



P. O. Box 1864 · Santa Fe · NM · 87504-1864 · 505.982.2568 · www.nmoga.org

March 3, 2023

Sophia Varnasidis
Director of Legislative Operations
Committee on Natural Resources

Dear Ms. Varnasidis,

Thank you for the opportunity to participate in the Subcommittee on Energy and Mineral Resources on Monday, February 13, 2023, at the University of Texas Permian Basin Midland Campus during the field hearing titled "Federal Energy Production Supports Local Communities".

We appreciate the committee asking for input from the industry in New Mexico and we are pleased to provide answers to the additional questions forwarded from Representative Westerman, which are attached.

Please don't hesitate to contact us with further questions or needs concerning the Oil and Gas Industry in New Mexico. Once again, we are very grateful for the staff and committees support and interest in the industry in New Mexico, and we stand ready to assist in any way.

Thank You.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug Ackerman", written over a horizontal line.

Doug Ackerman
President & CEO
New Mexico Oil & Gas Association

1a. Do you think that BLM headquarters should allow and encourage BLM field offices with excessive APD delays to prioritize APD approval by working proactively with the private sector to ensure the necessary information is submitted and reviewed in a timely manner to comply with the 30 day deadline for APD approval in the Mineral Leasing Act?

Absolutely. While the permitting staff in the Carlsbad Field Office (CFO) attempts to prioritize permitting needs of those member companies of ours who pursue direct engagement with the office, the average number of days an application for permit to drill (APD) remains pending until final approval from the CFO is currently averaging around 500 days. Moreover, our members are forced to logistically manage their rig lines while dealing with a number of "overdue" permit instances in which the CFO surpasses the 700+ pending days threshold prior to their approval. Any encouragement or additional effort made by BLM headquarters to facilitate additional prioritization between their field offices and the private sector to ensure necessary information is reviewed in a timely manner would be extremely beneficial to our members.

It is important to note that the industry is doing our part to ensure these APDs are submitted complete by participating in workgroups to standardize the APD (this was done in the past & we are trying to get another workgroup together with CFO). Some items inside the APD are left to the Authorized Officer for interpretation. Certain NRS (Natural Resource Staff) ask us to complete the APD in AFMSS 2 then add several attachments at the end of the APD for their review while others only require the necessary attachments required for AFMSS 2. NRS staff seem to focus on different goals, ex. one may not require cut/fill diagrams while another will require it. The goal of AFMSS 2 was to make a standard APD that anyone in the county could approve so that other field offices could assist with approving APDs. Industry provides 3rd party surveys for several of the specialists, cave/karst, botany, archaeology, and any other that is required by BLM. This is costly for industry but is a requirement for BLM to approve APDs so we pay it.

1b. Do you think BLM headquarters should consider a reallocation of resources and staff to local BLM field offices with excessive APD delays to alleviate permitting backlogs?

Certainly. In fact, a review of the Automated Fluid Mineral Support System (AFMSS 2.0) data suggests that other state / field offices with a disproportionately lower volume of APD's submitted per rig line operating in their respective region(s), have been able to process APD's with greater efficiency. Therefore, an extensive review of personnel and subsequent reallocation of resources to those field offices such as the CFO with excessive APD delays (even in the form of a

temporary strike team and/or remote personnel support given the digital permit processing system) would be highly beneficial to our member companies. This could alleviate many of the 3rd party surveys. Additionally, AFMSS is routinely down or encounters errors that lead to prolonged and unnecessary delays in processing permits. Investing in the technology/infrastructure behind the AFMSS platform to keep it functioning at the highest levels would be beneficial.

2. What else can the BLM and Congress do to address permitting backlogs and ensure permits are issued in a timely manner?

A. Ensure Utilization of Congressionally Directed NEPA Efficiencies - Congress should ensure that the original intent of Section 390 of the Energy Policy Act of 2005 is realized by expressly directing those categorical exclusions be utilized for projects meeting the specified criteria, and strictly limit when an agency may decline their use. Congress specified that certain activities were to be excused from burdensome (or duplicative) NEPA requirements because they were determined to not have a significant effect on the human environment (e.g. drilling on existing well pads). In practice, BLM frequently declines to utilize these Congressionally directed efficiencies, although a high rate of submitted APD's would meet one of the five statutorily codified exclusions. Furthermore, given existing impediments to the express authorizations of these previously codified exclusionary criteria, BLM headquarters should develop clear and concise Guidance that honors the intent of Congress in defining these instances and encourage a rollout and implementation plan with each field office in which they're tasked with adhering to such.

B. Overhaul the existing Office of personnel Management (OPM) onboarding process to ensure streamlined reallocation and recruitment of human resources within the Bureau of Land Management – Currently, it is NMOGA's understanding that approximately 35% of approved positions throughout the state of New Mexico's BLM field offices remain unfilled due to archaic background review and onboarding processes taking up to two years, on average, to fill announced and published roles. Should this Congress or Administration wish to achieve energy prosperity for the country moving forward, regardless of what energy forms (fossil or non) you may support, we will have to instill efficiencies in the onboarding process to appropriately staff the agency for adequate permit processing. This may also include consideration of unique incentives to incentivize and attract field specialists (e.g. archeologists, botanists and biologists) to certain regions, along with the consideration of "remote" employee retention to support digital processing of permits.

C. Mitigate Unnecessary Delays Caused by NEPA Litigation - Congress should change the standard for judicial review of NEPA determinations by amending

NEPA to only allow courts to set aside agency determinations for reasons of abuse of discretion and/or allow agency determinations to stand if they are in substantial compliance with NEPA. Congress should also limit standing to challenge NEPA determinations by adopting modest, but clear thresholds, for parties to establish standing to challenge agency determinations under NEPA and associated agency actions.

D. Streamlining APD Permitting - To decrease unnecessary burdens on BLM resources and improve the administration of APD permitting, Congress should enact the following statutory provisions:

- i. Require BLM to develop regulations to allow APDs to be issued through provisional permitting (permitting-by-rule); and
- ii. Require that APDs be issued for a minimum of four years, instead of two years with the potential for a two-year extension; and
- iii. Automatically extend APD terms throughout the full duration of any litigation challenging the APD and BLM corrective action.

E. Clarify BLM's Limited Discretion to Defer Lease Sales - Congress should clarify that the MLA substantially limits BLM's authority to defer oil and natural gas lease sales and confirm that BLM must conduct lease sales at least quarterly. Congress should clarify that the MLA only allows BLM to cancel or suspend a specific lease sale if doing so would violate a clear statutory requirement or obligation. Additionally, Congress should clarify that the Interior Secretary shall issue the leases to the winning bidder within 60 days of auction, with no delays allowed for protests or other analysis before the acreage is issued. The Secretary shall issue the lease, not put it into suspension or place it under a hold until protests are resolved. Once the parcel is offered at sale, the protest is deemed cleared.

3. How can this administration encourage companies to reinvest capital in exploration to increase production and drive down oil and natural gas prices? Amidst the global backdrop of high energy prices and skyrocketing inflation, the Biden Administration should ensure it's doing all it can to support continued access to produce oil and natural gas on federal lands. The US Department of the Interior should hold regular lease sales, as statutorily required by the Mineral Leasing Act. Additionally, permits and Application for Permit to Drill (APD) should be approved in a timely manner. The Biden Administration's historically low federal acreage reduction in leasing, along with its myriad of new regulations, coupled with the omnipresent risk of litigation, create serious challenges for operators working to responsibly develop federal mineral resources. To ensure NMOGA's members can meet growing energy demands, Congress should promote infrastructure development and reform the permitting process. Streamlining the National Environmental Policy Act (NEPA) process and ending obstruction of oil and natural gas projects in the permitting process will spur project investment in

energy infrastructure. And lastly, NMOGA member companies need regulatory certainty. While our members often exceed federal regulatory standards as part of their efforts to operate safely and efficiently, certainty is key to deploying capital and we respectfully request that this Administration ensures federal regulations are technology-neutral, flexible, cost-effective, and not duplicative of other federal and state regulations. Approve more APDs & ROWs. APDs receive much of the attention but ROWs are just as important to produce wells without flaring/venting. ROWs cut down on truck traffic which also reduces emissions and allows for safer travel. Industry is being asked to perform 3rd party environment assessments for the BLM to help speed up approval times.