Written Testimony of Ryan Flynn
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I. Introduction.

Chairman Gosar, Ranking Member Lowenthal, Members of the Subcommittee, thank you for the opportunity to provide testimony today about oil and gas development on federal lands in New Mexico. My name is Ryan Flynn and I am the Executive Director of the New Mexico Oil and Gas Association ("NMOGA"). Founded in 1929, NMOGA represents over 1,000 members who account for 95% of the oil and gas activity in New Mexico.

Before leading NMOGA, I worked in New Mexico Governor Susana Martinez's Administration for almost 6 years, where I served as Secretary of Environment and the Natural Resource Trustee. My experience in state government gave me firsthand experience dealing with the sort of problems inherited by Secretary Zinke and his staff at the Department of Interior's Bureau of Land Management. For example, when Governor Martinez took office in 2011, inconsistencies and delays plagued New Mexico's environmental permitting and enforcement programs. In one extreme case, a permit application was pending for over 18 years. Permit applications typically took years to review and permit conditions varied wildly depending on the individual permit writer. Enforcement decisions were at times were driven by political agendas with supplemental environmental projects occasionally being used to fund pet political projects. These permitting and enforcement issues gave the state a reputation for being a difficult place to conduct business, which in turn hindered investment in New Mexico. Beginning in 2011, under the leadership of Governor Martinez and with bipartisan support, we successfully implemented a series of regulatory reform efforts focused on various energy and environmental issues, including revisions to environmental permitting and enforcement programs. Permitting times decreased dramatically. For example, New Mexico air quality permits are issued in 45 days or less, and applications for permits to drill ("APD") are issued in 10 days or less. While permitting programs became more efficient, the state's enforcement programs remained strong. During my tenure, we collected approximately $250 million in fines for violations of environmental regulations, the overwhelming majority of which were collected from federal agencies operating in New Mexico, such as the U.S. Department of Energy.

While Secretary Zinke and his staff inherited some major challenges at the BLM, I believe he is the perfect fit for leading the Department of Interior and I have no doubt he will turn this situation around. His success in this regard will have a profound impact on the State of New Mexico. In the past year, major acquisitions and purchases in New Mexico have totaled over $13 billion and oil production has dramatically increased on non-federal lands. While the rest of New Mexico's economy struggles to gain a foothold, the state's oil and gas industry remains a bright spot. Strong leadership at the state level has helped New Mexico's oil and natural gas industry remain strong over the past few years, yet the state has not fully realized its resource development potential due to problems at the BLM. Specifically, delays for approving permits and rights of way is costing New Mexico and the federal revenue millions of dollars each day. NMOGA estimates $1,473,000 in federal royalty and $831,325 in state severance is *deferred each day* due to BLM's administrative problems. With early projections showing the state facing a potential deficit of $200 to $250 million for the fiscal year 2018, the lost revenue associated with administrative issues plaguing development on federal lands in New Mexico is a critical issue that must be addressed immediately.

II. New Mexico's Oil and Gas Industry

The oil and gas industry is New Mexico's most important industry. In 2016, the oil and gas sector contributed more than $1.6 billion to the state's general fund for schools, hospitals, and roads, and employed over 100,000 people. For context, New Mexico's total budget for 2016 was $6.2 billion, making the oil and gas industry's contribution approximately 25.8% of the total budget in 2016. Nationally, New Mexico is one of the top energy producing states in the entire country, ranking 5th in crude oil production and 8th in natural gas production. New Mexico is also a leader in other forms of energy production, such as renewables.

New Mexico's oil and gas industry remains resilient even through a prolonged period of low prices. In the last 8 months, major acquisitions and purchases in New Mexico have totaled over $13 billion, and the New Mexico portion of the Northern Delaware Basin has recently been the focal point of the some of the most expensive acreage-basis oil and gas acquisitions in the world.

The Oil Conservation Division and the State Land Office are primarily responsible for regulating the oil and gas industry at the state level while BLM is charged with leasing, selling, and generally managing oil and natural gas reserves on federal land. BLM's field offices in New Mexico are among the busiest in the nation. In calendar year 2016, New Mexico was the largest producer of oil and gas from federal lands, accounting for 78,646,829 bbls of oil (53% of NM oil production) and 771,601,140 mcf of natural gas (65% of NM gas production).

III. Challenges to Oil and Gas Development on Federal Lands in New Mexico

While New Mexico's oil and gas industry has been resilient during this difficult period of low prices, challenges to the industry's ability to capitalize on the recent investments remain. The greatest challenge today is regulatory uncertainty at BLM. Although there is a distinct advantage to operating on the New Mexico side of the border in terms of royalty rates (12.5% for New Mexico federal vs 25% for Texas fee land), the fact remains that operators are willing to pay a premium to develop in areas where regulatory certainty can be relied upon as a matter of course. For example, the Baker Hughes rig count from the week of June 16, 2017, indicates the discount economic factor associated with the federal royalty rate for New Mexico production is not much of an incentive, with only 59 rigs running in the New Mexico Permian versus 309 in the Texas Permian. While some of this may be due to the majority of surface acreage defined as the Permian Basin being on the Texas side of the line, it cannot account for the fact that New Mexico has some of the most sought-after geology and development potential, yet consistently trails Texas where development is concerned. The oil and gas industry invests millions of capital budget dollars in development projects when presented with a level playing field, and a lack of regulatory certainty is driving more investment to Texas than New Mexico.

Operators working through BLM's Farmington Field Office ("FFO"), which regulates all production in New Mexico's San Juan Basin, have seen drilling permit wait times approach the 500-day mark, with an average wait time of nearly one year for a standard application for a permit to drill ("APD") without revisions. By contrast, New Mexico's Oil Conservation Division, the state agency handling drilling permit, approves APDs in 10 days or less. Better management practices are required to remedy a lack of procedural uniformity, which often leads to multiple, differing interpretations of policies and protocols for document review. While industry appreciates the efforts of some individual staff members to create workarounds in this cumbersome system, there is no regulatory certainty in APD processing from the FFO. Additionally, the FFO does not use tools already at its disposal, such as categorical exclusions and pre-established protocols for NEPA review, that would go a long way towards getting projects initiated and revenue flowing to the federal government and the State of New Mexico.

The rights of way ("ROW") process at the FFO is likewise inefficient, with operators waiting up to a year for approvals. By contrast, the state approves ROWs in 45 days or less. Recent internal changes to the determination of the ROW starting point have hindered infrastructure projects, and constitute a drastic departure from the FFO's previous interpretation of lease rights and product transport guidelines. Additionally, poor coordination between BLM, the Bureau of Indian Affairs and various other tribal authorities has resulted in severe delays for ROW approvals. In addition to these difficulties in the ROW process, new interpretations of threatened and endangered species requirements have curtailed development on federal lands in the San Juan Basin due to a lack of regulatory flexibility and a seeming unwillingness to work with industry in this regard.

The Carlsbad Field Office ("CFO") is responsible for processing applications for development in New Mexico's portion of the Permian Basin, a region witnessing a drastic uptick in development from the low point of severely-depressed commodity pricing in early 2016. While it might seem that one of the most prolific oil and gas plays in the world should merit additional resources to alleviate a permitting bottleneck, this was not the case at the CFO until recently. Fortunately, Secretary Zinke and his staff have recently begun giving the Permian Basin the attention it deserves. Currently in the Permian Basin, operators wait an average of 250 days for an APD, and over a year for a ROW. Companies that diligently follow up on applications with CFO staff can achieve shorter wait times, but this is not an optimal solution for either industry or the CFO staff, especially as the area sees a resurgence in activity associated with major recent merger and acquisition activity.

The biggest challenges facing the CFO include a lack of personnel in key positions, and a cumbersome and relatively unworkable permit processing system, referred to as the Automated Fluid Minerals Support System 2 ("AFMSS 2"). AFMSS 2 was designed to expedite and automate permit processing, but has so far failed to deliver on either of these promises. Concurrent processing of different portions of APDs and ROWs by specialists responsible for independent sections of the permitting process was replaced by a completely linear system that does not allow for even simple edits by the CFO staff. The rigidity of the system has resulted in

70% of submissions being rejected for deficiencies, when historically there were very few deficiencies reported at the CFO. In short, AFMSS 2 has failed to deliver on its promise of greater efficiency and the system needs to be fixed or replaced.

Overall, BLM suffers from a lack of staffing, a poorly designed and cumbersome new system in the AFMSS 2 program and systematic irregularities in permit processing protocols. The APDs and ROWs processed by both the FFO and CFO are generated in spite of the organizational structure, rather than as the natural output of the organizational structure. While APDs and ROWs are the most significant instruments in terms of volume, BLM is also responsible for other important permits - such as unitizations, communitizations and commingling agreements - that also experience similar delays while moving through the current maze of the BLM approval process. These delays translate directly into lost revenue for federal and state stakeholders alike. NMOGA estimates $1,473,000 in federal royalty and $831,325 in state severance is *deferred each day* based on an April, 2017, count of 491 APD backlog (assuming wells were drilled and producing at conservative rates). In a state like New Mexico, where oil and gas revenue typically constitutes roughly one-third of the state's budget, fixing BLM's permitting issues will provide immediate economic benefits.

IV. Opportunities to Improve BLM's Operations in New Mexico

While there are many challenges to overcome on the path to a more efficient regulatory process at BLM, several identifiable opportunities for improvement exist. Simple edits to the AFMSS 2 program to allow BLM staff to edit permits moving through the application corridor will greatly enhance the workability of the system. Additional staff dedicated to permit processing (at the CFO in particular) will essentially guarantee a good return on investment for both state and federal entities, as expediting drilling permits and ROWs translates directly into severance tax and royalty dollars that can be put to good use for the taxpayers. Agreements with state regulatory authorities could transfer some of the more tedious work of processing permits from the BLM to local authorities. For example, even a small, focused pilot program aimed at allowing the New Mexico Oil Conservation Division to process the downhole engineering portions of APDs would free up much-needed time for BLM staff to focus on multi-use land management on the surface and expedite the entire application process. Lastly, BLM should make use of existing laws, such as categorical exclusions that allow for expedited review and approval of permits.

V. Conclusion

New leaders at the federal government, including President Trump and Secretary Zinke, are enacting good policies and regulations that are breathing fresh air into American energy production, and helping ensure the United States leads the way in safe and responsible energy production. Addressing the administrative issues at BLM, which are currently restricting access to federal lands, is critical issue that must be addressed immediately if the United States is going to fully realize the development potential of our oil and gas resources.