

Director's Protest Resolution Report

**Farmington Resource
Management Plan Amendment
(New Mexico) for the Glade Run
Recreation Area
Recreation and Transportation
Management Plan**

May 22, 2015



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Reader's Guide

How do I read the Report?

The Director's Protest Resolution Report is divided into sections, each with a topic heading, excerpts from individual protest letters, a summary statement (as necessary), and the Bureau of Land Management's (BLM) response to the summary statement.

Report Snapshot

Issue Topics and Responses
NEPA

Topic heading

Submission number

Issue Number: PP-CA-ESD-08-0020-10

Protest issue number

Organization: The Forest Initiative

Protesting organization

Protester: John Smith

Protester's name

Issue Excerpt Text:

Direct quote taken from the submission

Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.

Summary

General statement summarizing the issue excerpts (optional).

There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

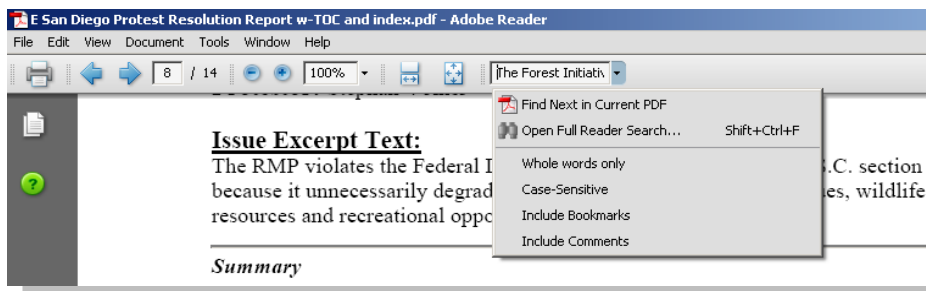
Response

BLM's response to the summary statement or issue excerpt if there is no summary.

Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a

How do I find my Protest Issues and Responses?

1. Find your submission number on the protesting party index which is organized alphabetically by protester's last name.
2. In Adobe Reader search the report for your name, organization or submission number (do not include the protest issue number). Key word or topic searches may also be useful.



List of Commonly Used Acronyms

ACEC	Area of Critical Environmental Concern		
BA	Biological Assessment	FO	Field Office (BLM)
BLM	Bureau of Land Management	FWS	U.S. Fish and Wildlife Service
BMP	Best Management Practice	GIS	Geographic Information Systems
BO	Biological Opinion	IB	Information Bulletin
CAA	Clean Air Act	IM	Instruction Memorandum
CEQ	Council on Environmental Quality	KOP	Key Observation Points
CFR	Code of Federal Regulations	MOU	Memorandum of Understanding
COA	Condition of Approval	NEPA	National Environmental Policy Act of 1969
CSP	Concentrated Solar Power	NHPA	National Historic Preservation Act of 1966, as amended
CSU	Controlled Surface Use	NOA	Notice of Availability
CWA	Clean Water Act	NOI	Notice of Intent
DEIS/DRMPA	Draft Environmental Impact Statement /Draft Resource Management Plan Amendment	NRHP	National Register of Historic Places
DM	Departmental Manual (Department of the Interior)	NSO	No Surface Occupancy
DOI	Department of the Interior	OHV	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
EA	Environmental Assessment	PA	Preliminary Assessment
EIR	Environmental Impact Report	PPA	Power Purchase Agreement
EIS	Environmental Impact Statement	RFDS	Reasonably Foreseeable Development Scenario
EO	Executive Order	RMP	Resource Management Plan
EPA	Environmental Protection Agency	ROD	Record of Decision
ESA	Endangered Species Act	ROW	Right-of-Way
FEIS	Final Environmental Impact Statement	SO	State Office (BLM)
FEIS/PRMPA	Final Environmental Impact Statement /Proposed Resource Management Plan Amendment	T&E	Threatened and Endangered
FLPMA	Federal Land Policy and Management Act of 1976	USC	United States Code
		USGS	U.S. Geological Survey
		VRM	Visual Resource Management
		WA	Wilderness Area
		WSA	Wilderness Study Area
		WSR	Wild and Scenic River(s)

Protesting Party Index

Protester	Organization	Submission Number	Determination
Mike Eisenfeld	San Juan Citizens Alliance	PP-NM-GladeRun-14-01	Denied – Issues and Comments

Issue Topics and Responses

NEPA

Public Participation

Issue Number: PP-NM-GladeRun-14-01-5
Organization: San Juan Citizen's Alliance
Protestor: Mike Eisenfeld

Issue Excerpt Text: BLM's refusal to provide timely, accurate, and full responses to our FOIA requests breaches the agency's NEPA duty to "insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." (40 C.F.R. § 1500.1(b)). The refusal to provide the information during the comment period is also contrary to the requirement that, BLM "shall to the fullest extent possible [...] encourage and facilitate public involvement in decisions which affect the quality of the human environment." (40 C.F.R. § 1500.2 (d)).

Issue Number: PP-NM-GladeRun-14-01-6
Organization: San Juan Citizen's Alliance
Protestor: Mike Eisenfeld

Issue Excerpt Text: In preparing the EA/Finding of No Significant Impact (FONSI) without providing access to the underlying data, and confirming a lack of data responsive to particular requests, BLM has not met the purpose of NEPA, which recognizes that "[a]ccurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA". (40 C.F.R. § 1500.1(b)).

Issue Number: PP-NM-GladeRun-14-01-14
Organization: San Juan Citizen's Alliance
Protestor: Mike Eisenfeld

Issue Excerpt Text: April 5, 2013 SJCA comments to BLM Farmington Field Office on the Glade Run Recreation Area Recreation (GRRRA) and Travel Management Plan (R&TMP) Environmental Assessment (NEPA No. DOI-BLM-NM-FO-2013-0197-EA). Of note in these comments was SJCA's discussion of the Federal Land Policy & Management Act (FLPMA): "FLPMA requires that the BLM prevent unnecessary and undue degradation (UUD) of public lands. This is accomplished through inventories, monitoring, compliance and enforcement of Conditions of Approvals (COAs) and stipulations for projects approved by BLM in the project area. A reasonable explanation of BLM's responsibilities for UUD is found in the United States Court of Appeals, Ninth Circuit, CENTER FOR BIOLOGICAL DIVERSITY; Western Land Exchange Project; Sierra Club, Plaintiffs-Appellants, v. UNITED STATES DEPARTMENT OF the INTERIOR; Bureau of Land Management, Defendants- Appellees, Asarco LLC, Defendant-Intervener-Appellee, No. 07-16423. Argued and Submitted Feb. 10, 2009. --September 23, 2010 (<http://caselaw.findlaw.com/us-9th-circuit/1539148.html>)." SJCA clearly and concisely brought forth the importance/evidence of BLM inventories, monitoring, compliance and enforcement in the April 5, 2013 comments, which the BLM has still failed to provide to SJCA as of October 14, 2014.

Summary:

The Glade Run Resource Management Plan Amendment (RMPA) violates NEPA because the Farmington Field Office (FFO) failed to adequately disclose underlying data and analysis or respond to Freedom Of Information Act (FOIA) requests in the plan amendment process.

Response:

The BLM has disclosed the underlying data and analysis used in the plan amendment, and collected such data in conformance with law, regulation, and policy. San Juan Citizen's Alliance filed numerous FOIAs and challenges to the data used throughout the plan amendment process, including separate FOIAs dated February 13, 2014 and February 19, 2014. The February 13, 2014 FOIA requested all records of communications regarding the preparation of the EA, while the February 19, 2014 FOIA requested underlying data used for issues such as surface disturbance relating to oil and gas activities, travel management data, rights-of-ways, land health standards, archaeological resources, and monitoring data. BLM provided responsive documents to both FOIAs in March 2014.

On the same date of the February 19, 2014 FOIA, San Juan Citizen's Alliance submitted an Information Quality Act request on the Glade Run RMPA for the same data requested in the FOIA. BLM responded to this request on April 17, 2014, specifically detailing the data used for the issues previously raised in the February FOIAs.

A separate FOIA clarifying the scope of the previous requests was submitted in April 10, 2014, alleging that BLM had misunderstood the scope of the February 19, 2014 FOIA. The April 10, 2014 FOIA requested monitoring, surface disturbance, travel management, minimization, and land health standards data going back to 2004 for the entire Farmington Field Office. Based on the scope of the documents requested, BLM placed this request in the Exceptional/Voluminous Track for processing FOIAs, and informed San Juan Citizen's Alliance (SJCA) that a final response date would be on or before July 13, 2015. Because of the amount of information requested, BLM informed SJCA that it would be difficult to release all of the records at one time. BLM provided installment responses to that FOIA in September and October 2014, and continues to work on fully responding to the FOIA.

SJCA filed another FOIA request in October 2014 requesting all references cited in the Glade Run Recreation Area Recreation and Travel Management Plan Resource Management Plan Amendment and Environmental Assessment (GRRR R&TMP RMPA/EA). As part of this, SJCA requested expedited processing, which was denied. Of the 86 references cited in the document, 51 were available on the internet. Many of the other references were books or journal articles that are available to the public through various libraries.

The BLM has been as responsive as possible to the various requests submitted throughout the Glade Run RMPA process.

In addition to the BLM's disclosure of information relied on in the Glade Run R&TMP RMPA/EA through the FOIA requests, the BLM FFO has provided ample opportunities for public involvement throughout the plan amendment process, in compliance with NEPA.

Preliminary planning issues were presented for public review and comment in the July 2011 Federal Register (FR) Notice of Intent (NOI; 76 FR 41819), which initiated a 30-day comment period for the GRRR R&TMP. BLM solicited public comments through a scoping meeting held on August 25, 2011. In addition, a website was created to provide information about the planning process and solicit comments. The scoping activities and concerns expressed by the public were briefly summarized in the *Scoping Report: Resource Management Plan Amendment for the Glade Run Recreation Area and Travel Management Plan and Associated Environmental Assessment* published in December 2011.

BLM announced the planning process and scoping period through the following public notifications:

- Notice of Intent (NOI) published in the Federal Register;
- Planning Letter sent to the project mailing and emailing lists;
- Consultation letters sent to Native American tribes and affected interest groups;
- Consultation letters sent to Federal, state, county and city planning organizations;
- News release to local news media sources;
- Legal notices published in local newspapers;
- Project website;
- Announcements on the BLM FFO website.

The news release was sent to local media contacts via the BLM FFO medial email distribution list.

The legal notice was published in the Farmington Daily Times on both August 10, 2011 and August 21, 2011. In addition to the legal notice, two ads were placed by BLM on August 10, 2011 and August 24, 2011. Subsequently the Talon Community Newspaper announced the Glade scoping meeting, and other articles were published regarding the Glade.

A public open house meeting was held on August 25, 2011 at the San Juan College Henderson Fine Arts building. In total, 113 people signed in at the meeting.

The meeting was held from 4:30pm – 7:30pm. The majority of the meeting was in an open house format allowing the public to directly ask questions and discuss the project with BLM specialists. Boards on display around the room described the project, frequently asked questions, general information, project maps, and preliminary issues. A short presentation about the project and process was given at 5:30pm with a question and answer session that was facilitated by Southwest Consulting. While at the meeting, attendees were encouraged to provide written

comments on large project area maps, fill out comments forms, and/or speak with BLM staff. Scoping input was solicited from 20 agencies.

Four tribes were invited to consult with BLM in regard to the R&TMP in a letter sent August 2, 2011. Tribes and their affiliated Historic Preservation Departments were also invited to submit scoping comments and invited to participate in the planning process. Tribal Organizations contacted included the Ute Mountain Ute Tribe, the Navajo Nation, the Jicarilla Apache Nation, and the Southern Ute Indian Tribe.

Scoping input was solicited from 11 interest groups. Table 3 lists the interest groups invited to provide comments in a letter sent August 2, 2011. This letter was mailed to San Juan Citizen's Alliance.

In addition, the City of Farmington's Parks, Recreation, and Cultural Affairs department sponsored a Focus Group for users of the GRRRA to review and provide feedback regarding the proposed R&TMP and RMPA. Four focus groups were held from May 2011 through August 2011 with the results provided to the BLM in September 2011.

A Draft GRRRA R&TMP RMPA EA was put out for a 45-day public comment period in February 2013. Letters were sent to a mailing list of 99 interested parties. A public meeting was held at San Juan College on March 21, 2013 in the form of an open house forum with tables focusing on the planning process, cultural resources, and each of the recreation management zones. In addition, two GIS stations were available to allow participants to examine routes or resource issues more closely. A map station was also set up with Mylar maps of each of the recreation management zones and various resource data.

In response to comments identifying a cut and paste error in the impacts analysis section of the Draft GRRRA R&TMP RMPA EA, a second Draft GRRRA R&TMP RMPA EA was put out for a 15-day public comment period on February 6, 2014. Notification of this additional comment period was sent to the 99 interested parties on the mailing list.

The BLM's effort to disclose environmental information and to provide opportunities for public participation on the Glade Run RMPA was adequate and satisfied the requirements of NEPA.

Impacts Analysis

Issue Number: PP-NM-GladeRun-14-01-12
Organization: San Juan Citizen's Alliance
Protestor: Mike Eisenfeld

Issue Excerpt Text:

In SJCA's comments on the February 6, 2014 Draft Resource Management Plan

Amendment (RMPA) Environmental Assessment (EA) for the BLM Farmington Field Office Glade Run Recreation Area (GRRRA) Recreation and Travel Management Plan (R&TMP) (NEPA No. DOI-BLM-NM-F0-2013-0197-EA), SJCA states "under NEPA, significance is

determined by context and intensity”. (40 C.F.R. § 1508.27(a)). The evaluation of context should consider both “short- and long-term effects.” *Id.* Intensity “refers to the severity of the impact.” *Id.* §1508.27(b). An action’s intensity is determined by consideration of adverse impacts, degree of impacts to “public health or safety”, “unique characteristics” of the impacted area, the degree to which the impacts will be “highly controversial”, the degree to which impacts are “highly uncertain or involve unique or unknown risks”, precedential effect of the action, the significance of cumulative impacts, the degree to which the action will affect “significant scientific, cultural, or historic resources”, the degree to which the action will affect “endangered or threatened species”, and whether the action threatens to violate federal, state, or local environmental laws. *Id.* §§1508.27(b)(1)-(10). “[T]he existence of one of these factors may be

sufficient to require preparation of an EIS in appropriate circumstances”. *Ocean Advocates v. US. Army Corps of Eng'rs*, 402 F.3d 846, 865 (9th Cir. 2005). Here, almost all of the significant intensity factors are present. For the record, SJCA gave precise comments to BLM on the specific significant intensity factors in the GRRRA of adverse impacts; public health or safety; controversy; precedent; significant Scientific, Cultural, or Historic Resources; cumulative impacts; and the violation of Environmental Protection Laws. SJCA stated in the February 20, 2014 GRRRA comments that BLM cannot legally support claims that violations of NEPA, FLPMA, National Historic Preservation Act, Archaeological Resources Protection Act, and failure to protect a component of the National Conservation Landscape System (OSNHT) has not occurred in the GRRRA EA.

Summary:

BLM was incorrect in preparing an EA and concluding that the impacts associated with the Glade Run Resource Management Plan Amendment are insignificant and, instead, should have prepared an EIS.

Response:

The Glade Run Recreation Area Recreation and Travel Management Plan Amendment did not contain any actions that require preparation of an EIS. According to NEPA Handbook H-1790-1, Section 7.2, actions that normally require an EIS include: (1) approval of Resource Management Plans; (2) proposals for WSRs and NHSTs; (3) approval of coal lease sales in a coal production region; (4) decisions to issue a coal preference right lease; (5) approval of applications to the BLM for major actions in categories that do not include recreation and travel management; (6) operations resulting in liberation of radioactive/nuclear materials; and (7) operations approving mining operations of a specific size, as identified in this section. The BLM adequately describes the narrow focus of the plan amendment in the Purpose and Need section of the GRRRA R&TMP Amendment as necessary to fulfill regulatory obligations in the 2003 Farmington RMP to develop Travel Management Plans (TMPs) and to reassess recreation management plans, when appropriate. (See GRRRA R&TMP RMPA/EA, pg. 4). Accordingly, the

BLM determined that use of an EA was appropriate to analyze the environmental impacts to consider whether the proposed plan amendment would have significant impacts that require preparation of an EIS.

The BLM's analysis in the EA and the inclusion of specific mitigation measures support a finding that the plan amendment would have no significant impacts on the quality of the human environment. This finding is explained in the BLM's Finding of No Significant Impact (FONSI), which considered the factors of context and intensity to conclude that no significant impacts would be created associated with the plan amendment. In short, the BLM's use of an EA for this plan amendment is appropriate and adequately meets the requirements of NEPA.
