretary of the Interior

Date: 202-208-4586

Anderson, Michael D

From: Barlan, Bryce
Sent: Thursday, November 15, 2012 9:21 AM
To: Burke, Marcilynn; Farquhar, Ned; Cardinale, Richard
Subject: Fw: DRAFT Potash Comm Materials
Attachments: 11_13_12_PotashTalkingPoints_DRAFT.docx.docx; 11_13_12_PotashQ & A_DRAFT.docx.docx; NewsRelease_Sec_Order_Potash_10-16-12_v2.docx.docx.docx

Potash comm material, folks.

Bryce Barlan
Office: 202-208-4114
Mobile: 202-699-0700
bbarlan@blm.gov

From: Allard, Phil
Sent: Thursday, November 15, 2012 07:03 AM
To: Barlan, Bryce
Subject: FW: DRAFT Potash Comm Materials

From: Evia, Aristotle E
Sent: Thursday, November 15, 2012 8:55 AM
To: Allard, Phil
Cc: Kornze, Neil G; Velasco, Janine; Lin, Janet H; Olson, Eric C; Decker, Julie A
Subject: FW: DRAFT Potash Comm Materials

Phil – these *might* be our most recent. Aris

From: Leff, Craig S
Sent: Tuesday, November 13, 2012 5:01 PM
To: Evia, Aristotle E
Subject: DRAFT Potash Comm Materials

Aris –
Attached are the draft materials. They have not gone through AD-300 or 100 review, but they should give you decent background.
Thanks,
Craig

Craig Leff
BLM Communications
202-208-6913 (office)
202-549-9218 (cell)

DRAFT TALKING POINTS – 11/13/12

2012 Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

The unique geology of southeast New Mexico contains potash, oil, and gas deposits. Concurrent development of these minerals has led to a long history of conflicts between the oil and gas and potash industries.

In 1939, the Designated Potash Area (DPA) was established by Order of the Secretary of the Interior, under the authority of the Mineral Leasing Act.

The Order withdrew approximately 43,000 acres from oil and gas leasing and development to protect potash deposits. Subsequent Orders changed the acreage and management strategies of the SPA.

The DPA currently covers a total area of approximately 497,002 acres and includes 350,617 acres of BLM managed land where leasing of oil and gas and potash occurs.

In 2011, potash and oil and gas companies formed a Joint Industry Technical Committee (JITC) to establish how both Potash Mining and Oil and Gas Production will operate in the SPA when their activities are in close proximity so as to allow safe, concurrent development of both minerals.

In January 2012, the Secretary requested the JITC formulate a consensus document to recommend a new method for the BLM's management of orderly concurrent development of oil and gas and potash within the DPA.

Today the Secretary of the Interior issued an Order (2012 Sec Order) addressing oil, gas, and potash leasing and development within the SPA, taking into account new technologies and issues associated with management of oil and gas and potash development in the SPA.

The 2012 Sec Order supersedes a previous Order issued in 1986 and is consistent with the key concepts suggested by the JITC.

A public comment period produced 28 comment letters with 41 distinct comments. Several changes to the proposed Order were made in response to the comments.

Highlights of the new Order include:

Co-Development: (b) (5) [redacted]

Development Areas: (b) (5) [redacted]

Increased Safety: (b) (5) [redacted]

Reduced Environmental Impact: (b) (5) [redacted]

Greater Recovery of O & G and Potash: (b) (5) [redacted]

Flexibility in Management: (b) (5) [redacted]

DRAFT – Internal Working Document – 10/12/12

Bureau of Land Management
For immediate release

Contact: Donna Hummel, (505) 954-2018
Date: November 15, 2012

Secretary Salazar Announces New Secretarial Order on Oil, Gas & Potash Development in New Mexico

ALBUQUERQUE, N.M.— (b) (5) [redacted]

(b) (5) [redacted]

—BLM—

The BLM manages more than 245 million acres of public land – the most of any Federal agency. This land, known as the National System of Public Lands, is primarily located in 12 Western states, including Alaska. The BLM also administers 700 million acres of sub-surface mineral estate throughout the nation. In Fiscal Year (FY) 2011, recreational and other activities on BLM-managed land contributed more than $130 billion to the U.S. economy and supported more than 600,000 American jobs. The Bureau is also one of a handful of agencies that collects more revenue than it spends. In FY 2012, nearly $5.7 billion will be generated on lands managed by the BLM, which operates on a $1.1 billion budget. The BLM's multiple-use mission is to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations. The Bureau accomplishes this by managing such activities as outdoor recreation, livestock grazing, mineral development, and energy production, and by conserving natural, historical, cultural, and other resources on public lands.

DRAFT Questions and Answers – 11/13/12

2012 Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

What is the Designated Potash Area (DPA)?

(b) (5) [redacted]

What is potash used for?

(b) (5) [redacted].

Why was this new 2012 Secretarial Order needed?

(b) (5) [redacted]

Was industry and the public involved with the development of the new Order?

(b) (5) [redacted]

What key changes for the management of the DPA are incorporated in the 2012 Secretarial Order?

The new Order calls for:

- (b) (5) [redacted]

- (b) (5) [redacted]

- [redacted]

- [redacted]

- [redacted]

- [redacted]

Where can I find additional information about the 2012 Secretarial Order?

Additional information about the 2012 Secretarial Order for the DPA, including the Federal Register Notice of Availability, can be found at: http://www.blm.gov/nm/st/en/info/potash.html

Anderson, Michael D

From: Fugate, Barbara
Sent: Wednesday, November 14, 2012 1:37 PM
To: Barlan, Bryce; Lin, Janet H; Allard, Phil
Cc: Cardinale, Richard; Hawbecker, Karen; Blank, Harvey
Subject: RE: ASLM Edits to Order, NOA, and Decision Memo
Attachments: 2012.11.14 BBF redline of ASLM edits - Potash Order.docx

Bryce and All --

In the attached version of the Order, I have made some changes, with explanations, to the version Bryce just sent. Karen Hawbecker has reviewed these changes and agrees with them. Please let me know if we need to discuss further. Thank you.

Barbara

-----Original Message-----
From: Barlan, Bryce
Sent: Wednesday, November 14, 2012 12:03 PM
To: Lin, Janet H; Allard, Phil
Cc: Fugate, Barbara; Cardinale, Richard
Subject: ASLM Edits to Order, NOA, and Decision Memo

Greetings All,

Attached please find edits we (Ned, Rich, and I) made to the Order, NOA, and Decision Memo.

In the NOA, all edits highlighted in yellow are edits we made and all edits highlighted in gray are edits Jack made. I had to make these formatting changes to easily illustrate how ASLM edits related to Jack's edits.

In the Decision Memo, all items highlighted in yellow are edits made to address Jack's recommendation about incorporating the EA/FONSI into the Decision Memo. Everything else in track changes (not highlighted) are edits we made.

FYI - We do not anticipate any major concerns, but MAB has not had an opportunity to review these documents yet. We will try to get you her edits ASAP, if any.

Please let me know if you have any questions.

Bryce Barlan
Office of the Assistant Secretary
Land and Minerals Management
US Department of the Interior
Office: 202-208-4114
Fax: 202-208-6243
bbarlan@blm.gov

ORDER NO.

Subject: Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

Sec. 1 **Purpose and Effect.** (b) (5) [redacted]

Sec. 2 **Authority.** (b) (5) [redacted]

Sec. 3 **Order Revised and Superseded.** (b) (5) [redacted]

(b) (5) [redacted]

Sec. 4. **Definitions.**

(b) (5) [redacted]

Comment [b2] (b) (5) [redacted]

(b) (5) [redacted]

(b) (5)

(b) (5)

(b) (5) [redacted]

Sec. 5 **Status of Lands.** (b) (5) [redacted]

Sec. 6 **General Provisions.**

a. Issuance of Oil and Gas Leases. (b) (5) [redacted]

(b) (5) [redacted]

b. Reinstatement or Renewal of Oil and Gas Leases. (b) (5) [redacted]

(b) (5) [redacted]

Comment [b4]: (b) (5) [redacted]

(b) (5) [redacted]

c. Potash Leases.

(b) (5)

[redacted]

d. Delineation of Resource Areas. (b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

e. Oil and Gas Drilling.

(b) (5)

[redacted]

Comment [b5]: (b) (5)

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

Comment [b6]: (b) (5) [redacted]

Comment [b7] (b) (5) [redacted]

(b) (5) [redacted]

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(b) (5)

[redacted]

Sec. 7 **Regulatory and Administrative Matters.**

(b) (5)

[redacted]

(b) (5)

[redacted]

Sec. 8. **The Designated Potash Area Legal Description.**

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

Sec. 9 **Administrative Provisions.** (b) (5) [redacted]

Secretary of the Interior

Date: 202-208-4586

Anderson, Michael D

From: Barlan, Bryce
Sent: Wednesday, November 14, 2012 12:14 PM
To: Burke, Marcilynn
Cc: Farquhar, Ned; Cardinale, Richard
Subject: Potash Order Documents
Attachments: MAB Review-Decision Memo for Secy Draft_ASLM Edits 11.14.12.docx; 2012.11.12 J.Haugrud edits -draft NOA for potash order_ASLM Edits 11.13.12.docx; SO Potash -11-13-12_ASLM Surnamed 11.14.12.docx

Marcilynn,

Attached please find the three core documents Ned, Rich, and I reviewed as part of the surnaming package for the proposed final Potash Order.

For the NOA, you'll notice text that has been highlighted. All text highlighted in gray are edits Jack made. We made all the other edits (which are highlighted in yellow). Ned recommended that I share this with you ASAP for your consideration and to also let you know that these documents were just shared with the BLM. They will work on incorporating our edits.

Please let me know if you have an questions.

Bryce Barlan
Office of the Assistant Secretary
Land and Minerals Management
US Department of the Interior
Office: 202-208-4114
Fax: 202-208-6243
bbarlan@blm.gov

DECISION MEMORANDUM FOR THE SECRETARY

FROM: Mike Pool, Acting Director

CC: David Hayes, Deputy Secretary
Marcilynn Burke, Acting Assistant Secretary, Land and Minerals Management
Jack Haugrud, Acting Principal Deputy Solicitor

SUBJECT: Proposed Final 2012 Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico and Finding of No Significant Impact

I. INTRODUCTION

The Bureau of Land Management (BLM (b) (5) has prepared a proposed final "Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico."

The proposed final 2012 Secretary's Order would supersede the current Secretary's Order that addresses (b) (5) [redacted] The revisions in the new Order are designed to (b) (5) romote the efficient development of potash, oil, and gas resources, while minimizing conflict between the industries and ensuring the safety of operations. Industry representatives from leading oil and gas and potash interests have been working together to identify and propose a (b) (5) n acceptable path forward. The opportunity to finalize a Secretary's Order that has the potential support of both industries is historic, particularly in light of the long and contentious history of the area (b) (5)

The proposed Secretary's Order was made available for a 30-day public comment period on July 13, 2012. The BLM thereafter extended the public comment period, which closed on August 31. (b) (5) [redacted]

The BLM conducted government-to-government tribal consultation meetings with seven tribes beginning on July 17; ~~and~~ none of the tribes expressed any adverse opinions about the proposed Order.

II. BACKGROUND

Potash is a potassium-bearing mineral used primarily for fertilizer. The Carlsbad Mining District has a unique geology that contains potash, oil, and gas deposits. (b) (5) [redacted] Oil and gas is found in formations below the potash-bearing formations, so oil and gas wells must be drilled through the potash formations. If a well casing fails, gas could enter the mine workings and endanger miners. The potential for such a breach also could increase potash operating costs because enhanced ventilation and specialized equipment would be needed before mining could continue. These conflicts have led to litigation; ~~and~~ numerous cases have been appealed to the Interior Board of Land Appeals ~~(IBLA)~~ and to Federal court.

(b) (5)

While there has been a long history of litigation, multiple mineral development has occurred in the past, as ~~is~~ evidenced by the fact that a total of 4,959 wells (approximately 2,295 active oil wells, 577 active gas wells, 33 water injection wells, and 2,054 dry holes and abandoned wells) are currently located within the area covered by the Order. Historically, there have been seven major potash mining operations in this area with thousands of miles of interconnected underground mine workings. Currently, two companies operate four potash mines in the area. In addition, about 2,500 potash core holes have been drilled within the area.

The Designated Potash Area (DPA) was established by a Secretary's Order in 1939 ~~that~~, which originally withdrew approximately 43,000 acres from oil and gas leasing and development to protect potash deposits. Exploration by several companies continued after 1939 and the potash area was expanded by a 1951 Order, which lifted the withdrawal and authorized concurrent development by the oil and gas and potash industries. To achieve concurrent development, the 1951 Order, and later Orders in 1965, 1975, and 1986, imposed protective stipulations in new leases issued for both oil and gas and potash, to avoid conflicts as much as possible. The DPA currently covers a total area of approximately 497,002 acres and includes 350,617 acres of ~~BLM~~ BLM-managed land where leasing of oil and gas and potash occurs.

(b) (5) [redacted]

(b) (5) [redacted]

(b) (5)

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

III. POSITIONS OF ~~of~~ INTERESTED PARTIES

The JITC is composed of a number of oil and gas companies and potash companies, along with Sandia National Laboratories. The potash company members of the JITC hold all of the potash leases in the DPA. The oil and gas company members of the JITC are responsible for approximately 85% of the oil and gas production in the DPA. All but one JITC member (OXY) signed a consensus document in April 2012 containing a general outline for a proposed management plan for the DPA. The proposed final 2012 Secretary's Order is consistent with the key concepts suggested by the JITC. While one JITC member (Yates Petroleum) later submitted comments criticizing the proposed Order, the other members of the JITC (including OXY) proposed very few edits to the proposed Order, most of which have been incorporated into this proposed final Order.

The companies representing the remaining 15% of oil and gas production in the DPA have declined to participate in the JITC. Some of these companies commented that the proposed Order would adversely affect the oil and gas industry. (b) (5) [redacted] The BLM expects that the proposed revision would benefit the overall economic outlook for both industries and give access to leases that cannot be developed under the 1986 Order. (b) (5) [redacted] The BLM is committed to (b) (5) working with all lessees in implementing the proposed final 2012 Secretary's Order, if it is approved. (b) (5) [redacted]

New Mexico Governor Susana Martinez and staff for Senators Bingaman and Udall and Representative Pearce have been briefed by the BLM and the JITC on the possibility of a new 2012 Secretary's Order. Industry has briefed Texas Senators Hutchinson and Cornyn and reports that the two Texas Senators are supportive of the JITC recommendations. Tom Bemis, New Mexico Cabinet Secretary for Energy, Minerals, and Natural Resources, and Ray Powell, New Mexico State Land Office Commissioner, have also been briefed by the JITC on the consensus that it reached. The New Mexico Oil Conservation Division (NMOCD) commented that the language in one section potentially could cause conflict due to differences between NMOCD and BLM regulatory frameworks. The BLM adopted a change to the new 2012 Secretary's Order (b) (5) [redacted]. Eddy, Lea, and Chaves Counties submitted comments expressing concern that the proposed Order was in essence a withdrawal of the entire DPA from concurrent development and requesting coordination with local governments. [redacted] (b) (5) [redacted] (b) (5) [redacted] The BLM has met with the Eddy and Lea County commissions to discuss the proposed final 2012 Secretary's Order and the comments they provided to further explain how the BLM would approach the implementation of the 2012 Secretary's Order. (b) (5) [redacted] The county commissioners with whom the BLM met indicated that these meetings aided their understanding of how the BLM would manage the development of both resources in the DPA.

(b) (5) [redacted]

The BLM's Carlsbad Field Office consulted with seven Federally recognized tribes that have interests within the DPA in June, July, and August of 2012. The BLM made initial contact with tribes in the form of a letter informing them of the proposed revision and soliciting their concerns and input. The BLM sent a second letter, which included a copy of the draft revision to the 1986 Secretary's Order, to the tribes on July 9, 2012, and held face-to-face meetings with the various tribes in July and August 2012. The BLM arranged these meetings to discuss the proposed

revision of the 1986 Secretary's Potash Order and other projects. The tribes did not express any adverse opinions regarding the substance of the proposed Order, but were very concerned that the BLM continue to follow the Native American Graves Protection and Repatriation Act (NAGPRA) and immediately notify the tribes if any human remains and associated funerary items are discovered. The proposed final 2012 Secretary's Order would not affect the BLM's continuing commitment to fulfill its responsibilities under NAGPRA. The tribes did not identify any areas of traditional cultural importance within the DPA.

IV. DECISION OPTIONS

A. (b) (5) [redacted]

[redacted]

[redacted]

[redacted]

(b) (5) [redacted]

V. RECOMMENDATION

I recommend that you approve the proposed final 2012 Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico. (b) (5) [redacted]

VI. DECISION BY THE SECRETARY

SELECT OPTION A: ___

SELECT OPTION B: ___

CHECK IF SUBJECT TO COMMENTS: ___

(b) (5) [redacted] ___

_____
Ken Salazar

4310-VC

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO100000, L18200000.XX0000]

Notice of Availability of BLM's Responses to Public Comments and of BLM's Environmental Assessment on the Proposed Order of the Secretary on Oil, Gas, and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Under the authority of the Mineral Leasing Act, as amended, on [fill in date], 2012, the Secretary of the Interior ~~has~~ issued an Order (2012 Secretary's Order) to address oil, gas, and potash leasing and development within the Designated Potash Area in Eddy and Lea counties in New Mexico. The 2012 Secretary's Order (b) (5) [redacted] supersedes a previous Order issued in 1986 and corrected in 1987 that addresses these issues. In developing the 2012 Secretary's Order (b) (5) [redacted], a draft Order was released for a public comment period that began on July 13, 2012 and ended on August 31, 2012, 77 FR 41442. This Notice announces the availability of the Bureau of Land Management's (BLM) responses to the comments that were received during the comment period and the availability of the Environmental Assessment that was prepared by BLM in developing the 2012 Secretary's Order.

ADDRESSES: The comments that were received, (b) (5) [redacted] the comment responses, and the Environmental Assessment are available for review at the following Website: http://www.blm.gov/nm/st/en/info/potash.html. The 2012 Secretary's Order was published

in the Federal Register on [INSERT DATE OF PUBLICATION OF THE 2012 SECRETARY'S ORDER IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Tony Herrell; telephone 505-954-2222; 301 Dinosaur Trail, Santa Fe, New Mexico, 87508; e-mail: therrell@blm.gov.

SUPPLEMENTARY INFORMATION:

Background

An area near the town of Carlsbad in southeastern New Mexico (b) (5) contains large deposits of potash, oil, and gas. Oil and gas have been produced from this area since the early twentieth century. In 1925, (b) (5) potash (potassium-bearing salts primarily used for fertilizer) was discovered in this area (b) (5) and has been mined since 1930.

The Secretary issued the first Potash Order in 1939 (4 FR 1012, February 25, 1939). That Order withdrew approximately 43,000 acres of public land from oil and gas leasing (b) (5) to protect potash deposits. In 1951, the Secretary revoked the 1939 Order and issued a new Order that instituted the policy of authorizing concurrent development of oil and gas and potash reserves within an area comprising 298,345 acres, under reciprocal lease stipulations to ensure that the development of either mineral would not interfere with development of the other (16 FR (b) (5) 0669, October 18, 1951). The Order was amended in 1965 (30 FR 6692, May 15, 1965), 1975 (40 FR 51486, November 5, 1975), and 1986 (51 FR 39425, October 28, 1986). A correction to the 1986 Order was issued in 1987 (52 FR 32171, August 26, 1987). The potash area designated by the corrected 1986 Order comprises approximately 497,000 acres, and the 2012 Secretary's Order, published [INSERT DATE OF PUBLICATION OF THE ORDER IN THE FEDERAL REGISTER], does not alter the boundaries of the area.

The potash deposits in this area occur from 800 feet to over 2,000 feet beneath the surface and are mined by both conventional and solution mining methods; conventional methods require miners to be underground. The oil and gas in the area is found in formations below the potash-bearing formations, so oil and gas wells must extend through potash formations. If potash mining (b) (5) were to breach a well casing, or if a well casing near a potash mine failed for other reasons, gas could (b) (5) migrate into the mine workings, thus endangering the miners. Additionally, the potential for such a breach could raise the costs of potash mining due to the need (b) (5) to utilize enhanced ventilation techniques and specialized equipment needed to mine in a (b) (5) gas-filled environment. (b) (5) Given these safety risks, it has (b) (5) been a challenge to produce potash and oil and gas at the same time in the same area. This has led to a long history of conflict between the potash and the oil and gas industries.

This conflict has resulted in a great deal of litigation regarding decisions made by the BLM on a variety of potash or oil and gas development applications. Nevertheless, (b) (5) (b) (5) leading members of the two industries have initiated efforts to work together over the past two years. A number of productive meetings and discussions have occurred among many of the parties involved in these previous disputes. Additionally, there have been significant advances in the technology of oil and gas drilling that could be used to reduce the conflict between such drilling and the extraction of potash. Further, the economic outlook for both the oil and gas industry and the potash industry has recently improved. The BLM has also worked with Sandia National Laboratories to investigate well logging technology, gas migration in the potash formations, and standards to use for estimating the

(b) (5)

mineability of potash and potash cutoff grades. These circumstances led to review of the 1986 Secretary's Order.

The New 2012 Secretary's Order

The 2012 Secretary's Order differs from the 1986 Order as described below.

The formatting is modified to be consistent with the Department of the Interior's (Department) style requirements for Secretary's Orders. These requirements were changed in 1992 and are recorded in Section 012 DM 1 of the Departmental Manual.

The 2012 Secretary's Order authorizes the BLM to establish "Development Areas," where oil and gas wells can be drilled from one or more "Drilling Islands." The Drilling Island concept was first introduced in the 1975 Secretary's Order. In most cases, a single Drilling Island will be established for each Development Area, but if circumstances so dictate, the BLM may establish additional Drilling Islands. Drilling Islands will be situated in such a manner that extended reach horizontal wells could access oil and gas within the associated Development Area. The 2012 Secretary's Order envisions that the oil and gas leases in a Development Area will ordinarily be unitized under the regulations found at 43 CFR subpart 3180 and developed by a unit operator, or operated under a communitization agreement as authorized under 43 CFR subpart 3105. (b) (5) [redacted]

(b) (5) [redacted]

(b) (5) [redacted] These oil and gas reservoir management tools should lead to more orderly development of the oil and gas resources in the Development Area and minimize impacts to surface resources due to a reduction in the number of drill pads and associated roads, power lines, and other ancillary facilities. Moreover, the resulting reduction in the number and spacing of

(b) (5) [redacted]

oil and gas drilling locations where wells penetrate the potash formation is expected to minimize impacts to potash resources and enhance the safety of underground potash miners.

The BLM envisions that a substantial portion of the Designated Potash Area will eventually be divided into Development Areas designed to minimize the impacts to potash mining while allowing for the development of oil and gas resources. The ~~BLM's~~BLM expects that (b) (5) (b) (5) the oil and gas in Development Areas will largely (b) (5) e developed with extended reach horizontal wells using the most current technology, consistent with applicable laws and regulations.

The 2012 Secretary's Order retains several important features of the 1986 Order, including the boundaries of the Designated Potash Area established in the 1986 Order, as corrected in 1987. The Secretary's Order also retains language of the 1986 Order for stipulations for oil and gas leases and potash leases issued, reinstated, renewed, or readjusted in the Designated Potash Area.

Comments on the Draft Order

The BLM received 28 comment letters during the comment period, including 41 distinct comments. These comments and the BLM's responses to them are available for review at the following website:

http://www.blm.gov/nm/st/en/info/potash.html.

Environmental Assessment

Pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., and BLM's implementing regulations, the BLM prepared an Environmental Assessment (EA) in conjunction with the development of the 2012 Secretary's Order. Based on the EA, a Finding of No Significant Impact (FONSI) was made. The EA/FONSI is available for

review at the following website: (b) (5) [redacted]

(b) (5) [redacted]

Mike Pool

Acting Director, Bureau of Land Management

AUTHORITY: 43 CFR 3164.1, 43 CFR 3590.2

ORDER NO.

Subject: Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

Sec. 1 **Purpose and Effect.** (b) (5) [redacted]

Sec. 2 **Authority.** (b) (5) [redacted]

Sec. 3 **Order Revised and Superseded.** (b) (5) [redacted]

Sec. 4. **Definitions.**

(b) (5) [redacted]

(b) (5)

[redacted]

(b) (5) [redacted]

Sec. 5 **Status of Lands.** (b) (5) [redacted]

Sec. 6 **General Provisions.**

a. Issuance of Oil and Gas Leases. (b) (5) [redacted]

(b) (5) [redacted]

b. Reinstatement or Renewal of Oil and Gas Leases. (b) (5) [redacted]

c. Potash Leases.

(b) (5)

[redacted]

d. Delineation of Resource Areas. (b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

e. Oil and Gas Drilling.

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

Sec. 7 **Regulatory and Administrative Matters.**

(b) (5)

[redacted]

(b) (5)

[redacted]

Sec. 8. **The Designated Potash Area Legal Description.**

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

Sec. 9 **Administrative Provisions.** (b) (5) [redacted]

Secretary of the Interior

Date: 202-208-4586

Anderson, Michael D

From: Farquhar, Ned
Sent: Tuesday, November 13, 2012 1:36 PM
To: Barlan, Bryce; Cardinale, Richard
Subject: RE: SURNAME VERSION Potash Order, NOA for comment responses, & Decision Memo for Secy
Attachments: 2012 11 06 Revised draft potash order - with DMR RTC edits accepted by BLM_BGB 11 13 12 nf edits.docx

My comments on the SO itself. (b) (5) [redacted]. Hope you can figure out where they were. Come see me if you have problems. NF

From: Barlan, Bryce
Sent: Tuesday, November 13, 2012 10:10 AM
To: Cardinale, Richard; Farquhar, Ned
Subject: RE: SURNAME VERSION Potash Order, NOA for comment responses, & Decision Memo for Secy

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1. Rich – For the Potash Order, (b) (5) [redacted]
2. For the NOA, (b) (5) [redacted]
3. (b) (5) [redacted]

In the meantime, here are my edits (which have been combined with Rich's edits).

Please let me know if you have any questions.

Bryce Barlan
Office of the Assistant Secretary
Land and Minerals Management
US Department of the Interior
Office: 202-208-4114
Fax: 202-208-6243
bbarlan@blm.gov

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Sent: Monday, November 12, 2012 10:27 AM
To: Farquhar, Ned; Barlan, Bryce
Subject: Fw: SURNAME VERSION Potash Order, NOA for comment responses, & Decision Memo for Secy

Very minor edits to the Secretarial Order, NOA, and Decision Memo.

From: Richard Cardinale [mailto(b) (6) [redacted]
Sent: Monday, November 12, 2012 10:24 AM
To: Cardinale, Richard
Subject: Re: SURNAME VERSION Potash Order, NOA for comment responses, & Decision Memo for Secy

From: "Cardinale, Richard" <Richard_Cardinale@ios.doi.gov>
To: (b) (6) Richard Cardinale [redacted]
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Subject: Fw: SURNAME VERSION Potash Order, NOA for comment responses, & Decision Memo for Secy

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Sent: Friday, November 09, 2012 05:24 PM
To: Farquhar, Ned; Burke, Marcilynn
Cc: Cardinale, Richard; Barlan, Bryce
Subject: FW: SURNAME VERSION Potash Order, NOA for comment responses, & Decision Memo for Secy

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Sent: Friday, November 09, 2012 5:21 PM
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Cc: Hawbecker, Karen; Blank, Harvey
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Barbara

ORDER NO.

Subject: Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

Sec. 1 **Purpose and Effect.** [redacted] (b) (5)

Sec. 2 **Authority.** (b) (5) [redacted]

Sec. 3 **Order ~~Revised and~~ Superseded.** (b) (5) [redacted]

Sec. 4. **Definitions.**

(b) (5) [redacted]

(b) (5)

[redacted]

(b) (5)

(b) (5)

Sec. 5 **Status of Lands.** (b) (5)

Sec. 6 **General Provisions.**

a. Issuance of Oil and Gas Leases. (b) (5)

32

cac

arc

as

(b) (5)

~~(b)~~ (). Reinstatement or Renewal of Oil and Gas Leases. (b) (5)

~~(c.)~~. Potash Leases.

(b) (5)

[redacted]

d. Delineation of Resource Areas. (b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

e. Oil and Gas Drilling.

(b) (5)

[redacted]

Comment [bbarlan3]: (b) (5)
[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

Comment [RC4]: [redacted] (b) [redacted])

(b) (5)

(b) (5)

Comment [RC6]: (

b

(b) (5)

[redacted]

Sec. 7 **Regulatory and Administrative Matters.**

(b) (5)

[redacted]

(b) (5)

[redacted]

Sec. 8. **The Designated Potash Area Legal Description.**

(b) (5)

[redacted]

DRAFT

(b) (5)

[redacted]

DRAFT

(b) (5)

[redacted]

Sec. 9 **Administrative Provisions.** (b) (5) [redacted].

Secretary of the Interior

Date:

Anderson, Michael D

From: Farquhar, Ned
Sent: Tuesday, November 13, 2012 1:11 PM
To: Farquhar, Ned; Barlan, Bryce; Cardinale, Richard
Subject: RE: SURNAME VERSION Potash Order, NOA for comment responses, & Decision Memo for Secy
Attachments: 2012 11 09 Draft Decision Memo for Secy RTC edits_BGB edits 11 13 12 nf edits.docx

With the attachment

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Sent: Tuesday, November 13, 2012 1:10 PM
To: Barlan, Bryce; Cardinale, Richard
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DECISION MEMORANDUM FOR THE SECRETARY

FROM: Mike Pool, Acting Director

CC: David Hayes, Deputy Secretary
Marcilynn A. Burke, Acting Assistant Secretary, Land and Minerals Management
Jack Haugrud, Acting Principal Deputy Solicitor

SUBJECT: Proposed Final 2012 Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

I. INTRODUCTION

The Bureau of Land Management (BLM) [redacted] has prepared [redacted] proposed final "Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico."

The proposed final 2012 Secretary's Order would supersede the current Secretary's Order that addresses (b) (5) [redacted] The revisions in the new Order are designed to (b) (5) promote the efficient development of potash, oil, and gas resources, while minimizing conflict between the industries and ensuring the safety of operations. Industry representatives from leading oil and gas and potash interests have been working together to identify and propose a (b) (5) acceptable path forward. The opportunity to finalize a Secretary's Order that has the potential support of both industries is historic, particularly in light of the long and contentious history of the area (b) (5) [redacted]

Comment (b) (5) [redacted]

Comment (b) (5) [redacted]

The proposed Secretary's Order was made available for a 30-day public comment period on July 13, 2012. The BLM thereafter extended the public comment period, which closed on August 31. The BLM received 28 comment letters that contained 41 distinct comments on the draft Order. [redacted]

The BLM conducted government-to-government tribal consultation meetings with seven tribes beginning on July 17; ~~and~~ none of the tribes expressed any adverse opinions about the proposed Order.

II. BACKGROUND

Potash is a potassium-bearing mineral used primarily for fertilizer. The Carlsbad Mining District has a unique geology that contains potash, oil, and gas deposits. (b) (5) [redacted] Oil and gas is found in formations below the potash-bearing formations, so oil and gas wells must be drilled through the potash formations. If a well casing fails, gas could enter the mine workings and endanger miners. The potential for such a breach also could increase potash operating costs because enhanced ventilation and specialized equipment would be needed before mining could continue. These conflicts have led to litigation; ~~and~~ numerous cases have been appealed to the Interior Board of Land Appeals (IBLA) and to Federal court.

Comment [(b) [redacted] (5) [redacted]

While there has been a long history of litigation, multiple mineral development has occurred in the past, as ~~is~~ evidenced by the fact that a total of 4,959 wells (approximately 2,295 active oil wells, 577 active gas wells, 33 water injection wells, and 2,054 dry holes and abandoned wells) are currently located within the area covered by the Order. Historically, there have been seven major potash mining operations in this area with thousands of miles of interconnected underground mine workings. Currently, two companies operate four potash mines in the area. In addition, about 2,500 potash core holes have been drilled within the area.

The Designated Potash Area (DPA) was established by a Secreta[redacted] ~~'s~~ Order in 1939 (b) (5) [redacted] which originally withdrew approximately 43,000 acres from oil and gas leasing and development to protect potash deposits. Exploration by several companies continued after 1939 and the potash area was expanded by a 1951 (b) (5) [redacted] rder, which lifted the withdrawal and authorized concurrent development by the oil and gas and potash industries. To achieve concurrent development, the 1951 Order, and later Orders in 1965, 1975, and 1986, imposed protective stipulations in new leases issued for both oil and gas and potash, to avoid conflicts as much as possible. The DPA currently covers a total area of approximately 497,002 acres and includes 350,617 acres of ~~BLM~~ BLM-managed land where leasing of oil and gas and potash occurs.

(b) (5) [redacted]

(b) (5) [redacted] es.

(b) (5)

Comment [RC6]: (b) (5)

Comment [DOTI7]: (b) (5)

Comment [DOTI8]: Same comment

III. POSITIONS OF ~~of~~ INTERESTED PARTIES

The JITC is composed of a number of oil and gas companies and potash companies, along with Sandia National Laboratories. The potash company members of the JITC hold all of the potash leases in the DPA. The oil and gas company members of the JITC are responsible for approximately 85% of the oil and gas production in the DPA. All but one JITC member (OXY) signed a consensus document in April 2012 containing a general outline for a proposed management plan for the DPA. The proposed final 2012 Secretarial Order is consistent with the key concepts suggested by the JITC. While one JITC member (Yates Petroleum) later submitted comments criticizing the proposed Order, the other members of the JITC (including OXY) proposed very few edits to the proposed Order, most of which have been incorporated into this proposed final Order.

Comment [DOTI9]: Same comment

The companies representing the remaining 15% of oil and gas production in the DPA have declined to participate in the JITC. Some of these companies commented that the proposed Order would adversely affect the oil and gas industry. (b) (5)

(b) (5) [redacted]. The BLM expects that the proposed revision would benefit the overall economic outlook for both industries and give access to leases that cannot be developed under the 1986 Order. (b) (5) [redacted] The BLM is committed to working with all lessees in implementing the proposed final 2012 Secreta[redacted]'s Order, if it is approved. (b) (5) [redacted]

Comment [DOTI10]: Same comment

New Mexico Governor Susana Martinez and staff for Senators Bingaman and Udall and Representative Pearce have been briefed by the BLM and the JITC on the possibility of a new 2012 Secreta[redacted]'s Order. Industry has briefed Texas Senators Hutchinson and Cornyn and reports that the two Texas Senators are supportive of the JITC recommendations. Tom Bemis, New Mexico Cabinet Secretary for Energy, Minerals, and Natural Resources, and Ray Powell, New Mexico State Land Office Commissioner, have also been briefed by the JITC on the consensus that it reached. The New Mexico Oil Conservation Division (NMOCD) commented that the language in one section potentially could cause conflict due to differences between NMOCD and BLM regulatory frameworks. The BLM adopted a change to the new 2012 Secreta[redacted]'s Order (b) (5) [redacted]. Eddy, Lea, and Chaves Counties submitted comments expressing concern that the proposed Order was in essence a withdrawal of the entire DPA from concurrent development and requesting coordination with local governments. (b) (5) [redacted] (b) (5) [redacted] The BLM has met with the Eddy and Lea County commissions to discuss the proposed final 2012 Secreta[redacted]'s Order and the comments they provided to further explain how the BLM would approach the implementation of the 2012 Secretary's Order. (b) (5) [redacted] The county commissioners with whom the BLM met indicated that these meetings aided their understanding of how the BLM would manage the development of both resources in the DPA.

Comment [DOTI11]: (b)(5)

Comment [bbarlan12]: [redacted] (b) [redacted]

The BLM's Carlsbad Field Office consulted with seven Federally recognized tribes that have interests within the DPA in June, July, and August of 2012. The BLM made initial contact with tribes in the form of a letter informing them of the proposed revision and soliciting their concerns and input. The BLM sent a second letter, which included a copy of the draft revision to the 1986 Secreta[redacted] (b) (5) [redacted] Order, to the tribes on July 9, 2012, and held face-to-face meetings with the various tribes in July and August 2012. The BLM arranged these meetings to discuss the proposed revision of the 1986 Secreta[redacted]'s (b) (5) [redacted]rder and other projects. The tribes did not express any adverse opinions regarding the substance of the proposed Order, but were very concerned that the BLM continue to follow the Native American Graves Protection and Repatriation Act (NAGPRA) and immediately notify the tribes if any human remains and associated funerary items are discovered. The proposed final 2012 Secreta[redacted]'s Order would not affect the BLM's continuing commitment to fulfill its responsibilities under NAGPRA. The tribes did not identify any areas of traditional cultural importance within the DPA.

Comment [DOTI13]: (b) [redacted]

Comment [DOTI14]: Same comment

IV. DECISION OPTIONS

(b) (5) [redacted]

(b) (5)

Comment [bbarlan15]: (b) (5)

Comment [DOTI16]: (b) (5)

V. RECOMMENDATION

I recommend that you approve the proposed final 2012 Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico.

VI. DECISION BY THE SECRETARY

APPROVE: ___

DISAPPROVE: ___

COMMENTS: ___

_____

Ken Salazar

Anderson, Michael D

From: Barlan, Bryce
Sent: Tuesday, November 13, 2012 10:10 AM
To: Cardinale, Richard; Farquhar, Ned
Subject: RE: SURNAME VERSION Potash Order, NOA for comment responses, & Decision Memo for Secy
Attachments: 2012.11.09 draft NOA for potash order comment responses RTC edits_BGB edits 11.13.12.docx; 2012.11.09 Draft Decision Memo for Secy RTC edits_BGB edits 11.13.12.docx; 2012.11.06 Revised draft potash order - with DMR RTC edits, accepted by BLM_BGB 11.13.12.docx

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4310-VC

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO100000, L18200000.XX0000]

Notice of Availability of BLM's Responses to Public Comments on the Proposed Order of the Secretary on Oil, Gas, and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Under the authority of the Mineral Leasing Act, as amended, the Secretary of the Interior has issued an Order to address oil, gas, and potash leasing and development within the Designated Potash Area in Eddy and Lea counties in New Mexico. The Secretary's Order (2012 Secretary's Order) supersedes a previous Order issued in 1986 and corrected in 1987 that addresses these issues. (b) (5) [redacted] This Notice announces the availability of the Bureau of Land Management's (BLM) responses to the comments that were received during the comment period.

ADDRESSES: The comments that were received and the comment responses are available for review at the following Website: http://www.blm.gov/nm/st/en/info/potash.html. The 2012 Secretary's Order was published in the Federal Register on [INSERT DATE OF PUBLICATION OF THE 2012 SECRETARY'S ORDER IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Tony Herrell; telephone 505-954-2222; 301 Dinosaur Trail, Santa Fe, New Mexico, 87508; e-mail: therrell@blm.gov.

SUPPLEMENTARY INFORMATION:

Background

An area near the town of Carlsbad in southeastern New Mexic[redacted] contains large deposits of potash, oil, and gas. Oil and gas have been produced from this area since the early twentieth century. In 1925[redacted] potash (potassium-bearing salts primarily used for fertilizer) was discovered in this area[redacted] and has been mined since 1930.

The Secretary issued the first Potash Order in 1939 (4 FR 1012, February 25, 1939). That Order withdrew approximately 43,000 acres of public land from oil and gas leasing in order to protect potash deposits. In 1951, the Secretary revoked the 1939 Order and issued a new Order that instituted the policy of authorizing concurrent development of oil and gas and potash reserves within an area comprising 298,345 acres, under reciprocal lease stipulations to ensure that the development of either mineral would not interfere with development of the other (16 FR[redacted] 10669, October 18, 1951). The Order was amended in 1965 (30 FR 6692, May 15, 1965), 1975 (40 FR 51486, November 5, 1975), and 1986 (51 FR 39425, October 28, 1986). A correction to the 1986 Order was issued in 1987 (52 FR 32171, August 26, 1987). The potash area designated by the corrected 1986 Order comprises approximately 497,000 acres, and the 2012 Secretary's Order, published [INSERT DATE OF PUBLICATION OF THE ORDER IN THE FEDERAL REGISTER], does not alter the boundaries of the area.

[redacted]

The potash deposits in this area occur from 800 feet to over 2,000 feet beneath the surface and are mined by both conventional and solution mining methods; conventional methods require miners to be underground. The oil and gas in the area is found in formations below the potash-bearing formations, so oil and gas wells must extend through potash formations. If potash mining[redacted] were to breach a well casing, or if a well casing near a potash

mine failed for other reasons, gas coul[redacted] igrate into the mine workings, thus endangering the miners. Additionally, the potential for such a breach could raise the costs of potash mining due to the need[redacted] utilize enhanced ventilation techniques and specialized equipment needed to mine in a[redacted] as-filled environment. [redacted] iven these safety risks, it has [redacted] een a challenge to produce potash and oil and gas at the same time in the same area. This has led to a long history of conflict between the potash and the oil and gas industries.

This conflict has resulted in a great deal of litigation regarding decisions made by the BLM on a variety of potash or oil and gas development applications. Nevertheles[redacted] [redacted] he two industries have initiated efforts to work together over the past two years. A number of productive meetings and discussions have occurred among many of the parties involved in these previous disputes. Additionally, there have been significant advances in the technology of oil and gas drilling that could be used to reduce the conflict between such drilling and the extraction of potash. Further, the economic outlook for both the oil and gas industry and the potash industry has recently improved. The BLM has also worked with Sandia National Laboratories to investigate well logging technology, gas migration in the potash formations, and standards to use for estimating the mineability of potash and potash cutoff grades. These circumstances led to review of the 1986 Secretary's Order.

[redacted]

The New 2012 Secretary's Order

The 2012 Secretary's Order differs from the 1986 Order as described below.

The formatting is modified to be consistent with the Department of the Interior's (Department) style requirements for Secretary's Orders. These requirements were changed in 1992 and are recorded in Section 012 DM 1 of the Departmental Manual.

The 2012 Secretary's Order authorizes the BLM to establish "Development Areas," where oil and gas wells can be drilled from one or more "Drilling Islands." The Drilling Island concept was first introduced in the 1975 Secretarial Order. In most cases, a single Drilling Island will be established for each Development Area, but if circumstances so dictate, the BLM may establish additional Drilling Islands. Drilling Islands will be situated in such a manner that extended reach horizontal wells could access oil and gas within the associated Development Area. The 2012 Secretary's Order envisions that the oil and gas leases in a Development Area will be unitized under the regulations found at 43 CFR subpart 3180 and developed by a unit operator, or operated under a communitization agreement as authorized under 43 CFR subpart 3105. Through unitization and communitization agreements, Federal and non-Federal leases held by different [redacted] essees could be included in Development Areas. [redacted] These [redacted] oil and gas reservoir management tools should lead to more orderly development of the oil and gas resources in the Development Area and minimize impacts to surface resources due to a reduction in the number of drill pads and associated roads, power lines, and other ancillary facilities. Moreover, the resulting reduction in the number and spacing of oil and gas drilling locations where wells penetrate the potash formation is expected to minimize impacts to potash resources and enhance the safety of underground potash miners.

[redacted]

The BLM envisions that a substantial portion of the Designated Potash Area will eventually be divided into Development Areas designed to minimize the impacts to potash mining while

allowing for the development of oil and gas resources. The BLM's goal is for the oil and gas in Development Areas to be developed with extended reach horizontal wells using the most current technology, consistent with applicable laws and regulations.

The 2012 Secretary's Order retains several important features of the 1986 Order, including the boundaries of the Designated Potash Area established in the 1986 Order, as corrected in 1987. The Secretary's Order also retains language of the 1986 Order for stipulations for oil and gas leases and potash leases issued, reinstated, renewed, or readjusted in the Designated Potash Area.

Comments on the Draft Order

The BLM received 28 comment letters during the comment period, including 41 distinct comments. These comments and the BLM's responses to them are available for review at the following website:

http://www.blm.gov/nm/st/en/info/potash.html.

Mike Pool

Acting Director, Bureau of Land Management

AUTHORITY: 43 CFR 3164.1, 43 CFR 3590.2

ORDER NO.

Subject: Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

Sec. 1 **Purpose and Effect.** (b) (5) [redacted]

Sec. 2 **Authority.** (b) (5) [redacted]

Sec. 3 **Order Revised and Superseded.** (b) (5) [redacted]

Sec. 4. **Definitions.**

(b) (5) [redacted]

(b) (5)

[redacted]

Comment [bbarlan1]: [redacted]
(b)
(

(b) (5) [redacted]

Sec. 5 **Status of Lands.** (b) (5) [redacted]

Sec. 6 **General Provisions.**

a. Issuance of Oil and Gas Leases. [redacted]

(b) Reinstatement or Renewal of Oil and Gas Leases. [redacted]

(c2). Potash Leases.

[redacted]

(b) (5)

[redacted]

e. Oil and Gas Drilling.

(b) (5)

[redacted]

Comment [bbarlan2]: (b)(5) [redacted]

Comment [bbarlan4]: (b)(5) [redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

Comment [RC5]: [redacted] (b) [redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

Comment [RC7]: (b [redacted])

(b) (5)

[redacted]

Sec. 7 **Regulatory and Administrative Matters.**

(b) (5)

[redacted]

(b) (5)

[redacted]

Sec. 8. **The Designated Potash Area Legal Description.**

(b) (5)

[redacted]

DRAFT

(b) (5)

[redacted]

DRAFT

(b) (5)

[redacted]

Sec. 9 **Administrative Provisions.** (b) (5) [redacted]

Secretary of the Interior

Date:

DECISION MEMORANDUM FOR THE SECRETARY

FROM: Mike Pool, Acting Director

CC: David Hayes, Deputy Secretary
Marcilynn A. Burke, Acting Assistant Secretary, Land and Minerals Management
Jack Haugrud, Acting Principal Deputy Solicitor

SUBJECT: Proposed Final 2012 Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

I. INTRODUCTION

The Bureau of Land Management (BLM [redacted] (b) (5) has prepared [redacted] (b) (5) proposed final "Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico."

The proposed final 2012 Secretary's Order would supersede the current Secretary's Order that addresses (b) (5) [redacted] The revisions are designed to further promote the efficient development of potash, oil, and gas resources, while minimizing conflict between the industries and ensuring the safety of operations. Industry representatives from oil and gas and potash interests have been working together to identify and propose a mutually acceptable path forward. The opportunity to finalize a Secretary's Order that has the potential support of both industries is historic, particularly in light of the long and contentious history of this issue.

Comment [bbarlan1]: (b) (5) [redacted]

Comment [bbarlan2]: Same comment as previous.

The proposed Secretary's Order was made available for a 30-day public comment period on July 13, 2012. The BLM thereafter extended the public comment period, which closed on August 31. The BLM received 28 comment letters that contained 41 distinct comments on the draft Order

[redacted]

(b) (5)

The BLM conducted government-to-government tribal consultation meetings with seven tribes beginning on July 17; ~~and~~ none of the tribes expressed any adverse opinions about the proposed Order.

II. BACKGROUND

Potash is a potassium-bearing mineral used primarily for fertilizer. The Carlsbad Mining District has a unique geology that contains potash, oil, and gas deposits. Concurrent development of these minerals has led to conflicts between the oil and gas and potash industries. Oil and gas is

found in formations below the potash-bearing formations, so oil and gas wells must be drilled through the potash formations. If a well casing fails, gas could enter the mine workings and endanger miners. The potential for such a breach also could increase potash operating costs because enhanced ventilation and specialized equipment would be needed before mining could continue. These conflicts have led to litigation; ~~and~~ numerous cases have been appealed to the Interior Board of Land Appeals (IBLA) and to Federal court.

While there has been a long history of litigation, multiple mineral development has occurred in the past, as ~~is~~ evidenced by the fact that a total of 4,959 wells (approximately 2,295 active oil wells, 577 active gas wells, 33 water injection wells, and 2,054 dry holes and abandoned wells) are currently located within the area covered by the Order. Historically, there have been seven major potash mining operations in this area with thousands of miles of interconnected underground mine workings. Currently, two companies operate four potash mines in the area. In addition, about 2,500 potash core holes have been drilled within the area.

The Designated Potash Area (DPA) was established by a Secretar[redacted] ~~'s~~ Order in 1939 (b) (5) which originally withdrew approximately 43,000 acres from oil and gas leasing and development to protect potash deposits. Exploration by several companies continued after 1939 and the potash area was expanded by a 1951 (b) (5) [redacted] Order, which lifted the withdrawal and authorized concurrent development by the oil and gas and potash industries. To achieve concurrent development, the 1951 Order, and later Orders in 1965, 1975, and 1986, imposed protective stipulations in new leases issued for both oil and gas and potash, to avoid conflicts as much as possible. The DPA currently covers a total area of approximately 497,002 acres and includes 350,617 acres of BLM managed land where leasing of oil and gas and potash occurs.

(b) (5)
[redacted]

[redacted]

Comment [RC3]: [redacted]

(b) (5)

[redacted]

III. POSITION of INTERESTED PARTIES

The JITC is composed of a number of oil and gas companies and potash companies, along with Sandia National Laboratories. The potash company members of the JITC hold all of the potash leases in the DPA. The oil and gas company members of the JITC are responsible for approximately 85% of the oil and gas production in the DPA. All but one JITC member (OXY) signed a consensus document in April 2012 containing a general outline for a proposed management plan for the DPA. The proposed final 2012 Secretarial~~y's~~ Order is consistent with the key concepts suggested by the JITC. While one JITC member (Yates Petroleum) later submitted comments criticizing the proposed Order, the other members of the JITC (including OXY) proposed very few edits to the proposed Order, most of which have been incorporated into this proposed final Order.

The companies representing the remaining 15% of oil and gas production in the DPA have declined to participate in the JITC. Some of these companies commented that the proposed Order would adversely affect the oil and gas industry. (b) (5) [redacted]. The BLM expects that the proposed revision would benefit the overall economic outlook for both industries and give access to leases that cannot be developed under the 1986 Order. (b) (5) [redacted]

(b) (5) [redacted] The BLM is committed to working with all lessees in implementing the proposed final 2012 Secreta[redacted]y's Order, if it is approved. (b) (5) [redacted]

New Mexico Governor Susana Martinez and staff for Senators Bingaman and Udall and Representative Pearce have been briefed by the BLM and the JITC on the possibility of a new 2012 Secreta[redacted]y's Order. Industry has briefed Texas Senators Hutchinson and Cornyn and reports that the two Texas Senators are supportive of the JITC recommendations. Tom Bemis, New Mexico Cabinet Secretary for Energy, Minerals, and Natural Resources, and Ray Powell, New Mexico State Land Office Commissioner, have also been briefed by the JITC on the consensus that it reached. The New Mexico Oil Conservation Division (NMOCD) commented that the language in one section potentially could cause conflict due to differences between NMOCD and BLM regulatory frameworks. The BLM adopted a change to the new 2012 Secreta[redacted]'s Order (b) (5) [redacted] Eddy, Lea, and Chaves Counties submitted comments expressing concern that the proposed Order was in essence a withdrawal of the entire DPA from concurrent development and requesting coordination with local governments. (b) (5) [redacted] The BLM has met with the Eddy and Lea County commissions to discuss the proposed final 2012 Secreta[redacted]y's Order and the comments they provided to further explain how the BLM would approach the implementation of the 2012 Secretary's Order. (b) (5) [redacted] The county commissioners with whom the BLM met indicated that these meetings aided their understanding of how the BLM would manage the development of both resources in the DPA.

Comment [bbarlan4]: (b) (5) [redacted]

The BLM's Carlsbad Field Office consulted with seven Federally recognized tribes that have interests within the DPA in June, July, and August of 2012. The BLM made initial contact with tribes in the form of a letter informing them of the proposed revision and soliciting their concerns and input. The BLM sent a second letter, which included a copy of the draft revision to the 1986 Secreta[redacted]y's (b) (5) [redacted]rder, to the tribes on July 9, 2012, and held face-to-face meetings with the various tribes in July and August 2012. The BLM arranged these meetings to discuss the proposed revision of the 1986 Secretar[redacted]'s (b) (5) [redacted] Order and other projects. The tribes did not express any adverse opinions regarding the substance of the proposed Order, but were very concerned that the BLM continue to follow the Native American Graves Protection and Repatriation Act (NAGPRA) and immediately notify the tribes if any human remains and associated funerary items are discovered. The proposed final 2012 Secreta[redacted]'s Order would not affect the BLM's continuing commitment to fulfill its responsibilities under NAGPRA. The tribes did not identify any areas of traditional cultural importance within the DPA.

IV. DECISION OPTIONS

[redacted]

Comment [bbarlan5]: (b) (5) [redacted]

(b) (5)

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V. RECOMMENDATION

(b) (5)

VI. DECISION BY THE SECRETARY

APPROVE: ___

DISAPPROVE: ___

COMMENTS: ___

_____

Ken Salazar

Anderson, Michael D

From: Richard Cardinale (b) (6) [redacted]
Sent: Monday, November 12, 2012 10:25 AM
To: Cardinale, Richard
Subject: Re: SURNAME VERSION Potash Order, NOA for comment responses, & Decision Memo for Secy
Attachments: 2012.11.06 Revised draft potash order - with DMR RTC edits, accepted by BLM.docx; 2012.11.09 Draft Decision Memo for Secy RTC edits.docx; 2012.11.09 draft NOA for potash order comment responses RTC edits.docx

From: "Cardinale, Richard" <Richard_Cardinale@ios.doi.gov>
To: (b) (6) Richard Cardinale [redacted]
Sent: Monday, November 12, 2012 9:38 AM
Subject: Fw: SURNAME VERSION Potash Order, NOA for comment responses, & Decision Memo for Secy

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From: Lin, Janet H
Sent: Friday, November 09, 2012 05:24 PM
To: Farquhar, Ned; Burke, Marcilynn
Cc: Cardinale, Richard; Barlan, Bryce
Subject: FW: SURNAME VERSION Potash Order, NOA for comment responses, & Decision Memo for Secy

Hey Ned – I didn't mean to leave you off, but I know that Bryce/Rich usually review before you and Marcilynn do, so I didn't want to get ahead of that process. I am sending to Marcilynn as well. As you can see, Jack and Hilary have not reviewed either – but in the interest of time, we wanted to get this to you. We are told that something final needs to be ready by next Friday.

Thanks all!

From: Lin, Janet H
Sent: Friday, November 09, 2012 5:21 PM
To: Barlan, Bryce; Juen, Jesse J; Herrell, Tony J; Juen, Jesse J; Herrell, Tony J; Allard, Phil; Stovall, James K; Fugate, Barbara; Hawbecker, Karen; Blank, Harvey; Cardinale, Richard; Barlan, Bryce; Nedd, Michael D; Fugate, Barbara; Pool, Michael J; Kornze, Neil G; Velasco, Janine; Decker, Julie A; Hanson, Joshua F; Iudicello, Fay; Wilson, Hazel A; Boddington, Celia; Krauss, Jeff
Subject: SURNAME VERSION Potash Order, NOA for comment responses, & Decision Memo for Secy

Attached are the versions that will begin making their way simultaneously through ASLM, BLM Director's Office, Exec Sec, and SOL. Please use these versions for those of you who have paper packages. BLM-NM – could you send us your e-surname of these versions?

Fay and Hazel: I believe Phil has mentioned that (b) (5) [redacted]. We appreciate your consideration of these factors as you conduct your review.

From: Fugate, Barbara
Sent: Friday, November 09, 2012 4:16 PM
To: Lin, Janet H; Allard, Phil
Cc: Hawbecker, Karen; Blank, Harvey
Subject: Attaching Potash Order, NOA for comment responses, & Decision Memo for Secy

Janet (and Phil when you get back) –

Karen has just surnamed the attached documents that are revised versions of the ones included in the initial surname package: (1) proposed final 2012 Secretary's Potash Order; (2) Notice of Availability of BLM's comment responses; and (3) Decision Memorandum for the Secretary. Please note that we have just transmitted this surname package to the front office, so Jack and Hilary have not yet reviewed these versions.

I'm also attaching a redline version of the proposed final Order showing the revisions that have been made to the July 13, 2012, proposed Order and a redline version of the draft Decision Memorandum showing DMR revisions to the version BLM sent on November 7 in response to DMR's initial edits We are currently reviewing BLM's responses to DMR's suggested edits to the comment responses and the EA. Please let me know if you have questions. Thank you.

Barbara

ORDER NO.

Subject: Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

Sec. 1 **Purpose and Effect.** (b) (5)
(b) (5)

Sec. 2 **Authority.** (b) (5)
(b) (5)

Sec. 3 **Order Revised and Superseded.** (b) (5)
(b) (5)

Sec. 4. **Definitions.**

(b) (5)

(b) (5)

[redacted]

(b) (5) [redacted]

Sec. 5 **Status of Lands.** (b) (5) [redacted]

Sec. 6 **General Provisions.**

a. Issuance of Oil and Gas Leases. (b) (5) [redacted]

b. Reinstatement or Renewal of Oil and Gas Leases. (b) (5) [redacted]

c. Potash Leases.

(b) (5)

[redacted]

d. Delineation of Resource Areas. (b) (5)

(b) (5)

[redacted]

(b) (5)

[redacted]

e. Oil and Gas Drilling.

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

Comment [RC1]: ([redacted] b)

(b) (5)

[redacted]

Comment [RC2]: (b [redacted])

(b) (5)

[redacted]

Sec. 7 **Regulatory and Administrative Matters.**

(b) (5)

[redacted]

Sec. 8. **The Designated Potash Area Legal Description.**

(b) (5)

[redacted]

(b) (5)

[redacted]

DRAFT

(b) (5)

[redacted]

DRAFT

(b) (5)

[redacted]

Sec. 9 **Administrative Provisions.** (b) (5)

(b) (5)

[redacted]

Secretary of the Interior

Date:

DRAFT

4310-VC

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO100000, L18200000.XX0000]

Notice of Availability of BLM's Responses to Public Comments on the Proposed Order of the Secretary on Oil, Gas, and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Under the authority of the Mineral Leasing Act, as amended, the Secretary of the Interior has issued an Order to address oil, gas, and potash leasing and development within the Designated Potash Area in Eddy and Lea counties in New Mexico. The Secretary's Order (2012 Secretary's Order) supersedes a previous Order issued in 1986 and corrected in 1987 that addresses these issues. (b) (5) [redacted] This Notice announces the availability of the Bureau of Land Management's (BLM) responses to the comments that were received during the comment period.

ADDRESSES: The comments that were received and the comment responses are available for review at the following Website: http://www.blm.gov/nm/st/en/info/potash.html. The 2012 Secretary's Order was published in the Federal Register on [INSERT DATE OF PUBLICATION OF THE 2012 SECRETARY'S ORDER IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Tony Herrell; telephone 505-954-2222; 301 Dinosaur Trail, Santa Fe, New Mexico, 87508; e-mail: therrell@blm.gov.

SUPPLEMENTARY INFORMATION:

Background

An area near the town of Carlsbad in southeastern New Mexico (b) (5) large deposits of potash, oil, and gas. Oil and gas have been produced from this area since the early twentieth century. Potash (potassium-bearing salts primarily used for fertilizer) was discovered in this area (b) (5) (b) (5) and has been mined since 1930.

The Secretary issued the first Potash Order in 1939 (4 FR 1012, February 25, 1939). That Order withdrew approximately 43,000 acres of public land from oil and gas leasing in order to protect potash deposits. In 1951, the Secretary revoked the 1939 Order and issued a new Order that instituted the policy of authorizing concurrent development of oil and gas and potash reserves within an area comprising 298,345 acres, under reciprocal lease stipulations to ensure that the development of either mineral would not interfere with development of the other (16 FR (b) (5) October 18, 1951). The Order was amended in 1965 (30 FR 6692, May 15, 1965), 1975 (40 FR 51486, November 5, 1975), and 1986 (51 FR 39425, October 28, 1986). A correction to the 1986 Order was issued in 1987 (52 FR 32171, August 26, 1987). The potash area designated by the corrected 1986 Order comprises approximately 497,000 acres, and the 2012 Secretary's Order, published [INSERT DATE OF PUBLICATION OF THE ORDER IN THE FEDERAL REGISTER], does not alter the boundaries of the area. The potash deposits in this area occur from 800 feet to over 2,000 feet beneath the surface and are mined by both conventional and solution mining methods; conventional methods require miners to be underground. The oil and gas in the area is found in formations below the potash-bearing formations, so oil and gas wells must extend through potash formations. If potash mining (b) (5) a well casing, or if a well casing near a potash mine failed for other reasons, gas could (b) (5) the mine workings, thus endangering the miners. Additionally,

the potential for such a breach could raise the costs of potash mining due to the need (b) (5) enhanced ventilation techniques and specialized equipment needed to mine in (b) (5) environment. (b) (5) given these safety risks, it has (b) (5) to produce potash and oil and gas at the same time in the same area. This has led to a long history of conflict between the potash and the oil and gas industries.

This conflict has resulted in a great deal of litigation regarding decisions made by the BLM on a variety of development applications. Nevertheless (b) (5) the two industries have initiated efforts to work together. A number of productive meetings and discussions have occurred among many of the parties involved in these previous disputes. Additionally, there have been significant advances in the technology of oil and gas drilling that could be used to reduce the conflict between such drilling and the extraction of potash. Further, the economic outlook for both the oil and gas industry and the potash industry has recently improved. The BLM has also worked with Sandia National Laboratories to investigate well logging technology, gas migration in the potash formations, and standards to use for estimating the mineability of potash and potash cutoff grades. These circumstances led to review of the 1986 Secretary's Order.

The New 2012 Secretary's Order

The 2012 Secretary's Order differs from the 1986 Order as described below.

The formatting is modified to be consistent with the Department of the Interior's (Department) style requirements for Secretary's Orders. These requirements were changed in 1992 and are recorded in Section 012 DM 1 of the Departmental Manual.

The 2012 Secretary's Order authorizes the BLM to establish "Development Areas," where oil and gas wells can be drilled from one or more "Drilling Islands." The Drilling Island concept was first introduced in the 1975 Secretarial Order. In most cases, a single Drilling Island will be established for each Development Area, but if circumstances so dictate, the BLM may establish additional Drilling Islands. Drilling Islands will be situated in such a manner that extended reach horizontal wells could access oil and gas within the associated Development Area. The 2012 Secretary's Order envisions that the oil and gas leases in a Development Area will be unitized under the regulations found at 43 CFR subpart 3180 and developed by a unit operator, or operated under a communitization agreement as authorized under 43 CFR subpart 3105. Through unitization and communitization agreements, leases held by different (b) (5) could be included in Development Areas. This should lead to more orderly development of the oil and gas resources in the Development Area and minimize impacts to surface resources due to a reduction in the number of drill pads and associated roads, power lines, and other ancillary facilities. Moreover, the resulting reduction in the number and spacing of oil and gas drilling locations where wells penetrate the potash formation is expected to minimize impacts to potash resources and enhance the safety of underground potash miners.

The BLM envisions that a substantial portion of the Designated Potash Area will eventually be divided into Development Areas designed to minimize the impacts to potash mining while allowing for the development of oil and gas resources. The BLM's goal is for the oil and gas in Development Areas to be developed with extended reach horizontal wells using the most current technology, consistent with applicable laws and regulations.

The 2012 Secretary's Order retains several important features of the 1986 Order, including the boundaries of the Designated Potash Area established in the 1986 Order, as corrected in 1987. The Secretary's Order also retains language of the 1986 Order for stipulations for oil and gas leases and potash leases issued, reinstated, renewed, or readjusted in the Designated Potash Area.

Comments on the Draft Order

The BLM received 28 comment letters during the comment period, including 41 distinct comments. These comments and the BLM's responses to them are available for review at the following website:

http://www.blm.gov/nm/st/en/info/potash.html.

Mike Pool

Acting Director, Bureau of Land Management

AUTHORITY: 43 CFR 3164.1, 43 CFR 3590.2

DECISION MEMORANDUM FOR THE SECRETARY

FROM: Mike Pool, Acting Director

CC: David Hayes, Deputy Secretary
Marcilynn A. Burke, Acting Assistant Secretary, Land and Minerals Management
Jack Haugrud, Acting Principal Deputy Solicitor

SUBJECT: Proposed Final 2012 Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

I. INTRODUCTION

The Bureau of Land Management (BLM) (b) (5) as prepared (b) (5) proposed final "Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico."

The proposed final 2012 Secretary's Order would supersede the current Secretary's Order that addresses these issues. The revisions are designed to further promote the efficient development of potash, oil, and gas resources, while minimizing conflict between the industries and ensuring the safety of operations. Industry representatives from oil and gas and potash interests have been working together to identify and propose a mutually acceptable path forward. The opportunity to finalize a Secretary's Order that has the potential support of both industries is historic, particularly in light of the long and contentious history of this issue.

The proposed Secretary's Order was made available for a 30-day public comment period on July 13, 2012. The BLM thereafter extended the public comment period, which closed on August 31. The BLM received 28 comment letters that contained 41 distinct comments on the draft Order

(b) (5)

The BLM conducted government-to-government tribal consultation meetings with seven tribes beginning on July 17; ~~and~~ none of the tribes expressed any adverse opinions about the proposed Order.

II. BACKGROUND

Potash is a potassium-bearing mineral used primarily for fertilizer. The Carlsbad Mining District has a unique geology that contains potash, oil, and gas deposits. Concurrent development of these minerals has led to conflicts between the oil and gas and potash industries. Oil and gas is

found in formations below the potash-bearing formations, so oil and gas wells must be drilled through the potash formations. If a well casing fails, gas could enter the mine workings and endanger miners. The potential for such a breach also could increase potash operating costs because enhanced ventilation and specialized equipment would be needed before mining could continue. These conflicts have led to litigation; ~~and~~ numerous cases have been appealed to the Interior Board of Land Appeals (IBLA) and to Federal court.

While there has been a long history of litigation, multiple mineral development has occurred in the past, as ~~is~~ evidenced by the fact that a total of 4,959 wells (approximately 2,295 active oil wells, 577 active gas wells, 33 water injection wells, and 2,054 dry holes and abandoned wells) are currently located within the area covered by the Order. Historically, there have been seven major potash mining operations in this area with thousands of miles of interconnected underground mine workings. Currently, two companies operate four potash mines in the area. In addition, about 2,500 potash core holes have been drilled within the area.

The Designated Potash Area (DPA) was established by a Secreta[redacted] ~~'s~~ Order in 1939 that originally withdrew approximately 43,000 acres from oil and gas leasing and development to protect potash deposits. Exploration by several companies continued after 1939 and the potash area was expanded by a 1951 (b) (5) Order, which lifted the withdrawal and authorized concurrent development by the oil and gas and potash industries. To achieve concurrent development, the 1951 Order, and later Orders in 1965, 1975, and 1986, imposed protective stipulations in new leases issued for both oil and gas and potash, to avoid conflicts as much as possible. The DPA currently covers a total area of approximately 497,002 acres and includes 350,617 acres of BLM managed land where leasing of oil and gas and potash occurs.

(b) (5)

[redacted]

(b) (5)

[redacted]

[redacted]

(b) (5)

(b) (5) [redacted]

[redacted]

[redacted]

[redacted]

III. POSITION of INTERESTED PARTIES

The JITC is composed of a number of oil and gas companies and potash companies, along with Sandia National Laboratories. The potash company members of the JITC hold all of the potash leases in the DPA. The oil and gas company members of the JITC are responsible for approximately 85% of the oil and gas production in the DPA. All but one JITC member (OXY) signed a consensus document in April 2012 containing a general outline for a proposed management plan for the DPA. The proposed final 2012 Secreta(b) (5) [redacted] Order is consistent with the key concepts suggested by the JITC. While one JITC member (Yates Petroleum) later submitted comments criticizing the proposed Order, the other members of the JITC (including OXY) proposed very few edits to the proposed Order, most of which have been incorporated into this proposed final Order.

The companies representing the remaining 15% of oil and gas production in the DPA have declined to participate in the JITC. Some of these companies commented that the proposed Order would adversely affect the oil and gas industry. (b) (5) [redacted]. The BLM expects that the proposed revision would benefit the overall economic outlook for both industries and give access to leases that cannot be developed under the 1986 Order. (b) (5) [redacted]

(b) (5) [redacted]. The BLM is committed to working with all lessees in implementing the proposed final 2012 Secretar[redacted]'s Order, if it is approved. (b) (5) [redacted]

New Mexico Governor Susana Martinez and staff for Senators Bingaman and Udall and Representative Pearce have been briefed by the BLM and the JITC on the possibility of a new 2012 Secreta[redacted]'s Order. Industry has briefed Texas Senators Hutchinson and Cornyn and reports that the two Texas Senators are supportive of the JITC recommendations. Tom Bemis, New Mexico Cabinet Secretary for Energy, Minerals, and Natural Resources, and Ray Powell, New Mexico State Land Office Commissioner, have also been briefed by the JITC on the consensus that it reached. The New Mexico Oil Conservation Division (NMOCD) commented that the language in one section potentially could cause conflict due to differences between NMOCD and BLM regulatory frameworks. The BLM adopted a change to the new 2012 Secreta[redacted]'s Order (b) (5) [redacted]. Eddy, Lea, and Chaves Counties submitted comments expressing concern that the proposed Order was in essence a withdrawal of the entire DPA from concurrent development and requesting coordination with local governments. [redacted] The BLM has met with the Eddy and Lea County commissions to discuss the proposed final 2012 Secreta[redacted]'s Order and the comments they provided to further explain how the BLM would approach the implementation of the 2012 Secretary's Order. (b) (5) [redacted] The county commissioners with whom the BLM met indicated that these meetings aided their understanding of how the BLM would manage the development of both resources in the DPA.

The BLM's Carlsbad Field Office consulted with seven Federally recognized tribes that have interests within the DPA in June, July, and August of 2012. The BLM made initial contact with tribes in the form of a letter informing them of the proposed revision and soliciting their concerns and input. The BLM sent a second letter, which included a copy of the draft revision to the 1986 Secretar[redacted]'s [redacted]rder, to the tribes on July 9, 2012, and held face-to-face meetings with the various tribes in July and August 2012. The BLM arranged these meetings to discuss the proposed revision of the 1986 Secretar[redacted]'s [redacted] Order and other projects. The tribes did not express any adverse opinions regarding the substance of the proposed Order, but were very concerned that the BLM continue to follow the Native American Graves Protection and Repatriation Act (NAGPRA) and immediately notify the tribes if any human remains and associated funerary items are discovered. The proposed final 2012 Secreta[redacted]'s Order would not affect the BLM's continuing commitment to fulfill its responsibilities under NAGPRA. The tribes did not identify any areas of traditional cultural importance within the DPA.

IV. DECISION OPTIONS

(b) (5) [redacted]

(b) (5)

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V. RECOMMENDATION

I recommend that you approve the proposed final 2012 Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico.

VI. DECISION BY THE SECRETARY

APPROVE: ___

DISAPPROVE: ___

COMMENTS: ___

_____

Ken Salazar

Anderson, Michael D

From: Lin, Janet H
Sent: Friday, November 09, 2012 5:25 PM
To: Farquhar, Ned; Burke, Marcilynn
Cc: Cardinale, Richard; Barlan, Bryce
Subject: FW: SURNAME VERSION Potash Order, NOA for comment responses, & Decision Memo for Secy
Attachments: 2012.11.06 Revised draft potash order - with DMR edits, accepted by BLM.docx; 2012.11.09 draft NOA for potash order comment responses.docx; 2012.11.09 Draft Decision Memo for Secy.docx; 2012.11.09 Comparison of draft revised Potash Order to July proposed Order.docx; 2012.11.09 DMR redline of BLM's Nov. 7 revised Dec. Memo for Secy.docx

Hey Ned – I didn't mean to leave you off, but I know that Bryce/Rich usually review before you and Marcilynn do, so I didn't want to get ahead of that process. I am sending to Marcilynn as well. As you can see, Jack and Hilary have not reviewed either – but in the interest of time, we wanted to get this to you. We are told that something final needs to be ready by next Friday.

Thanks all!

From: Lin, Janet H
Sent: Friday, November 09, 2012 5:21 PM
To: Barlan, Bryce; Juen, Jesse J; Herrell, Tony J; Juen, Jesse J; Herrell, Tony J; Allard, Phil; Stovall, James K; Fugate, Barbara; Hawbecker, Karen; Blank, Harvey; Cardinale, Richard; Barlan, Bryce; Nedd, Michael D; Fugate, Barbara; Pool, Michael J; Kornze, Neil G; Velasco, Janine; Decker, Julie A; Hanson, Joshua F; Iudicello, Fay; Wilson, Hazel A; Boddington, Celia; Krauss, Jeff
Subject: SURNAME VERSION Potash Order, NOA for comment responses, & Decision Memo for Secy

Attached are the versions that will begin making their way simultaneously through ASLM, BLM Director's Office, Exec Sec, and SOL. Please use these versions for those of you who have paper packages. BLM-NM – could you send us your e-surname of these versions?

Fay and Hazel: I believe Phil has mentioned that this Secretarial Order (b) (5) [redacted]. We appreciate your consideration of these factors as you conduct your review.

From: Fugate, Barbara
Sent: Friday, November 09, 2012 4:16 PM
To: Lin, Janet H; Allard, Phil
Cc: Hawbecker, Karen; Blank, Harvey
Subject: Attaching Potash Order, NOA for comment responses, & Decision Memo for Secy

Janet (and Phil when you get back) –

Karen has just surnamed the attached documents that are revised versions of the ones included in the initial surname package: (1) proposed final 2012 Secretary's Potash Order; (2) Notice of Availability of BLM's comment responses; and

(3) Decision Memorandum for the Secretary. Please note that we have just transmitted this surname package to the front office, so Jack and Hilary have not yet reviewed these versions.

I'm also attaching a redline version of the proposed final Order showing the revisions that have been made to the July 13, 2012, proposed Order and a redline version of the draft Decision Memorandum showing DMR revisions to the version BLM sent on November 7 in response to DMR's initial edits We are currently reviewing BLM's responses to DMR's suggested edits to the comment responses and the EA. Please let me know if you have questions. Thank you.

Barbara

ORDER NO.

Subject: Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

Sec. 1 **Purpose and Effect.** (b) (5) [redacted]

Sec. 2 **Authority.** [redacted] (b) (5) [redacted]

Sec. 3 **Order Revised and Superseded.** (b) (5) [redacted]

Sec. 4. **Definitions.**

(b) (5) [redacted]

(b) (5)

[redacted]

(b) (5) [redacted]

Sec. 5 **Status of Lands.** (b) (5) [redacted]

Sec. 6 **General Provisions.**

a. Issuance of Oil and Gas Leases. (b) (5) [redacted]

(b) (5) [redacted]

b. Reinstatement or Renewal of Oil and Gas Leases. (b) (5) [redacted]

c. Potash Leases.

(b) (5)

[redacted]

d. Delineation of Resource Areas. (b) (5) [redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

e. Oil and Gas Drilling.

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

Sec. 7 **Regulatory and Administrative Matters.**

(b) (5)

[redacted]

Sec. 8. **The Designated Potash Area Legal Description.**

(b) (5)

[redacted]

(b) (5)

[redacted]

DRAFT

(b) (5)

[redacted]

DRAFT

(b) (5) [redacted]

Sec. 9 **Administrative Provisions.** (b) (5) [redacted]

Secretary of the Interior

Date:

DRAFT

DECISION MEMORANDUM FOR THE SECRETARY

FROM: Mike Pool, Acting Director

CC: David Hayes, Deputy Secretary
Marcilynn Burke, Acting Assistant Secretary, Land and Minerals Management
Jack Haugrud, Acting Principal Deputy Solicitor

SUBJECT: Proposed Final 2012 Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

I. INTRODUCTION

The Bureau of Land Management (BLM) is preparing a proposed final "Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico."

The proposed final 2012 Secretary's Order would supersede the current Secretary's Order that addresses (b) (5) [redacted] The revisions are designed to further promote the efficient development of potash, oil, and gas resources, while minimizing conflict between the industries and ensuring the safety of operations. Industry representatives from oil and gas and potash interests have been working together to identify and propose a mutually acceptable path forward. The opportunity to finalize a Secretary's Order that has the potential support of both industries is historic, particularly in light of the long and contentious history of this issue.

The proposed Secretary's Order was made available for a 30-day public comment period on July 13, 2012. The BLM thereafter extended the public comment period, which closed on August 31. The BLM received 28 comment letters on the draft Order that contained 41 distinct comments.

(b) (5) [redacted]

The BLM conducted government-to-government tribal consultation meetings with seven tribes beginning on July 17 and none of the tribes expressed any adverse opinions about the proposed Order.

II. BACKGROUND

Potash is a potassium-bearing mineral used primarily for fertilizer. The Carlsbad Mining District has a unique geology that contains potash, oil, and gas deposits. Concurrent development of these minerals has led to conflicts between the oil and gas and potash industries. Oil and gas is found in formations below the potash-bearing formations, so oil and gas wells must be drilled

through the potash formations. If a well casing fails, gas could enter the mine workings and endanger miners. The potential for such a breach also could increase potash operating costs because enhanced ventilation and specialized equipment would be needed before mining could continue. These conflicts have led to litigation and numerous cases have been appealed to the IBLA and to Federal court.

While there has been a long history of litigation, multiple mineral development has occurred in the past, as is evidenced by the fact that a total of 4,959 wells (approximately 2,295 active oil wells, 577 active gas wells, 33 water injection wells and 2,054 dry holes and abandoned wells) are currently located within the area covered by the Order. Historically, there have been seven major potash mining operations in this area with thousands of miles of interconnected underground mine workings. Currently, two companies operate four potash mines in the area. In addition, about 2,500 potash core holes have been drilled within the area.

The Designated Potash Area (DPA) was established by a Secretary's Order in 1939 that originally withdrew approximately 43,000 acres from oil and gas leasing and development to protect potash deposits. Exploration by several companies continued after 1939 and the potash area was expanded by a 1951 Order, which lifted the withdrawal and authorized concurrent development by the oil and gas and potash industries. To achieve concurrent development, the 1951 Order, and later Orders in 1965, 1975, and 1986, imposed protective stipulations in new leases issued for both oil and gas and potash, to avoid conflicts as much as possible. The DPA currently covers a total area of approximately 497,002 acres and includes 350,617 acres of BLM managed land where leasing of oil and gas and potash occurs.

(b) (5)

(b) (5)

(b) (5) [redacted]

[redacted]

[redacted]

[redacted]

III. POSITION of INTERESTED PARTIES

The JITC is composed of a number of oil and gas companies and potash companies, along with Sandia National Laboratories. The potash company members of the JITC hold all of the potash leases in the DPA. The oil and gas company members of the JITC are responsible for approximately 85% of the oil and gas production in the DPA. All but one JITC member (OXY) signed a consensus document in April 2012 containing a general outline for a proposed management plan for the DPA. The proposed final 2012 Secretary's Order is consistent with the key concepts suggested by the JITC. While one JITC member (Yates Petroleum) later submitted comments criticizing the proposed Order, the other members of the JITC (including OXY) proposed very few edits to the proposed Order, most of which have been incorporated into this proposed final Order.

The companies representing the remaining 15% of oil and gas production in the DPA have declined to participate in the JITC. Some of these companies commented that the proposed Order would adversely affect the oil and gas industry. (b) (5) [redacted]. The BLM expects that the proposed revision would benefit the overall economic outlook for both industries and give access to leases that cannot be developed under the 1986 Order. (b) (5) [redacted] The BLM is

committed to work with all lessees in implementing the proposed final 2012 Secretary's Order, if it is approved. (b) (5) [redacted]

New Mexico Governor Susana Martinez and staff for Senators Bingaman and Udall and Representative Pearce have been briefed by the BLM and the JITC on the possibility of a new 2012 Secretary's Order. Industry has briefed Texas Senators Hutchinson and Cornyn and reports that the two Texas Senators are supportive of the JITC recommendations. Tom Bemis, New Mexico Cabinet Secretary for Energy, Minerals, and Natural Resources, and Ray Powell, New Mexico State Land Office Commissioner, have also been briefed by the JITC on the consensus that it reached. The New Mexico Oil Conservation Division (NMOCD) commented that the language in one section potentially could cause conflict due to differences between NMOCD and BLM regulatory frameworks. The BLM adopted a change to the new 2012 Secretary's Order (b) (5) [redacted]. Eddy, Lea, and Chaves Counties submitted comments expressing concern that the proposed Order was in essence a withdrawal of the entire DPA from concurrent development and requesting coordination with local governments. (b) (5) [redacted] BLM has met with the Eddy and Lea County commissions to discuss the proposed final 2012 Secretary's Order and the comments they provided to further explain how the BLM would approach the implementation of the 2012 Secretary's Order, (b) (5) [redacted] The county commissioners with whom the BLM met indicated that these meetings aided their understanding of how the BLM would manage the development of both resources in the DPA.

The BLM's Carlsbad Field Office consulted with seven Federally recognized tribes that have interests within the DPA in June, July, and August of 2012. The BLM made initial contact with tribes in the form of a letter informing them of the proposed revision and soliciting their concerns and input. The BLM sent a second letter, which included a copy of the draft revision to the 1986 Secretary's Potash Order, to the tribes on July 9, 2012, and held face-to-face meetings with the various tribes in July and August 2012. The BLM arranged these meetings to discuss the proposed revision of the 1986 Secretary's Potash Order and other projects. The tribes did not express any adverse opinions regarding the substance of the proposed Order, but were very concerned that the BLM continue to follow the Native American Graves Protection and Repatriation Act (NAGPRA) and immediately notify the tribes if any human remains and associated funerary items are discovered. The proposed final 2012 Secretary's Order would not affect the BLM's continuing commitment to fulfill its responsibilities under NAGPRA. The tribes did not identify any areas of traditional cultural importance within the DPA.

IV. DECISION OPTIONS

A. (b) (5) [redacted]

B. (b) (5) [redacted]

C. (b) (5) [redacted]

V. RECOMMENDATION

I recommend that you approve the proposed final 2012 Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico.

VI. DECISION BY THE SECRETARY

APPROVE: ___

DISAPPROVE: ___

COMMENTS: ___

_____

Ken Salazar

ORDER NO.

Subject: Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

Sec. 1. **Purpose and Effect.** (b) (5) [redacted]

Sec. 2. **Authority.** (b) (5) [redacted]

Sec. 3. **Order Revised and Superseded.** (b) (5) [redacted]

Sec. 4. **Definitions.**

(b) (5) [redacted]

(b) (5)

[redacted]

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(b) (5) [redacted]

Sec. 5 **Status of Lands.** (b) (5) [redacted]

Sec. 6 **General Provisions.**

(b) (5) [redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

e. Oil and Gas Drilling.

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

(b) (5)

[redacted]

Sec. 7 **Regulatory and Administrative Matters.**

(b) (5)

[redacted]

(b) (5)

[redacted]

Sec. 8. **The Designated Potash Area Legal Description.**

(b) (5)

[redacted]

DRAFT

(b) (5)

[redacted]

DRAFT

(b) (5) [redacted]

Sec. 9 **Administrative Provisions.** (b) (5) [redacted]

Secretary of the Interior

Date:

DRAFT

DECISION MEMORANDUM FOR THE SECRETARY

FROM: Mike Pool, Acting Director

CC: David Hayes, Deputy Secretary
Marcilynn Burke, Acting Assistant Secretary, Land and Minerals Management
Jack Haugrud, Acting Principal Deputy Solicitor

SUBJECT: Proposed Final 2012 Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

I. INTRODUCTION

The Bureau of Land Management (BLM) is preparing a proposed final "Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico."

The proposed final 2012 Secretary's Order would supersede the current Secretary's Order that addresses these issues. The revisions are designed to further promote the efficient development of potash, oil, and gas resources, while minimizing conflict between the industries and ensuring the safety of operations. Industry representatives from oil and gas and potash interests have been working together to identify and propose a mutually acceptable path forward. The opportunity to finalize a Secretary's Order that has the potential support of both industries is historic, particularly in light of the long and contentious history of this issue.

The proposed Secretary's Order was made available for a 30-day public comment period on July 13, 2012. The BLM thereafter extended the public comment period, which closed on August 31. The BLM received 28 comment letters on the draft Order that contained 41 distinct comments.

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The BLM conducted government-to-government tribal consultation meetings with seven tribes beginning on July 17 and none of the tribes expressed any adverse opinions about the proposed Order.

II. BACKGROUND

Potash is a potassium-bearing mineral used primarily for fertilizer. The Carlsbad Mining District has a unique geology that contains potash, oil, and gas deposits. Concurrent development of these minerals has led to conflicts between the oil and gas and potash industries. Oil and gas is found in formations below the potash-bearing formations, so oil and gas wells must be drilled

through the potash formations. If a well casing fails, gas could enter the mine workings and endanger miners. The potential for such a breach also could increase potash operating costs because enhanced ventilation and specialized equipment would be needed before mining could continue. These conflicts have led to litigation and numerous cases have been appealed to the IBLA and to Federal court.

While there has been a long history of litigation, multiple mineral development has occurred in the past, as is evidenced by the fact that a total of 4,959 wells (approximately 2,295 active oil wells, 577 active gas wells, 33 water injection wells and 2,054 dry holes and abandoned wells) are currently located within the area covered by the Order. Historically, there have been seven major potash mining operations in this area with thousands of miles of interconnected underground mine workings. Currently, two companies operate four potash mines in the area. In addition, about 2,500 potash core holes have been drilled within the area.

The Designated Potash Area (DPA) was established by a Secretary's Order in 1939 that originally withdrew approximately 43,000 acres from oil and gas leasing and development to protect potash deposits. Exploration by several companies continued after 1939 and the potash area was expanded by a 1951 Order, which lifted the withdrawal and authorized concurrent development by the oil and gas and potash industries. To achieve concurrent development, the 1951 Order, and later Orders in 1965, 1975, and 1986, imposed protective stipulations in new leases issued for both oil and gas and potash, to avoid conflicts as much as possible. The DPA currently covers a total area of approximately 497,002 acres and includes 350,617 acres of BLM managed land where leasing of oil and gas and potash occurs.

(b) (5)

[redacted]

(b) (5)

[redacted]

[redacted]

(b) (5) [redacted]

[redacted]

[redacted]

[redacted]

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The JITC is composed of a number of oil and gas companies and potash companies, along with Sandia National Laboratories. The potash company members of the JITC hold all of the potash leases in the DPA. The oil and gas company members of the JITC are responsible for approximately 85% of the oil and gas production in the DPA. All but one JITC member (OXY) signed a consensus document in April 2012 containing a general outline for a proposed management plan for the DPA. The proposed final 2012 Secretary's Order is consistent with the key concepts suggested by the JITC. While one JITC member (Yates Petroleum) later submitted comments criticizing the proposed Order, the other members of the JITC (including OXY) proposed very few edits to the proposed Order, most of which have been incorporated into this proposed final Order.

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(b) (5) [redacted]. The BLM is committed to work with all lessees in implementing the proposed final 2012 Secretary's Order, if it is approved. (b) (5) [redacted]

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(b) (5) [redacted]

The BLM's Carlsbad Field Office consulted with seven Federally recognized tribes that have interests within the DPA in June, July, and August of 2012. The BLM made initial contact with tribes in the form of a letter informing them of the proposed revision and soliciting their concerns and input. The BLM sent a second letter, which included a copy of the draft revision to the 1986 Secretary's Potash Order, to the tribes on July 9, 2012, and held face-to-face meetings with the various tribes in July and August 2012. The BLM arranged these meetings to discuss the proposed revision of the 1986 (b) (5) [redacted] Secretary's Potash Order and other projects. The tribes did not express any adverse opinions regarding the substance of the proposed Order, but were very concerned that the BLM continue to follow the Native American Graves Protection and Repatriation Act (NAGPRA) and immediately notify the tribes if any human remains and associated funerary items are discovered. The proposed final 2012 Secretary's Order would not affect the BLM's continuing commitment to fulfill its responsibilities under NAGPRA. The tribes did not identify any areas of traditional cultural importance within the DPA.

IV. DECISION OPTIONS

A. [redacted]

(b) (5) [redacted]

B. [redacted]

C.

V. RECOMMENDATION

I recommend that you approve the proposed final 2012 Secretary's Order on Oil and Gas and Potash Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico.

VI. DECISION BY THE SECRETARY [redacted]

APPROVE: ___

DISAPPROVE: ___

COMMENTS: ___

_____

Ken Salazar

4310-VC

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO100000, L18200000.XX0000]

Notice of Availability of BLM's Responses to Public Comments on the Proposed Order of the Secretary on Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Under the authority of the Mineral Leasing Act, as amended, the Secretary of the Interior has issued an Order to address oil, gas, and potash leasing and development within the Designated Potash Area in Eddy and Lea counties in New Mexico. The Secretary's Order (2012 Secretary's Order) supersedes a previous Order issued in 1986 that addresses these issues. (b) (5) [redacted] This Notice announces the availability of the Bureau of Land Management's (BLM) responses to the comments that were received during the comment period.

ADDRESSES: The comments that were received and the comment responses are available for review at the following Website: http://www.blm.gov/nm/st/en/info/potash.html. The 2012 Secretary's Order was published in the Federal Register on [INSERT DATE OF PUBLICATION OF THE 2012 SECRETARY'S ORDER IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Tony Herrell; telephone 505-954-2222; 301 Dinosaur Trail, Santa Fe, New Mexico, 87508; e-mail: therrell@blm.gov.

SUPPLEMENTARY INFORMATION:

Background

An area near the town of Carlsbad in southeastern New Mexico has large deposits of potash, oil, and gas. Oil and gas have been produced from this area since the early twentieth century. Potash (potassium-bearing salts primarily used for fertilizer) was discovered in this area (b) (5) (b) (5) and has been mined since 1930.

The Secretary issued the first Potash Order in 1939 (4 FR 1012, February 25, 1939). That Order withdrew approximately 43,000 acres of public land from oil and gas leasing in order to protect potash deposits. In 1951, the Secretary revoked the 1939 Order and issued a new Order that instituted the policy of authorizing concurrent development of oil and gas and potash reserves within an area comprising 298,345 acres, under reciprocal lease stipulations to ensure that the development of either mineral would not interfere with development of the other (16 FR (b) (5), October 18, 1951). The Order was amended in 1965 (30 FR 6692, May 15, 1965), 1975 (40 FR 51486, November 5, 1975), and 1986 (51 FR 39425, October 28, 1986). A correction to the 1986 Order was issued in 1987 (52 FR 32171, August 26, 1987). The potash area designated by the corrected 1986 Order comprises approximately 497,000 acres, and the 2012 Secretary's Order, published [INSERT DATE OF PUBLICATION OF THE ORDER IN THE FEDERAL REGISTER], does not alter the boundaries of the area. The potash deposits in this area occur from 800 feet to over 2,000 feet beneath the surface and are mined by both conventional and solution mining methods; conventional methods require miners to be underground. The oil and gas in the area is found in formations below the potash-bearing formations, so oil and gas wells must extend through potash formations. If potash mining (b) (5) a well casing, or if a well casing near a potash mine failed for other reasons, gas could (b) (5) the mine workings, thus endangering the miners. Additionally, the potential for such a breach could raise the costs of potash mining due to the need (b) (5) enhanced ventilation techniques and specialized equipment needed to mine in a (b) (5)

environment. (b) (5) ven these safety risks, it has (b) (5) o produce potash and oil and gas at the same time in the same area. This has led to a long history of conflict between the potash and the oil and gas industries.

This conflict has resulted in a great deal of litigation regarding decisions made by the BLM on a variety of development applications. Nevertheless (b) (5) he two industries have initiated efforts to work together. A number of productive meetings and discussions have occurred among many of the parties involved in these previous disputes. Additionally, there have been significant advances in the technology of oil and gas drilling that could be used to reduce the conflict between such drilling and the extraction of potash. Further, the economic outlook for both the oil and gas industry and the potash industry has recently improved. The BLM has also worked with Sandia National Laboratories to investigate well logging technology, gas migration in the potash formations, and standards to use for estimating the mineability of potash and potash cutoff grades. These circumstances led to review of the 1986 Secretary's Order.

The New 2012 Secretary's Order

The 2012 Secretary's Order differs from the 1986 Order as described below.

The formatting is modified to be consistent with the Department of the Interior's (Department) style requirements for Secretary's Orders. These requirements were changed in 1992 and are recorded in Section 012 DM 1 of the Departmental Manual.

The 2012 Secretary's Order authorizes the BLM to establish "Development Areas," where oil and gas wells can be drilled from one or more "Drilling Islands." The Drilling Island concept was first introduced in the 1975 Secretarial Order. In most cases, a single Drilling Island will be established for each Development Area, but if circumstances so dictate, the BLM may establish additional Drilling Islands. Drilling Islands will be situated in such a

manner that extended reach horizontal wells could access oil and gas within the associated Development Area. The 2012 Secretary's Order envisions that the oil and gas leases in a Development Area will be unitized under the regulations found at 43 CFR subpart 3180 and developed by a unit operator, or operated under a communitization agreement as authorized under 43 CFR subpart 3105. Through unitization and communitization agreements, leases held by different (b) (5) could be included in Development Areas. (b) (5) should lead to more orderly development of the oil and gas resources in the Development Area and minimize impacts to surface resources due to a reduction in the number of drill pads and associated roads, power lines, and other ancillary facilities. Moreover, the resulting reduction in the number and spacing of oil and gas drilling locations where wells penetrate the potash formation is expected to minimize impacts to potash resources and enhance the safety of underground potash miners.

The BLM envisions that a substantial portion of the Designated Potash Area will eventually be divided into Development Areas designed to minimize the impacts to potash mining while allowing for the development of oil and gas resources. The BLM's goal is for the oil and gas in Development Areas to be developed with extended reach horizontal wells using the most current technology, consistent with applicable laws and regulations.

The 2012 Secretary's Order retains several important features of the 1986 Order, including the boundaries of the Designated Potash Area established in the 1986 Order, as corrected in 1987. The Secretary's Order also retains language of the 1986 Order for stipulations for oil and gas leases and potash leases issued, reinstated, renewed, or readjusted in the Designated Potash Area.

Comments on the Draft Order

The BLM received 28 comment letters during the comment period, including 41 distinct comments. These comments and the BLM's responses to them are available for review at the following website:

http://www.blm.gov/nm/st/en/info/potash.html.

Mike Pool

Acting Director, Bureau of Land Management

AUTHORITY: 43 CFR 3164.1, 43 CFR 3590.2

Anderson, Michael D

From: Lin, Janet H
Sent: Friday, November 09, 2012 5:21 PM
To: Barlan, Bryce; Juen, Jesse J; Herrell, Tony J; Juen, Jesse J; Herrell, Tony J; Allard, Phil; Stovall, James K; Fugate, Barbara; Hawbecker, Karen; Blank, Harvey; Cardinale, Richard; Barlan, Bryce; Nedd, Michael D; Fugate, Barbara; Pool, Michael J; Kornze, Neil G; Velasco, Janine; Decker, Julie A; Hanson, Joshua F; Iudicello, Fay; Wilson, Hazel A; Boddington, Celia; Krauss, Jeff
Subject: SURNAME VERSION Potash Order, NOA for comment responses, & Decision Memo for Secy
Attachments: 2012.11.06 Revised draft potash order - with DMR edits, accepted by BLM.docx; 2012.11.09 draft NOA for potash order comment responses.docx; 2012.11.09 Draft Decision Memo for Secy.docx; 2012.11.09 Comparison of draft revised Potash Order to July proposed Order.docx; 2012.11.09 DMR redline of BLM's Nov. 7 revised Dec. Memo for Secy.docx

Attached are the versions that will begin making their way simultaneously through ASLM, BLM Director's Office, Exec Sec, and SOL. Please use these versions for those of you who have paper packages. BLM-NM – could you send us your e-surname of these versions?

Fay and Hazel: I believe Phil has mentioned that this Secretarial Order (b) (5) [redacted] We appreciate your consideration of these factors as you conduct your review.

From: Fugate, Barbara
Sent: Friday, November 09, 2012 4:16 PM
To: Lin, Janet H; Allard, Phil
Cc: Hawbecker, Karen; Blank, Harvey
Subject: Attaching Potash Order, NOA for comment responses, & Decision Memo for Secy

Janet (and Phil when you get back) –

Karen has just surnamed the attached documents that are revised versions of the ones included in the initial surname package: (1) proposed final 2012 Secretary's Potash Order; (2) Notice of Availability of BLM's comment responses; and (3) Decision Memorandum for the Secretary. Please note that we have just transmitted this surname package to the front office, so Jack and Hilary have not yet reviewed these versions.

I'm also attaching a redline version of the proposed final Order showing the revisions that have been made to the July 13, 2012, proposed Order and a redline version of the draft Decision Memorandum showing DMR revisions to the version BLM sent on November 7 in response to DMR's initial edits We are currently reviewing BLM's responses to DMR's suggested edits to the comment responses and the EA. Please let me know if you have questions. Thank you.

Barbara

Anderson, Michael D

From: Barlan, Bryce
Sent: Friday, November 09, 2012 1:54 PM
To: Farquhar, Ned; Cardinale, Richard
Subject: Potash Order Supporting Docs
Attachments: POTASH-OG NOA for comment analysis 10-10-12_bb edits 10.10.12.docx; Potash Order 11.5.2012 track changes_bb edits 11.09.12.docx; 2012 10 31 DMR comment responses BLM Response.docx.docx; 2012.10.12 BFugate-HBlank-KHawbecker redline of EA -Sec Potash Order v.2.docx

Ned/Rich,

I dropped off on your chairs a copy of the following supporting documents for the Secretarial Potash Order;

1. **Proposed Potash Order** – A copy of the potash order in track changes indicating where edits were made as a result of the comments that were received. It also contains edits I've made.
2. **Notice of Availability** – A copy of the NOA with my edits only in track changes
3. **Comments Analysis Document** – All substantive comments with an analysis of those comments, including edits and notes provided by the solicitors.
4. **Environmental Assessment** – A copy of the EA in track changes with edits made by the solicitors.

I've attached an electronic version of these documents to this email for convenience.

I still have the main surnaming package and can give it to you if you wish.

As soon as I receive a Karen Hawbecker-approved comment analysis document, I will share it with you all.

Please let me know if you have any questions.

Bryce Barlan
Office of the Assistant Secretary
Land and Minerals Management
US Department of the Interior
Office: 202-208-4114
Fax: 202-208-6243
bbarlan@blm.gov

4310-VC

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO100000, L18200000.XX0000]

Notice of Availability of the Comment Analysis for the Order of the Secretary on Oil and Gas and Potash Development Within the Designated Potash Area, Eddy and Lea Counties, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Under the authority of the Mineral Leasing Act, as amended, the Secretary of the Interior has issued an Order to address oil, gas, and potash leasing and development within the Designated Potash Area in Eddy and Lea counties in New Mexico. The Secretary's Order (2012 Secretary's Order) supersedes a previous Order issued in 1986 that addresses these issues. (b) (5) [redacted] This Notice announces the availability of the Bureau of Land Management's (BLM) analysis of the comments that were received during the comment period.

ADDRESSES: The Comments that were received and the comment analysis are available for review at the following Website: http://www.blm.gov/nm/st/en/info/potash.html. The 2012 Secretary's Order was published in the Federal Register on [INSERT DATE OF PUBLICATION OF THE 2012 SECRETARY'S ORDER IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Tony Herrell; telephone 505-954-2222; 301 Dinosaur Trail, Santa Fe. New Mexico, 87508; e-mail: therrell@blm.gov.

SUPPLEMENTARY INFORMATION:

Background

An area near the town of Carlsbad in southeastern New Mexico ~~has~~ contains large deposits of potash, oil, and gas. Oil and gas resources have been produced from this area since the early twentieth century. (b) (5) In 1925, potash (potassium bearing salts primarily used for fertilizer) was discovered in this area (b) (5) and has been mined since 1930.

(b) (5) [redacted] That Order withdrew 43,000 acres of public land from oil and gas leasing in order to protect potash deposits. The Order was amended in 1951 (16 FR (b) (5) 0669, October 18, 1951) to allow for multiple mineral development in a larger area and established special lease terms for use in both potash leases and oil and gas leases. Such lease terms were designed to facilitate the protection of mineral resources and the safety of miners. The Order was also amended in 1965 (30 FR 6692, May 15, 1965), 1975 (40 FR 51486, November 5, 1975), and 1986 (51 FR 39425, October 28, 1986). A correction to the 1986 Order was issued in 1987 (52 FR 32171, August 26, 1987). The potash area designated by the corrected 1986 Order comprises approximately 497,000 acres, and the 2012 Secretary's Order, published [INSERT DATE OF PUBLICATION OF THE ORDER IN THE FEDERAL REGISTER], does not alter the boundaries of the area.

(b) (5)

The potash deposits in this area occur from 800 feet to over 2,000 feet beneath the surface and are mined by both conventional and solution mining methods; conventional methods require miners to be underground. The oil and gas in the area is found in formations below the potash bearing formations, so oil and gas wells must extend through potash formations. If potash mining (b) (5) were to breach a well casing, or if a well casing near a potash mine failed for other reasons, gas could (b) (5) migrate into the mine workings, thus endangering the miners. (b) (5) Such a breach would raise the costs of potash mining

due to the need [redacted] to utilize enhanced ventilation techniques and specialized equipment [redacted] capable of mining in [redacted] as-filled environment. [redacted] Given these safety risks, it has [redacted] been a challenge to simultaneously produce ~~them at~~ the [redacted] potash and oil and gas resources [redacted] hat are found in the same area. This has led to a long history of conflict between the potash and the oil and gas industries. This conflict has resulted in a great deal of litigation regarding decisions made by the BLM on a variety of potash or oil and gas development applications. Nevertheless, [redacted] he two industries have initiated efforts to work together over the past two years. A number of productive meetings and discussions have occurred among many of the parties involved in these previous disputes. Additionally, there have been significant advances in the technology of oil and gas drilling that could be used to reduce the conflict between such drilling and the extraction of potash. Further, the economic outlook for both the oil and gas industry and the potash industry has recently improved. The BLM has also worked with Sandia National Laboratories to investigate well logging technology, gas migration in the potash formations, and standards to use for estimating the mineability of potash and potash cutoff grades. These circumstances have led to this current review of the 1986 Secretary's Order.

[redacted]

The New 2012 Secretary's Order

[redacted]

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Comments on the Draft Order

The BLM received 28 comment letters during the comment period including 40 distinct comments. (b) (5)

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http://www.blm.gov/nm/st/en/info/potash.html. T(b) (5)

Mike Pool

Acting Director, Bureau of Land Managment

AUTHORITY: 43 CFR 3164.1, 43 CFR 3590.2

Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

Comments on Proposed Secretarial Order

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Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico
Comments on Proposed Secretarial Order

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Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico
Comments on Proposed Secretarial Order

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Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico
Comments on Proposed Secretarial Order

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Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico
Comments on Proposed Secretarial Order

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ORDER NO.

Subject: Oil, Gas and Potash Leasing and Development Within the Designated Potash Area of Eddy and Lea Counties, New Mexico

Sec. 1 **Purpose and Effect.** (b) (5) [redacted]

(b) (5) [redacted]

Sec. 2 **Authority.** (b) (5) [redacted]

Sec. 3 **Order Revised and Superseded.** (b) (5) [redacted].

Sec. 4. **Definitions.**

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Sec. 5 **Status of Lands.** (b) (5) [redacted]

Sec. 6 **General Provisions.**

a. Issuance of Oil and Gas Leases. (b) (5) [redacted]

(b) (5) [redacted]

(b) (5) [redacted]

~~(b.)~~ Reinstatement or Renewal of Oil and Gas Leases. (b) (5) [redacted]

(b) (5) [redacted]

Section 6.a.

~~(~~c.~~)~~ Potash Leases.

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d. Delineation of Resource Areas. (b) (5)

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Comment [b10]: Corrected font size.

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e. Oil and Gas Drilling.

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Sec. 7 **Regulatory and Administrative Matters.**

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Sec. 8. **The Designated Potash Area Legal Description.**

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Sec. 9 **Administrative Provisions** (b) (5)

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Secretary of the Interior

Date:

Anderson, Michael D

From: Barlan, Bryce
Sent: Friday, November 09, 2012 10:49 AM
To: Lin, Janet H; Cardinale, Richard; Allard, Phil
Subject: RE: Attaching DMR's comments on draft potash order
Attachments: POTASH-OG NOA for comment analysis 10-10-12.docx

We'll get started now (with the versions I already have). As soon as the Karen Hawbecker-approved version is complete, you can just send it this way. I can just do a compare to see what the new changes were. If you feel more comfortable having your folks do it, then that's fine too (but I would like to offer my help if you'd like).

As for the NOA, that hasn't been modified. Right?

Here's the version we currently have on file.

What do you think?

Bryce Barlan
Office of the Assistant Secretary
Land and Minerals Management
US Department of the Interior
Office: 202-208-4114
Fax: 202-208-6243
bbarlan@blm.gov

From: Lin, Janet H
Sent: Friday, November 09, 2012 10:30 AM
To: Barlan, Bryce; Cardinale, Richard; Allard, Phil
Subject: RE: Attaching DMR's comments on draft potash order

Bryce - The SOL is looking at that version now. You can either look at that now – or wait until this afternoon for the SOL version. I'm on the phone with SOL now and the plan is to get you a staff surnamed (Barbara, Harvey, Karen) version by this afternoon. That will be the version they convey to Jack/Hilary. Let us know how you would like to proceed. Friday is the date for signing AND sending the NOA to the FR. (This is new from when I last talked to Rich – at that time, we thought we would be sending the NOA to FR on Tuesday for a Friday publication).

From: Barlan, Bryce
Sent: Friday, November 09, 2012 10:02 AM
To: Lin, Janet H
Subject: FW: Attaching DMR's comments on draft potash order

Greetings Janet,

Rich gave me the download not too long ago regarding the potash announcement.

I was hoping to get the most recent version of the (i) NOA, (ii) comment analysis document, and the (iii) the Potash Order so to allow folks up here to start their review.

Phil shared with me a November 5 version of the Potash Order (attached here), but I was wondering if there was something more recent. If there is, could I please get a copy?

As for the comment analysis document, the most recent version I have is an October 31 version, which he shared with me on November 2 (also attached here).

With regards to the NOA, I don't have anything new on that one. Whatever we received when the surnaming package was sent up here (October 15) is the only version I have.

What do you think?

I've cc'ed josh here so he too knows what I have on file.

Thanks all. Your help would be greatly appreciated.

Bryce Barlan
Office of the Assistant Secretary
Land and Minerals Management
US Department of the Interior
Office: 202-208-4114
Fax: 202-208-6243
bbarlan@blm.gov

From: Allard, Phil
Sent: Tuesday, November 06, 2012 1:09 PM
To: Barlan, Bryce
Cc: Cardinale, Richard; Lin, Janet H
Subject: FW: Attaching DMR's comments on draft potash order

Bryce,

Could you please print out this version of the Order and place it in the surname package. If you are jammed for time let me know and I will print out one in track changes and one in final and bring them up.

As you cans see from the notes below this version has been accepted by the Solicitor's Office through Karen.

Thanks,

Phil

From: Hawbecker, Karen
Sent: Tuesday, November 06, 2012 1:03 PM
To: Allard, Phil
Cc: Blank, Harvey; McNeer, Richard; Johnson, Lynn; Umshler, Sue; Fugate, Barbara; Herrell, Tony J; Stovall, James K; Lin, Janet H
Subject: RE: Attaching DMR's comments on draft potash order

Phil, I looked at it last night. I'm okay with Barbara's latest version. Please go ahead with replacing the version in the ASLM surname package. Thanks. –Karen

From: Allard, Phil
Sent: Tuesday, November 06, 2012 11:16 AM
To: Fugate, Barbara; Herrell, Tony J; Stovall, James K; Lin, Janet H
Cc: Hawbecker, Karen; Blank, Harvey; McNeer, Richard; Johnson, Lynn; Umshler, Sue
Subject: RE: Attaching DMR's comments on draft potash order

Barbara,

Thank you for your hard work on this. I think BLM is fine with all of your changes in this version.

Karen, I will update my records and make this most recent version from Barbara the "official version." I note that she corrected a variety of small, but important, errors. (b) (5) [redacted] We had this in at one time (a September version I think) but it inadvertently dropped out in subsequent versions. Please let me know if you are satisfied with this version so that I may replace the version in ASLM's surname package with this one.

Many thanks,

Phil

From: Fugate, Barbara
Sent: Monday, November 05, 2012 7:55 PM
To: Allard, Phil; Herrell, Tony J; Stovall, James K
Cc: Hawbecker, Karen; Blank, Harvey; McNeer, Richard; Johnson, Lynn; Umshler, Sue
Subject: Attaching DMR's comments on draft potash order

Phil, Tony, and Jim –

I am attaching DMR's comments on the revisions to the proposed Potash Order. Please let me know if you have questions. Thank you.

Barbara

4310-VC

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO100000, L18200000.XX0000]

Notice of Availability of the Comment Analysis for the Order of the Secretary on Oil and Gas and Potash Development Within the Designated Potash Area, Eddy and Lea Counties, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Under the authority of the Mineral Leasing Act, as amended, the Secretary of the Interior has issued an Order to address oil, gas, and potash leasing and development within the Designated Potash Area in Eddy and Lea counties in New Mexico. The Secretary's Order (2012 Secretary's Order) supersedes a previous Order issued in 1986 that addresses these issues. (b) (5) [redacted]

This Notice announces the availability of the Bureau of Land Management's (BLM) analysis of the comments that were received during the comment period.

ADDRESSES: The Comments that were received and the comment analysis are available for review at the following Website: http://www.blm.gov/nm/st/en/info/potash.html. The 2012 Secretary's Order was published in the Federal Register on [INSERT DATE OF PUBLICATION OF THE 2012 SECRETARY'S ORDER IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Tony Herrell; telephone 505-954-2222; 301 Dinosaur Trail, Santa Fe. New Mexico, 87508; e-mail: therrell@blm.gov.

SUPPLEMENTARY INFORMATION:

Background

An area near the town of Carlsbad in southeastern New Mexico has large deposits of potash, oil, and gas. Oil and gas have been produced from this area since the early twentieth century. Potash (potassium bearing salts primarily used for fertilizer) was discovered in this area (b) (5) [redacted] (b) (5) [redacted] and has been mined since 1930.

(b) (5) [redacted] That Order withdrew 43,000 acres of public land from oil and gas leasing in order to protect potash deposits. The Order was amended in 1951 (16 FR (b) (5) [redacted] October 18, 1951) to allow for multiple mineral development in a larger area and established special lease terms for use in both potash leases and oil and gas leases. Such lease terms were designed to facilitate the protection of mineral resources and the safety of miners. The Order was also amended in 1965 (30 FR 6692, May 15, 1965), 1975 (40 FR 51486, November 5, 1975), and 1986 (51 FR 39425, October 28, 1986). A correction to the 1986 Order was issued in 1987 (52 FR 32171, August 26, 1987). The potash area designated by the corrected 1986 Order comprises approximately 497,000 acres, and the 2012 Secretary's Order, published [INSERT DATE OF PUBLICATION OF THE ORDER IN THE FEDERAL REGISTER], does not alter the boundaries of the area.

The potash deposits in this area occur from 800 feet to over 2,000 feet beneath the surface and are mined by both conventional and solution mining methods; conventional methods require miners to be underground. The oil and gas in the area is found in formations below the potash bearing formations, so oil and gas wells must extend through potash formations. If potash mining (b) (5) [redacted] a well casing, or if a well casing near a potash mine failed for other reasons, gas could (b) (5) [redacted] the mine workings, thus endangering the miners. Additionally, such a breach would raise the costs of potash mining due to (b) (5) [redacted] enhanced ventilation techniques and specialized equipment needed to mine in a gassy environment. (b) (5) [redacted]

given these safety risks, it has (b) (5) [redacted] sy to produce them at the same time even though potash and oil and gas are found in the same area. This has led to a long history of conflict between the potash and the oil and gas industries.

This conflict has resulted in a great deal of litigation regarding decisions made by the BLM on a variety of development applications. Nevertheless, (b) (5) [redacted] the two industries have initiated efforts to work together. A number of productive meetings and discussions have occurred among many of the parties involved in these previous disputes. Additionally, there have been significant advances in the technology of oil and gas drilling that could be used to reduce the conflict between such drilling and the extraction of potash. Further, the economic outlook for both the oil and gas industry and the potash industry has recently improved. The BLM has also worked with Sandia National Laboratories to investigate well logging technology, gas migration in the potash formations, and standards to use for estimating the mineability of potash and potash cutoff grades. These circumstances have led to this current review of the 1986 Secretary's Order.

The New 2012 Secretary's Order

The 2012 Secretary's Order differs from the 1986 Order in several important ways.

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Comments on the Draft Order

The BLM received 28 comment letters during the comment period including 40 distinct comments. (b) (5) [redacted]

(b) (5)

[redacted]

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[redacted]

http://www.blm.gov/nm/st/en/info/potash.html. (b) (5) [redacted]

[redacted]

Mike Pool

Acting Director, Bureau of Land Managment

AUTHORITY: 43 CFR 3164.1, 43 CFR 3590.2

Anderson, Michael D

From: Allard, Phil
Sent: Tuesday, November 06, 2012 1:09 PM
To: Barlan, Bryce
Cc: Cardinale, Richard; Lin, Janet H
Subject: FW: Attaching DMR's comments on draft potash order
Attachments: Potash Order 11.5.2012 track changes.docx

Bryce,

Could you please print out this version of the Order and place it in the surname package. If you are jammed for time let me know and I will print out one in track changes and one in final and bring them up.

As you cans see from the notes below this version has been accepted by the Solicitor's Office through Karen.

Thanks,

Phil

From: Hawbecker, Karen
Sent: Tuesday, November 06, 2012 1:03 PM
To: Allard, Phil
Cc: Blank, Harvey; McNeer, Richard; Johnson, Lynn; Umshler, Sue; Fugate, Barbara; Herrell, Tony J; Stovall, James K; Lin, Janet H
Subject: RE: Attaching DMR's comments on draft potash order

Phil, I looked at it last night. I'm okay with Barbara's latest version. Please go ahead with replacing the version in the ASLM surname package. Thanks. –Karen

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From: Allard, Phil
Sent: Tuesday, November 06, 2012 11:16 AM
To: Fugate, Barbara; Herrell, Tony J; Stovall, James K; Lin, Janet H
Cc: Hawbecker, Karen; Blank, Harvey; McNeer, Richard; Johnson, Lynn; Umshler, Sue
Subject: RE: Attaching DMR's comments on draft potash order

Barbara,

Thank you for your hard work on this. I think BLM is fine with all of your changes in this version.

Karen, I will update my records and make this most recent version from Barbara the "official version." I note that she corrected a variety of small, but important, errors. (b) (5) [redacted] We had this in at one time (a September version I think) but it inadvertently dropped out in subsequent versions. Please let me know if you are satisfied with this version so that I may replace the version in ASLM's surname package with this one.

Many thanks,

Phil

From: Fugate, Barbara
Sent: Monday, November 05, 2012 7:55 PM
To: Allard, Phil; Herrell, Tony J; Stovall, James K

Cc: Hawbecker, Karen; Blank, Harvey; McNeer, Richard; Johnson, Lynn; Umshler, Sue
Subject: Attaching DMR's comments on draft potash order

Phil, Tony, and Jim –

I am attaching DMR's comments on the revisions to the proposed Potash Order. Please let me know if you have questions. Thank you.

Barbara