



November 5, 2018

Bureau of Land Management
Carlsbad Field Office
620 East Greene Street
Carlsbad, NM 88220
Attn.: Hector Gonzalez, Carlsbad RMP Team Lead

Re: Comments to the Draft Resource Management Plan and Draft Environmental Impact Statement for the BLM Carlsbad Field Office, New Mexico

Dear Mr. Gonzalez:

With this letter, API respectfully submits comments relating to the Draft Resource Management Plan and Draft Environmental Impact Statement (RMP/EIS) for the BLM Carlsbad Field Office (CFO), which was published in the Federal Register on Friday August 3, 2018. API is a national trade association representing over 625 companies involved in all aspects of the oil and natural gas industry. API's members include producers, refiners, suppliers, pipeline operators, and marine transporters, as well as service and supply companies that support all segments of the industry. API member companies are leaders of a technology-driven industry that supplies most of America's energy, supports more than 10.3 million jobs and nearly 8 percent of the U.S. economy, and since 2000, has invested more than \$3 trillion in U.S. capital projects. A number of API's members operate or perform work on oil and gas leases on federal public lands managed by the CFO.

On behalf of our members, API has consistently supported access to natural gas and oil resources under Federal administration in a manner that allows environmentally responsible development and appropriate management and protection of habitat, wildlife and other resources. We believe this balance is achievable on the public lands that the Bureau of Land Management (BLM) administers in the CFO planning area where crude oil and natural gas resources of national and strategic significance are located.

In a nation that is blessed with an endowment of world class oil and natural gas resources, the Permian Basin stands out as a region with both a strong history of oil and gas production and the potential to provide resources at scale for decades to come. The CFO planning area encompasses key portions of the Permian Basin, which is the most prolific onshore play in the nation and includes some of the most critical acreage anywhere in the United States. The RMP/EIS will affect the development plans for 2.1 million surface acres and 2.7 million mineral estate acres within the CFO planning area, which has been engaged in oil and gas drilling for nearly a century. The continued development of the resources within the CFO planning area balances conservation strategies and policies with the need to create jobs that directly align with the

purpose of Secretarial Order No. 3349. Additionally, continued development within the CFO planning area aligns with Presidential Executive Order No. 13783 issued March 28, 2017 on Promoting Energy Independence and Economic Growth, which highlights the national interest in promoting the clean and safe development of the federal energy resources while avoiding regulatory burdens that would encumber energy production and prevent job creation.

Oil and gas development in New Mexico accounts for over 100,000 jobs and has provided the State with \$1.7 billion directly attributed to state tax revenue in 2017 alone. Additionally, the New Mexico Tax Research Institute has produced data indicating that in Fiscal Year 2017, the oil and gas activities within the State provided public schools with a total of \$711 million, and public colleges and universities with nearly \$223 million¹. Also, the recent record-breaking CFO BLM lease sale with bonuses of nearly \$1 billion provided New Mexico with almost \$500 million in revenue. The safe and environmentally responsible development and management of mineral resources within the CFO planning area that is based on sound science, technology and best practices area will continue to yield a direct benefit to local communities and the nation, but curtailing these activities would have a significant, negative economic impact on the local cities, counties, State and the nation. API believes that the BLM should give particular weight to the comments and feedback regarding the Draft RMP/EIS submitted by the local communities, offices, and agencies within New Mexico, since these communities and families will be directly affected by any management direction established by the final plan.

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.”² 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.”³ FLPMA dedicated the public lands to multiple use and sustained yield, and identified mineral exploration and development as one of the principal uses.⁴ The current Administration has re-stated a commitment to these principles through Secretarial Order 3349, embracing a forward-looking policy agenda to “put our nation on track to full and dominant energy independence” and pursuing the restoration of certainty and predictability into the permitting and regulatory systems for our nation’s oil and gas resources.

In recognition of that national objective, API encourages BLM to ensure that the draft CFO RMP/EIS document complies with the National Environmental Policy Act’s (“NEPA”) core procedural and informational purposes, rather than allowing the draft document to dictate substantive outcomes. In addition, API recommends that BLM:

1. Promote oil and gas development consistent with BLM’s multi-use mandate.
2. Use appropriate and timely NEPA analysis and peer-reviewed science in the environmental analysis to justify stipulations.

¹ Albuquerque Business Journal. “Report finds the oil and gas industry has multibillion-dollar impact on budget and schools”, January 31, 2018.

² 43 U.S.C. §1701(a)(12)

³ 30 U.S.C. §21(a)

⁴ 43 U.S.C. §1702(c),(l)

3. Comply with the 2005 Energy Policy Act⁵ to ensure lease stipulations are only as restrictive as necessary to protect the applicable resource.
4. Appropriately analyze and justify any restrictions on surface access (e.g., no surface occupancy), and provide clear, workable criteria for any future surface restrictions within the CFO planning area, so stakeholders have certainty with future BLM decisions.
5. Take an appropriate balanced approach for protecting, restoring, and enhancing the CFO planning area.

API generally supports the adoption of Alternative C; however, in some instances, API agrees with NMOGA that the adoption of provisions within Alternative D may be appropriate. Alternative C emphasizes multiple use and is also described as BLM's preferred alternative. Aspects of Alternative D are often appropriate within the RMP/EIS, especially where existing laws and regulations have been established to manage the protection of established resources. The restrictions in Alternatives A and B tend to emphasize geographic separation and restrictions on surface use rather than true multiple-use as required by FLPMA, do not align with current Secretarial Orders, Presidential Orders, the 2005 Energy Policy Act and would unreasonably restrict the development of the oil and natural gas resources within the CFO planning area, which would ultimately lead to a direct negative impact to the local communities, the State of New Mexico, and the nation.

API endorses the recommendations the New Mexico Oil and Gas Association (NMOGA) has offered to ensure the draft RMP/EIS is consistent with existing federal and state regulations and policies. API's members need certainty and predictability, and regulatory practices require that a BLM RMP acknowledge and follow existing regulatory schemes, particularly those that fall under a different agency's jurisdiction. BLM should not insert duplicative, more restrictive, or inconsistent regulatory requirements into the CFO planning area where another regulatory program exists that provides sufficient protection of the resource in question. To cite some examples:

- The Environmental Protection Agency has the authority to regulate stormwater pollution and discharge under the Clean Water Act. The National Pollutant Discharge Elimination System permitting program (NPDES) governs stormwater discharge activities and best management practices surrounding construction and industrial activities, including those carried out by operators of oil and natural gas facilities and projects. The NPDES program is carried out in partnership with the New Mexico Environmental Department. BLM is not authorized to regulate stormwater discharge activities, and the establishment of additional regulatory requirements through the CFO RMP/EIS document will not provide additional benefits, but it would create conflict, confusion, and uncertainty for the regulated community.
- The proposal to regulate pits constructed and used to manage drilling and production wastes are not consistent with the New Mexico Oil Conservation Division (NMOCD) requirements related to construction. In addition, there are inconsistencies regarding pit regulation within the CFO RMP/EIS document itself. Reliance on NMOCD regulations

⁵ 42 USCS § 15801 (2005)

for construction, use, and closure of pits in the CFO planning area will avoid regulatory conflict and will promote regulatory certainty for operators who invest in New Mexico's oil and gas resources development

API agrees with NMOGA and its members that the CFO RMP/EIS document should allow operational flexibility through site-specific assessments so that existing leases are not burdened with new requirements that limit or discourage additional development. To offer some examples to explain this recommendation:

- The Gypsum Soil area described in the CFO RMP/EIS document is extensive, and resources to be protected by this plan designation are not clearly identified. As a result, large areas within the CFO planning area may be burdened with a no surface occupancy designation, unnecessarily restricting development. API agrees with NMOGA that operators should be allowed to verify whether gypsum soils are present in an area of interest and to be allowed to recommend design and construction alternatives or mitigation measures suitable for the site and the operating context.
- Instead of access limitations in the CFO planning area for large areas based upon the presence of playas, the CFO RMP/EIS document should allow operators the opportunity to identify whether playas are present near the proposed site of operations, to evaluate the location and its characteristics, and to propose appropriate setbacks, other design and construction alternatives or mitigation measures to be applied in conjunction with any setbacks.
- The karst area buffers described in the CFO RMP/EIS document may be large enough in extent that they restrict lessee's ability to develop lease(s) near where karsts may be found. Operators should be able to use appropriate technology and best management practices to determine whether karst in the vicinity of their operations may be impacted. That information could then be used to determine appropriate level of limitation on surface use in the in the project operation being proposed.

For these reasons, we endorse the letter dated November 5, 2018 sent to you by NMOGA providing comments to the CFO RMP/EIS document. We support the efforts of NMOGA and its members to promote safe and environmentally responsible development of the oil and natural gas resource endowment found in New Mexico, and trust that you will give their comments due consideration in the final document and Record of Decision.

Thank you for considering this letter and API's comments.

Very truly yours,

A handwritten signature in cursive script that reads "Richard Ranger". The signature is written in black ink and is positioned above the printed name and title.

Richard Ranger
American Petroleum Institute