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Mr. Jesse Juen
State Director
BLM New Mexico
301 Dinosaur Trail
Santa Fe, NM 87508

Mr. Jeff Pappas
State Historic Preservation Officer
State Of New Mexico
407 Galisteo Streen, Suit 236
Santa Fe, NM 87501

By: Email to gdamone@blm.gov

Re: Comment on May 28 2014 draft state protocol between NMBLM and NMSHPO regarding the manner in which BLM will meet its responsibilities under the National Historic Preservation Act

Dear Mr Juen and Mr. Pappas;

On behalf of the 400 member companies of the Independent Petroleum Association of New Mexico, thank you for the opportunity to comment on your draft state protocol between the New Mexico BLM and the New Mexico State Historic Preservation Officer regarding the manner in which the BLM will meet its responsibilities under the National Historic Preservation Act.

The Independent Petroleum Association of New Mexico, IPANM, represents several hundred independent oil and gas producers who live, work and employ New Mexicans. We

are small, with, on average, 25 employees who often wear multiple proverbial hats, but we provide enough revenue to the State of New Mexico to support 31% of the General Fund¹. We strive to be stewards of the land in a state where nearly 41.8% of the land is federally owned. The Bureau of Land Management New Mexico office manages one of the largest oil and gas programs in the agency controlling 13.4 million acres of public lands and 26 million subsurface acres of federal oil, natural gas, and minerals. There are currently 30,561 active wells on federal lands² ranking New Mexico sixth in crude oil production in the nation in 2013³. New Mexico's marketed production of natural gas accounted for 4.8% of U.S. marketed natural gas production in 2012, despite a decline in production of 20% between 2007 and 2012⁴. According to the Office of Natural Resources Revenue, in FY 2013 the Federal Government disbursed \$478,732,193.90 in revenues to New Mexico⁵, which is only 48% of the total royalty revenues collected for oil and gas operations on NM federal lands.

General Comments to the Protocol Document:

As a preliminary matter, IPANM notes that the role of the surface lessee or mineral lessee who is the party that, in general, will make initial unintended discovery of a cultural resource, is significantly minimized in this proposal. IPANM would point out that the lessee has a legal right to be on the property pursuant to a legal arrangement and that the discovery of a cultural resource significantly impacts the lessee's activities on that land. IPANM would respectfully request, therefore, that the parties directly impacted by the BLM action would be included in the consultation conversations and exchange of reports between the SHPO and BLM.

¹ "Fiscal Impacts of Oil and Natural Gas Production in New Mexico: Preliminary report", New Mexico Tax Research Institute, Jan 2014.

² <http://www.emnrd.state.nm.us/OCD/documents/OCD%20Well%20Statistics03272014.pdf>

³ <http://www.eia.gov/state/?sid=NM>

⁴ Id.

⁵ <http://statistics.onrr.gov/ReportTool.aspx>

Specific comments Protocol document.

In Section III at Biii, pertaining to meetings and communications between the BLM and SHPO, it states, “*under special conditions, such as staffing shortages, unforeseen events, or non-discretionary actions, specified time frames for SHPO review may be extended.....*”. IPANM would strongly object to this open ended statement. First, oil and gas operators have a legal contract with the BLM to extract minerals within a specified time frame. Personnel shortages at the SHPO, who is not a party to the legal contract between the lessee and the BLM, should not be considered a mitigating reason for an extension for SHPO to review a BLM decision. IPANM would recommend this paragraph be stricken in its entirety as it is vague, it is unclear if the ‘specified time frames’ as written refers to the time frames for communications between the BLM and SHPO for the time frames for SHPO to review and approve the work plans which will affect the oil and gas operator.

Page 21.B First paragraph and second paragraph. IPANM is concerned that the new consideration of ‘indirect and cumulative effects to historic properties and their associated settings’ is too broad and vague. This is an expansion of the technical geographic area that could be considered an ‘area of potential effect’. Again, IPANM would request that the lessee directly affected by this expansion would be included in discussions prior to a final determination by the BLM.

Specific Comments to Appendix F:

page 1 A.i requires SHPO to have 30 days to review an Undertaking Specific Discovery Plan. IPANM would be concerned that this provision would add another 30 days to the waiting period for an APD.

Page 1 A.ii requires a ‘monitoring method that will be used during surface disturbing activities.’ IPANM is unsure of that this entails. Would this be monitoring of the surface, ie. Cameras? Further, what is considered a surface disturbing activity? IPANM would suggest the BLM and SHPO be aware of the case of *Woody Investments Inc. v. Sovereign Eagle, LLC*, Ct. App. No. 32,830 before the New Mexico Court of Appeals. IPANM

filed several Amicus briefs on the issue of whether geophysical surveying could be considered surface disturbing activities under the New Mexico Surface Owners Protection Act at NMSA 1978, §§ 70-21-1 to -10(2007). In this case, the parties are asking the courts to resolve the question of what are surface disturbing activities to justify compensation on both private and state trust lands.

Page 1 A.iib requires a communication strategy. IPANM is unclear as to what this communication strategy will be. We would request that after the signing of this protocol that the BLM issue a letter to producers and archeological contractors on file that will outline what a communication strategy will be – who to call at the BLM, their phone numbers. Under this protocol, it is unclear whether an operator needs to call SHPO at all when leasing and uncovering a potential cultural resource on federal lands.

Page 2 A.ii.c requires a ‘training plan’. IPANM is unclear as to how detailed a ‘training plan’ must be. IPANM members should not have to bear the cost and liability of training all personnel to recognize a cultural resource. IPANM would suggest the BLM hold a workshop and prepare a pamphlet with the information our employees must be aware of when discovering a potential cultural resource or historic property.

Page 2.B.i Unanticipated discoveries. IPANM is concerned that the 48 time frame for BLM to notify SHPO will result in significant delays. We would request a 24 hour notification of SHPO since this can be done by email. IPANM would also request that the affected operator be included on the email so that we are aware the SHPO has been notified. We would also ask that the affected mineral and grazing lessees be notified by the BLM Cultural Resource Specialist or BLM permitted Archaeological consultant within 48 hours that they will be evaluating the site. The notification, which can be completed by email, should include information on the date and time of the visit and include a phone number. Further, IPANM is unclear as to which “persons in the area who are associated with the project’ need to be notified that they will be subject to criminal penalties. This burden is not upon a private citizen to notify another person, the notice of potential violation and a threat of criminal penalties is the responsibility of the agency. IPANM members should not be legally responsible for securing a site without an adequate, timely

response from the agency and thus are requesting notification with a time certain from the agency so that we can determine the level of need for securing a site. Further, 'associated with' implies a legal connection to the project that needs to be clarified in this context.

Page 2.B.ii, IPANM would request that the lessee be included in these consultations and discussions. It is unclear if the lessee is considered a 'consulting party' in this context. Further, the cost of the evaluative testing done to determine the level of eligibility and integrity of the resource should be paid for by the BLM or SHPO.

Page 3 C.2 IPANM would request the last sentence of C1 be applied to the SHPO to request the project applicant redesign of the project. We would also request a time certain for review and decision by the BLM as to the project redesign. IPANM would also request that if any meetings between BLM and SHPO occur regarding the project redesign that the applicant be present in order to provide the agencies with accurate information.


In conclusion, IPANM supports most of the protocol updates between the BLM and SHPO. However, we would request more notification and involvement towards developing mitigation strategies should one of our members discover a potential cultural resource or historic property. In the age of electronic communications and 24 hour availability through smart phones, we are concerned that the time frames for communications in this protocol document are too lengthy. Further, as we are expending significant resources out on location, we cannot agree to open ended extensions for lack of personnel at either agency. Since we have a legal responsibility to meet certain imposed time frames, we feel that the agencies should try to assist lessees by not unreasonably extending time periods for responses from an understaffed the agency. We agree that communication between the two agencies is paramount and this document outlines that level of communication, however, we would request that since our operators have expended funds and resources to develop a lease that we be included in those discussions.

Thank you for the opportunity to comment on draft state protocol between the New Mexico BLM and the New Mexico State Historic Preservation Officer regarding the

manner in which the BLM will meet its responsibilities under the National Historic Preservation Act. Should you have any questions or comment to this document, please feel free to contact me at Karin@ipanm.org or at (505) 238-8385.

Respectfully submitted,

INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO

A handwritten signature in black ink, appearing to read "Karin V. Foster", is written over a horizontal line. The signature is stylized and somewhat cursive.

By: Karin V. Foster, esq.

Executive Director