



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240



SEP 29 2008

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## DECISION

Pitkin County Commissioners  
Pitkin County  
Aspen, Colorado 81611

### August 14, 2008 Competitive Oil & Gas Lease Sale Protest Of Parcel COC73064 through COC73094 Is Dismissed

NOTE: Due to the high volume of protests, the official BLM protest response is posted on the BLM Colorado website, [co.blm.gov](http://co.blm.gov). This paper copy is provided to you as a courtesy.

Your letter was received in our office on July 24, 2008, protesting the above named parcels offered in the August 14, 2008, Competitive Oil & Gas Lease Sale.

**Protest Point 1: BLM has failed to abide by the recommendations of its own field staff, the State of Colorado, and other cooperating agencies.**

**Response:**

The BLM involved local communities, Garfield County, and the State of Colorado extensively as cooperating agencies throughout the process leading to the final decision. Given varying perspectives, consensus among all parties was not achieved, but all concerns were addressed and incorporated to the extent practicable within the range of alternatives considered and analyzed, as required by the National Environmental Policy Act (NEPA). Indeed, the concept of phased and clustered ridgetop development atop the plateau, with a maximum of 350 acres (1 percent of the area) allowed to be in a disturbed condition at any one time—which is the cornerstone of the Resource Management Plan Amendment and final Environmental Impact Statement (PRMPA/FEIS)—was based heavily on specific input by the Colorado Department of Natural Resources (CDNR). Although the BLM acknowledges a large amount of support for protecting the top of the Roan Plateau from natural gas drilling, it is also important to note that a significant portion of the local community and other stakeholders expressed a desire to see as much production of natural gas from BLM lands in the planning area as practicable.

The Draft EIS considered a wide spectrum of alternatives based on input from concerned citizens, local communities and cooperating agencies. In the Draft EIS (DEIS), the BLM addressed an alternative (Alternative I) that would not allow oil and gas development on top of the plateau. Alternative II of the DEIS included protection of wilderness characteristics and natural values through the use of No Ground Disturbance/No Surface Occupancy (NGD/NSO) stipulations, as well as the designation of four large Areas of Critical Environmental Concern (ACECs) proposed to address visual, fish, wildlife, and plant values. Alternative III of the DEIS deferred drilling on the Upper Plateau and included mandatory protections for lands below the cliffs.

The BLM considered a full range of alternatives regarding designation and sizes of ACECs. The agency examined the relevant and important values and special management attention to protect these values during the analysis in the DEIS, considered comments received by the public and cooperating agencies, and proposed the four ACECs included in proposed RMPA/FEIS. The BLM followed a process regarding designation of ACECs that allowed for further public review and comment to comply with 43 CFR 1610.7-2. The BLM's considerations included the determination that the proposed ACECs provide an adequate level of protection for the values present, including rare plants, sensitive wildlife, the Colorado River cutthroat trout, and visual resources, among others. These considerations are consistent with Federal Land Policy and Management Act (FLPMA) and BLM guidance (BLM Handbooks H-1601-1 and H-1613) and the requirement to analyze a range of alternatives (40 C.F.R. § 1502.14).

Although smaller in area than proposed by the Colorado Department of Natural Resources and various local communities, the final RMPA represents an increase in the acreage of ACECs as compared to the Preferred Alternative of the DEIS.

One or more NSO/NGD stipulations which protect a variety of sensitive resource values will be applied to leases issued within the proposed ACECs. Table 2.2 of the PRMPA/FEIS describes the proposed management prescriptions for ACECs and outlines such stipulations. For example, relevant and important criteria used to define the ACEC boundaries, and which would be protected by NSO/NGD stipulations, include high- and moderate-risk habitat for the Colorado River cutthroat trout for the Trapper/Northwater and East Fork Parachute Creek ACECs, wildlife security areas below the rim as mapped by Colorado Division of Wildlife (CDOW) for the Magpie Gulch and Anvil Points ACECs, and old-growth Douglas-fir forest for Magpie Gulch. For public land and resource values atop the plateau that lie outside the boundaries of the ACECs, BLM has provided a variety of other conservation/protection safeguards, including a controlled surface use (CSU) stipulation for the entire Parachute Creek Watershed Management Area, which includes all of the upper plateau.

**Protest Point 2: BLM has failed to consider alternatives that would provide meaningful protection for the RPPA's wilderness-quality lands.**

**Response:**

The BLM did consider an alternative that would protect and maintain areas found to have wilderness character (Alternative II in the PRMPA/FEIS). Wilderness character and related values (characteristics) are addressed in Section 4.5.8 of the FEIS. Traditional uses associated with wilderness values are also included in discussions relating to recreation, tourism, hunting, and wildlife in Chapter 4 of the final EIS. Though the final RMPA does not specifically manage areas to protect wilderness character, it does include prescriptions protecting other resources;

these prescriptions protect some wilderness characteristics in portions of the planning area. It is important to note that management for protection and maintenance of wilderness character and related values is discretionary for the BLM, under FLPMA § 202.

**Protest Point 3. BLM failed to consider alternatives that would protect the RPPA's high-quality backcountry recreation lands, in spite of massive public support...and the agency's own analysis that such lands are both a limited and quickly diminishing resource in the Piceance Basin.**

**Response:**

Recreational uses, including backcountry uses, were considered in the PRMPA/FEIS, and the vast majority of lands atop the plateau were placed in an Extensive Recreation Management Area (ERMA). Management prescriptions for the ERMA were developed in accordance with the plan's goal to "...emphasize balance in managing for a variety of multiple resource uses incorporating outcome-based adaptive management, to protect key biological and aesthetic resources while developing oil and gas resources in a systematic, clustered, and staged manner" (p. 2-27 of the PRMPA/FEIS). Additionally, the multiple NSO/NGD stipulations applied to protect a variety of sensitive ecological, hydrologic, and visual resources in the generally unroaded stream valleys would also protect these areas for backcountry recreation, as would the Visual Resource Management (VRM) Class I area of the East Fork Parachute Creek waterfall and box canyon. The phased ridge-by-ridge development was incorporated into the RMPA, with only one ridge available for development at any one time, also has the benefit of keeping the remaining ridges and intervening valleys available for backcountry recreation.

Regarding Alternative F, the DEIS and FEIS explained that BLM has interpreted the Transfer Act as directing that the transferred lands in Naval Oil Shale Reserves No. 1 and 3 be made available for oil and gas lease, consistent with the Federal Land Policy and Management Act. For this reason, the BLM concluded that Alternative F did not comply with the Transfer Act. Elements of Alternative F and the other "preliminary alternatives" were therefore reworked into the five alternatives analyzed through the planning process. For example, in various alternatives, the DEIS and FEIS analyzed the following: no new leasing on top of the plateau (44,267 acres); management of 21,382 acres for the protection of wilderness characteristics in three areas totaling 36,184 acres; protection of 7,883 acres within eligible wild and scenic river corridors; and strict management of motor vehicle travel.

**Protest Point 4. BLM has failed to properly consider the impacts of its decision to lease all the public lands in the Roan Plateau Planning Area.**

**Response:**

The BLM adequately analyzed direct, indirect and cumulative impacts to the extent that they were applicable to the resources. The EIS analyzed the impacts of leasing-level decisions and addresses cumulative impacts relating to such leasing, based on a reasonable projection of activities. The EIS is not intended to provide a "full-field" or similar development analysis, given that currently, only an examination of leasing and the likely related activities over the life of the plan can be projected. Further site specific NEPA analysis would be required when specific development and production activities are proposed. Such site-specific analyses would provide for a more thorough examination of impacts related to the development of the lease parcels and provide for the application of site-specific conditions of approval.

The BLM's policy in assessing the likelihood of development for mineral resources is articulated

in the BLM's "Planning for Fluid Mineral Resources Handbook" (H-1624-1). Guidance from this handbook addressing the projection of reasonably foreseeable development under existing management directs an interdisciplinary team "to project management activities and actions, including developments, which are likely in the planning area over the life of the plan (i.e., generally 15 to 20 years or whatever has been determined to be the planning horizon or timeframe for the RMP)...."

If the impacts of development in the planning area significantly exceeds the impacts analyzed during the life of the plan, BLM will be required to produce further NEPA. Further, environmental stipulations that are placed on individual leases at issuance continue to apply throughout the life of the lease (unless modified or waived, as provided by regulation). In the future, additional protective measures in the form of conditions of approval (COAs) may also be applied, based on site-specific analysis.

**Protest Point 5. BLM has failed to properly consider impacts to the region's declining air quality from its actions.**

**Response:**

The air quality analysis conducted for the Roan Plateau RMPA used the generally accepted practice for air quality modeling analyses in BLM EISs. The BLM used multiple models for its near-field and far-field analyses to reach its conclusions about air impacts. The California Puff Dispersion Model (CalPuff), meteorological data, and other methodologies used in the analysis were put forth by the BLM in an analysis protocol that was developed in consultation with an inter-agency team of air quality specialists from the BLM, Forest Service, Utah Department of Environmental Quality, CDPHE-Air Quality Control Division, National Park Service and the EPA. The general consensus reached by this group of experts is reflected in the protocol and the methodologies used and the results of the final analysis (see Section 4.2.5 of the FEIS).

The Secretary of the Interior (through the BLM) met its responsibilities under NEPA to describe existing air quality conditions (Affected Environment) and to predict potential direct, indirect, and cumulative air quality impacts from the Proposed Action and Alternatives (Environmental Consequences), as required by CEQ regulations. In addition to predicting the maximum air quality impacts within close proximity to the proposed activities, the air quality impact analysis also examined potential air quality impacts at twelve distant mandatory Federal PSD Class I areas and ten other distant "sensitive" locations. BLM compared direct impacts to Class I and Class II increments to assess their significance under NEPA. BLM did not conduct regulatory increment consumption analyses. The most recent and representative data were used to define the Affected Environment for NEPA purposes. BLM assumed emissions from operations in 2000 or 2001 were captured in state monitoring when establishing the Affected Environment. This approach is acceptable in light of state's Clean Air Act authority to monitor air quality. Under the Clean Air Act, the authority and responsibility for conducting regulatory PSD Increment Consumption Analysis rests with the appropriate air quality regulatory agency (e.g. CDPHE).

**Protest Point 6. BLM has failed to fully consider the impacts of its action on wildlife and sensitive species.**

**Response:**

Section 4.3.4 of the PRMPA/FEIS (p.4-67) discusses at considerable length the various special status wildlife, fish, and plant species known or expected to occur in the Roan Plateau planning

area, as well as the no surface occupancy, controlled surface use, and timing limitation stipulations to be applied to leases for their protection. Appendix I in the PRMPA/FEIS provides further information on best management practices, reclamation practices, and other mitigation measures to be applied as conditions of approval at the permitting stage for oil and gas developments. Among the protective measures are NSO stipulations for streams supporting Colorado River cutthroat trout, as well as associated moderate- and high-value watershed processes, wildlife security areas below the rim, raptor nest sites and the peregrine falcon cliff-nesting complex, caves that support Townsend's big-eared bats, and occupied habitat for threatened, endangered, proposed, or candidate plant species. Additional measures include controlled surface use and timing limitation stipulations for wildlife.

Moreover, the entire approach of phased and clustered ridgetop development, with a maximum of 350 acres of disturbance at any one time and with a minimum of 0.5 mile between well pads was specifically developed in concert with the State of Colorado. The phased and clustered ridge-by-ridge development was designed to reduce habitat fragmentation, and to reduce effective habitat loss due to disturbance.

Regarding BLM's ability to grant waivers, modifications, or exceptions to lease stipulations, these are described in Appendix C of the FEIS and would be allowed only under strictly defined circumstances, and in consideration of the need to protect resources. As stated in 43 C.F.R. § 3101.1-4, "a stipulation included in an oil and gas lease shall be subject to modification or waiver only if the authorized officer determines that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or if proposed operations would not cause unacceptable impacts."

Further, as required by 43 C.F.R. § 3101.1-4, public notification and at least a 30-day public comment period is required before granting of any waiver or modification that is substantial. An exception, which is a one-time exception from a stipulation for a specific period, location, or activity, does not require public notice or comment. As with waivers and modifications, BLM grants exceptions to protective stipulations only if it is demonstrated that adverse impacts would not result to the resource being protected or that any adverse impacts would be adequately mitigated. Decisions to grant waiver, modification or exception affecting wildlife typically involve consultation with the Colorado Division of Wildlife.

**Protest Point 7: BLM has misinterpreted the intent of the 1997 Transfer Act that gave jurisdiction of the NOSR lands to the Department of the Interior, wrongly concluding that it must lease all, or a significant portion, of the Roan Plateau immediately for oil and gas development.**

**Response:**

The BLM disagrees with this assertion and continues to conclude that the plain language of the act directs BLM to make available for oil and gas leasing all transferred lands (i.e., in NOSRs 1 and 3) subject to the Federal Land Policy and Management Act. That is the process that BLM

followed in developing and analyzing the alternatives throughout the Roan Plateau Resource Management Plan Amendment process (See the discussion of Transfer Act in RMPA/FEIS at p. 1-4 to 1-5).

Accordingly, on behalf of the Department of the Interior, I dismiss your protest. If you have any questions about this response, contact Duane Spencer, Chief, Branch of Fluid Minerals at 303.239.3753.



C. Stephen Allred  
Assistant Secretary  
Land and Mineral Management

cc:

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