



February 20, 2017

Submitted via email: BLM_NM_FFO_RMP@blm.gov

BLM Farmington Field Office
RMP Amendment Project Manager
6251 North College Blvd., Suite A
Farmington, NM 87402

Re: Farmington Resource Management Plan Mancos-Gallup Amendment

Dear Sir/Madam:

Western Energy Alliance appreciates the opportunity to submit scoping comments on the Bureau of Land Management's (BLM) Resource Management Plan Amendment (RMPA) for the Farmington Field Office. We are specifically responding to BLM's request for comments regarding mineral leasing issues on lands managed by the Bureau of Indian Affairs (BIA) within the RMPA planning area.

Western Energy Alliance represents over 300 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in New Mexico and across the West. The Alliance represents independents, the majority of which are small businesses with an average of fifteen employees.

Statutory Framework

When the Federal Land Policy and Management Act (FLPMA) was enacted in 1976, Congress declared that "the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals."¹ It is therefore the "continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in...the orderly and economic development of domestic mineral resources."²

FLPMA dedicated the public lands to multiple use and sustained yield, and identified mineral exploration and development as one of the principle uses.³ Congress also directed the president to encourage federal agencies to "facilitate availability and development of domestic resources to meet critical material needs."⁴

Domestic oil and natural gas resource development is a legitimate use of public lands which can and is being done in an environmentally responsible manner. Throughout the

¹ 43 U.S.C. §1701(a)(12)

² 30 U.S.C. §21a

³ 43 U.S.C. §1702(c),(l)

⁴ 30 U.S.C. § 1602(7)

development of an RMP and associated EIS, BLM must consider Executive Order 13212 – Actions to Expedite Energy-Related Projects (2001). In the Executive Order, the President directs federal agencies to evaluate current programs, policies and rules, and to reduce barriers to America’s energy self-sufficiency. BLM must also follow the requirements of the Energy Policy Conservation Act of 2000 and the Energy Policy Act of 2005 (EPA) to reduce rather than increase impediments to federal oil and gas leasing.

Section 363 of the EPA addressed these impediments by requiring BLM to enter into a Memorandum of Understanding (MOU) with the U.S. Forest Service that documented procedures to ensure consultation between agencies regarding oil and natural gas leasing on public lands. We appreciate that BLM and BIA are coordinating their efforts in this RMPA, and hope this collaboration will encourage a more efficient process for oil and natural gas leasing in the planning area once the RMPA is finalized.

Congress further required the MOU to include a provision that lease stipulations are “only as restrictive as necessary to protect the resource for which the stipulations are provided.”⁵ Accordingly, BLM’s Manual on Land Use Planning specifically states that “[w]hen applying leasing restrictions, the least restrictive constraint to meet the resource protection objective should be used.”⁶ We urge BLM to observe this statutory mandate and regulatory guidance as it considers any stipulations for oil and natural gas leases, especially with regard to timing limitations, No Surface Occupancy (NSO) stipulations, and controlled surface use (CSU) restrictions. As NSO is the most restrictive stipulation, it should be used only sparingly.

Finally, we note that the State of New Mexico and other federal agencies have primary authority to regulate numerous aspects of oil and natural gas development, including air quality, the hydraulic fracturing process, and groundwater. The RMPA should only address issues over which BLM has primacy.

Taken together, this statutory framework should serve as clear guidance for BLM in evaluating which lands are available for oil and natural gas leasing and under what conditions. The RMPA should reflect federal law and policy and the nation’s need for secure sources of domestic energy. The RMPA must also acknowledge that oil and natural gas resources are developed in an environmentally responsible manner while providing the nation with an abundant source of affordable energy.

Disturbance and Multiple Use

BLM has a congressionally mandated multiple-use mission, which must be honored and not compromised by the single-use land management objectives promoted by certain single interest groups. Western Energy Alliance supports BLM’s multiple-use mandate, and where energy production exists public lands are also available for other uses such as recreation, ranching, farming and hunting. By its nature, multiple-use engenders

⁵ 42 U.S.C. § 15922(b)(3)(C)

⁶ BLM Handbook H-1601-1, App. C. II. H. at 24.

coexistence, not competition. We can develop the energy on public lands that all Americans own while protecting the land, wildlife, air, water, cultural and other resources.

Each year, improvements in technology reduce the footprint of oil and natural gas development, and reclamation techniques continue to improve so that the impact to the land is small and temporary. Over the last decade, oil and gas development has shifted from vertical wells with dense well-pad spacing to directional and horizontal wells with significantly less disturbance and fragmentation per section of land developed. One horizontal well now takes the place of 8 to 16 vertical wells, leading to reductions in well pad disturbances, linear disturbances, and disturbances due to human activity.⁷ In 2012, the disturbance reduction resulting from this dramatic shift in drilling technology may have approached approximately 70 percent in Wyoming alone.⁸

After a well is drilled and completed, which usually takes just a few weeks to months, depending on how many wells are clustered on a pad, interim reclamation occurs and the surrounding land remains available for recreational and agricultural purposes. Once wells are plugged and abandoned and final reclamation occurs, the disturbance to the land is barely discernable, if at all.

Ultimately, the impacts of developing vital energy resources are temporary, and oil and natural gas development can and does coexist with other multiple uses. BLM should recognize these facts and not preclude an excessive amount of land from oil and natural gas leasing.

Reasonable Foreseeable Development

In October 2014, the Reasonable Foreseeable Development (RFD) Scenario for Northern New Mexico was released. The RFD accurately notes that “recent successes in the exploration and development for oil in U.S. shale plays have resulted in a significant increase in domestic oil production. As a result, the Gallup/Mancos Play has become of interest as a major target for future exploration and development.”

The RFD Scenario is a critical component of the RMP, as it serves as the analytical baseline for identifying and quantifying direct, indirect, and cumulative impacts of oil and natural gas development. The RFD provides the premise for formulating alternatives for an RMP and serves as a baseline scenario assuming all potentially productive areas can be open under standard lease terms and conditions.

The planning area is a fully developed field, and oil and natural gas development has coexisted successfully with wildlife and cultural resources for decades. Recent technological advances such as hydraulic fracturing and directional drilling have opened up

⁷ *Oil & Gas Impacts on Wyoming's Sage-Grouse: Summarizing the Past & Predicting the Foreseeable Future*, 8 *Human-Wildlife Interactions*, David H. Applegate & Nicholas L. Owens, Fall 2014, 288.

⁸ *Id.* at 289.

significant new resources in the area, however. As outlined in the RFD, “3650 potential locations exist for development of the Mancos/Gallup play.”

Because the new RFD takes into account the advanced technologies that have recently opened up significant new resources, we believe it is appropriate and necessary to revise the RMPA to allow for more oil and natural gas development. As discussed above, energy development coexists with other resources under reasonable restrictions, and we believe BLM must affirm this multiple-use system and the RFD update in its final RMPA.

Planning Area Boundaries

The final RMPA must make it clear that BLM does not seek and will not attempt to regulate oil and gas operations that fall outside the boundaries of BLM and BIA’s authority, and the agencies must recognize they lack authority to regulate activities on non-federal lands.

The State of New Mexico has jurisdiction on non-federal lands in Northern New Mexico, and the State employs extensive rules and regulations intended to protect natural resources and the environment. These rules address a variety of issues, such as drilling, development, and production activities, setbacks, ground water protection measures, financial assurance requirements, spill reporting, and reclamation requirements.

BLM’s ability to impact non-federal land is limited to activities with direct impacts within BLM boundaries. An extensive radius around the planning area that goes beyond the directly impactful lands is unlawful, unnecessary, and unreasonable. The final RMPA should make clear that BLM is acting within its authority to regulate.

Valid Existing Lease Rights

FLPMA requires BLM to ensure that valid existing lease rights are unequivocally protected.⁹ BLM must make clear in the final RMPA that timing limitations, CSU and NSO stipulations, and any other management prescriptions across the planning area are not applied retroactively to existing leases.

Such a result is not permissible and would unlawfully preclude the development of valid existing oil and natural gas lease rights, as explicitly stated in FLPMA: “All actions...under this Act shall be subject to valid existing rights.”¹⁰ The statute does not leave room for discretionary actions that would be contrary to existing terms and stipulations.

BLM is contemplating a 10-mile buffer around Chaco Canyon. A buffer area of that magnitude would include significant acreage that has already been leased, in many cases has been developed, and is subject to valid existing rights. We oppose the buffer in general, but are especially concerned as to how it would relate to existing leases and

⁹ 43 U.S.C. § 1701 note (h).

¹⁰ 43 U.S.C. § 1701 note (h); *see also* 43 C.F.R. § 1610.5-3(b) (requiring BLM to recognize valid existing lease rights).

active wells. Once again, BLM cannot enact restrictions in the RMPA that would nullify valid rights, so any buffer designation must include a provision exempting current leases.

Master Leasing Plan

Western Energy Alliance strongly opposes consideration of a Master Leasing Plan (MLP) in the area surrounding Chaco Canyon National Historic Park (NHP). BLM's contemplation of an MLP for lands outside Chaco Canyon appears to be a response to activist interest groups who are fervently opposed to any development on federal lands. BLM has a statutory mandate to provide for multiple use on these lands, so prohibiting all development is unlawful and ill-advised.

The Chaco Canyon NHP boundaries were set in order to protect sensitive cultural resources, and drilling inside the NHP is forbidden. However, the park's boundaries do not imply an additional buffer zone, and energy development outside the park on BLM multiple-use lands is appropriate. BLM already protects archaeological and cultural resources in the area under the current Farmington RMP, which was completed in 2003 following significant public input and agency effort. Companies also diligently protect cultural resources through compliance with the National Historic Preservation Act as well as best management practices and voluntary actions. Further limitations through an MLP are duplicative and unnecessary.

In 2010, the Secretary of the Interior created the new MLP process by Secretarial Order, creating another unnecessarily lengthy process that will further constrain and impede mineral development on federal lands. BLM adopted its MLP planning process as an "Instruction Memorandum" in private, without involving the public.¹¹ Yet FLPMA establishes a congressional requirement to develop, and standards for the content of, BLM RMPs.¹² BLM regulations also establish a clear and precise process for developing and amending those RMPs.¹³

The 2010 IM amends and alters these regulations by adding new standards and requirements, without a public process involving the public. Unlike the regulations governing the development and revision of RMPs, the IM deems that certain leasing recommendations are not appealable or protestable decisions.¹⁴ The Administrative Procedures Act (APA) requires agencies to adhere to three steps when they promulgate rules: (1) give the public notice of the proposed rulemaking in the Federal Register; (2) afford "interested persons an opportunity to participate ... through submission of written

¹¹ See Instruction Memorandum (IM) 2010-117, Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews.

¹² 43 U.S.C. § 1712(a).

¹³ See 43 C.F.R. § 1610.

¹⁴ IM 2010-117 at 5.

data, views, or arguments”; and (3) explain the rule ultimately adopted.¹⁵ None of that happened for the 2010-IM, which was adopted with no public process.

BLM MLP policy impermissibly circumvents APA rulemaking requirements, especially given that it amends and supplements properly promulgated planning rules in the Code of Federal Regulations. Therefore, BLM cannot consider implementation of an MLP that may be subject to immediate invalidation, given that IM 2010-117 was not issued in compliance with the APA.

Mitigation

We are concerned that BLM may be considering requiring compensatory mitigation for leases issued under the RMPA. While we recognize there is a mitigation hierarchy within the Department of the Interior that calls for avoidance, minimization, and mitigation of impacts, we are strongly opposed to several policies that were recently finalized. We are especially concerned about the Fish and Wildlife Service’s (FWS) Endangered Species Act (ESA) Mitigation Policy, the Department of the Interior’s Solicitor M Opinion 37039, and BLM Manual 1794 and Handbook 1794-1.

Taken together, we believe these documents envision a level of punitive, compensatory mitigation requirements that Congress has not authorized and BLM is not allowed to enact in an RMPA. We submitted extensive comments opposing the FWS Policy, which included the following: the ESA “does not provide a means by which FWS can commandeer the various agencies to protect both listed and unlisted species, impose use restrictions across expansive landscapes, and require agency decisions to result in ‘net conservation gain.’” BLM must not rely on the FWS Policy to incorporate compensatory mitigation requirements into the RMPA, as this would be an unlawful restriction.

Further, the Solicitor’s Opinion and the BLM Manual and Handbook are guidance documents that encourage BLM to exceed its statutory authority. The Solicitor’s Opinion relies on flawed legal reasoning that is not supported by FLPMA or any other statute, and the Manual and Handbook were not subject to public notice and comment and therefore are inappropriate tools for a rulemaking regarding mitigation.

Any discussion of mitigation in the RMPA must be constrained by the bounds of the law. Attempting to require excessive mitigation beyond statutory authority would be an unreasonable and unlawful burden on oil and natural gas development. BLM should make clear in the RMPA that it does not intend to do so.

¹⁵ See 5 U.S.C. § 553(b)-(c); see also *Natural Resources Defense Council v. EPA*, 643 F.3d 311, 320-21 (D.C. Cir. 2011) (finding that EPA policy guidance constituted a legislative rule requiring compliance with APA rulemaking procedures).

Socio-Economic Considerations

Domestic oil and natural gas development is vital to New Mexico's economy, providing substantial revenues to the state and local governments that support roads, schools, public safety and other critical services. The oil and natural gas industry also provides billions of dollars in annual economic impact and supports thousands of jobs.

Under FLPMA, BLM is required to integrate social science and economic information in the preparation of land use planning decisions. Specifically, FLMPA requires that BLM "estimate and display the physical, biological, economic, and social effects of implementing each alternative considered in detail."¹⁶ BLM's Land Use Planning Handbook incorporates this requirement by directing BLM to analyze demographic, economic, social, and fiscal conditions, as well as the impacts to conditions and trends associated with the alternatives to be addressed.

The RMPA must include an accurate and timely socio-economic analysis that takes into account the economic benefits of oil and natural gas development discussed above. This analysis should include the potential value of oil and natural gas sales, royalty revenues, tax revenues and wages generated by the increase or decrease in production that results from each alternative. Western Energy Alliance is more than willing to assist with these analyses in order to provide the most accurate information for consideration in the RMP/EIS.

Conclusion

Environmentally responsible development of oil and natural gas in the RMPA planning area provides significant benefits to local communities, the state, and the nation. BLM should continue to support development and avoid drastic changes to the current RMP. BLM should also strongly consider the economic benefits for every stakeholder involved, including lease payments and royalties to local governments, in preparing the final RMPA.

Today's oil and natural gas technology is better, safer and more efficient than ever before in minimizing surface usage. To successfully develop an RMPA for the area, BLM must establish multiple-use alternatives that will balance reasonable protections for wildlife, cultural, and recreational interests with responsible oil and natural gas development. We appreciate this opportunity to provide comments during this scoping process. Please do not hesitate to contact me should you have any questions.

Sincerely,



Tripp Parks
Manager of Government Affairs

¹⁶ 43 C.F.R. § 1610.4-6