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WRITTEN STATEMENT
OF
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ENERGY, MINERALS & NATURAL RESOURCES DEPARTMENT
STATE OF NEW MEXICO

BEFORE THE
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON ENERGY AND MINERAL RESOURCES
UNITES STATES HOUSE OF REPRESENTATIVES

Onshore Oil and Gas

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I. Introduction

Chairman Gosar, Chairman Bishop, Ranking Member Lowenthal, members of the subcommittee, thank you for the opportunity to appear today to discuss oil and gas permitting on lands managed by the federal government.

The Bureau of Land Management administers some 245 million surface acres (a tenth of the U.S. land base) and 700 million subsurface mineral acres. While no one here will be surprised by this fact, it nevertheless is worth mentioning that the overwhelming majority of federal land ownership is concentrated in states west of the hundredth meridian. Consider that the federal government owns 48% of Wyoming, 61% of Idaho, 63% of Utah, 61% of Alaska, and 80% of Nevada, whereas federal ownership falls to nominal levels as you move east, with the federal government owning only 1.8% of Texas, 1.1% of Illinois, 2.1% of Pennsylvania, 1.2% of Massachusetts, and 0.6% of New York.[1] As everyone here knows, federal land ownership, with its complex regulatory overlay, can stymie land use and development. With the bulk of western states' lands falling under federal ownership, the conclusion is not a hard one to reach that in the context

1 Federal Land Ownership: Overview and Data, Congressional Research Service, March 3, 2017, (available at https://fas.org/sgp/crs/misc/R42346.pdf).

of land management opportunities, western states are at a comparative disadvantage to their eastern sister-states.

In New Mexico the federal government owns 35% of the state's acreage, most of which is managed by the Bureau of Land Management (BLM). Oil and gas production in New Mexico is disproportionately produced on those federal lands. Consider that in 2017, 57% of New Mexico's oil and 65% of New Mexico's gas was produced from the federal mineral estate.

Today the Permian Basin is one of the most active plays in the world, in fact, 45% (477 rigs) of the entire US rig fleet is working in the Permian Basin. The Basin stretches across two states—25% of the basin falling in New Mexico and the remainder in Texas. Texas was blessed, not just with a larger portion of the basin, but also with no federal lands. This all works to New Mexico's disadvantage. In Texas you can have a permit and a rig on location quicker than you can fill out the paperwork to drill a well on federal acreage in New Mexico.

The oil and gas industry is a very cyclical business, with wide and unpredictable swings in activity. During the last price collapse, New Mexico saw utilized drilling rigs drop from 103 to 13 in 17 months.

Why does this matter?

It's important to provide as many permits as possible while oil prices are high, as they are today. That way, when we move into the next slowdown, having a larger inventory of wells drilled and more production on-line will help buoy the state through the down cycle.

Because it seemed unlikely that a petition to redraw the Texas-New Mexico border to locate more of the Permian in New Mexico would succeed, we are here today encouraging you to examine and address process inefficiencies that will help put states like New Mexico, with a heavy BLM presence, on a more level playing field with states like Texas, who still do not know what BLM stands for. This proposal, developed by Gov. Martinez, and signed on by five other western state governors, offers a practical and common sense approach to addressing the mountain of backlogged permits on federal lands.

When the BLM makes decisions for the multiple-use lands under its management, specifically decisions regarding mineral development, the decisions are primarily governed by three statutes—the Federal Land Policy and Management Act of 1976 (FLPMA), the National Environmental Policy Act (NEPA), and the Mineral Leasing Act. Often this collection of statutes has been perceived to be anti-development in nature. This perception is not in keeping with the statutory language. Consider the purposes of the statutes.

FLPMA instructs the BLM to manage its resources "based on multiple use and sustained yield" and in a manner that protects "scenic, historical, ecological [and] environmental" resources and values.[2]

NEPA instructs the federal government to cooperate with state and local governments to "foster and promote the general welfare, to create and maintain conditions under which man and

2 43 U.S.C. § 1701(a)(7)-(8)

nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans."[3]

The Mineral Leasing Act instructs the federal government to "foster and encourage private enterprise in (1) the development of economically sound and stable domestic mining, minerals, metal and mineral reclamation industries, [and] (2) the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs."[4]

FLPMA promotes multiple-use and sustained yield and the Mineral Leasing Act encourages private enterprise and economic development. These pro-development mandates are balanced by NEPA's environmental considerations. NEPA is not, however, intended to stymie development, rather implement a process to help find balance. Together these statutes promote both development and environmental protection. However, the current implementing processes under these statutes have been largely coopted by anti-development interests with the intent of stalling and preventing through delay the multiple use sustained yield mandate

II. The Proposals

Currently, there are over eight hundred Applications for Permit to Drill (APDs) pending approval in the Carlsbad, New Mexico BLM field office—the heart of the Permian. The BLM will eventually approve most, if not all, of these APDs, however, marshalling each APD through the present process will take an average of 250 days. These delays present significant costs to the federal government and the State of New Mexico. Given current oil and gas prices, over a one-year period these delays will cost the federal government over $1.3 billion and New Mexico over $700 million. These revenues are not deferred because of substantive FLPMA, NEPA, or other objections, rather these revenues are deferred solely because of process inefficiencies.

The proposals before the sub-committee eliminate process inefficiencies. They do not subjugate one statutory purpose to another, rather, they ensure that when circumstances call for limitations on development, those limitations will be based on substance and not process alone. Process for the sake of process should not be allowed to frustrate the multiple-use and economic development mandates.

a. No federal permit required for production activities on non-federal surface

The first proposal right-sizes the geographic scope of a BLM APD. Under current processes, field offices require an APD for production and exploration activities situated on non-federal surface if the activity penetrates federal minerals or if the operation is unitized/communitized with federal minerals. Under these scenarios, production/exploration activities situated entirely on private land would require an APD and consequently NEPA process if, for example, the increasingly common multiple-mile horizontal well-bore penetrates, even slightly, federal minerals, or if a well situated entirely on private surface that never penetrates federal minerals but is unitized with federal minerals.

3 42 U.S.C. § 4331(a)
4 30 U.S.C. § 21a

This proposal removes the APD requirement for production and exploration activities situated on non-federal surface if the operator submits to the BLM a state-issued permit to drill and the United States owns less than fifty percent of the target minerals.

b. NEPA categorical exclusions

The second proposal introduces practical NEPA categorical exclusions for certain activities conducted under the Mineral Leasing Act. Importantly, the new categories of activities are activities that mirror existing land-use activities or are categories of activities that have already undergone NEPA analysis. For example, drilling an oil or gas well at a well pad site at which drilling has occurred previously, or drilling an oil and gas well at new well pad sites, provided the new disturbance does not exceed 20 acres or the amount of acreage evaluated in prior NEPA.

I would recommend a slight tweak to the proposal as presently drafted and extend the time frame on current categorical exclusions to ten years. This makes sense because the last two Resource Management Plans have taken nearly five years to complete.

c. Notification of Permit to Drill (NPD)

The third proposal is perhaps the most impactful, and while novel in the oil and gas context, is not without precedent. This proposal shares attributes with the well-known Clean Water Act Section 404 nationwide permitting scheme, which has been in existence for decades. Under the proposed program, an operator submits a notification of a permit to drill in lieu of an APD, which notification must include certain specified items, such as a surface use plan of operations, a drilling plan, a well plat, evidence of bond coverage, the appropriate fee, etc. Assuming a complete notification and that the operation meets certain additional specified criteria, the operator can move forward with its proposed production activity, unless within 45 days it receives notice that the Secretary of Interior objects to the proposed production activity.

Like the Clean Water Act Section 404 nationwide permitting scheme, this proposal instructs the Secretary to develop regulations establishing procedures that will implement the program and further contemplates the preparation of a NEPA analysis as part of that rulemaking. The effect is to adjust the timing of the NEPA analysis. Rather than conducting NEPA upon receipt of an APD, the proposal contemplates a large, umbrella NEPA review contemplating oil and gas production activity within specified areas. Then, when an operator intends to move forward with production activity at a specific site, it must conduct a limited environmental review that must conclude that the actions described in the notification do not pose a significant effect to the environment or to threatened or endangered species.

III. Conclusion

In conclusion, the problem with energy development in New Mexico and similarly situated states is real. Waiting a year for a permit is an economic development poison-pill. These bills, like Governor Martinez's proposals, present practical and executable solutions that eliminate process inefficiencies and get the process of developing energy and an economy back on track. To the extent there are opportunities to pilot these or other similar proposals on a regional or state level, New Mexico is ready to get started.