



November 4, 2013

Submitted via email to: NM_LCDO_Comments@blm.gov

Ms. Jennifer Montoya
Bureau of Land Management
1800 Marquess Street
Las Cruces, NM 88005

RE: Western Energy Alliance Comments, TriCounty Draft EIS/RMP

Dear Ms. Montoya:

Western Energy Alliance submits the following comments to the Bureau of Land Management (BLM) regarding the TriCounty Draft Environmental Impact Statement/Resource Management Plan (DRMP). Western Energy Alliance represents over 400 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in New Mexico and across the West. Our members have a vested interest in decisions made by BLM for the TriCounty DRMP planning area (Sierra, Otero, and Doña Ana Counties) that affect valid existing oil and gas lease rights, as well as future leasing, exploration, and development activities.

Background

In 2005 BLM attempted to amend the existing RMP to address fluid minerals, and subsequently issued a lease in the Bennet Ranch Unit. However, challenges in the New Mexico Federal District Court and Tenth Circuit Court of Appeals resulted in decisions to set aside the RMP amendment, and the existing lease cannot be executed until the mandated NEPA analysis is complete.

The courts ruled that site specific analysis under the National Environmental Policy Act (NEPA) was required, that the public was not given adequate opportunity to comment on significant changes to the alternatives during the process, that there was not a sufficient range of alternatives, and that BLM failed to sufficiently analyze potential impacts to the Salt Basin Aquifer.

At this point, BLM has stated that it requires more time to gather sufficient data on oil and gas leasing and development to fulfill the courts' requirements, and that it does not wish to further delay management planning for the non-fluid mineral resources within the planning area. As such, it has decided that the DRMP will defer all oil and gas leasing within the planning area until after the TriCounty Resource Management Plan is complete, and will later amend the RMP with a Programmatic Environmental Analysis of oil and gas leasing.

Necessity of Comprehensive Planning

We strongly believe that BLM cannot adequately assess the various uses within the planning area and how they will interact by conducting the planning process in a piecemeal manner. Resources do not exist in isolation from one another, and the purpose of an RMP is to determine the appropriate uses of public land, to what extent and where they may take place, and importantly, how various resources and uses may impact one another. This is done in accordance with the multiple use mandate found in the Federal Land Policy and Management Act (FLPMA). Omitting analysis for an entire leg (minerals) of the multiple-use stool would create an unbalanced result.

The District Court ruling was handed down in 2006, and the Tenth Circuit ruling in 2009, so BLM has already had several years' time with which to conduct oil and gas analyses, yet has chosen to segregate this one resource use and subject it to further delay, while giving no indication of how long it expects the process to last. BLM should therefore reconsider its intent to draft the RMP revision in fragments over an indefinite length of time.

Valid Existing Rights

The DRMP offers an assurance that, "(a)s a valid existing right, any areas currently under lease would be managed according to existing regulations and lease terms and conditions; this would not be changed by new land use plan decisions."¹ However, the DRMP also states specifically that when the District Court set aside the 2005 RMP amendment, it ordered BLM "not to 'execute the 2005 Bennett Ranch Unit lease without first conducting an appropriate environmental analysis pursuant to NEPA'".² This would seem to negate BLM's assurance that currently leased parcels will not be negatively impacted.

The DRMP further states that as a result of the deferral, any existing leases would continue "until those leases expire *and would not be renewed* (emphasis added).³ BLM needs to provide assurances that it does not plan to simply run out the clock on existing leases while it conducts the required additional analysis. Conducting environmental analysis is a time consuming process, and indefinitely delaying oil and gas analysis beyond the timeframe for developing the remainder of the RMP severely impacts lease holders' ability to develop the resource.

Proposed Otero Mesa Grasslands Area of Critical Environmental Concern (ACEC)

The DRMP states that "During the last several years, the area of greatest interest for oil and gas leasing and exploration has been Otero Mesa..."⁴ It further acknowledges that,

¹ TriCounty Draft EIS/RMP, Section 2.4.4.6, page 2-84

² Ibid., Section 1.6.5, page 1-13

³ Ibid., Section 4.4.6.2.2, page 4-85

⁴ TriCounty Draft EIS/RMP, Section 4.4.6.2.2, page 4-85

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“There was a gas discovery on Otero Mesa in Otero County in the late-1990s and interest in exploration in that area increased substantially but it is still not clear if extensive energy resource development will occur in Otero Mesa.”⁵

Even while recognizing the interest in Otero Mesa for oil and gas resources and admitting that there is uncertainty about the level of future resource development, BLM proposes to designate an ACEC for Otero Mesa. The proposed ACEC would encompass 198,511 acres under the preferred alternative. This proposal, with the concurring visual, surface impact, and right-of-way restrictions among others would severely constrict any future attempts to explore for and develop oil and natural gas, a land use which BLM is currently excluding from the planning process. This underscores Western Energy Alliance’s contention that the planning process cannot be effectively conducted in a disjointed manner. Management decisions made with an incomplete range of data are sure to have detrimental impacts on certain resource uses.

Conclusion

As BLM cannot effectively conduct the planning process without all resource uses being considered and analyzed concurrently, BLM should refrain from completing the RMP until such time as it has sufficient data to include oil and natural gas development. If BLM chooses to move forward in a fragmented manner, it should not consider any management prescriptions that impose restrictions on a resource use that does not currently have a seat at the table.

Western Energy Alliance appreciates the opportunity to comment on the TriCounty Draft EIS/RMP. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Kathleen M. Sgamma
Vice President of Government & Public Affairs

⁵ Ibid., Section 3.5.2.1.1, page 3-87