



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240



SEP 29 2008

IN REPLY REFER TO:  
CO922(KZ)

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## DECISION

Trout Unlimited  
315 Main St., Ste. 11  
Lander, Wyoming 82520

### 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 failed to consider important statutory, regulatory, and executive requirements.**

##### **Response:**

Your protest makes a number of allegations regarding the resource management planning and National Environmental Policy Act (NEPA) documentation process that culminated in the Roan Plateau Resource Management Plan Amendment (RMPA) and Environmental Impact Statement (EIS) and June 2007 Record of Decision (ROD) under which the Naval Oil Shale Reserves (NOSR) 1 and 3 parcels were made available at auction. The PRMPA/FEIS and ROD specifically considered impacts to the NOSR lands from oil and gas activities after considering a suitable range of alternatives and identifying variety of protective stipulations and corresponding mitigation measures to meet statutory, regulatory, and executive requirements. The BLM adequately analyzed direct, indirect and cumulative impacts to the extent that they were applicable to the resources affected. The protest does not provide new and significant information to show that BLM's process was flawed.

In regard to Executive Order 13443 - Facilitation of Hunting Heritage and Wildlife Conservation,

the BLM analyzed impacts to big game and other wildlife and native fish in Sections 4.2.2.1 and 4.3.2.2 of the PRMPA/FEIS and adequately address the provisions of EO 13443.

Protection of terrestrial and aquatic wildlife resources under the RMPA include application of protective stipulations and use restrictions for a variety of related resources. The analysis identified habitats on the top of the plateau and along or below the cliffs that would be protected with NSO stipulations under the RMPA. Additional areas would be subject to controlled surface use restrictions. These restrictions for wildlife security areas along and below the cliffs, and the controlled surface use restriction for security areas along some stream valleys atop the plateau, are considered by CDOW and the BLM to be particularly important. In addition the six "passages" (migration routes) used by deer and elk during seasonal movements through the otherwise impassable Roan Cliffs are protected with use restrictions.

The RMPA recognizes that big game, such as deer and elk, is important throughout the region and considers impacts for big game winter range. Much of the concern regarding game species involves the maintenance of populations that can support the desired level of consumptive recreational use, with its associated local economic benefits, whereas the primary concern for special status species maintaining and expanding existing populations and avoiding local or regional extirpation (see p. 4-62 Section 4.3.2.2 Summary of Impacts to Fish and Wildlife).

**Protest Point 2: The BLM's consideration of the direct, indirect, and cumulative impacts to wild and native fish and their watersheds is either outdated, inadequate, or lacking a discussion of significant new information.**

**Response:**

The RMPA recognizes that there could be indirect impacts associated with the potential transport of soil into streams that may adversely affect water quality, riparian vegetation and aquatic organisms including the Colorado River cutthroat trout. Restrictions would continue to be used to protect slopes or tributaries with high quality or moderate quality for the Colorado River cutthroat trout. In addition, above-the-rim no ground disturbance / no surface occupancy (NGD/NSO) restrictions would be used specifically for protection of broad zones containing high value habitat for genetically pure populations of Colorado River cutthroat trout. An overlapping, but much narrower zone of protection is afforded from an NGD/NSO restriction for riparian/wetland vegetation. Other restrictions would be used to control the specific location of proposed surface uses within a 500-foot buffer outside the edge of riparian or wetland plant communities.

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 PRMP/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.

Your protest alleges that the impact analysis concerning wild and native fish including the Colorado River Cutthroat Trout (CRCT) is outdated, inadequate, or lacking. Although reference is made to various documents, nothing was provided to show that the impact analysis specific to the Roan Plateau RMPA is in error. You provide no new significant information for consideration.

Your protest notes that only 2,895 acres of no surface occupancy/no ground disturbance stipulations (NSO/NGD) are specific to CRCT. You also state that 2,895 acres is only a "... fraction of the roughly 28,000 acres of the BLM atop the Roan Plateau that are part of the watersheds that sustain conservation populations of CRCT." The June 2007 and March 2008 Records of Decision protect 13,521 acres of CRCT habitat with an NSO. The confusion results because the first ROD (June 2007) excluded stipulations within the ACECs, which were undergoing an additional public review and comment period. The second ROD (March 2008) approved the stipulations in the ACECs as described in the final RMPA/EIS, which included 13,521 acres of NSO for the CRCT. Additionally, it is important to note that other stipulations on top of the Roan Plateau will serve to protect the habitats important to the CRCT. For example, Site-Specific Relocation/Controlled Surface Use (SSR/CSU) stipulations for the Parachute Creek High Valued Watershed and Watershed Management Area (WMA) and the SSR/CSU for riparian and wetland habitat will further protect the CRCT. Furthermore, the Master Development Plan (a.k.a., Plan of Development) may further identify specific Best Management Practices (BMP) and Conditions of Approval (COA) to protect the CRCT and related habitat.

**Protest Point 3: BLM ignored its own information by excluding certain key areas from designation as Areas of Critical Environmental Concern (ACECs).**

**Response:**

While this topic is not properly the subject of a protest to a lease sale, BLM is willing to reiterate its approach to ACEC designation in the plan amendment process.

The BLM identified specific protective measures for the relevant and important values identified within each ACEC. Because the resources identified have been found to be both relevant and important, the protective measures would apply to the extent needed to protect those resources. No-ground disturbance/no-surface occupancy stipulations will be applied to any leases issued within the proposed ACECs.

The BLM examined the relevant and important values and brought forward special management attention to protect these values during the analysis in the DEIS. BLM considered comments received by the public and cooperating agencies, and proposed the four ACECs be included in the Proposed RMPA. The BLM's considerations include the determination that these ACECs provide an adequate level of protection for the values present. These considerations are consistent with 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). The BLM adequately analyzed a range of alternatives for ACEC designation (i.e., zero to 36,184 acres of designations).

In order to protect the values present in the ACECs and in consideration of comments received from the public and cooperating agencies, the final RMPA increased in the acreage of ACECs as compared to the Preferred Alternative of the draft EIS.

**Protest Point 4. The proposed parcels are located within crucial wildlife habitats, migration corridors, and areas containing wildlife species that are considered threatened, endangered, and/or sensitive by Federal and State agencies.**

**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.

A variety of protective stipulations have been incorporated into the RMPA to protect the habitats and species you have concerns over. Tables 2-1 through 2-3 of the PRMPA/FEIS, Appendix F of the June 2007 ROD, and appendix A of the March 2008 ROD detail those stipulations and stipulations. As was disclosed in Chapter 4 of the PRMPA/FEIS, the anticipated impacts from implementation of the RMPA are not expected to be significant.

**Protest Point 5: The BLM lacks any consideration and development of a vulnerability analysis of climate change and its risk factors to wildlife and fisheries habitat; such analysis should be completed prior to any lease sale.**

**Response:**

There is information suggesting a role for greenhouse gas (GHG) emissions in the phenomena of global warming and climate change that was not considered in the RMPA/EIS.

Ongoing scientific research has identified the potential impacts from anthropogenic (human-caused) GHGs and their effects on global climate. These GHGs include carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), and several trace gases, as identified by the Intergovernmental Panel on Climate Change (IPCC). Through complex interactions on a global scale, these GHG emissions cause a net warming effect of the atmosphere, primarily by decreasing the amount of heat energy radiated by the earth back into space. The Intergovernmental Panel on Climate Change (IPCC) has predicted that, by the year 2100, global average surface temperatures would increase 1.4 to 5.8°C (2.5 to 10.4°F) above 1990 levels. The National Academy of Sciences supports the IPCC's predictions, but acknowledges there are uncertainties about how climate change may affect different regions.

The assessment of the effect of GHG emissions on climate is an ongoing scientific endeavor. At present, the lack of appropriate scientific tools makes it impossible to analyze how specific quantities of GHG emissions may contribute to an incremental change in average annual global surface temperatures.

In some cases there is information about general potential or projected effects of global climate change on resources. However, there is limited ability to estimate potential future impacts of climate change on the environment of a particular area, regionally or locally. Based on BLM resource inventories conducted, monitoring data collected, resource assessments made on a continuous basis to help understand the condition and health of the resources on public lands, and other additional information, the description of the affected environment made in the RMPA/EIS is still accurate and does not substantially change the analysis of the effects of the proposed action.

While future development of the parcel is likely to emit GHGs into the atmosphere, leasing alone will not, as the leasing decision itself does not authorize development or production. Whatever the incremental contributions to global GHG emissions may result from potential development of this parcel, they cannot be translated into incremental effects on the global climate system or the environment in the leasing area. Because the incremental effects of potential future activities on this parcel cannot be analyzed with any degree of reliability, the new information regarding climate change would not substantially change the analysis of the proposed action. In light of the foregoing, the existing analysis in the RMPA/EIS remains valid to support the leasing decision.

**Protest Point 6: BLM's analysis fails to consider the cumulative impacts associated with different extractive energy development projects, including oil, uranium, geothermal, coal, and oil shale, which are projected to occur within many of the lease parcel locations.**

**Response:**

The BLM adequately analyzed cumulative impacts to the extent that they were applicable to the resources affected and were significant as directed by 40 C.F.R. § 1508.25(a) (2). The descriptions of cumulative impacts for uranium and other locatable minerals and coal are addressed in 4.5.6 of the PRMP/FEIS. Geothermal energy is not known to exist in the area. Research-scale oil shale lease tracts can be considered within the planning area subject to the same restrictions and limitations on surface use as traditional oil and gas drilling operations. Furthermore, oil shale leasing decisions which would allow for future development are being deferred in the Programmatic Environmental Impact Statement for Oil Shale and Tar Sands Leasing (see June 2007 ROD, page 43). Further site-specific NEPA analysis will be required when specific exploration, development, and production activities are proposed. Such 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.

**Protest Point 7: Air quality issues with the potential to impact soils, plants, wildlife, livestock, and human health have not been analyzed adequately.**

**Response:**

The air quality analysis conducted for the Roan Plateau PRMPA/FEIS 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 all legal 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 8: BLM failed to adequately analyze alternatives that offer stronger measures of protection for unique fisheries, wildlife, soils, and plant ecosystems within these parcels.**

**Response:**

Section 4.3.4 of the PRMPA/FEIS (p.4-67) discusses at considerable length the anticipated impacts to 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 9. BLM failed to analyze the substantial impacts associated with oil and gas development and groundwater contamination issues and events.**

**Response:**

Impacts to water resources, including groundwater, were analyzed for the proposed action in Section 4.2.4 of the PRMPA/FEIS and for all alternatives in Section 4.2.4 of the Draft RMPA/EIS. The conclusions reached in those documents are based on (1) the much greater depth of hydrocarbon-bearing strata compared to groundwater zones (aquifers) that have the potential to affect surface water resources or be used as domestic fresh water sources and (2) the protective measures required of oil and gas drilling operations to isolate water-bearing zones from the well bore.

The PRMPA/FEIS evaluates the increased potential for accidental spills or discharges associated with oil and gas development. Potential for groundwater contamination is considered a low risk both above and below the rim due to the limited amount of water-bearing zones present on public lands. Phased and clustering of development sites on top of the plateau combined with protective stipulations that would isolate and protect usable water-bearing zones would minimize the potential for groundwater contamination. BLM conditions for approval and stipulations protect aquatic and riparian resources including large portions of surface and groundwater resources in sensitive areas. The BLM retains additional latitude to avoid adverse impacts to surface and ground water such as the ability to move an operator 200 meters away from any water source.

**Protest Point 10: BLM failed to adequately consider and analyze the economic impacts to the outdoor recreation industry, which includes hunting, fishing, tourism, and local communities.**

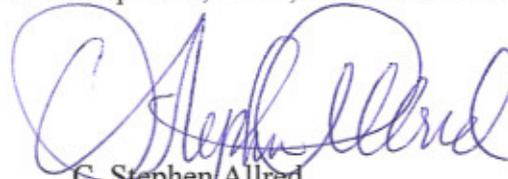
**Response:**

The protest allegations regarding potential impacts of oil and gas development on the amount of hunter use are speculative and unfounded. Furthermore, the data cited in the discussion of this protest point are not accurate relative to the lease sale area but instead appear to refer to national, regional, or statewide statistics. For example, the protestor’s statement that a majority of the 215 outfitters operating in Colorado conduct their business within the areas being offered for lease conflicts with the actual figure of three outfitters holding permits to provide guide and outfitting services for the lease parcels.

Impacts on outdoor recreation, and associated economic impacts, were specifically addressed in the analysis. The BLM also addressed the role of natural amenities in sustaining rural communities. At the time the EIS was written there were no studies of amenity values for the Planning Areas. The BLM was aware based on social and economic issues identified during scoping that quality of life was an important issue in the area. As a result, the BLM had the contractor social scientist conduct numerous interviews with residents, community leaders and public land users with the purpose of “exploring attitudes of locals about their lifestyle and quality of life and assess the role of public lands in general, and the Planning Area in particular, in shaping those attitudes.” The results are documented in the EIS Affected Environment section 3.4.3.6 Quality of Life Considerations.

The DEIS and FEIS include discussions of such social values, as described in your letter. Benefits to the public associated with nearby wilderness quality lands are documented in several resource discussions – not simply in the socioeconomic analysis. In the FEIS, see the analysis of visual resource management (for aesthetic values associated with viewsheds, pp. 4-78 through 4-84); recreation (including opportunities for primitive experiences, pp. 4-110 through 4-113); wilderness characteristics (as they relate to the human experience, p. 4-125); and socioeconomics (pp. 4-96 through 4-104). Combined, the analyses qualitatively address the benefits to local residents of having wilderness quality lands nearby by primarily discussing uses of these lands.

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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