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April 15, 2016

Director Neil Kornze  
Bureau of Land Management  
1849 C St. NW, Room 5665  
Washington DC 20240

RE: BLM Proposed Rule

Dear Director Kornze,

The New Mexico State Land Office (NMSLO) has reviewed the Bureau of Land Management's (BLM) proposals for new regulations to reduce the waste of natural gas from venting, flaring and leaks during oil and natural gas production on Federal and Indian leases that would be codified in the Code of Federal Regulations (CFR) as published in the *Federal Register* on February 8, 2016. The NMSLO strenuously objects to the proposed regulations (proposed rule/rules) on the grounds that they would greatly impact the revenues generated by the New Mexico State Land Office, constitute federal overreach and intrusion into the affairs of the NMSLO and would result in an undue environmental burden for the beneficiaries of the New Mexico State Land Trust.

New Mexico's state trust lands were granted to New Mexico by Congress under the Ferguson Act of 1898 and the Enabling Act of 1910 for the financial support of the state's schools and other public institutions. The NMSLO is an independent state agency that manages these lands, including 13 million acres of mineral estate. Oil and gas development is the single largest generator of income from New Mexico's state trust lands, accounting for over 95% of revenues collected by the NMSLO and distributed to the trust beneficiaries, including New Mexico's school children. Public education in New Mexico receives the most trust benefit from these funds, with healthcare and other public institutions also benefitting as

a result of the activities of the NMSLO. Given the state's distinctive checkerboard division of land ownership, New Mexico state trust lands (and corresponding mineral estates) are adjacent to or scattered among federal and tribal minerals, and are contained in multiple federal oil and gas units, communitization agreements (CA) and commingling orders within New Mexico. The revenues of the NMSLO are highly dependent on units and CAs, with 82% of oil and gas royalty revenues deriving from such agreements and a vast majority of such agreements containing both NMSLO and federally-governed mineral interests. The school children of New Mexico therefore have considerable financial exposure to any actions taken by the BLM that impact such agreements. New Mexico is also somewhat unique among western states on the basis of near parity in production levels between state and federally-managed lands, as opposed to either the state or federal government being overwhelmingly dominant in the area of hydrocarbon production, further demonstrating the interdependence of the revenues generated by the NMSLO and the BLM.

***BLM lacks the authority to administer operations on lands managed by NMSLO and seeks to promote its own interests under the proposed rule.***

As is common to all of the recent proposed rules issued by the BLM and published in the Federal Register, the BLM again seeks to infringe upon the authority of the NMSLO and insert itself into the permitting and regulatory process in ways detrimental to the NMSLO in the proposed rule discussed in these comments. State tracts committed to CAs and units in federally-governed agreements would be subject to the provisions regarding royalty-free use of lease production set forth in the proposed rule. Additionally, Waste Management Plans (WMP) required by the proposal would also burden the same properties with needless delays prior to any production and subsequent royalty generation, which would cause the reduction of state benefit from such agreements. While the state is capable of processing applications for permission to drill (APD) very expediently, the BLM timeframe for doing so is incredibly inefficient and would become even more so under the pressures of the increased regulatory burden outlined by the proposed rule. Development would therefore be disproportionately pushed onto state trust land in such agreements for expediency: producers would not wait a year for a BLM APD when they can get one in approximately eight days from the state. With royalty generation allocated on a proportional basis in most units and CAs, this situation would create an obvious benefit in delay for the BLM, insofar as they would proportionately share in all production from state trust lands while slowing the extraction of their own mineral estate. Such an outcome would be untenable for the NMSLO and all options would have to be considered for adequate protection of trust benefits, including withdrawal from such agreements entirely. Furthermore, the fact that the BLM did not conduct a federalism assessment would strongly indicate that the agency is aware of such potential for intrusion into the affairs of the states that the proposed rule presents and has chosen to not to undertake a federalism assessment, so as not to highlight this obvious shortfall in the proposed rule.

***The BLM is largely responsible for what this proposed rule ostensibly seeks to mitigate.***

In 2015, a Gas Capture Plan Committee (GCPC) was formed in New Mexico with the mandate of studying reductions in flaring and assessing the feasibility of requiring gas capture plans for new drilling permits. The GCPC consisted of representatives from the New Mexico Oil Conservation Division (NMOCD) of the Energy, Minerals and Natural Resources Department, the Energy Conservation and Management Division (NMECMD) of the Energy, Minerals and Natural Resources Department, the New Mexico Environment Department (NMED), the BLM and industry representatives. One of the key findings identified by the GCPC was that the amount of time required to obtain a federal right of way (ROW) from the BLM contributed considerably to flaring on federally-managed lands, with operators waiting six months to a year on average for ROW approvals necessary to even begin construction of natural gas gathering and transport systems. Timeframes for approval on tribal lands are even longer, on average. It is therefore hypocritical of the BLM to find fault with hydrocarbon producers and attempt to impose essentially punitive and costly new rules when its own actions have been responsible for a large part of the problem. The recent history of the NMSLO indicates that there is another path forward on this issue. Prior to my administration, the NMSLO experienced similar delays in ROW permitting and was also responsible for developmental hindrances on a comparable scale. Since January, 2015, however, NMSLO turnaround times for ROW approvals has been reduced from that similarly inefficient timeframe perpetuated by previous administrations down to a forty-five day total transit time from receipt of a completed application to issuance of an approved ROW, with expedited applications processed even more quickly. This represents an 81% reduction in time that industry spends waiting for permission to begin development projects, while still maintaining all necessary protections for cultural and environmental resources. The NMSLO is committed to improving efficiencies in an effort to maximize revenue for our beneficiaries, and would therefore be amenable to working with the BLM to share the successful processes which resulted in such efficiencies in the hopes of eliminating some of the bottleneck that has developed at the BLM with simple, straightforward process solutions that should be implemented prior to instituting the drastic and unproven measures outlined in the proposed rule.

***The economic purpose of the proposed rule does not stand up to scrutiny***  
BLM asserts that the proposed rule will result in “*increased opportunities for royalties*”. While the BLM has spent considerable time in attempting to quantify increases in royalties associated with capture of fugitive methane and identifies several net benefit projections that realize positive cash flow in the proposed rule, it has blatantly failed to address the issue of thousands of marginal wells being abandoned in New Mexico when the proposed rule renders them uneconomic to operate. A very basic tenet of economics that the BLM fails to consider strongly indicates that producers will not invest the capital necessary to upgrade low volume wells in an attempt to meet the proposed requirements and then

subsequently operate said wells for an economic loss over the long term. On the contrary, the NMSLO has been informed by many producers operating on NMSLO lands that such a scenario would eventually lead to premature abandonment of producing oil and gas wells and the subsequent stranding of hydrocarbon reserves on state trust and federally-managed lands. Furthermore, NMSLO internal volumetric estimates indicate that the flaring limit of 1,800mcf per month per developmental oil well imposed by the proposed rule would constrain initial, high-volume production by as much as 40% and baseline production by as much as 25%, thus leading to a corresponding decrease in both state and federal royalty revenues (based on a matrix of gas-oil ratios as solicited from producers). To put this into perspective using oil and gas income from fiscal year 2015, revenues generated would have declined by nearly \$178 million using just the baseline volumetric production threshold decrease of 25% imposed by the proposed rule. Therefore, the NMSLO is convinced that this proposed rule would actually have the opposite effect regarding royalties than that stated by the BLM and would result in substantial royalty losses.

***BLM has not fully considered the collateral environmental impacts of this proposed rule.***

While the purported aim of this proposed rule is to reduce greenhouse gas (GHG) emissions and capture additional royalties, it will in fact have an unintended detrimental environmental impact on lands used for oil and gas production and cause the NMSLO to expend significant funds in an effort to protect state trust lands. In the current commodity price environment, the proposed rule would render thousands of wells in New Mexico uneconomic and has the potential to push operators already experiencing historically severe economic conditions into bankruptcy. NMSLO has already witnessed multiple bankruptcies among operators and lessees, and has also unfortunately experienced the ensuing environmental damage caused when wells and facilities are abandoned in place for lack of operational funding. If the proposed rule were to become law, it is easily conceivable to envision a deluge of further bankruptcies within the oil and gas industry and a corresponding dramatic increase in the number of abandoned wells that would then become the responsibility of the state and federal governments, with all associated liabilities. Neither the NMSLO nor the NMOCD (which is typically tasked with plugging and abandoning orphaned wells and maintains a fund specifically for that purpose) currently have the capability to deal with such a scenario, and the problems associated with enacting the majority of recent rules proposed by the BLM would only compound these issues by further increasing the burden on the NMSLO and other cooperating agencies in New Mexico. The state trust could be irreparably harmed by even a small-scale increase in such unfortunate occurrences and the NMSLO is therefore committed to keeping existing wells productive and generating revenue, rather than creating nothing but environmental liability on state trust land.

***BLM has not accurately represented its outreach to stakeholders.***

As a part of the proposal review process, BLM states that it has “conducted outreach to states with extensive oil and gas production on BLM-administered leases” and “carefully reviewed state regulations and guidance, and we have contacted state regulatory bodies that oversee aspects of oil and gas production to discuss their requirements and practices.” The NMSLO generates more revenue from state trust lands than any other western state, and obviously qualifies as a substantial stakeholder in any discussion of federal energy policy impacts on non-federal entities. Its hydrocarbon leasing, operational oversight and royalty management activities are unmatched in volumetric comparisons for state trust land. The NMSLO should therefore have been consulted prior to the publication of the proposed rule regarding potential impacts associated with the rule, yet the BLM never made any effort to do so. The representation made by the BLM is therefore not one that can be made in good faith and calls into question many of the other more complex representations offered as fact in the proposed rule. The idea that the BLM has not accurately described something as basic as its stakeholder outreach efforts is cause enough to cast doubt on considerations of fiscal and environmental impacts – or supposed lack thereof - contained in the proposed rule.

***The cumulative impact of the proposed rules will be hugely detrimental to NMSLO.***

This proposed rule is but one in a recent series proposed by the BLM, and the NMSLO has commented on all of them in an effort to accomplish its fiduciary duty to protect the rights of the state trust beneficiaries. Taken individually, the proposals as written have the potential to be injurious to the trust. When examined cumulatively, the prospects for a drastic reduction in funding to the trust beneficiaries cannot be ignored. As a major funding source for education and health care in one of the poorest states in the country, the NMSLO wholeheartedly objects to the successive nature of the proposed rules and the aggregate impacts that they would have on such institutions in New Mexico, and urges the BLM to examine the cumulative effects of the proposals in light of the provisions of the Unfunded Mandates Reform Act (UMRA). While it has been argued by the BLM that, individually, the proposals do not exceed the \$100 million threshold in annual cost to consider the UMRA pertinent, the NMSLO is of the opinion that its losses will exceed this figure annually and that the UMRA is certainly applicable and enforceable in these cases. At a time when budgets across the western United States are already reeling from record low commodity prices, it seems nonsensical that the BLM would propose such measures and realistically expect that they would promote economic growth and increased royalties. As a stakeholder with a lot to lose, the NMSLO strongly urges the BLM to rethink the concepts that generated such lopsided proposals.

For the above reasons, the NMSLO does not support the BLM's proposed rules for new regulations to reduce the waste of natural gas from venting, flaring and leaks during oil and natural gas production on Federal and Indian lands. The

BLM's proposal to increase regulatory authority and infringe on the ability of the NMSLO to efficiently administer its own assets would cause direct harm to the school children of New Mexico and will lead to negative environmental impacts on state trust lands at a time when the trust is already vulnerable due to a severe and prolonged downturn in the hydrocarbon market. Given New Mexico's strong dependence on oil and gas revenues, and the specific negative effects to the New Mexico state land trust outlined herein, the NMSLO strongly urges the BLM to revise the rule to more accurately reflect the realities of oil and gas production in the current market and re-examine the cost data used in support of the publication in the *Federal Register*, as the current models are clearly examining only the benefit side and not taking the premature abandonment of producing wells into consideration. NMSLO welcomes the opportunity to discuss this matter further with the BLM. Thank you for the opportunity to comment.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Aubrey Dunn', is written over the printed name.

Aubrey Dunn  
Commissioner of Public Lands