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September 25, 2020

BLM Farmington Field Office
Attn.: Jillian Aragon, Project Manager
6251 College Blvd, Suite A
Farmington, NM 87402

Submitted online at: <https://eplanning.blm.gov/epl-front-office/eplanning/comments/commentSubmission.do?commentPeriodId=8001159>

RE: February 2020 Farmington Mancos-Gallup Draft Resource Management Plan Amendment and Environmental Impact Statement

Dear Ms. Aragon,

On behalf of the New Mexico Environment Department (NMED), attached please find our comments on the February 2020 Farmington Mancos-Gallup Draft Resource Management Plan Amendment and Environmental Impact Statement.

Please do not hesitate to contact me to discuss further.

Sincerely,

James C. Kenney
Cabinet Secretary

Attachment (1)

cc: Courtney Kerster, Director of Federal Affairs, Office of Governor Michelle Lujan Grisham
Sarah Cottrell Propst, Secretary, Energy, Minerals and Natural Resources Department
Rebecca Roose, Director, NMED Water Protection Division
Stephane Stringer, Director, NMED Resource Protection Division
Sandra Ely, Director, NMED Environment Protection Division

Attachment

Introduction

In 2012, the Bureau of Land Management (BLM) Farmington Field Office (FFO) produced an Environmental Impact Statement (EIS) to examine changing oil and gas development patterns in the Mancos Shale and Gallup Sandstone (Mancos/Gallup) formations, including innovations in horizontal drilling technology and multistage hydraulic fracturing. In 2016, the Bureau of Indian Affairs (BIA), Navajo Regional Office (NRO) became a co-lead agency for the Farmington Mancos Gallup (FMG) Resource Management Plan Amendment/Environmental Impact Statement (FMG RMPA/EIS). The planning area consists of 4,189,460 acres of the BLM FFO and BIA NRO, including lands managed by the BLM, the BIA (Tribal trust lands and individual Indian allotments), the State of New Mexico, the Forest Service, the National Park Service (NPS), the Bureau of Reclamation (BOR), and New Mexico Game and Fish; it also includes private property and Navajo Tribal fee lands.

The stated vision for BLM-managed lands for the FMG RMPA/EIS is to facilitate development of federal mineral resources while improving natural, cultural, and open space values across the landscape to protect human health and the environment, and pursue recreation opportunities through partnerships and collaboration for the enjoyment and use by the growing and diverse population and future generations. The BIA's stated vision for the FMG RMPA/EIS process is to manage oil and gas development so as to enhance the quality of life, promote economic opportunity, and carry out the responsibility to protect and improve the trust assets of American Indians, Indian Tribes, and Alaska Natives.

Comments

A. Comments on BLM and BIA Alternatives

Five primary alternatives, including a No Action scenario, are described in the draft RMPA/EIS. NMED carefully evaluated the BLM and BIA alternatives, particularly with respect to air quality and water quality impacts. We have environmental protection concerns with each alternative, as explained below. NMED believes Sub-Alternative B2, with modifications to integrate several key elements of Alternative A, will better meet the BLM and BIA visions stated above.

1. Sub-Alternative B2 offers the best air quality protections, but even selection of Sub-Alternative B2 risks putting the northwest region of New Mexico into non-attainment.

The proposed land development of the planning area includes oil and gas extraction and processing operations in the New Mexico counties of San Juan, Rio Arriba, McKinley, and Sandoval. This land development area is of particular concern to NMED, as it contains thousands of existing oil and gas sources that cause or contribute to ozone formation, as well as emit potent greenhouse gases that contribute to climate change.

In January 2019, Governor Lujan Grisham issued Executive Order (EO) 2019-003 on Climate Change and Energy Waste Prevention. This Order is aimed at limiting adverse climate change impacts and reducing air pollution that threatens human health. The EO requires reductions in methane emissions from the oil and gas sector, as well as a requirement to achieve statewide reductions in greenhouse gas emissions by at least 45% by 2030, as compared to 2005 levels.

Methane is a potent greenhouse gas (GHG), and the oil and gas industry is the largest industrial source of methane emissions in the planning area. Efforts to reduce methane emissions throughout New Mexico will have a significant climate benefit as well as prevent the waste of the state's energy

resources. In order to achieve the requirements for reductions in the EO, the state must and will reduce methane emissions. Methane makes up approximately 31% of New Mexico's greenhouse gas emissions profile. Methane emissions in New Mexico are dominated by the oil and gas industry, which emits approximately 64% of New Mexico's methane emissions. Aggressive emission controls for (volatile organic compounds) VOC and methane are necessary, especially in light of the federal rollbacks of 40 CFR Part 60 Subparts OOOO and OOOOa. The Department's comments on the federal government's proposed rollbacks are available here: <https://www.env.nm.gov/wp-content/uploads/2019/10/2019-10-24-NMED-Comments-on-EPA-CAA-NSPS-Proposed-Rule.pdf>

As identified in the RMP, New Mexico is experiencing rising ozone concentrations in areas of the state with significant oil and gas operations. Due to these rising ozone concentrations and as required by state statute, the Department is developing regulations that target the reduction of ozone precursors (oxides of nitrogen and volatile organic compounds). As noted in the RMP, ozone concentrations are rising for many monitoring stations listed in the report. As acknowledged by the federal agencies in the report, the proposed alternative must address these rising ozone levels and not continue to contribute to this issue. The Department's preferred alternative will necessarily focus on those alternatives that will help to reduce the emissions of ozone precursors.

NMED is taking an aggressive approach to reduce ozone precursors in the San Juan Basin and the land development area under this review. VOC and oxides of nitrogen (NO_x) emitted from oil and gas operations are a precursor pollutant to ozone formation, and ozone concentration levels are approaching or exceeding the National Ambient Air Quality Standard (NAAQS) for ozone at all monitoring stations in the planning area. Voluntary, proactive efforts taken by the BLM and the BIA would contribute positively towards the mitigation of ozone precursors in this area. Until the Ozone Attainment Initiative and regulations are adopted and implemented, NMED strongly urges the BLM and the BIA to require implementation of the best management practices that reduce ozone forming pollutants in this planning area, such as requiring the use of low-NO_x emitting engines and generators and reducing flaring and venting to the maximum extent possible.

The data on greenhouse gas emissions provided in the report should be corrected to reflect more recent figures, as provided in New Mexico's Climate Strategy Report, available here: https://www.climateaction.state.nm.us/documents/reports/NMClimateChange_2019.pdf.

Sub-Alternative B2 provides the most significant reductions of both potent GHG emissions and harmful ozone precursors. Sub-Alternative B2 will assist in meeting the GHG emission reduction requirements outlined in the EO and reduce harmful ozone precursors that endanger public health and the environment.

Sub-Alternative B2 would also provide the greatest protection of future air quality in the planning area and result in the smallest quantity of overall emissions from well development, as shown in Table 3-10 Emissions from Well Development (Construction and Operations) by Alternative. The emissions data in this table highlight important reductions of criteria pollutants, GHG, and Hazardous Air Pollutants (HAPs) emissions from Sub-Alternative B2, as compared to the No Action and other Alternatives.

Sub-Alternative B2 may also help prevent this region from being designated non-attainment for ozone. A nonattainment designation under section 107(d) of the CAA carries potentially serious sanctions and damaging repercussions for an area, including the potential loss of federal highway funding and economic development opportunities. States that are designated nonattainment areas are required to develop a State Implementation Plan (SIP) designed to bring an area back into attainment with the NAAQS through the adoption of stricter emission controls (e.g., Reasonably

Available Control Technology) and permitting requirements (emissions offsets) for emission sources that cause or contribute to poor air quality.

Once an area in New Mexico is designated nonattainment for ozone, not only will this trigger minor New Source Review (NSR) construction permits for sources at the minor source permit threshold of 10 pounds per hour (pph) or 25 tons per year (tpy) of VOC emissions, major source nonattainment permits will be required when VOC or NOx emissions from a new source or from a major modification at an existing source are projected to occur. The applicability thresholds of nonattainment permitting will depend on the nonattainment designation but are considered low thresholds and will affect thousands of sources. These permitting requirements will have a significant and negative impact on NMED and permittees.

Permittees looking to construct or modify their facility in an ozone nonattainment area are subject to the following: (1) Lowest Achievable Emission Rate (LAER) control techniques, which unlike Prevention of Significant Deterioration (PSD), do not consider the cost of controls; (2) requiring applicants to obtain permanent emission reductions through the purchase of emission offsets, which may or may not be available, from permittees of existing sources; (3) requiring complicated ambient air impact analyses to demonstrate a net air quality benefit from the proposed project; (4) requiring additional public outreach and participation from Federal Land Managers and the United States Environmental Protection Agency (USEPA); and (5) requiring expensive air quality permits that take significant resources and time for the permittee and NMED to prepare and process. Such changes require pre-approval through an air quality permit. Without similar requirements across state lines, New Mexico is at a competitive disadvantage.

Applying the additional control measures described by the medium scenario would help reduce ozone precursor emissions and mitigate the impacts on all NAAQS significant impact levels, as shown in Table 3-11 of the RMP.

Table 3-12 "Comparison of Nitrogen Deposition (kg/ha-yr) to the Project-Level Data Analysis Threshold at Class I and Sensitive Class II Areas in and Near the Planning Area" also shows that Sub-Alternative B2 will have the least impact on air quality at Class I and II Areas.

Sub-Alternative B2 would reduce emissions of particulate matter (PM) due to decreased surface development in areas of fragile soils. Activities that involve road construction, earthmoving, construction equipment and other vehicles can lead to increased particulate matter concentrations; however, the increases should not result in non-attainment of air quality standards. NMED urges dust control measures to be taken to minimize the release of particulates due to vehicular traffic and any construction activities. Areas disturbed by these activities, within and adjacent to the project area should be reclaimed to avoid long-term problems with erosion and fugitive dust.

In regard to Appendix C for Air Quality, there are additional control measures that may be required under the Application for Permit to Drill (APD). NMED supports and encourages BLM to implement these additional measures as listed in the second bullet of this section. Requiring these measures will contribute additional reductions in emissions from future oil and gas operations.

2. Sub-Alternative B2 with the addition of several key elements of Alternative A would best protect groundwater and surface water quality and preserve drinking water sources for New Mexicans.

NMED implements New Mexico Water Quality Act (WQA) programs that are designed to protect groundwater quality, surface water quality and public health. The State has established water quality standards in the New Mexico Administrative Code and updates those standards through the

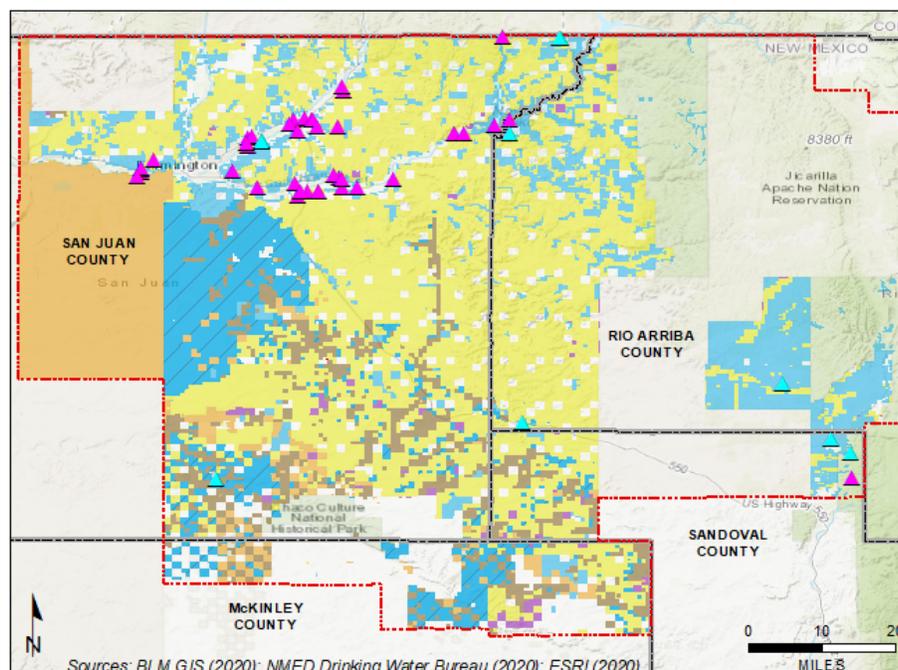
New Mexico Water Quality Control Commission (WQCC) as needed to maintain adequate protections. NMED has authority to issue groundwater discharge permits to ensure activities outside the oil and gas sector do not cause exceedances of standards. NMED also has authority to enforce against people who cause an exceedance of a groundwater or surface water quality standard.

The BLM Farmington Field Office manages 85 separate riparian-wetland reaches containing approximately 112 miles of perennial, intermittent, and ephemeral habitats including the perennial waters of San Juan, Animas, and La Plata Rivers and intermittent portions of Largo Canyon and Cereza Canyon. Within one mile of the BLM decision area there are 51 public water systems, 40 that rely on surface water and 11 that rely on groundwater (see Figure 1 next page). The primary concerns related to oil and gas development near drinking water sources are (1) water quality degradation and contamination, and (2) aquifer drawdown due to increased pumping of groundwater for drilling and extraction of hydrocarbon resources.

NMED supports the BLM and BIA action alternatives that provide for the greatest *protection of water resources*, including Clean Water Act section 303(d) impaired streams, and *preservation of drinking water sources* through various closures to fluid mineral leasing, no surface occupancy (NSO) stipulations for fluid minerals, right-of-way exclusion areas, and applied conditions of approval (COAs) to minimize impacts to groundwater, wetlands, streams and riparian areas.

Sub-Alternative B2 is arguably the most protective of drinking water resources because it stipulates the greatest acreages of closure to fluid mineral leasing, open to leasing but with NSO, and ROW avoidance or exclusion. Surface-disturbing activities that decrease vegetation cover and damage soils would be relatively minimized under Sub-Alternative B2 as compared with all other alternatives in the draft RMPA/EIS, thereby diminishing the potential for runoff and erosion that degrade water quality through turbidity and sediment loading. In addition, fewer acres with active oil and gas production also translates to less ground disturbance from roads and infrastructure and decreased risk of spills and pipeline failures that pollute groundwater and surface water.

Figure 1. Public Water Supply Systems Within One Mile of BLM-Managed Decision Area Parcel(s).



- | | |
|---|--|
| BLM Decision Areas | BLM BIA Planning Area |
| BLM surface land and mineral estate | Active Public Groundwater Systems* |
| Non-BLM surface land and BLM mineral estate | Active Public Surface Water Systems* |
| BLM surface land and non-BLM mineral estate | <i>*Within 1 mile of BLM-managed decision area parcel(s)</i> |
| BIA Decision Areas | |
| Navajo trust surface land and mineral estate | |
| Navajo trust surface land and BLM mineral estate | |
| Navajo allotment surface land and mineral estate | |
| Navajo trust surface land and Navajo allotment mineral estate | |

Furthermore, NMED views Sub-Alternative B2 as the most protective of water supplies because it involves the least number of wells in use and therefore the least amount of water used for hydraulic fracturing. Even Sub-Alternative B is projected to require 8,100-100,800 acre-feet of water over the years 2018-2037. Therefore, the final EIS and RMPA should further enhance water conservation by either requiring new oil and gas lessees to recycle produced water and flowback fluids or, at the very least, strongly incentivizing recycling (e.g., give preference to lease applicants that commit to maximize recycling of produced water and flowback fluids in their operations). It is unclear from the draft RMPA/EIS why produced water recycling is required under Alternative A but encouraged under the other alternatives. Given advances in technology that provide for cost-effective in-field recycling coupled with the impacts of climate change in this arid region, NMED sees no reason why the next 20 years of oil and gas leasing in the BLM and BIA decision areas should not be structured to preserve as much fresh water as possible.

To provide for necessary water protections, NMED requests BLM integrate several other key elements of Alternative A into the final RMPA/EIS, along with Sub-Alternative B2. The final RMPA/EIS should impose NSO stipulations within 1,000 feet of all domestic water wells and community water sources (section 3.4.3), require collocation of wells on existing well pads in sensitive wildlife areas (section 3.4.7), many of which are found along perennial streams or intermittent and ephemeral drainages where runoff infiltrates to shallow and/or deep aquifers, and implement a 656 foot (200 meter) buffer zone around wetlands and riparian areas, instead of the

150 foot buffer zone included in proposed Alternative B.

Part A Conclusion: While some elements of different alternatives should be preserved, none of them are sufficiently protective of New Mexico’s air and water resources on their own. NMED prefers draft RMPA/EIS Sub-Alternative B2 with elements of Alternative A as specified above, but even these alternatives do not go far enough in VOC and GHG emission reductions. NMED strongly opposes the No Action Alternative and Alternatives C and D, all of which would fail to mitigate GHG or VOC and would put precious groundwater and surface water resources at risk for contamination and depletion beyond what our ecosystems and communities can sustain.

B. Additional Comments on Environmental Impacts Analysis and Draft RMPA

In addition to our comments about the proposed alternatives, NMED provides the following comments about environmental impacts associated with the draft RMPA.

1. BLM should require, not encourage, the Best Management Practices listed in Appendix B of the draft RMPA/EIS and revise Conditions of Approval in Appendix C to provide stronger water resource protections.

The use of existing infrastructure, siting of multiple wells on a single pad, interim and final reclamation, closed-loop liquid-gathering systems, and reduced water use in fracturing fluid are all Best Management Practices (BMPs) that will benefit water quality and quantity.

NMED recommends the following BMPs and Conditions of Approval (COA) be considered under Water Resources (C.1.9) and Riparian Areas and Wetlands (C.1.10):

- a. Any water contaminants must be contained within the facility boundaries. A description of the methods used to achieve this goal must be included in the BMPs (consistent with “Pollution Prevention Best Management Practices for the New Mexico Oil and Gas Industry,” available on the New Mexico Oil Conservation Division (NMOCD) website).
- b. Water produced from the exploration holes at the drill site must be contained to prevent erosion and gully formation.
- c. Drilling cores must be collected and disposed of properly.
- d. COA mitigation measures may include filter strips, vegetated swales, dry detention basins, and infiltration basins. Additional BMPs and mitigation opportunities may be described in the Lower Animas River Watershed Based Plan, available at https://www.env.nm.gov/surface-water-quality/wp-content/uploads/sites/25/2019/12/LowerAnimasWBP_Aug2016.pdf.
- e. Culverts at stream crossings should be designed and installed to prevent upstream headcutting, downstream channel incision, and erosion of the stream banks. Bottomless arch culverts and embedded culverts should be installed when practicable. The COA should include additional guidance and requirements for appropriately sizing, installing, and maintaining culverts. Including a COA for a minimum culvert size may result in culverts being undersized.
- f. To encourage use of lower-risk chemicals near waterways, provide for BLM review of Safety Data Sheets for drilling-related chemicals to be used and consideration of alternatives for any chemicals that contain warnings such as “May constitute a hazard

following a spill,” “Prevent spilled material from entering sewers, storm drains, other unauthorized drainage systems, and natural waterways,” or “Prevent from entering sewers, waterways, or low areas.”

- g. Describe the circumstances under which it may be necessary to move resource management and extraction developments outside of the 100-year floodplain.
- h. Revise the COA that says, “Water features that may pose a future threat to the project will be armored and will include outside areas” to focus on locating projects/activities at appropriate distances from water features to allow such features to naturally adjust and meander.
- i. In addition to general COA that requires “full compliance with all applicable laws, regulations, and onshore orders,” specifically reference New Mexico notification requirements for accidental discharges as specified at 20.6.2.1203 NMAC.

2. BLM’s analysis of water quality impacts of the proposed alternatives fails to fully consider New Mexico’s water quality standards set forth in the New Mexico Administrative Code.

Section 3-44 of the Draft RMPA, Volume 1, states: “The BLM does not have jurisdiction over water quality or use. Regulations around water quality and use are under the jurisdiction of the State of New Mexico. The New Mexico Clean Water Act, Section 303(d)/Section 305(b) Integrated Report identifies streams that have impaired water quality. Watersheds containing impaired streams are summarized in Table 3-17, with miles of 303(d) impaired streams on BLM- and BIA-managed land.”

A Memorandum of Understanding (MOU) between NMED and the BLM state office approved in 1992 establishes responsibilities of both agencies with respect to water quality management and states that “the [WQCC] has designated the BLM as a management agency for water quality protection within the context of the New Mexico Water Quality Management Plan and the New Mexico Nonpoint Source Management Program.” The MOU is attached to these comments. The WQCC confirmed this designation in 2019 with approval of the current Nonpoint Source Management Program plan.¹ As such, the BLM should have analyzed each alternative according to the current status of water quality standards attainment within the project area. Such an analysis, which NMED requests BLM conduct as part of the final EIS development, should project impacts of each alternative on water quality and ensure that the selected alternative will comply with the Antidegradation Policy and Implementation Plan at 20.6.4.8 NMAC.

NMED recommends that the final RMPA further describe the differences between BLM and State responsibilities, authorities, and jurisdictions with respect to water quality. For example, the WQA grants authority to the WQCC to develop surface water quality standards and regulations within the State of New Mexico but these standards do not apply on tribal lands. NMED’s Environmental Justice Mapper is available online at <https://www.env.nm.gov/general/tools-maps-links/> and contains a Tribal Lands layer that can be used for preliminary assessments regarding tribal, pueblo and state jurisdiction. The BLM may have separate authorities and responsibilities with respect to water quality goals and objectives that may be useful to include the final RMPA. Ultimately, the Plan for the Farmington Mancos-Gallup region should provide a clear and easy to follow roadmap for protecting water quality with each site-specific resource management decision.

¹ The 2019 *New Mexico Nonpoint Source Management Plan* is available at <https://www.env.nm.gov/wp-content/uploads/sites/25/2019/08/2019-NPS-Management-Plan-Final-web.pdf>.

3. The final RMPA/EIS must account for the dynamic nature of water quality assessments and listed impairments under the Clean Water Act Section 303(d).

The Clean Water Act (CWA) Section 303(d) list of impaired waters is dynamic and therefore the impaired waters in the planning area, and the BIA and BLM decision areas specifically, will change over time (see discussion of surface water quality beginning on page 3-44 of the draft RMPA/EIS). While it is true that there are not currently any Total Maximum Daily Loads established for waters in the planning area, that too could change over time and impact site-specific decisions within the planning area. NMED utilizes a targeted, rotational watershed approach to ambient water quality monitoring. The San Juan River was surveyed during the 2017-2018 field seasons. As of this writing, these data have not been fully assessed. When this assessment is EPA-approved, NMED will include it in the future 2020-2022 Integrated Report and List, which will be available online at <https://www.env.nm.gov/surface-water-quality/303d-305b/>. NMED recommends the final RMPA include a statement that updated impaired waters data will be available when the 2020-2022 Integrated Report is EPA-approved (see Table 3-17 of the draft RMPA). Despite resource limitations, SWQB is striving to meet an eight-year statewide rotational schedule for assessments, which means the next San Juan Basin survey is planned for 2025-2026. An online map showing monitoring stations, assessed streams and 303(d) impaired streams is available at <https://gis.web.env.nm.gov/oem/?map=swqb>.

4. The draft RMPA/EIS does not reflect NMED's role in implementation of federal Clean Water Act regulatory programs.

In the State of New Mexico, the USEPA administers the CWA Section 402 National Pollutant Discharge Elimination System (NPDES) permit program. CWA Section 401 State Certification from NMED is required for NPDES permits. The US Army Corps of Engineers (USACE) administers a regulatory program to implement Section 10 of the Rivers and Harbors Appropriation Act and Section 404 of the Clean Water Act. The USACE issues permits (Standard Individual Permits, Regional General Permits, and Nationwide Permits) and authorizes projects requiring the discharge of dredged or fill material into waters of the U.S. Activities authorized by BLM and BIA under the final RMPA may trigger the requirement for CWA Section 402 or 404 permits, including industrial process water, industrial stormwater and construction stormwater discharges to waters of the United States.

Pursuant to Section 401 of the CWA, the NMED SWQB certifies USEPA and USACE permitting actions to ensure that the federal permits are consistent with State law and otherwise comply with surface water quality standards ([20.6.4 NMAC](#)). SWQB typically certifies Section 404 permits with conditions, meaning the certification is contingent upon those conditions being followed. The draft RMPA/EIS discussion of BLM and Surface Water (see pages 3.44 and 3.45) should be updated to include discussion of State of New Mexico Section 401 certifications, similar to the discussion of Navajo Nation EPA certifications under BIA and Surface Water.

5. National Environmental Policy Act reviews are critical during the implementation phase.

Once the final RMPA is adopted, it is imperative that BLM and BIA comply fully with NEPA for site-specific actions during the implementation phase of the Plan. NMED emphasizes the importance of BLM and BIA managers allowing ample time for meaningful consultation with tribes, community members and associations, state and local officials, and public water systems with well facilities or surface water intakes within one mile of proposed activities.

6. The draft EIS fails to demonstrate that the Proposed Action will achieve environmental justice for the high percentage of minority and low-income populations in the planning area that may have already suffered disproportionately high adverse human health and environmental effects of energy development on lands administered by BIA and BLM.

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority and Low-Income Populations, states, "... each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations of the United States."

As described in the EIS, almost all of the planning area has a population where more than half of the population identifies as a minority race, and most of the area has greater levels of individuals that live below the poverty line. Native Americans account for a substantial portion of the study area population, including McKinley County, where the population is nearly three-quarters American Indian. NMED agrees with the EIS statement that impacts common to all BLM alternatives on identified environmental justice populations could include those on human health, air quality, water quality, traditional cultural ways of life, social systems, and economic conditions. The EIS, however, asserts that exact level and intensity of impacts on vulnerable populations cannot be determined in the context of the FMG RMPA/EIS, and defers evaluation of the degree to which any implementation impacts would disproportionately or adversely affect environmental justice populations to future, but unspecified, NEPA analyses. The EIS inappropriately states that, if specific disproportionately high and adverse impacts are identified in subsequent NEPA analyses, the BLM FFO would encourage members of affected populations to provide input on appropriate modifications to avoid or otherwise mitigate effects. Executive Order 12898 clearly puts the burden on Federal agencies, not vulnerable populations, to identify and address disproportionately high adverse human health and environmental effects.

Environmental justice deficiencies in the draft EIS include:

- a. Failure to identify and evaluate the cumulative history of adverse human health and environmental effects that energy development on lands administered by BIA and BLM may have already had on vulnerable populations in the planning area;
- b. Failure to quantify with a proper risk assessment how various contaminant release scenarios from the Proposed Action might create disproportionately high adverse effects on vulnerable populations in the planning area during implementation of the FMG RMPA/EIS;
- c. Failure to include proactive pollution prevention measures designed specifically to protect vulnerable populations; and
- d. Failure to include a monitoring program designed to detect disproportionately high adverse human health and environmental effects on vulnerable populations if they occur during implementation of the FMG RMPA/EIS.

The environmental justice deficiencies in the draft EIS must be corrected. In accordance with Executive Order 12898, every aspect of the Proposed Action must provide the highest level of protection to New Mexico citizens in the planning area, including use of best available technology in these safeguards.

7. Technical Correction

The 2019 BLM New Mexico Water Support Document does not reflect current New Mexico Ground and Surface Water Protection Regulations (20.6.2 NMAC). Specifically, Table 2-10 presents incorrect State standards for Nitrite, Arsenic, Barium, and Lead.

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE STATE OF NEW MEXICO
AND
THE U.S. DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT
NEW MEXICO STATE OFFICE

This Memorandum of Understanding is entered into by and between the Environment Department of the State of New Mexico, hereinafter referred to as NMED, and the U.S. Department of Interior, Bureau of Land Management, referred to as BLM.

PURPOSE: To respond to the water quality objective defined by Congress in the Federal Water Pollution Control Act (Clean Water Act or CWA), as amended. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waters;

To respond to the goals and policies of the State of New Mexico as defined in the New Mexico Nonpoint Source Pollution Management Program developed pursuant to Section 319 of the CWA; and

To identify the responsibilities and activities to be performed by each agency in carrying out the State Water Quality Management Plan developed pursuant to Section 208 of the CWA and Nonpoint Source Management Program as related to activities on lands administered by the BLM.

WHEREAS, the New Mexico Water Quality Act (74-6-1 et seq. , NMSA 1978) creates the New Mexico Water Quality Control Commission (Commission) and identifies the Commission as the State water pollution control agency for all purposes of the CWA; and

WHEREAS, the Commission has designated the NMED as the State's lead agency to implement Sections 208 and 319 of the CWA; and

WHEREAS, the State of New Mexico authorizes NMED to enter into agreements with a Federal agency for the purpose of water quality management; and

WHEREAS, the BLM is authorized and directed to conserve public land natural resources managing for multiple uses; Congress has provided direction for these practices in the Federal Land Policy and Management Act (FLPMA) of October 21 1976 and the National Environmental Policy Act (NEPA) of January 1, 1969. Multiple executive orders and Bureau policy aid this direction; and

WHEREAS, it is BLM policy to consult, cooperate, and coordinate with neighboring land owners and agencies; and

WHEREAS, the BLM is authorized and directed to administer development of mineral resources on lands which the Federal government retains the subsurface mineral estate. Congress has provided direction for this authority in the Mineral Leasing Act of 1920 as amended, the 1872 Mining Law for Locatable Minerals, multiple executive orders, and BLM policy; and

WHEREAS, the BLM, under Section 313 of the CWA, Executive Order 12088, approved October 13, 1978 and Executive Order 12372, approved July 14, 1982, is directed to meet Federal, State, interstate, and local substantive and procedural requirements respecting control and abatement of water pollution to the same extent as a nongovernmental entity; and

WHEREAS, the Commission has designated the BLM as a management agency for water quality protection within the context of the New Mexico Water Quality Management Plan and the New Mexico Nonpoint Source Management Program.

NMED AND BLM AGREE:

- a. That the most practical and effective means of controlling potential nonpoint source water pollution from all properties administered by BLM is through development and implementation of preventative or mitigative land management practices, generally referred to as Best Management Practices (BMPs) and to ensure control of such nonpoint source pollutants through the practice and monitoring of these BMPs.
- b. To develop and implement procedural methods and agreements to minimize duplication of effort and facilitate complementary nonpoint source water pollution control and abatement programs.
- c. To jointly identify existing or potential nonpoint source water pollution problems on all properties administered by BLM.
- d. To coordinate present and proposed water quality monitoring activities within all properties administered by BLM; to schedule cooperative monitoring efforts; to share data collection and analysis responsibilities; and to routinely make available any unrestricted water quality data and information.
- e. To use such water quality information for validating existing water quality criteria and designated uses and when appropriate developing the data into proposed standards revisions for consideration by the Commission during regularly scheduled water quality standards reviews.

f. To provide, on request, technical expertise and support not otherwise available to the other party, to the extent the supplying party's program priorities, budget, and availability of expertise allow.

g. To meet at least annually, to maintain coordination and communication, report on water quality management progress and problems, review proceedings under this agreement, and consider/negotiate revisions and amendments that shall become effective after written approval by both parties.

h. To manage all resources and operate all programs for which they are responsible in a manner that seeks to achieve Federal water quality and State water quality standards.

NMED AGREES TO:

a. Recommend that the Commission continue its designation of the BLM as the designated management agency for water quality on all properties administered by BLM within the context of the New Mexico Nonpoint Source Pollution Management Program, as long as the BLM diligently seeks to meet Federal and State water quality mandates.

b. Recommend that the Commission incorporate into State water quality plans, including Section 208 and 319 Plans, the BLM responsibility for determination and implementation of BMP's.

c. Coordinate State water quality management planning with the BLM when properties administered by BLM are involved.

d. Provide drafts of NMED proposed water quality laws, regulations, standards, and policies to the BLM for review and comment during their development.

e. Provide the BLM with appropriate State and local BMP's accepted for minimizing nonpoint source water pollution as they become available.

f. Participate in the BLM Coordinated Resource Management Plan (CRMP) process in a manner consistent with NMED's regulatory responsibility and authority.

g. Consult with the BLM and make recommendations on necessary projects, activities, or BMP changes through informal discussions and the CRMP process.

h. Participate in monitoring with the BLM and provide consultation on appropriate mitigation, where necessary.

- i. Review water quality standards and designated uses when the BLM and/or NMED monitoring indicate that criteria or uses may not be attainable.
- j. Review and comment on appropriate BLM documents on request.
- k. Participate with the BLM in evaluating the validity of nonpoint source pollution complaints.
- l. Join with the BLM in describing to other agencies or citizens the results of cooperative investigations or reviews of nonpoint source pollution complaints.
- m. Meet legally established BLM procedural time constraints where applicable.

BLM AGREES TO:

- a. Serve as the Designated Management Agency within the context of the New Mexico Water Quality Management Program and the New Mexico Nonpoint Source management program.
- b. Recognize New Mexico identified designated uses of water and Nonpoint Source Management Program objectives.
- c. Ensure all future Land Use Plans, Environmental Impact Statements, and surface disturbing activity plans meet requirements of State Water Quality Management Plans and the Nonpoint Source Management Program developed pursuant to Federal regulations, the CWA, and other applicable requirements placed on the State. Review and necessary revisions of existing plans will occur on a schedule that will be negotiated between NMED and BLM.
- d. Ensure that all project planning (Environmental Assessments, Categorical Exclusions, etc.) and implementation of projects which could result in nonpoint source pollution of surface or ground waters, contain site-specific BMP's where needed to meet the purpose of this agreement. Project analysis will include technical, economic, and institutional feasibility regarding water quality impacts from the proposed activity in the selection of BMP's.
- e. Ensure that all new and renewed land use authorizations, easements, rights-of-way documents, allotment management plans, term-grazing permits, and other agreements involving permitted activity on properties administered by BLM, contain provisions for compliance with water pollution control and abatement statutes, regulations, standards and ordinances (Federal, State, and local) promulgated under the authority of the CWA as an enforceable condition to those potential agreements.

f. Identify program elements needed to meet state programs adopted pursuant to sections 208 and 319 of the CWA and incorporate these into BLM program planning and budgeting systems so that personnel and funds are available to respond to needs.

g. Evaluate environmental effects as part of the land management process, and to expeditiously and effectively mitigate any additional adverse cumulative environmental effects through standard BLM mitigation practices, consideration of the total number of activities within the watershed, and relative placement of the activity to other activities within the watershed.

h. Consult with NMED in situations where the BLM does not manage the entire watershed and it has been determined there will/or may be a significant water quality impact due to an activity (initiated by any land owner), and that the impact will/or may preclude attainment of water quality standards on or off properties administered by BLM, and/or the water does not currently meet water quality standards.

i. Implement a BMP monitoring strategy that includes implementation monitoring to ensure application of BMP's as specified in project work schedules, and effectiveness monitoring on selected activities to determine if BMP's are meeting resource, aquatic, and water quality goals.

j. Adjust recommendations and BMP's when they are found to be ineffective in protecting identified designated uses and water quality criteria or where unanticipated problems are detected.

k. Provide NMED an annual list of all proposed project planning issues for New Mexico BLM at the beginning of each fiscal year. NMED can then call for project documents they wish to review. BLM will also coordinate with NMED on unanticipated documents or plans that evolve through the year. This procedure is intended to improve on the ground management with regards to BMP implementation, NPS control, and monitoring techniques. The process will help close the NPS feedback loop, and serve as technology transfer for all parties concerned.

l. Implement water quality improvement projects identified in BLM and cooperative State and local water quality management plans in a timely manner consistent with Land Use Plan implementation, and in accord with available funding.

m. Conduct annual NPS program and activity reviews using standard BLM program review procedures.

n. Provide NMED with an annual general assessment of water quality accomplishments, monitoring results, problems, and

priorities. Report will be submitted by July 30 each year.

o. Store on a quarterly basis water quality data resulting from all BLM water quality monitoring in the Environmental Protection Agencies' Water Quality Storage and Retrieval System.

p. Use in-service education and training to increase employee awareness of, and sensitivity to, the importance of maintaining and improving water quality and of the requirements of State and Federal water quality regulations and standards.

RESOLUTION OF COMPLAINTS AND STANDARD VIOLATIONS:

The BLM agrees to assure compliance with New Mexico water quality standards to the extent water quality is affected by BLM activities and to take the following actions when it has reason to believe that exceedances of water quality standards are occurring or when notified by NMED, or another Federal, State, local government agency, or citizen that water quality standard violations are suspected due to BLM actions:

a. Contact when appropriate or meet with NMED to evaluate the validity of the complaint.

b. Conduct a plan-in-hand review of the activity site within 10 days, or an agreed to time, after receiving the complaint to determine if BMP's were implemented according to the plan, contract, or permit.

c. Evaluate BMP's to determine if they are functioning as planned, and if not, through the interdisciplinary process, design and expeditiously implement modifications to assure proper functioning conditions.

d. Evaluate the activity or project site using the interdisciplinary process to determine the need for additional mitigation measures or conservation practices.

e. Modify contracts and/or project plans to assure that any additional NPS measures, prescribed through the interdisciplinary process, are implemented.

f. Modify project implementation plans to stop the action causing the violation, if the standard violations persist.

g. Cooperate with NMED in effecting necessary remediation.

THE NMED AND BLM FURTHER AGREE:

.. That nothing herein shall be construed in any way as

limiting the authority of the NMED in carrying out their legal responsibilities for management or regulation of water quality;

b. That nothing herein shall be construed in any way as limiting the legal authority of the BLM in connection with the proper administration and protection of all properties administered by BLM in accordance with Federal laws and regulations;

c. That nothing in this Agreement shall be construed as obligating the BLM or NMED to expend funds in any contract or other obligations for future payment or service in excess of those available or authorized for expenditure;

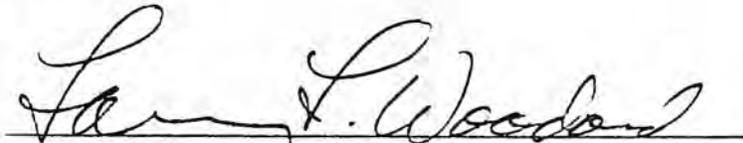
d. That this Agreement shall become effective as soon as it is signed by the parties hereto and filed with the New Mexico Secretary of State and shall continue in force unless terminated by either party upon 30 days notice in writing to the other of intent to terminate upon an indicated date;

e. That this Agreement may be amended upon approval of both parties by executing an amendment containing the desired amendments; and

f. That each and every provision of the Agreement is subject to the laws of the State of New Mexico, the laws of the United States, the regulations of the Secretary of Interior, and the regulations of the State of New Mexico.

In witness thereof, the parties hereto have caused this Management Agreement to be executed.

APPROVED:

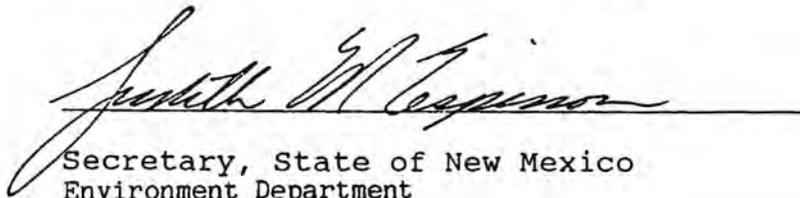


State Director, New Mexico
Bureau of Land Management

Larry L. Woodard

2-28-92

Date



Secretary, State of New Mexico
Environment Department

Judith M. Espinosa

March 2, 1992

Date