

*Director's Protest Resolution Report*

**Canyons of the Ancients  
National Monument  
Resource Management Plan**

April 4, 2010



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## Reader's Guide

### *How do I read the Report?*

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

### **Report Snapshot**

**Issue Topics and Responses** (Topic heading)

**NEPA** (Submission number)

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**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.

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**Summary** (General statement summarizing the issue excerpts (optional).)

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

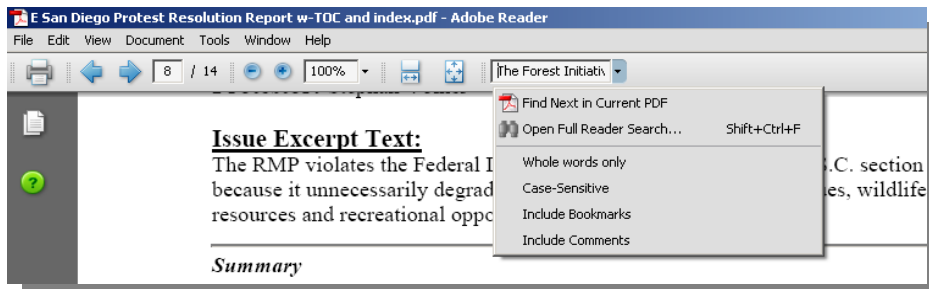
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**Response** (BLM's response to the summary statement or issue excerpt if there is no summary.)

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 site-specific NEPA analysis of the proposal before actions could be approved (FEIS Section 2.5.2, p. 2-137). Project specific impacts would be analyzed at that time (including impacts to

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

**Protesting Party Index**

<b>Protester</b>	<b>Organization</b>	<b>Submission Number</b>	<b>Determination</b>
	Dolores County Board of Commissioners	PP-CO-Ancients-09-0012	Denied
	Montezuma County Board of Commissioners	PP-CO-Ancients-09-0008	Denied
Byron, John	DJ Simmons, Inc.	PP-CO-Ancients-09-0014	Denied
Calvert, Hal		PP-CO-Ancients-09-0001	Dismissed – No Standing
Culver, Nada	Wilderness Society		
Hayes, Ti	National Trust for Historic Preservation	PP-CO-Ancients-09-0011	Denied
Havens, Jr., Kenneth H.	Kinder Morgan CO2 Company, L.P.	PP-CO-Ancients-09-0009	Denied
Heaton, Al	Montezuma County Rangeland Stewardship Committee	PP-CO-Ancients-09-0007	Denied
House, Sr., Ernest	Ute Mountain Ute Tribe	PP-CO-Ancients-09-0005	Denied
Koppenhafer, Vance	Southwestern Colorado Livestock Association	PP-CO-Ancients-09-0013	Dismissed – Only Comments
Matheny, J. Paul	Questar Exploration and Production Company	PP-CO-Ancients-09-0003	Denied
Mathes, Robert C.	Bill Barrett Corporation	PP-CO-Ancients-09-0002	Denied
McCarthy, Tom	Robert L. Bayless, Producer LLC	PP-CO-Ancients-09-0006	Denied
Pock, Gala Fern		PP-CO-Ancients-09-0004	Denied
Witthans, W.J.		PP-CO-Ancients-09-0010	Dismissed – Only Comments

## Issue Topics and Responses

### National Environmental Policy Act

#### Impact Analysis

#### **Impacts on Lease Holders**

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Issue Number: PP-CO-Ancients-09-0009-100  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:  
The Proposed RMP contains restrictive management prescriptions for cultural, visual, environmental and other resources that will have real effects on development of existing leases. This EIS ignores these effects. To claim the RMP will not impact existing leases at all, while stating that the BLM has the authority to completely deny development to protect cultural and other resources, is arbitrary and capricious.

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Issue Number: PP-CO-Ancients-09-0009-101  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:  
The Final EIS makes no attempt to satisfy the agency's legal obligation to "estimate and display the physical, biological, economic, and social effects of implementing each alternative considered in detail" in the RMP. 43 C.F.R. § 1610.4-6. The failure to distinguish between alternatives and the effect they will have on the ability to develop oil and gas resources strikes at the heart of the EIS.

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Issue Number: PP-CO-Ancients-09-0009-103  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:  
The Final EIS does not provide this analysis for the effect of the alternatives on oil and gas development on existing leases. It is neither comparative nor sharply defined. There is no clear basis for choice among management options for oil and gas development because the Final EIS concludes all alternatives are the same.

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Issue Number: PP-CO-Ancients-09-0009-11  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

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Issue Excerpt Text:  
The Final EIS violates NEPA, FLPMA and agency regulations for three reasons: (1) the Final EIS does not identify how the proposed action will affect the ability to drill oil and gas wellson existing leases;

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Issue Number: PP-CO-Ancients-09-0009-94  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:  
But the Final EIS is arbitrary and capricious because it concludes that the proposed action - the management direction in Alternative VI - will have absolutely zero effect on the ability to develop existing leases.

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Issue Number: PP-CO-Ancients-09-0009-95  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:  
The EIS is predicting that all of the RMP management direction on cultural resources will have absolutely no effect on the ability to drill oil and gas wells on existing leases.

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Issue Number: PP-CO-Ancients-09-0009-98  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:  
None of the Monument is in identified VRM classes today under the No Action Alternative. Id. The VRM classes will materially restrict surface use for oil and gas development. See Proposed RMP at 359-60. Yet the Final EIS concludes that the VRM classes will not affect the amount of surface disturbance or other effects of oil and gas development. Proposed RMP at 366. One is forced to guess what effect the Proposed RMP will have on the ability to site wells and surface infrastructure on existing leases because the Final EIS does not disclose the impact.

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## ***Summary***

The Proposed RMP/Final EIS (PRMP/FEIS) did not analyze the impacts from management decisions, including restrictions on the lessees of existing leases.

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## ***Response***

The CANM PRMP/FEIS assesses and discloses the environmental consequences of the Proposed Plan and alternatives in Chapter 4, as required by 40 CFR § 1502.16. In the section regarding impacts on Minerals (Section 4.3.5 Page 415), the BLM discusses the benefits and drawbacks (i.e., the impacts on?) existing and/or new leases from the proposed management objectives. As stated, beneficial impacts, in terms of fluid minerals extraction, may include those actions that may enhance extraction efforts. Impediments to fluid mineral extraction may include the reduced access and/or restrictions that make mineral extraction costly. Other impacts may include the loss of available exploration acreage due to No Surface Occupancy or Timing Limitation stipulations. These stipulations could complicate the ability to extract fluid minerals. This information is also discussed under Fluid Minerals Management under Alternative V (Page 418) and referenced in Alternative VI (Page 419).

For additional information regarding valid and existing rights, refer to the responses under the Valid Existing Rights section.

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## **Differences in Impacts between No Action and Action Alternatives**

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Issue Number: PP-CO-Ancients-09-0009-119  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

(Alternative VI), the impacts to cultural resources will be exactly the same as the No Action Alternative. Id.

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Issue Excerpt Text:  
Throughout the discussion of environmental consequences in Chapter 4, the Final EIS states that there will be exactly the same number of wells drilled, disturbance caused, and roads built under the No Action Alternative as under Alternative VI. See, e.g., Proposed RMP at 256. For example, in analyzing the effect of cultural resource management on development of existing leases under the Alternative I, the No Action Alternative, the Final EIS concludes that there will be up to 1,985 acres of new surface disturbance and up to 347 sites potentially impacted. Proposed RMP at 285. The Final EIS states that, under the Proposed RMP

Issue Number: PP-CO-Ancients-09-0009-96  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:  
The Final EIS concludes that all of the management direction in the Proposed RMP (Alternative VI), and in every other alternative, will have absolutely no effect on development of existing oil and gas leases because it predicts exactly the same impacts from development under all alternatives. See Proposed RMP at 285 (cultural resources), 256 (air quality), 324 (soils), 342 (wildlife), 355 (vegetation), 367 (visual resources).

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## ***Summary***

The PRMP/FEIS does not show differences in impacts between the No Action Alternative and the Action Alternatives for existing lease decisions.

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## *Response*

The No Action Alternative is based on several land use plans, interim guidance, and the Proclamation (see PRMP/FEIS, p. 26 for the full list). Additionally, for all alternatives, the BLM must honor existing lease rights while at the same time avoiding new impacts to Monument objects. Therefore, the decision space that the BLM has with respect to existing leases is very narrow and does not change under either the No Action Alternative (Alternative I) or the Action Alternatives.

The BLM estimated that potential development on existing leases would be the same across all alternatives as described in the Impact Analysis Components (PRMP/FEIS, p. 252-253 and Table 4-1, p. 256). As the management direction and estimated amount of potential development is the same for all alternatives, it follows that the impacts for each alternative with respect to existing leases would be the same.

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## *Need for a Supplemental Environmental Impact Statement*

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Issue Number: PP-CO-Ancients-09-0002-39  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
Finally, BBC Protests the entire "Management Common to All Alternatives" setting specific emissions requirements, see Proposed CANM RMP, pgs. 35 - 38, because they appear for the very first time in the Proposed CANM RMP. The proposed Management conditions were not included in the Draft CANM RMP and thus, members of the public such as BBC did not have an opportunity to review and comment on the proposed emissions standards before they were included in the Proposed CANM RMP.

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Issue Number: PP-CO-Ancients-09-0003-18  
Organization: Questar Exploration and Production Company  
Protester: J. Paul Matheny

Issue Excerpt Text:  
Insufficient Analysis and Opportunity to Comment on Issues Presented for the First Time in the PRMP: In far too many instances, new information is brought forward in the PRMP/FEIS that was not included in the DRMP. This is a fatal flaw in the NEP A process that necessitates either a supplemental RMP or some other mechanism for disclosure and public participation. Questar protests this lack of disclosure

and opportunity to comment on the issues set forth below. To the extent Questar can provide some initial substantive objections to this new language during the short Protest period, we will include them here, but note that had this material appeared in a Draft RMP as it should have, it would have allowed individuals and industries negatively affected by the BLM's analysis and decisions an opportunity to request an extension to the public comment period to fully review and comment on these provisions. . The new additions to the PRMP which Questar can identify are listed below:

a. App. E - Wildlife Management provisions at E-II through 16. While these restrictions only apply to new leases issued subsequent to this PRMP, Questar often works with BLM in other field offices to comply with wildlife stipulations voluntarily even on leases that pre-date the stipulation. Depending on the interpretation of the PRMP, that may not be possible in this instance. The wildlife-related BMPs are poorly drafted, overly restrictive, and need significant clarification and redrafting. First, we question the placement of the restrictions. As noted below, BLM guidance on BMPs has been that they are voluntary and are to be negotiated with operators on a case-by-case basis. Timing limitations and NSOs are not BMPs, and they should not be hidden away in an appendix. Many of the BMPs set forth in this appendix are unworkable. Questar protests the following:



1. Timing limitations around active raptor nests should be and historically have been applied only to surface disturbing activities. While the "Impact/Risk" column of Table 4-18 (incorrectly identified at E-3 as Table 4-16) states the timing limitations apply to "disturbance," the "Buffer Distance" column seems to limit ANY "human encroachment." This would ban necessary production activities, maintenance, workovers, gauging tanks, safety operations, etc. Not only is that unacceptable but it conflicts with Onshore Order 1 guidelines on emergency repairs and with the federal lessee obligation to responsibly, diligently, and safely produce the resource.

2. In some instances, the appendix doesn't distinguish between active and inactive nests, and the Plan doesn't define what constitutes an active nest. If the lack of distinction is intended, then the plan bars any human encroachment within a huge buffer zone around all nests, whether they have been used for 30 years or not, another ridiculous result without legal support.

3. The NSO limitation around all raptor nests needs to be re-worded to clarify that only "permanent" structures will be disallowed. There is no justification for preventing temporary structures, like drilling rigs, from operating in proximity to nests outside the timing restrictions, and indeed there would be no need for the timing limitations if that was the intent of the NSO language.

4. More fundamentally, the BLM must specify its justification or source for these restrictions in the CANM beyond pointing to an entity or some other BLM office as a source. Are those restrictions in a plan? Was that plan open to public comment, or peer-reviewed? The lack of analysis and justification is stark. Questar protests the confusing and inappropriate portrayal of raptor nest timing limitations and NSO requirements.

b. App. M - This new appendix sets forth the cultural resources definitions, inventory requirements, planning, and evaluation process that is to govern surface disturbing activities and proposals. It is astonishing that it is disclosed to the public for the first time in this PRMP. Specifically:

1. Questar protests the requirement that a 40-acre block survey is expected for every single well pad drilled. M-1. 40 acres is well beyond the actual

disturbance acreage of a well pad. In addition, no distinction is made as to well pads constructed on existing disturbance or in areas that have already been surveyed. In addition, the scope of the required survey for a GADP is not defined in the PRMP but is left entirely to the discretion of the BLM.

2. Questar protests the statement that BLM, based solely on its discretion based on surveys provided at the expense of the operator, can restrict development in areas of "high site density" and "settlement clusters in close proximity to each other." M-3.

3. Questar protests the inclusion of the section at M-4 entitled "Horizontal/Directional Drilling Analysis" as it is not a valid analysis, as further discussed in the next section.

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Issue Number: PP-CO-Ancients-09-0003-36  
Organization: Questar Exploration and Production Company  
Protester: J. Paul Matheny

Issue Excerpt Text:

d. App. Q - These two "strategic plans," one for the NCLS lands in Colorado and the second for fluid minerals management in CANM and the San Juan Public Lands Center, are both presented here in the PRMP for the first time. The Colorado plan was signed by State Director Wisely in June 2007 so was available for inclusion in the Draft RMP and was not included. The second was signed by Ms. Jacobson and Mr. Stiles in August 2008, months after the public comment on the draft was closed. Questar has never been asked to comment on the strategic plan for fluid mineral development.

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Issue Number: PP-CO-Ancients-09-0006-3  
Organization: Robert L. Bayless, Producer LLC  
Protester: Tom McCarthy

Issue Excerpt Text:

The RMP contains well pad spacing requirements of 1/2 mile between pads and not more than 4 pads per square mile. This provision was not noticeably located in the draft plan, so no public comment was possible. This is a significant addition to the plan, which makes development of oil reservoirs on 40 acre spacing impossible. Spacing on 40 acres is typical in many oil reservoirs, and is usually required to recover the resource.

Issue Number: PP-CO-Ancients-09-0009-10  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.  
Other Sections: Response to Comments,  
Assumptions and Data Used

Issue Excerpt Text:  
Kinder Morgan protests the Proposed RMP's discussion of directional drilling because it ignores, without response, Kinder Morgan's comments on the Draft RMP, adds significant provisions that were not included in the draft, and fails to recognize the significant technological and economic limitations on directional drilling within the Monument.

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Issue Number: PP-CO-Ancients-09-0009-110  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:  
The Proposed RMP contains material provisions that the public has not had an opportunity to comment on because they were not included in the Draft EIS. Where the Draft was largely silent on the use of directional drilling, the Proposed EIS identifies it as management direction of broad application that will allow the exercise of valid existing oil and gas lease rights without impact to cultural and natural resources. See, e.g., Proposed RMP at M-4; Section III.C. *supra*.

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Issue Number: PP-CO-Ancients-09-0009-111  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:  
Where the Draft EIS did not identify the foreseeable effect of oil and gas development on existing leases on Monument resources, the Final EIS discloses these effects for the first time. See Proposed RMP, Chapter 4, U-34. This analysis should have been identified for comment in the Draft EIS. It was not. See Exhibit Bat 4-6, 12-16.

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Issue Number: PP-CO-Ancients-09-0009-114  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:

Because the Draft EIS was so inadequate it precluded meaningful review, the BLM should treat the Proposed RMP EIS as a supplemental Draft, and accept public comment on it prior to issuance of a Final EIS. 40 C.F.R. § 1502.9(a).

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Issue Number: PP-CO-Ancients-09-0009-115  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:  
(2) the Draft RMP EIS was so inadequate that it precluded meaningful review and the public should have received an opportunity to comment on a supplemental draft before issuance of a Final EIS; and (3) material provisions were added to the Proposed RMP that the public never had an opportunity to comment on.

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Issue Number: PP-CO-Ancients-09-0009-47  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:  
The Proposed RMP's adoption of directional drilling as management direction is arbitrary and capricious. This was not identified as management direction in the Draft. Directional drilling was included as a potential BMP in the Draft RMP, but was not discussed in any detail. The Proposed RMP elevates the practice to proposed management direction:

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Issue Number: PP-CO-Ancients-09-0009-58  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.  
Other Sections: Assumptions and Data Used

Issue Excerpt Text:  
Map 17 is a fantasy. It does not consider topography, intervening canyons, geology, engineering, or economics. See *id.* Map 17 cannot provide a rational basis to support the adoption of directional drilling in the Proposed RMP as management direction, especially because the Proposed RMP did not respond to detailed comments about the issue. The RMP's statements on page M -4 about directional drilling and Map 17 are misleading, unsupported, and lacking in a rational basis.

## ***Summary***

BLM brought forward substantial new information in the PRMP/FEIS that was not available in the Draft RMP/Draft EIS. The BLM should consider the PRMP/FEIS as a supplemental EIS and release it for public comment.

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## ***Response***

A supplemental EIS, as defined under the CEQ regulations, 40 CFR 1502.9, is not warranted. The BLM made no substantial changes to the DRMP/DEIS that are relevant to environmental concerns. The BLM determined that there would be no changes that would result in significant effects outside the range of effects analyzed in the DEIS. Also, no significant new circumstances or information were identified that would bear on the BLM's decision or its impacts.

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## ***Response to Comments***

Issue Number: PP-CO-Ancients-09-0006-6  
Organization: Robert L. Bayless, Producer LLC  
Protester: Tom McCarthy

**Issue Excerpt Text:**

Best management practices (BMP's) are promoted throughout the plan's Fluid Minerals Management sections. As stated in our comments to the draft RMP, (attached), how BMP's will be enforced on existing leases was not discussed. We feel their enforcement is not necessary. Our comments relative to this subject were apparently ignored.

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Issue Number: PP-CO-Ancients-09-0009-10  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.  
Other Sections: Need for a Supplemental EIS, Assumptions and Data Used

**Issue Excerpt Text:**

Kinder Morgan protests the Proposed RMP's discussion of directional drilling because it ignores, without response, Kinder Morgan's comments on the Draft RMP, adds significant provisions that were not included in the draft, and fails to recognize the significant technological and economic limitations on directional drilling within the Monument.

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Issue Number: PP-CO-Ancients-09-0009-54  
Organization: Kinder Morgan CO2 Company, L.P.

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Protester: Kenneth H. Havens, Jr.

**Issue Excerpt Text:**

The Draft RMP and EIS contain almost no discussion of directional drilling. The Final EIS fails to respond to comments it did receive about that minimal discussion. The Final EIS does not provide a meaningful opportunity to comment because the Proposed RMP identifies directional drilling as a centerpiece of management for the first time. The Draft EIS discussed directional drilling only as a potential BMP and in advisory committee notes. Draft RMP Appendix E at 1; Draft RMP Appendix F at 3. Kinder Morgan submitted comments on the Draft EIS that identified the economic and technological challenges of directional drilling in January 2008. See Exhibit B at 18. The Proposed RMP referenced the comment but did not respond to it. Proposed RMP at U-41 - U-43.

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Issue Number: PP-CO-Ancients-09-0009-56  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

**Issue Excerpt Text:**

The Proposed RMP is arbitrary and capricious because it ignores substantive comments identifying reasonable uncertainty about the feasibility of the directional drilling.

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## ***Summary***

BLM did not respond to comments regarding implementation of Best Management Practices (BMPs) on existing leases or the technological and economic limitations of directional drilling.

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## ***Response***

The BLM complied with the NEPA regulations at 40 CFR § 1503.4 by performing a detailed comment analysis which assessed and considered all substantive comments received on the DRMP/DEIS. Appendix U lists the comments that the BLM received on the DRMP/DEIS, as well as the BLM's responses to those comments, including instances where the BLM made minor factual corrections to the DRMP/DEIS. Please see pages U-37, U-42 and U-43 of the PRMP.

All 14,500 letters received on the Canyons of the Ancients DRMP/DEIS were compiled, reviewed and analyzed to determine whether the comments submitted were substantive. The systematic process used by the Interdisciplinary (ID) Team for identification of substantive comments is described in Appendix U (p. U-1).

For all substantive comments raised, the ID Team determined if the comment warranted adding or modifying the analyses by making factual corrections or explained why the comment did not warrant any action. Many of the comments were especially voluminous, providing extensive information on issues such as a lack of impact analysis on existing leases, cultural resources considerations, visual resource management, and fluid minerals (oil and gas) development. Some of the information and suggestions provided by commentors were not pertinent to an RMP-level document; such comments would be more appropriate for use on a site-specific basis. The BLM summarized the salient points or issues raised by each comment letter, and then provided substantive and meaningful responses, which included the BLM's basis or rationale for its assumptions and methodology used.

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## ***Categorical Exclusions***

Issue Number: PP-CO-Ancients-09-0009-67  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

### **Issue Excerpt Text:**

The Proposed RMP does not appropriately recognize that oil and gas development may be subject to a statutory or administrative categorical exclusion from additional NEPA analysis. Appendix M states that all APDs would be subject to "alternative development in the Environmental Assessment." Proposed RMP at M-3. This assumes that all APDs will require analysis under NEP A and preparation of an Environmental Assessment within the meaning of 40 C.F.R. Part 1500. Id. This assumption is wrong. Appendix M

overlooks that, as a matter of law, an APD approval may be subject to a categorical exclusion from NEPA analysis.

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Issue Number: PP-CO-Ancients-09-0009-70  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

### **Issue Excerpt Text:**

The Proposed RMP asserts that categorical exclusions may not be used unless "no extraordinary circumstances" exist. Proposed RMP at U-34. That is correct for categorical exclusions established by agency regulation. See 40 C.F.R. §§ 1507.3, 1508.4. It is wrong for statutory categorical exclusions

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### ***Summary***

The Proposed RMP does not appropriately recognize that oil and gas development may be subject to a statutory or administrative categorical exclusion (CX) from additional NEPA analysis. The Proposed RMP incorrectly asserts that categorical exclusions provided by Section 390 of the Energy Policy Act may not be used unless “no extraordinary circumstances” exist.

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### ***Response***

Section 390 of the Energy Policy Act of 2005 establishes certain categorical exclusions and sets out criteria for their use. Section 390 does not specifically address extraordinary circumstance review. The BLM is currently reviewing its policy regarding the implementation of Section 390 categorical exclusions. To the extent the PRMP is not consistent with current policy; those corrections will be made in the ROD. In any event, a determination on whether or not to rely on a categorical exclusion occurs at the implementation level and is not protestable under the planning regulations.

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### ***Assumptions and Data Used***

Issue Number: PP-CO-Ancients-09-0003-44  
Organization: Questar Exploration and Production Company  
Protester: J. Paul Matheny

Issue Excerpt Text:  
Questar protests the following flaws in the assumptions:

1. BLM shows no technical basis for its 2,200' directional drilling radius assumption. Some of the fluid mineral reservoirs in this area are relatively shallow, thus limiting the "reach" of directional drilling to a much smaller radius than shown. As an example, for targets above 4,000', the technically-feasible drilling radius could easily be limited to 1,100', and thus BLM's guidelines would deny access to more than half the leases in the Monument.
2. BLM incorrectly considers directional and horizontal drilling as the same technology. Although there are many economic and environmental advantages to horizontal drilling, it can only be used under certain reservoir conditions, and it does not always provide the surface avoidance flexibility of directional drilling. Horizontal drilling is an emerging

technology that could prove to be the only feasible way to access some of the resources in the area.

3. A policy based on utilizing surface disturbance and lands outside CANM boundaries will prevent leaseholders from using this technology and violate their access rights and will result in a waste of the public energy resource and a taking of lessee property rights.

4. Given the scale of the map, it is impossible to properly evaluate the feasibility of using the existing access points in this example. However, the explanation at M-4 is very concerning. It is impractical to suggest that power line corridors and roads can provide adequate access for construction of well pads and extremely naive to imply that existing facilities such as well locations and compressor sites can be used for additional wells without expansion. Once again, this appears to be a deliberate misleading of the public as to what is required to produce the energy resource. It is erroneous to exclude consideration for topography in any surface use analysis, especially in an area known for its massive topographic features. The fluid resource industry has made significant progress in reducing

the amount of surface disturbance required; however, there are still practical limits to the shape and size of our facilities, and this analysis does not consider any of those limits.

5. Finally, the result of the analysis set forth in Appendix M and Map 17 is appalling. When combined with other restrictions in the PRMP, relying on directional drilling results in more than one-fifth of the leased acreage in CANM potentially being inaccessible for fluid mineral production. Given the flaws in the reach assumptions the actual number is significantly more. Just as important as the objectionable pieces of this reliance on directional drilling is what is left out of the analysis. Directional wells take more time to drill than vertical wells; what is the impact to wildlife and the community of adding rig count or extending field development life if directional drilling is required? What are the point source air quality impacts of co-location of facilities? Have the impacts to offset private landowners been considered? Under this plan, most of the facilities on their land will be used to access resources off their land from which they will see no royalty benefit. If BLM feels compelled to discuss directional drilling so as to attempt to trivialize the impacts producers will feel from the restrictions in the PRMP, they ought to be compelled to fully analyze the activity, not pay it lip service.

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Issue Number: PP-CO-Ancients-09-0006-11  
Organization: Robert L. Bayless, Producer LLC  
Protester: Tom McCarthy

Issue Excerpt Text:  
Several sections of the plan promote directional drilling as an effective method to avoid cultural disturbance. For oil production on the monument, this will not be feasible for two reasons. Oil accumulations are not blanket accumulations, but are very localized. As a result, bottom hole locations need to be very closely adhered to, to maximize recovery. Secondly, the oil produced in the monument is very paraffinic. Rod pumping directional wells with this type of oil is very difficult and expensive. See pages 282, 320, 363, 376, and others. This also makes the no surface occupancy provision for new leases totally impossible.

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Issue Number: PP-CO-Ancients-09-0009-10  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Other Sections: Response to Comments, Need for a Supplemental EIS

Issue Excerpt Text:  
Kinder Morgan protests the Proposed RMP's discussion of directional drilling because it ignores, without response, Kinder Morgan's comments on the Draft RMP, adds significant provisions that were not included in the draft, and fails to recognize the significant technological and economic limitations on directional drilling within the Monument.

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Issue Number: PP-CO-Ancients-09-0009-48  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:  
1. "In order to protect the high cultural resource site density, including settlement clusters, within the Monument, horizontal/directional drilling methods would need to be employed." Proposed RMP at 418.  
2. Throughout Chapter Four, the Proposed RMP states that directional drilling will be used to avoid impacts. See, e.g., Proposed EIS at 352 (stating that for vegetation "the use of directional/horizontal drilling would minimize ground disturbance."). See also *id.* at 282 (cultural resources); 320 (soil); 338 (wildlife); 363 (visual resources); 376 (water); 418 (minerals).  
3. The list of BMPs in Appendix E includes to "Co-locate/directionally drill multiple wells from a single location." *Id.* at E-9.  
4. The Proposed RMP contains a map that claims that 77% of the Monument's minerals "can be reached from existing disturbed areas." See *id.* at M-5; Map 17. The Proposed RMP recognizes that this map does not "consider restrictions due to topography, concerns with other resources, etc." *Id.* at M-4. These statements are arbitrary and capricious because directional drilling has not been established as a feasible technology in the Monument - an issue that the Final EIS has sidestepped public input on.

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Issue Number: PP-CO-Ancients-09-0009-49  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:  
The Proposed RMP treats directional drilling as a silver bullet to resolve development conflicts in the Monument, but the Final EIS does not respond to comments questioning the feasibility of it.



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Issue Number: PP-CO-Ancients-09-0009-51  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:

The Monument includes immense topographic features that constrain the ability to drill directionally. It contains high mesas, deep canyons and numerous arroyos. The Proposed RMP does not consider how these topographic features limit the feasibility of directional drilling.

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Issue Number: PP-CO-Ancients-09-0009-52  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:

But the practice has not been proven and remains uncertain. Directional drilling doubles the cost of each well from about \$5 million to about \$10 million. Exhibit Cat 8. Because of the significant risks involved, Kinder Morgan expects to incur additional "trouble costs" (costs related to unpredicted drilling problems) on one or more of every four wells drilled.

Id. Only one out of every seven traditional vertical wells experiences these significant additional costs. Id. And these additional costs are greater for directional wells - about \$5 million versus about \$2 million for traditional vertical wells. Id. The Proposed RMP completely fails to acknowledge these uncertainties and economic and technological constraints.

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Issue Number: PP-CO-Ancients-09-0009-58  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.  
Other Sections: Need for a Supplemental EIS

Issue Excerpt Text:

Map 17 is a fantasy. It does not consider topography, intervening canyons, geology, engineering, or economics. See *id.* Map 17 cannot provide a rational basis to support the adoption of directional drilling in the Proposed RMP as management direction, especially because the Proposed RMP did not respond to detailed comments about the issue. The RMP's statements on page M -4 about directional drilling and Map 17 are misleading, unsupported, and lacking in a rational basis.

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## ***Summary***

The BLM's analysis of directional and horizontal drilling is flawed. The BLM has not considered the added costs associated with directional and horizontal drilling, nor have they analyzed the limitations on the technology. BLM has not fully analyzed impacts that could accrue from co-location of wells and facilities.

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## ***Response***

The BLM is required to identify any methodologies used and make the explicit reference to the scientific and other sources relied upon for conclusions in the RMP/EIS in accordance with 40 CFR 1502.24. An experienced interdisciplinary team, including a fluid minerals specialist, archaeologist, and a natural resource economist, developed the analysis in the Final EIS regarding directional drilling (Vol. II, List of Preparers, p. List of Preparers-2 - List of Preparers-3). The team reviewed and incorporated all relevant and current data and information available. Such information is cited in Chapter 6: References of the Proposed RMP/Final EIS (p. 523-532) and information submitted during scoping and the Draft EIS comment period. For example, the BLM researched the PI Dwigths Database for information that would help determine if directional and/or horizontal drilling was feasible. It was discovered that there are four conventional oil and gas wells drilled directionally on the Monument and at least two carbon dioxide wells drilled horizontally in the McElmo Dome Unit. The successful application of

directional and horizontal drilling technology makes it apparent that, in some cases, the operators and the BLM can apply this technology to avoid impacts to resources, and drill new wells from existing surface disturbance.

BLM acknowledges these technologies add cost to drilling projects and will work with the operators to design projects that are protective of the Monument resources and allow enjoyment of the lessees' rights (PRMP/FEIS, p. 418). The BLM used information submitted as part of the Reasonably Foreseeable Development (RFD) scenario in determining impacts associated with costs. For example, in terms of added costs, the RFD notes that the first horizontal CO2 well saw a 3-fold increase in production rates when the vertical well was converted to a horizontal well. In terms of economics, this must also be considered by BLM and the operator when reviewing the project economics.

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### **Definition of Proclamation Objects**

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Issue Number: PP-CO-Ancients-09-0003-10  
Organization: Questar Exploration and Production Company  
Protester: J. Paul Matheny

Issue Excerpt Text:  
BLM attempts to expand the subject of the Proclamation to further restrict development. At various points in the PRMP, BLM claims it has a mandate to protect "settlement clusters,"

"communities," "sites," "landscapes," and "social and environmental relationships." See, e.g., pp. 22, 23, 25, 30, 254, 273, 275. The Proclamation states clearly it allows for the creation of CANM in order to protect archeological and historical "objects," and nothing more. And the types of "objects" are identified as more than pots, shards, or simple evidence of human habitation or interaction, but large finds such as "cliff dwellings;" or "great kivas."

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### ***Summary***

BLM attempts to expand the definition of objects, protected under the Proclamation, to include settlement clusters, communities, sites, landscape and social and environmental relationships.

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### ***Response***

The Proclamation speaks broadly to not only individual remnants but to the landscape where they are found. For example, it states, "this area, with its intertwined natural and cultural resources, is a rugged landscape, a quality that greatly contributes to the protection of its scientific and historic objects" and again where it notes, "the complex landscape and remarkable cultural resources of the Canyons of the Ancients National Monument have been a focal point for archaeological interest for over 125 years" (The Monument Proclamation, as cited in Appendix A, p. A-1). Additionally, it notes specific types of archaeological sites and features, such as "cliff dwellings, villages, great kivas, shrines, sacred springs, agricultural fields, check dams, reservoirs, rock art sites, and sweat lodges [that] are spread across the landscape" (The Monument Proclamation, as cited in Appendix A, p. A-1). It also describes how people lived and labored on the land, the occupation period of inhabitants and their use of the land, and about



historic occupation in terms of "landscape", "communities", "sites" and "settlements." Finally, in describing why the area was designated a Monument, the Proclamation speaks to how people lived on the landscape, used the natural resources and interacted in communities (The Monument Proclamation, as cited in Appendix A, p. A-1 - A-2). In developing the RMP, the BLM adhered to the Proclamation's descriptions of specific objects, site types, archaeological and historic features of the Monument's landscape.

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## **FLPMA**

### ***Consistency with Local and State Plans and Policies***

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Issue Number: PP-CO-Ancients-09-0008-17  
Organization: Montezuma County Board of Commissioners

Issue Excerpt Text:

Montezuma County protests the lack of consideration for the Montezuma County Comprehensive land Use Plan. Only 30% of the 1.3 million acres in Montezuma County is in private ownership. The remaining 70% is under Federal management including 33% Ute Mountain Ute Tribal land, 19% National Forest land, 14% BLM land, 4% National Park land and 1% other public land. Federal lands are obviously very important to the overall health of Montezuma County.

Chapter 12 of the Montezuma County Comprehensive land Use Plan establishes the County Policy on multiple -use, planning goals and policy recommendations.

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Issue Number: PP-CO-Ancients-09-0008-19  
Organization: Montezuma County Board of Commissioners

Issue Excerpt Text:

The proposed RMP and current management practices is in conflict with Montezuma County's policy on multiple-use, in particular regard to oil and gas development, and livestock production, the key economic sectors that bring new dollars into Montezuma County and which depend, in a major way, on the multiple use of federal lands.

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Issue Number: PP-CO-Ancients-09-0012-19  
Organization: Dolores County Board of County Commissioners

Issue Excerpt Text:

Montezuma County protests the lack of consideration for the Montezuma County Comprehensive Land Use Plan. Only 30% of the 1.3 million acres in Montezuma County is in private ownership. The remaining 70% is under Federal management including 33% Ute Mountain Ute Tribal land, 19% National Forest land, 14% BLM land, 4% National Park land and 1% other public land. Federal lands are obviously very important to the overall health of Montezuma County. Chapter 12 of the Montezuma County Comprehensive Land Use Plan establishes the County Policy on multiple -use, planning goals and policy recommendations.

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Issue Number: PP-CO-Ancients-09-0012-21  
Organization: Dolores County Board of County Commissioners

Issue Excerpt Text:

The proposed RMP and current management practices is in conflict with Montezuma County's policy on multiple-use, in particular regard to oil and gas development, and livestock production, the key economic sectors that bring new dollars into Montezuma County and which depend, in a major way, on the multiple use of federal lands.

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## ***Summary***

The PRMP/FEIS is in conflict with Montezuma County's policy on multiple-use.

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## ***Response***

BLM’s planning regulations require that land use plans must “be consistent with the officially approved or adopted resource related plans, and the policies and programs contained therein” of local governments, as long as these resource-related plans comport with FLPMA and other Federal laws and regulations. 43 C.F.R. § 1610.3-2(a). Chapter 5, Section 5.6 addresses the differences between the Montezuma County Comprehensive Plan (County Plan) and the PRMP/FEIS (p. 520-521). The BLM determined that the County management direction of placing a priority on grazing, timber harvest and energy development is contradictory to FLPMA (p. 521). Additionally, the County Plan is inconsistent with the Proclamation's stated purpose of protecting the objects listed therein (PRMP/FEIS, p. 521).

The BLM has worked closely with State and local governments during the preparation of the Canyons of the Ancients National Monument (CANM) PRMP/FEIS. The PRMP/FEIS lists the cooperating agencies actively involved in the planning process in Chapter 5, sections 5.2.5 - 5.2.7 (p. 512-516). The BLM works to find a balance among land resource uses and needs as reflected in these local government plans, and has done so in the preparation of the CANM PRMP/FEIS.

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## ***Advisory Committee***

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Issue Number: PP-CO-Ancients-09-0008-13  
Organization: Montezuma County Board of Commissioners

Issue Excerpt Text:  
Montezuma County protests the planning process followed by the BLM.  
The Monument Plan was supposed to be developed using input from an Advisory Committee. However the Advisory Committee charter was left to expire by May 2007, before the plan was completed. We feel that local representation was significantly compromised because of this.

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Issue Number: PP-CO-Ancients-09-0008-20  
Organization: Montezuma County Board of Commissioners

Issue Excerpt Text:  
Montezuma County also establishes the need for strong citizen and local government involvement in planning decisions, as per FLPMA requirements. Because the Advisory Committee charter was not renewed this component of the planning process was compromised.

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Issue Number: PP-CO-Ancients-09-0012-15  
Organization: Dolores County Board of County Commissioners

Issue Excerpt Text:  
Montezuma County protests the planning process followed by the BLM.  
The Monument Plan was supposed to be developed using input from an Advisory Committee. However the Advisory Committee charter was left to expire by May 2007, before the plan was completed. We feel that local representation was significantly compromised because of this.

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Issue Number: PP-CO-Ancients-09-0012-22  
Organization: Dolores County Board of County Commissioners

Issue Excerpt Text:  
Montezuma County also establishes the need for strong citizen and local government involvement in planning decisions, as per FLPMA requirements. Because the Advisory Committee charter was not renewed this component of the planning process was compromised.

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## ***Summary***

The BLM's planning process was compromised because of the Monument's Advisory Committee's lack of involvement once the charter was not renewed.

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## ***Response***

As noted in the Response to Comments on the Draft RMP/Draft EIS, the Monument Advisory Committee became a subgroup of the Southwest Resource Advisory Council (SWRAC) and continued its active role as interested local participants (PRMP/FEIS, Appendix U, p. U-5).

The Bureau of Land Management (BLM) charters its Resource Advisory Committees (RACs) pursuant to the requirements of the Federal Advisory Committee Act (FACA) and BLM's Advisory Committee regulations (see 43 C.F.R. § 1784). FACA requirements apply to subgroups, such as the Monument Advisory Committee, which converted from the stand-alone Monument Advisory Committee to a subgroup of SWRAC.

The Monument Advisory Committee continued its active role in the planning process when it became a subgroup of the SWRAC. Except for changes in elected official positions (Montezuma County and Dolores County representatives) members of the subgroup were the same individuals as those on the Monument Advisory Committee. The subgroup continues to operate in an advisory capacity for the planning process (43 CFR 1601-1610 and CEQ 40 CFR 1500-1508).

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## ***Air Resources***

### ***Regulatory Authority for Air Quality***

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Issue Number: PP-CO-Ancients-09-0002-38  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
BBC Protests the BLM's first and second Objectives identified on page 35 of the Proposed CANM RMP because they are potentially illegal because they are beyond the BLM's jurisdiction and authority. Additionally, BBC Protests the BLM's adoption of specific air emissions standards in violation of the Clean Air Act, FLMP A, and their implementing regulations. See Proposed CANM RMP, pgs. 35 - 38.

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Issue Number: PP-CO-Ancients-09-0002-42  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
Although BBC supports the BLM's laudable goal of protecting air quality, as a matter of unequivocal Federal law, the BLM does not have the authority to impose air emission standards, ensure air quality standards are maintained, or protect visibility within the Monument.

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Issue Number: PP-CO-Ancients-09-0002-43  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
The BLM does not have direct authority over air quality or air emissions under the Clean Air Act (CAA). 42 U.S.C. §§ 7401 et seq. Under the express terms of the CAA, the Environmental Protection Agency (EPA) has the authority to regulate air emissions. In Colorado, the EPA has delegated its

authority to the Colorado Department of Public Health and Environment (CDPHE). See COLO. REV. STAT. §§ 25-7-101 - 25-7-1309 (2009). The Secretary of the Interior, through the IBLA, has recognized that in states such as Wyoming and Colorado, the States, not the BLM, have authority over air emissions

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Issue Number: PP-CO-Ancients-09-0002-45  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
The BLM does not have authority to regulate emissions in Colorado. The BLM must eliminate or revise the first and second Objectives and all of the Management Actions Common to All Alternatives identified on pages 35 - 38 because the BLM cannot regulate air quality or air emissions. In particular the BLM must eliminate the proposed Management Actions adopting specified emission controls for compressors and wellhead engines: the CDPHE and the EP A alone have the authority to establish emission controls. Similarly, the BLM must eliminate the proposed management action requiring all new or replacement internal combustion engines to have specific emission controls for NOx. See Proposed CANM RMP, pg. 35 - 37. The BLM must also eliminate the proposed emission standards for VOC emissions on pages 33 - 35. The BLM simply cannot develop or enforce emission controls.

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Issue Number: PP-CO-Ancients-09-0002-48  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
With respect to potential visibility impacts, the BLM's authority is also limited by existing federal law.

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Issue Number: PP-CO-Ancients-09-0002-50  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
Although federal land managers with jurisdiction over Class I areas may participate in the development of regional haze SIPs, the BLM has no such

jurisdiction in Colorado. 42 U.S.C. § 7491 (2009); see also COLO. REV. STAT. §§ 25-7-101 - 25-7-1008 (2009). Accordingly, the BLM has no authority over air quality and cannot impose emissions restrictions, either directly or indirectly, on natural gas operations in Colorado, particularly if the overall goal is to reduce potential visibility impacts.

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Issue Number: PP-CO-Ancients-09-0009-116  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:  
Kinder Morgan protests the Proposed RMP's air quality management direction because it is inconsistent with state authority and expertise, frustrates other RMP land use objectives, and fails to allow for variances where other resource concerns are present.

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Issue Number: PP-CO-Ancients-09-0009-73  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:  
The Proposed RMP adopts detailed air emissions control requirements for engines and other fluid minerals development activities, and adopts air quality based surface spacing requirements. Proposed RMP at 35-38. Those provisions should be removed from the RMP because the Clean Air Act grants Colorado -- and not the BLM -- "primary responsibility for assuring air quality within the entire geographic area comprising [the] State." 42 U.S.C. § 7407(a).

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Issue Number: PP-CO-Ancients-09-0009-75  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:  
Congress did not authorize the BLM to adopt air pollution controls in RMPs or otherwise directly regulate air quality in a land use plan.

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Issue Number: PP-CO-Ancients-09-0009-79  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:  
The Proposed RMP improperly suggests the BLM has responsibility over an issue comprehensively

regulated by the State, and in which the BLM has

little expertise and ability to monitor.

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### ***Summary***

BLM does not have the authority to regulate air quality, air emissions or visibility standards. This authority rests with the State of Colorado as delegated by the Environmental Protection Agency.

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### ***Response***

While the authority to regulate air quality rests primarily with states, tribes and the EPA, FLPMA requires the BLM to manage the public lands in a manner that will protect air quality. Specifically, The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1752) requires that "public lands will be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmosphere, water resource and archaeological values..." (sec. 102). BLM requires all that all surface-disturbing activities on public lands with an air quality impact be permitted by the appropriate air quality regulator. BLM cannot authorize activities that will be in violation of any law, including the Clean Air Act (CAA), FLPMA and NEPA (Section 3.1.1.1, p. 127-128 and Table 5-1). Moreover, FLPMA requires that land use plans provide for compliance with applicable air pollution control laws and implementation plans, and provides authority for the BLM to regulate through various instruments, the use, occupancy, and development of public lands as necessary to prevent unnecessary or undue degradation of lands. The CDPHE and the EPA formally requested that the San Juan Public Lands including CANM, adopt very specific measures limiting NOx emissions. The NOx emission limits are included as air quality objectives in the CANM RMP. The objectives for air quality protection for CANM are in compliance with FLPMA and are within the regulatory authority of the BLM. Therefore, the BLM will adopt the mitigation measures provided by the Four Corners Air Quality Task Force (of which the BLM is a signatory) that mitigate impacts to levels that do not violate the CAA standards (PRMP/FEIS, Appendix U, p. U-16).

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### ***Leasable Minerals***

#### ***Data Used for RFD Scenario***

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Issue Number: PP-CO-Ancients-09-0002-67  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
BBC objects to the RFD Scenario as currently drafted and incorporated into the Proposed CANM RMP because the RFD Scenario for oil and natural gas development within the Monument is unreasonably

low, particularly given recent advances in drilling, completion, and production technology.

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Issue Number: PP-CO-Ancients-09-0002-69  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
The BLM's view that oil and gas development in the

Monument is declining and that substantial new development is not likely is erroneous given geologic conditions and recent advances in technology. For example, several operators are currently examining and even proposing increased development in the Monument using horizontal drilling techniques. Within the Monument there is significant potential for unconventional resource plays within the Paradox shales and tight carbonate formations. The application of horizontal drilling technology and fracture stimulation of tight reservoirs has the potential to revitalize the oil and gas development within the Monument. The Paradox shales are organic rich (up to 11 % total organic carbon) and mature in the Monument area. The Chimney Rock Shale is the main source rock for the Desert Creek member and the Hovenweep and Gothic Shales are the main source rocks for the Ismay member. Several of the wells that have penetrated through the Mississippian Leadville formation have encountered gas shows within the Paradox shales and micritic carbonates within the Akah and Barker Creek members of the Paradox Formation. There is significant potential to develop multiple stacked unconventional tight reservoir zones within the Paradox Formation in a single wellbore to produce economic results as well as drilling horizontally in some of these tight reservoir zones to maximize oil and gas production. If BBC's exploratory activities on similar geologic lands outside the monument prove successful, there is potential for up to 1,000 wellbores within the Monument boundary, though not all of those wells would be drilled during the planning period of the RMP.

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Issue Number: PP-CO-Ancients-09-0014-3  
Organization: DJ Simmons, Inc.  
Protester: John Byron

Issue Excerpt Text:

We assume the BLM logic behind determining the number of future wells within the Monument was based on the statement within the EIS which stated "the formations are near depletion". This is a false assumption for the following reasons:

- a. To date there has been minimal exploration (well bores) within this vast geologic area to conclude the formations are depleted. Only a fraction of the area has been tested and very little seismic data is available. One can refer to recent USGS resource base assessments which indicate the hydrocarbon resource potential is still very significant.
- b. Geologic and engineering science estimates only 30-40% of the oil and gas in place has been produced from existing wells to date. Secondary and tertiary recovery techniques could allow recovery of an additional 30 to 40%. Additionally, it is well known that the reservoirs are commonly compartmentalized and untapped compartments do exist and will be found, even in existing fields. The Utah Geologic Survey has done extensive research work on this particular aspect of the resource potential, for reference.
- c. The EIS did not analyze the resource potential of natural gas that is presently being developed by new technology from the Gothic and Hovenweep "shale" formations on lands outside the Monument. These rocks have long been known to be extremely rich in organic components and have sourced the conventional reservoirs. With new technology these source rocks are now considered to be a huge resource base themselves. The Gothic and Hovenweep shales also exist within the boundaries of the Monument.

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### ***Summary***

The BLM under-estimated the amount of oil and gas activity that would occur in the next 20 years within the Monument because the BLM did not take into account recent advances in technology. Additionally, the BLM has falsely assumed the formations are near depletion.

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## ***Response***

The BLM has not received any new information that requires a revision of the existing Reasonable Foreseeable Development (RFD) scenario. While preparing the RFD, the BLM sent an extensive questionnaire to all lease operators in the Monument. The BLM received a response from every operator, and based the RFD scenario in large part on those responses.

The BLM believes that data regarding potential production of the gas shales within the Monument are sufficient for analysis of exploration and production over the next 20 years. Additional information was added to Chapters 3, pp. 213-214, 415, and 422 in the PRMP/FEIS to reflect the possibility of Hovenweep Shale as a potential reservoir and drilling target for future exploration. To date, we have received no APDs for wells targeting these potential shale reservoirs. As there is no current production from these shales in the Monument, the BLM did not consider this to fall within the "reasonable, foreseeable" description. BLM recognizes that formations producing CO<sub>2</sub> will continue to be developed and will continue production beyond the 20-year life of the RMP; however, some formations with algal mounds producing oil and natural gas are near depletion. The BLM considers the existing RFD scenario valid.

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## ***Purpose of RFD***

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Issue Number: PP-CO-Ancients-09-0002-78  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
There is absolutely no doubt that as a matter of BLM policy, IBLA precedent, and federal case law, the RFD Scenario is not a cap of future development.

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Issue Number: PP-CO-Ancients-09-0002-80  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
The BLM must clarify that the RFD Scenario is not a cap on future development or a trigger that necessarily requires additional analysis, including air quality analysis. The BLM's indication that the submission of 150 APDs will necessarily trigger additional analysis ignores the fact that the filing, or even the drilling of 150 wells may not trigger the need for additional analysis if, for example, multiple wells are drilled from a single location thereby reducing the anticipated levels of surface disturbance. Similarly, with respect to air quality, the drilling of 150 wells may not mean that additional air quality

analysis is necessary if technologies are used to reduce emissions from oil and gas operations below the levels anticipated in the BLM' air quality technical support document.

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Issue Number: PP-CO-Ancients-09-0002-87  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
Unless the BLM clarifies the purpose of the RFD Scenario in the CANM RMP, the public will continue to be confused by the purpose of the RFD Scenario. BBC's interests will be adversely impacted by this confusion because the BLM and operators such as BBC will continue to face litigation, administrative appeals, and challenges by groups and individuals opposed to oil and gas development in the CANM who construe, or attempt to construe, the RFD Scenario as a limitation on oil and gas development. By clarifying the purpose of the RFD Scenario, and the fact that it is not a limitation on oil and gas development in the CANM RMP, the BLM can eliminate or curtail potential confusion, prevent unnecessary opposition to future oil and gas projects, and, thus, not adversely impact BBC's interests.

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## ***Summary***

A Reasonably Foreseeable Development (RFD) scenario is not a cap on future development and the well numbers used in the RFD scenario should not be used as a trigger to require additional analysis. The BLM must look at the associated level of disturbance and the impacts from that disturbance on other resources before determining that additional analysis is necessary.

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## ***Response***

The RFD is a long-term projection (scenario) of oil and gas exploration, development, production, and reclamation activity. The RFD estimates oil and gas activity in a defined area for a specified period of time (Washington Office Instruction Memorandum 2004-089).

The RFD does not establish a cap for the number of wells that can be drilled in a specific area. Instead, it serves as a land use planning tool to provide potential effects from oil and gas activity that could occur as a result of leasing. At the development/implementation stage, the actual number of wells could exceed the RFD scenario if the associated surface disturbance and impacts to other resources do not exceed the analysis threshold in the PRMP/FEIS. However, if the impacts from future oil and gas development were to exceed the impacts analyzed in the PRMP/FEIS (even prior to reaching the 150 APD estimate), then, at the development stage, additional NEPA analysis may be appropriate. For example, 150 APDs do not serve as a fixed trigger for additional resource analysis.

It is BLM policy to perform a review of planning decisions when new circumstances or information arise (Land Use Planning Handbook, H-1601-1, Section VI, p. 37-44). As the plan is implemented, the BLM will perform these reviews as new information is brought to our attention or on a five-year evaluation schedule, whichever comes first. Should an amendment or revision of the RMP be necessary, BLM will follow all applicable laws and policies. .

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## ***Private Access***

Issue Number: PP-CO-Ancients-09-0008-11  
Organization: Montezuma County Board of Commissioners

**Issue Excerpt Text:**

Closing historically used access points negatively affects private property values, creates unnecessary limitations on many uses, and may be in conflict with RS 2477 rights-of-way.

Montezuma County protests the proposed closure of any access roads into private property which pre-dates the creation of the Monument. Use of all access roads into private property that were in existence

before the creation of the Monument are a valid existing right and should be recognized as such. The private land owners of Montezuma County, already have existing right-of-way to access and use their property as they see fit using county, public, and private roads that they have historically used, including the right to improve and maintain those roads as required to meet the needs of the current or future land use.

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Issue Number: PP-CO-Ancients-09-0008-12  
Organization: Montezuma County Board of Commissioners



Issue Excerpt Text:  
Montezuma County further protests the Right-of-Way Acquisition Process (Appendix T) because access to private property is already an existing right, and is supported by the Proclamation.

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Issue Number: PP-CO-Ancients-09-0012-13  
Organization: Dolores County Board of County Commissioners

Issue Excerpt Text:  
Closing historically used access points negatively affects private property values, creates unnecessary limitations on many uses, and may be in conflict with RS 2477 rights-of-way.  
Montezuma County protests the proposed closure of any access roads into private property which pre-dates the creation of the Monument. Use of all access roads into private property that were in existence

before the creation of the Monument are a valid existing right and should be recognized as such. The private land owners of Montezuma County, already have existing right-of-way to access and use their property as they see fit using county, public, and private roads that they have historically used, including the right to improve and maintain those roads as required to meet the needs of the current or future land use.

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Issue Number: PP-CO-Ancients-09-0012-14  
Organization: Dolores County Board of County Commissioners

Issue Excerpt Text:  
Montezuma County further protests the Right-of-Way Acquisition Process (Appendix T) because access to private property is already an existing right, and is supported by the Proclamation.

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### ***Summary***

Use of all access roads into private property that were in existence before the creation of the Monument are a valid existing right and should be recognized as such.

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### ***Response***

Access to private property was considered in the EIS and Proposed Plan (PRMP/FEIS, pp. 83, 212, 230, and Appendix U, p. U60 - U62). After the Monument was established, private landowners identified their primary access route(s), which were then included in the transportation system in the Proposed RMP. Legal access to private property may be obtained as a BLM right-of-way (ROW) authorization (grant) issued under the authority of the Federal Land Policy and Management Act of 1976 (FLPMA) (Appendix U, p. U-61); the ROW grants are processed in accordance with 43 CFR 2800. Granting a right-of way authorization is an implementation decision made at the discretion of the BLM authorized officer; a ROW grant would be made only after adequate site-specific environmental analysis in accordance with the National Environmental Policy Act (NEPA).

The BLM encourages private landowners to secure rights-of-way across public land to their inholdings.

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## *Valid Existing Rights*

### *Interpretation of the Proclamation and Valid, Existing Fluid Mineral Rights*

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Issue Number: PP-CO-Ancients-09-0002-2  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
The Proposed CANM RMP Does Not Adequately Protest Existing Lease Rights  
BBC protests the BLM's description of and treatment of valid existing lease rights within the Proposed CANM RMP. See, e.g., CANM Proposed RMP, pgs. 22 - 23,43,216,415, U-22. BBC is concerned that the BLM's current description and treatment of valid and existing lease rights is inaccurate, legally indefensible, and may be used to prevent BBC from conducting operations on its existing oil and gas leases within the Monument.

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Issue Number: PP-CO-Ancients-09-0002-23  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
As discussed in more detail below, the BLM's proposed treatment of existing oil and gas lease rights is also inconsistent with the Monument's governing Proclamation.

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Issue Number: PP-CO-Ancients-09-0002-25  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
The Proclamation designating the Monument explicitly states that valid existing rights, including oil and gas lease rights, must be honored. See Presidential Proclamation 7317, 65 Fed. Reg. 37243, 37245 (June 13, 2000).

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Issue Number: PP-CO-Ancients-09-0002-27  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
BBC Protests the BLM's interpretation of the Proclamation that suggests that development on

existing leases will be allowed only where that development will not impact cultural resources. The Proposed CANM RMP contains a paraphrase of the Proclamation's critical sentence regarding oil and gas development: "In terms of existing leases, development will continue, subject to valid and existing rights, provided that the activities do not create new impacts that interfere with the proper care and management of the objects protected by the Proclamation." Proposed CANM RMP, pg. 216. Similarly, the BLM suggests that the "Monument Proclamation requires that existing lease rights be honored in ways that do not create new impacts on cultural resources and other objects the Monument was designed to protect." Proposed CANM RMP, pgs. 22-23. These statements suggest that development on existing leases will only be allowed where there are no new impacts. Such a statement is significantly different than the Proclamation's mandate that "the Secretary of Interior shall manage the development, subject to valid existing rights."

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Issue Number: PP-CO-Ancients-09-0002-30  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
Because most of the Federal lands have already been leased for oil and gas, which includes carbon dioxide, and development is already occurring, the monument shall remain open to oil and gas leasing and development; provided, the Secretary of the Interior shall manage the development, subject to valid existing rights, so as not to create any new impacts that interfere with the proper care and management of the objects protected by this proclamation. . . . Id. (emphasis added). This critical language mandates that the BLM's efforts to protect cultural resources and archaeological sites on existing oil and gas leases are "subject to" the rights granted to BBC and others in the existing oil and gas leases.

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Issue Number: PP-CO-Ancients-09-0002-33  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:

Further, the BLM cannot through regulation attempt to unreasonably restrict BBC access to or right to develop its existing leases. The BLM indicates on page 418 of the Proposed CANM RMP that adherence to the new RMP may result in greater up-front costs and delays to operations. Such additional restrictions may be permissible so long as they are reasonable. However, regulation under a law made subject to valid existing rights may not unreasonably restrain the exercise of those rights.

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Issue Number: PP-CO-Ancients-09-0002-36  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
The recognition of valid existing rights is not included as one of the purposes of the RMP nor is proposed management constructed in a way that complies with the Proclamation. The BLM must honor valid existing rights in the Monument area. The BLM's interpretation of valid existing rights in the Canyons DRMP/EIS does not honor valid existing rights.

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Issue Number: PP-CO-Ancients-09-0002-5  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
The quoted language in the Proposed CANM RMP directs that existing oil and gas lease rights can only be developed if absolutely no other resource values are impacted. Such restrictive requirements would preclude all future oil and gas development because any multiple use activity, such as oil and gas development, may have minor impacts visual, noise, and other resources. BBC works cooperatively with the BLM and other regulatory agencies to ensure that development operations have the least impact reasonably possible, but cannot develop its existing lease rights under the proposed regulatory framework.

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Issue Number: PP-CO-Ancients-09-0002-9  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:

The language on page 415 of Proposed CANM RMP suggests that the primary goal of fluid minerals management is to protect cultural and other resources. Such a statement does not address valid existing rights, or BBC's contractual obligation to develop the oil and gas resources within its leases.

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Issue Number: PP-CO-Ancients-09-0003-12  
Organization: Questar Exploration and Production Company  
Protester: J. Paul Matheny

Issue Excerpt Text:  
But the attempt to expand beyond the clear meaning of the Proclamation in order to place a majority of acres throughout the CANM off-limits to any disturbance is inappropriate and an illegal interpretation and restriction of Questar's valid existing rights.

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Issue Number: PP-CO-Ancients-09-0003-3  
Organization: Questar Exploration and Production Company  
Protester: J. Paul Matheny

Issue Excerpt Text:  
The PRMP suffers from many errors, but most can be traced back to a refusal to recognize the valid existing rights held by individuals and companies which pre-date President William Clinton's Proclamation which established the CANM on June 9, 2000.

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Issue Number: PP-CO-Ancients-09-0003-5  
Organization: Questar Exploration and Production Company  
Protester: J. Paul Matheny

Issue Excerpt Text:  
In an attempt to circumvent multiple-use and valid existing rights, BLM relies on a convoluted and illegal interpretation of the CANM Proclamation throughout the PRMP/FEIS and ignores its own Instructional Memorandums and Information Bulletins.

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Issue Number: PP-CO-Ancients-09-0003-7  
Organization: Questar Exploration and Production Company  
Protester: J. Paul Matheny

Issue Excerpt Text:  
Questar protests the transposing of the clear language

of the Proclamation throughout, including PRMP/FEIS pp. 22 - 23, 216, 415, U-22. BLM has mandated a position that valid existing lease rights are subservient to protection of cultural resources: "The Monument Proclamation requires that existing lease rights be honored in ways that do not create new impacts on the cultural resources and other objects the Monument was established to protect." PRMP at 22-23. "In terms of existing leases, development will continue, subject to valid and existing rights, provided that the activities do not create new impacts that interfere with the proper care and management of the objects protected by the Proclamation." PRMP at 216.

The actual language of the Proclamation clearly states that establishment of the Monument and management of development within the Monument is SUBJECT TO valid existing rights:

" [T]he monument shall remain open to oil and gas leasing and development; provided, the Secretary of Interior shall manage the development, subject to valid existing rights, so as not to create any new impacts that interfere with the proper care and management of the objects protected by this proclamation,..."

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Issue Number: PP-CO-Ancients-09-0003-8  
Organization: Questar Exploration and Production Company  
Protester: J. Paul Matheny

Issue Excerpt Text:  
By this erroneous interpretation of the Proclamation, BLM tells the public in this PRMP that the only way a company will be allowed to exercise its rights is if it can do so without impacts. This is an illegal interpretation

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Issue Number: PP-CO-Ancients-09-0008-1  
Organization: Montezuma County Board of Commissioners

Issue Excerpt Text:  
Montezuma County submits this protest because the BLM does not fully comply with the Monument Proclamation mandate regarding the protection of cultural and other resources being "subject to valid existing rights."

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Issue Number: PP-CO-Ancients-09-0008-22  
Organization: Montezuma County Board of

Commissioners

Issue Excerpt Text:  
Montezuma County also protests the current BLM interpretation of the Monument Proclamation with regard to valid existing rights. The Monument Proclamation language specifically places the protection of objects within the Monument "subject to" valid existing rights. The proclamation language, "subject to", clearly means that the BLM's objective of preserving cultural resources cannot dominate the right of private parties to enjoy their "valid existing right". Some affects to cultural resources may be unavoidable even with very careful planning. In these cases there are reasonable mitigation measures that can be used so that private parties can still exercise their rights. It is apparent however that the BLM has been implementing management decisions with overwhelming focus given to cultural preservation.

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Issue Number: PP-CO-Ancients-09-0008-25  
Organization: Montezuma County Board of Commissioners

Issue Excerpt Text:  
The BLM is very careful not to technically step outside of the letter of the Proclamation law. However the BLM does not follow the spirit of the Proclamation because the agency intentionally makes very difficult to enjoy valid existing rights.

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Issue Number: PP-CO-Ancients-09-0008-27  
Organization: Montezuma County Board of Commissioners  
Other Sections: Interpretation of the Proclamation and Other Valid Existing Rights

Issue Excerpt Text:  
Montezuma County recommends creating some fairness and accountability for the interpretation of the Monument Proclamation and review processes, including a timeline that the BLM must adhere to. Simply put, Montezuma County wants the oil and gas lease holders, grazing permit holders, and individuals who own private in-holdings to be allowed to exercise their valid existing rights in an orderly and timely manner.

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Issue Number: PP-CO-Ancients-09-0008-4  
Organization: Montezuma County Board of Commissioners

Issue Excerpt Text:

Montezuma County protests language on pages 22, 23, 415, and U-32 of the proposed RMP because the proposed RMP does not give full effect to the Proclamation mandate that cultural resources protection is "subject to valid existing rights:" "the monument shall remain open to oil and gas leasing and development; provided, the Secretary of the Interior shall manage the development, subject to valid existing rights, so as not to create any new impacts that interfere with the proper care and management of the objects protected by this proclamation;..."

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Issue Number: PP-CO-Ancients-09-0008-7  
Organization: Montezuma County Board of Commissioners

Issue Excerpt Text:

For over 40 years prior to the creation of the Monument, the BLM used a perfectly acceptable approval process and mitigation program which allowed mineral lease holders to enjoy their valid existing rights, yet still offered adequate protection to cultural resources and the environment. Montezuma County recommends adhering to the spirit and the letter of the Monument Proclamation by following the same APD process and timeline that is used on other BLM lands.

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Issue Number: PP-CO-Ancients-09-0009-117  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:

Proposed RMP at Q-17. (emphasis added) This statement correctly recognizes that valid existing rights should be managed in a way that protects the values contained in the Proclamation, but that management authority is not limitless - it may only be applied where "legal discretion allows." The Proposed RMP does not follow this policy, and fails to adequately acknowledge the limits of the BLM's legal discretion.

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Issue Number: PP-CO-Ancients-09-0009-14  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:

But the Proposed RMP creates an irreconcilable management conflict when it repeatedly and

erroneously states that existing oil and gas lease rights may or must be denied to prevent impacts to Monument resources. For example, the Proposed RMP states:

1. "The Monument Proclamation requires that existing lease rights be honored in ways that do not create new impacts on the cultural resources and other objects the Monument was established to protect." Proposed RMP at 22-23.
  2. "Should avoidance [of cultural resources] not be possible, mitigation, denial of components of/or entire proposals would also be viable management options." Proposed RMP at 22.
  3. "[W]e cannot authorize activities that will cause impacts to objects protected by the Proclamation." Id. at U-32.
- These statements are arbitrary and capricious because the BLM may not preclude the exercise of valid existing rights to protect cultural resources.
- 

Issue Number: PP-CO-Ancients-09-0009-17  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:

Under the Proclamation, the Secretary's authority to manage oil and gas development to avoid new impacts to Monument objects is made "subject to" the exercise of valid existing rights like Kinder Morgan's oil and gas leases.

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Issue Number: PP-CO-Ancients-09-0009-19  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:

But where the exercise of valid existing rights requires impacts to Monument objects, it is the prevention of impacts that must give way, not the other way around. The Proposed RMP misinterprets this one key sentence and fails to adequately recognize the status of valid existing rights within the Monument.

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Issue Number: PP-CO-Ancients-09-0009-2  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:

Kinder Morgan is protesting the Proposed RMP because, in its current form, the RMP does not recognize that the BLM may not implement the

proposed management direction in ways that, either individually or cumulatively, prohibit Kinder Morgan from exercising its valid existing oil and gas lease rights. Kinder Morgan's oil and gas leases, which predate the establishment of the Monument, give it the right to economically produce the minerals under lease.

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Issue Number: PP-CO-Ancients-09-0009-20  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:  
The Proposed RMP inverts the balance struck in the Proclamation. The Proclamation makes the BLM's management of oil and gas development to protect Monument objects "subject to" valid existing rights. Proclamation, Proposed RMP at A-3. But the Proposed RMP states that valid existing rights may only be exercised in ways that do not impact Monument objects.

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Issue Number: PP-CO-Ancients-09-0009-30  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:  
The Proposed RMP fails to follow the direction of the BLM Manual and BLM State Office policy. The BLM Manual provides that "[a]ll decisions made in land use plans, and subsequent implementation decisions, will be subject to valid existing rights. This includes, but is not limited to, valid existing rights associated with oil and gas leases. . . ." BLM Manual 1601-Land Use Planning at .06.G.

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Issue Number: PP-CO-Ancients-09-0009-4  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:  
The Proposed RMP contains a number of restrictive requirements and outright prohibitions that - either individually or cumulatively - purport to authorize the BLM to deny Kinder Morgan the exercise of those rights. The Proposed RMP fails to provide that management direction will not be applied in ways that deny the exercise of valid existing rights. The document affirmatively states that the BLM must deny development where impacts to Monument objects occur. Proposed RMP at U-32. This violates the Proclamation, is contrary to Kinder Morgan's

valid existing lease rights, and is arbitrary and capricious.

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Issue Number: PP-CO-Ancients-09-0012-24  
Organization: Dolores County Board of County Commissioners

Issue Excerpt Text:  
Montezuma County also protests the current BLM interpretation of the Monument Proclamation with regard to valid existing rights. The Monument Proclamation language specifically places the protection of objects within the Monument "subject to" valid existing rights. It is apparent however that the BLM has been implementing management decisions that do not give full effect to the Proclamation language.

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Issue Number: PP-CO-Ancients-09-0012-26  
Organization: Dolores County Board of County Commissioners

Issue Excerpt Text:  
The BLM is very careful not to technically step outside of the letter of the Proclamation law. However the BLM does not follow the spirit of the Proclamation because the agency intentionally makes very difficult to enjoy valid existing rights. The BLM has used extensive delays, policy changes, procedural red-tape, and access restrictions as a way to stymie the exercise of existing rights to the point where "existing rights" carries no meaning. The BLM has misapplied the Proclamation language to create obstructions for "undesirable" oil and gas leaseholders and then misapplied the Proclamation language again to allow activity it approves of (like Mountain Biking).

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Issue Number: PP-CO-Ancients-09-0012-27  
Organization: Dolores County Board of County Commissioners  
Other Sections: Interpretation of the Proclamation and Other Valid Existing Rights

Issue Excerpt Text:  
Montezuma County recommends creating some fairness and accountability for the interpretation of the Monument Proclamation and review processes, including a timeline that the BLM must adhere to. Simply put, Montezuma County wants the oil and gas lease holders, grazing permit holders, and individuals who own private in-holdings to be allowed to



exercise their valid existing rights in an orderly and timely manner.

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Issue Number: PP-CO-Ancients-09-0012-4  
Organization: Dolores County Board of County Commissioners

Issue Excerpt Text:  
Montezuma County submits this protest because the BLM does not fully comply with the Monument Proclamation mandate regarding the protection of cultural and other resources being "subject to valid existing rights."

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Issue Number: PP-CO-Ancients-09-0012-6  
Organization: Dolores County Board of County Commissioners

Issue Excerpt Text:  
Montezuma County protests language on pages 22, 23, 415, and U-32 of the proposed RMP because the proposed RMP does not give full effect to the Proclamation mandate that cultural resources protection is "subject to valid existing rights:"

"the monument shall remain open to oil and gas leasing and development; provided, the Secretary of the Interior shall manage the development, subject to valid existing rights, so as not to create any new impacts that interfere with the proper care and management of the objects protected by this proclamation;"

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Issue Number: PP-CO-Ancients-09-0012-9  
Organization: Dolores County Board of County Commissioners

Issue Excerpt Text:  
For over 40 years prior to the creation of the Monument, the BLM used a perfectly acceptable approval process and mitigation program which allowed mineral lease holders to enjoy their valid existing rights, yet still offered adequate protection to cultural resources and the environment. Montezuma County recommends adhering to the spirit and the letter of the Monument Proclamation by following the same APD process, and timeline that is used on other BLM lands.

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## ***Summary***

The Proclamation's "subject to" language clearly means that the BLM's objective of preserving cultural resources cannot dominate the right of private parties to develop their valid existing rights. The BLM cannot restrict access to or limit the right of a company to develop its oil and gas leases.

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## ***Response***

The Proclamation obligates the Secretary of the Interior, through the BLM, to manage the Monument pursuant to applicable authorities and to carry out the purposes of the Proclamation. Accordingly, management of the Monument must include protecting the objects described in the Proclamation. The establishment of the Monument constitutes an exception to the management regime otherwise applicable to lands managed by the BLM, and mandates protection of the objects within the Monument as the highest priority.

In recognition of its status as a National Monument, the BLM will manage the Monument in strict accordance with the provisions of the Proclamation "so as not to create any new impacts that interfere with the proper care and management of the objects protected by this proclamation" (Monument Proclamation, p. 1). Additionally, the Monument will be managed in accordance with existing laws, regulations, and policy, including FLPMA, NEPA, National Historic

Preservation Act (NHPA), Endangered Species Act (ESA), and the Minerals Leasing Act, to the extent such authorities do not conflict with the management direction contained in the Proclamation.

The BLM recognizes that management of the Monument is subject to valid existing rights. To the extent a person or entity has valid existing rights within the Monument, such as those associated with an existing lease agreement, the Proclamation, and the management decisions set forth in the PRMP for the Monument, respects their rights. The exercise of such rights, however, can be reasonably regulated in order to protect the objects of the Monument and to adhere to the intent of the Proclamation (as noted above). Existing leases associated with Monument lands remain open to continued oil and gas (including carbon dioxide) development, and must comply with current lease restrictions and BLM regulations.

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### *Interpretation of the Proclamation and Other Valid, Existing Rights*

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Issue Number: PP-CO-Ancients-09-0007-4  
Organization: Montezuma County Rangeland Stewardship Committee  
Protester: Al Heaton

Issue Excerpt Text:

3. The Rangeland Stewardship Committee also protests the current BLM interpretation of the Monument Proclamation with regard to valid existing rights. The Monument Proclamation language specifically places the protection of objects within the Monument "subject to" valid existing rights. Reductions in AUM's or vacating allotments does not give full effect to the Proclamation language and therefore threatens harm to grazing permit holders and Montezuma County.

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Issue Number: PP-CO-Ancients-09-0008-27  
Organization: Montezuma County Board of Commissioners  
Other Sections: Interpretation of the Proclamation and Valid Existing Fluid Mineral Rights

Issue Excerpt Text:

Montezuma County recommends creating some

fairness and accountability for the interpretation of the Monument Proclamation and review processes, including a timeline that the BLM must adhere to. Simply put, Montezuma County wants the oil and gas lease holders, grazing permit holders, and individuals who own private in-holdings to be allowed to exercise their valid existing rights in an orderly and timely manner.

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Issue Number: PP-CO-Ancients-09-0012-27  
Organization: Dolores County Board of County Commissioners  
Other Sections: Interpretation of the Proclamation and Valid Existing Fluid Mineral Rights

Issue Excerpt Text:

Montezuma County recommends creating some fairness and accountability for the interpretation of the Monument Proclamation and review processes, including a timeline that the BLM must adhere to. Simply put, Montezuma County wants the oil and gas lease holders, grazing permit holders, and individuals who own private in-holdings to be allowed to exercise their valid existing rights in an orderly and timely manner.

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### *Summary*

The Proclamation's "subject to" language clearly means that the BLM's objective of preserving cultural resources cannot dominate the right of private parties to develop their valid existing rights. The BLM cannot reduce Animal Unit Months or vacate grazing allotments.



## ***Response***

As noted in the previous response, management of the National Monument is subject to the overriding purpose of protecting the objects described in the Proclamation. Protection of the historic, cultural, natural, geological, and scientific objects within the National Monument is the highest priority.

A grazing permit or lease does not grant any rights or interest in the public lands. Grazing is a permitted use and the BLM has the authority to manage grazing practices and levels of livestock use to achieve the stated purposes of the Proclamation and management goals outlined in the Proposed RMP. The BLM has the authority to reduce Animal Unit Months (AUMs), adjusting allotment boundaries, and to close allotments in order to meet the requirements of FLPMA, NEPA, and the purpose and intent of the Proclamation.

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### ***The National Monument, FLPMA, and Valid Existing Rights***

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Issue Number: PP-CO-Ancients-09-0002-17  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
Further, the BLM cannot modify BBC's valid and existing rights. Congress made it clear when it enacted FLPMA that nothing therein, or in the land use plans developed thereunder, was intended to terminate, modify, or alter any valid or existing property rights. See 43 U.S.C. § 1701 note (2006). The BLM cannot modify or reduce BBC's existing lease rights.

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Issue Number: PP-CO-Ancients-09-0002-3  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
Although BBC understands that the CANM has special, intrinsic values and a plethora of historical and cultural resources, the BLM cannot manage the area to the detriment of all other multiple uses, particularly those already existing in the monument prior to its creation.

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Issue Number: PP-CO-Ancients-09-0002-7  
Organization: Bjork Lindley Little PC, Bill Barrett

Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
The proposed language is also impermissible because it exceeds the BLM's legal authority under The Federal Land Policy and Management Act of 1976 (FLPMA)-the BLM is proposing to modify, if not extinguish, BBC's existing lease rights through its land use planning process. Such a result is not permissible because the authority conferred in FLPMA is expressly made subject to valid existing rights, 43 U.S.C. § 1701 note, an RMP prepared pursuant to FLPMA, after lease execution and after drilling and production has commenced, is likewise subject to existing rights.

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Issue Number: PP-CO-Ancients-09-0009-32  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:  
Designation of areas within the NLCS system requires protection of certain values as prescribed in the legislation or the proclamation, but does not remove the areas from the overall multiple-use guidance of FLPMA. Valid existing rights that predate the designation still must be honored as legally necessary, while protecting the values to the extent that legal discretion allows.

## ***Summary***

The BLM cannot remove the entire National Monument area from the Federal Land Policy and Management Act's (FLPMA) multiple use mandate as this would modify operators' valid existing rights to develop the fluid resources.

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## ***Response***

As noted in the previous section, Interpretation of the Proclamation and Valid Existing Rights, management of the Monument will be pursuant to applicable legal authorities, including FLPMA. However, this management is subject to the overriding purpose of protecting the objects described in the Proclamation. The Proclamation that established the Monument constitutes an exception to the management regime otherwise applicable to lands managed by the BLM.

Specifically, section 302(a) of FLPMA states that the public lands shall be managed under the principles of multiple use and sustained yield "except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law." The Proclamation is a law that creates an exception to the multiple use mandate of the FLPMA.

The BLM recognizes that management of the Monument is subject to valid existing rights. To the extent a person or entity has valid existing rights within the Monument, such as those associated with existing oil and gas lease agreements, the Proclamation, and the management decisions set forth in the PRMP for the Monument, respects these rights. The exercise of such rights, however, can be reasonably regulated in order to protect the objects of the Monument and to adhere to the intent of the Proclamation. Existing leases associated with Monument lands remain open to continued oil and gas (including carbon dioxide) development, and must comply with current lease restrictions and BLM regulations.

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## ***Visual Resource Management and Valid Existing Rights***

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Issue Number: PP-CO-Ancients-09-0002-55  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes  
Other Sections: VRM Management Class Assignments

Issue Excerpt Text:  
The Bureau of Land Management's Proposed Visual Resource Management Is Inappropriate  
BBC protests the BLM's proposed Visual Resource Management Classifications in the CANM. See Proposed CANM RMP, pgs. 71 - 73. The BLM is attempting to improperly impose Visual Resource

Management (VRM) Class II objectives on significant portions of the CANM, including areas currently leased for oil and gas development.

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Issue Number: PP-CO-Ancients-09-0002-57  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes  
Other Sections: VRM Management Class Assignments

Issue Excerpt Text:  
The existing RMP for the lands contained within the CANM does not specify VRM requirements. See

CANM Draft RMP, pg. 206 (noting that "no management objectives were identified for VRM, and no management classes were established for the [San Juan] resource area. ),2 As such the BLM cannot simply impose VRM classifications in a vacuum, the BLM has already made specific management decisions that undeniably impact its future management options. For example, when proposing VRM restrictions in areas already leased for oil and gas development, the BLM cannot attempt to impose the new VRM objective on operations on existing leases.

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Issue Number: PP-CO-Ancients-09-0002-60  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
VRM Class II objectives may be viewed as inconsistent with even the most responsible development of BBC's leases. The proposed VRM Class II designation for lands covered by leases may be in conflict with, and provide confusion about, the prior decisions made to lease the same lands without restrictions for visual resources under the current RMP.

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Issue Number: PP-CO-Ancients-09-0002-64  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
The BLM has made management decisions to allow oil and gas development where it has issued leases. The Proclamation explicitly mandates that "the monument shall remain open to oil and gas leasing and development" and that "management" of the Monument is "subject to" valid existing rights. 65 Fed. Reg. 37,243, 37,245 (Jun. 9, 2000). Putting these same areas in a VRM Class II designation in the new RMP does not take into account the past leasing decisions and valid existing rights.

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Issue Number: PP-CO-Ancients-09-0003-13  
Organization: Questar Exploration and Production Company  
Protester: J. Paul Matheny

Issue Excerpt Text:

BLM's broad use of Class I and Class II VRM classifications will violate valid existing rights.

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Issue Number: PP-CO-Ancients-09-0003-14  
Organization: Questar Exploration and Production Company  
Protester: J. Paul Matheny

Issue Excerpt Text:  
In its response to comments in App. U at p. 27, BLM responds to concerns about applying new restrictive VRM classifications to existing leases by a non-answer. Instead of recognizing that the very restrictive requirements of Class I or Class II cannot be applied to existing leases, BLM refers to IM 2007-021 and IB 2007-119 . Yet those documents direct that Class I and Class II designations in areas already under lease rights and ongoing development is inappropriate, and actually supports the arguments set forth in this Protest. See, e. g., IB 2007-119, Attachment 1 at 4, cautioning BLM against imposing new restrictions on existing leases that could result in liability for breach of contract and regulatory taking.

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Issue Number: PP-CO-Ancients-09-0009-40  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:  
The Proposed RMP is arbitrary because it designates undeveloped leased lands as VRM Class II. This does not accommodate past leasing decisions. Compare Proposed RMP, Map 2 (existing oil and gas leases) with Proposed RMP, Map 7e (proposed VRM Classes). The Proposed RMP accommodates some actual existing oil and gas development in some areas by placing such lands in VRM Class III. Proposed RMP at 73,364, Map 7e. The Proposed RMP fails to do the same for undeveloped leased areas where the BLM has already made the legally binding decision to allow surface development by issuing oil and gas leases.

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Issue Number: PP-CO-Ancients-09-0009-44  
Organization: Kinder Morgan CO2 Company, L.P.  
Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:  
The response to comments does recognize that, if mitigation of the visual impacts of oil and gas development on existing leases does not meet the VRM class, the development must be allowed to go

forward with appropriate mitigation. Proposed RMP at U-28. This recognition is not included in the Proposed RMP itself, and should be expressly recognized in the ROD.

Protester: Kenneth H. Havens, Jr.

Issue Excerpt Text:

Kinder Morgan protests the designation of Visual Resource Management classes because they are inconsistent with the exercise of valid existing oil and gas lease rights.

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Issue Number: PP-CO-Ancients-09-0009-9

Organization: Kinder Morgan CO2 Company, L.P.

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### ***Summary***

The BLM cannot impose Visual Resource Management Class I and Class II management objectives on existing leases. Overlying these management classes onto existing leases will preclude future oil and gas development on the existing leases.

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### ***Response***

The BLM must consider the visual resource values of public lands in all land-use planning efforts and surface disturbing activities. Policy requires that all BLM administered lands be inventoried for visual resource values and have Visual Resource Management Classes designated. The visual values are determined through conducting a visual resource inventory and considered along with natural resource allocations when designating Visual Resource Management Classifications during the land use planning process. Visual Resource Management Classifications establish visual management objectives and are required to be designated for all BLM administered public lands. Visual resource management classes range from VRM Class I as the most restrictive to VRM Class IV as the least restrictive.

The VRM Class I objective is to preserve the existing character of the landscape. This class provides for natural ecological changes; however, it does not preclude very limited management activity. The level of change to the characteristic landscape should be very low and must not attract attention.

The VRM Class II objective is to “retain the existing character of the landscape. The level of change to the characteristic landscape should be low. Management activities may be seen, but should not attract the attention of the casual observer. Any changes must repeat the basic elements of form, line, color, and texture found in the predominant natural features of the characteristic landscape,” (PRMP/FEIS, p. U26 – U28).

Areas already leased for oil and gas development would be required to meet the respective VRM Class objectives assigned in the land use plan. VRM I and II management objectives allow for currently leased areas to be developed, but require projects to conduct effective planning and design, consider environmental and social factors and apply appropriate BMPs in order to meet the corresponding management objectives.

Potentially, the VRM Class II management classification would influence the type, design,

and/or location of proposed oil and gas development. Effectively applying visual resource BMPs can lead to successful reduction of visual impacts in order to meet the VRM Class I and II objectives. BLM Manual H-8431-1 (Visual Resource Contrast Rating) describes procedures for evaluating proposed surface disturbing activities for compliance with the VRM objectives, and techniques used for choice of color selection, earthwork, vegetative manipulation, structures, reclamation/restoration, and linear alignment design considerations that would help facilitate VRM compliant plans.

In the PRMP/FEIS there are indeed areas of VRM Class II management that overlay existing leases and areas with moderate to high oil and gas potential. The BLM will work with operators to meet the goals and objectives of both programs through the use of mitigation measures, best management practices, etc., for compliance with VRM objectives.

If it is discovered through the project planning process that mitigation of the adverse visual impacts associated with valid existing rights cannot meet the VRM objective, then the BLM will be obligated to allow these existing rights to move forward while still mitigating visual impacts to the greatest extent possible (Appendix U, p. U-28).

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### *Application of Stipulations and COAs*

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Issue Number: PP-CO-Ancients-09-0002-13  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
The BLM cannot impose conditions of approval that are inconsistent with BBC's existing, contractual lease rights; the BLM cannot restrict operations to the point that economic development on a lease is precluded.

Issue Number: PP-CO-Ancients-09-0002-19  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes

Issue Excerpt Text:  
With respect to BBC's leases within the CANM, the BLM cannot attempt to impose stipulations or conditions of approval (COAs) on BBC's existing leases that are inconsistent with its valid existing contractual rights.

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### *Summary*

BLM cannot impose Stipulations or Conditions of Approval on existing leases.

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### *Response*

The BLM does not have authority to impose new stipulations on existing leases; stipulations are incorporated into a lease prior to issuance (43 CFR 3101.1-3). The stipulations from the PRMP/FEIS will apply to new or expired leases when those parcels are made available for sale.

However, when approving or disapproving geophysical exploration permit requests and/or applications for permit to drill (APDs), the BLM may apply other reasonable restrictions and

mitigation measures to a new permit on a site-specific basis that are necessary to minimize adverse impacts to other resource values that have not been addressed in a lease stipulation (Land Use Planning Handbook, H-1601-1, Appendix C, p. 24, 43 CFR 3101.1-2, 43 CFR 3161.2, and 43 CFR 3162.5-1 (a), (b) and (c)). These additional restrictions and measures would be attached to new permits as APD Conditions of Approval (COAs).

Appendix E and Appendix K of the PRMP/FEIS, and the BLM's Surface Operating Standards and Guidelines for Oil and Gas Exploration and Development (Gold Book) 2007 identifies the types of restrictions and best management practices (BMPs) that could be applied on a site-specific basis in order to meet the objectives and purposes of the proclamation. Application of these restrictions and BMPs would be considered and evaluated through the environmental review process for development proposals and included as APD Conditions of Approval where necessary to reduce environmental impacts, to comply with the Proclamation's stated purposes and with other authorities, such as the National Historic Preservation Act, Clean Air Act, and Endangered Species Act.

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### Travel Management

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Issue Number: PP-CO-Ancients-09-0011-10  
Organization: The Wilderness Society, National Trust for Historic Preservation  
Protester: Nada Culver, Ti Hays

Issue Excerpt Text:  
The definition of "road" in the Proposed RMP violates BLM's own policy guidance. This definition must be corrected to set out the official agency definition as provided in the Roads and Trails Terminology Report, as adopted by IM 2006-173, and reaffirmed by subsequent IMs: A linear route declared a road by the owner, managed for use by low-clearance vehicles having four or more wheels, and maintained for regular and continuous use.

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Issue Number: PP-CO-Ancients-09-0011-12  
Organization: The Wilderness Society, National Trust for Historic Preservation  
Protester: Nada Culver, Ti Hays

Issue Excerpt Text:  
As noted above, in IM 2006-173, BLM implemented standard definitions for linear assets, which include definitions for "roads," "primitive roads," and "trails." These definitions are required to be applied in all comprehensive travel and transportation management planning per IM 2008-014 (attached as Exhibit 2 to this protest). Further, in conducting travel planning, IM 2008-014 directs the BLM to specifically identify linear assets that are roads, linear assets that are

primitive roads, and linear assets that are "trails." See, IM 2008-014, Attachment 1 (Travel and Transportation Planning Guidance). In the Proposed RMP, BLM did not fulfill these requirements and simply identified all linear features' generically as "routes." The BLM must complete designations. The BLM confirmed the lack of road, primitive road, and trail designations in the Proposed RMP

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Issue Number: PP-CO-Ancients-09-0011-14  
Organization: The Wilderness Society, National Trust for Historic Preservation  
Protester: Nada Culver, Ti Hays

Issue Excerpt Text:  
In the Proposed RMP, the BLM has also ignored the pertinent section of IM 2006-173 requiring the use of "a consistent set of terms and definitions. . . for implementing a comprehensive travel and transportation management policy" and explaining that the IM "standardizes definitions for three transportation system linear features or assets: roads, primitive roads, and trails." It is clear that the agency is to identify and manage these specific assets, rather than merely referring to them all as "routes," as the Proposed RMP attempts to do.

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Issue Number: PP-CO-Ancients-09-0011-15  
Organization: The Wilderness Society, National Trust for Historic Preservation  
Protester: Nada Culver, Ti Hays



Issue Excerpt Text:

While the foregoing language accurately represented parts of the definition of "route" from IM 2008-014 (See, Attachment 6, Definitions), the Proposed RMP is misusing the term and not applying the specific requirements of the guidance. The language from the Definitions included in IM 2008-014 and not quoted in the Proposed RMP is instructive: "Generically, components of the transportation system are described as 'routes.'" In short, designating linear features in the Monument as "routes" generically does not constitute designation of a travel and transportation network, as required by IM 2008-014

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Issue Number: PP-CO-Ancients-09-0011-17  
Organization: The Wilderness Society, National Trust for Historic Preservation  
Protester: Nada Culver, Ti Hays

Issue Excerpt Text:

However, for the purposes of classification during transportation planning, BLM must designate roads, primitive roads, and trails and distinguish among these three assets. The Proposed RMP for Canyons of the Ancients does not even incorporate the definitions. Rather, the only way that the Proposed RMP differentiates between transportation assets is by displaying all "transportation routes" on Map 5e, and then identifying the permitted categories of motorized and mechanized use. Identifying all of the transportation assets as "routes" and limiting the use of specific routes is not a substitute for the designation process that the BLM is obligated to complete for travel and transportation planning. The failure to identify which routes meet the definitions set out in IM 2006-173 is especially important in the Monument, where motorized and mechanized travel is only permitted on "roads," as discussed in the following section of this protest. The approach set out in the Proposed RMP is contrary to current BLM policy guidance

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Issue Number: PP-CO-Ancients-09-0011-19  
Organization: The Wilderness Society, National Trust for Historic Preservation  
Protester: Nada Culver, Ti Hays

Issue Excerpt Text:

The approach taken in the Proposed RMP, to designate a general category of "routes" instead of distinguishing roads from primitive roads and trails,

undermines the plain language and intent of the Monument Proclamation. The only transportation assets in the Monument that BLM can designate for motorized and mechanized vehicular use are roads. "Primitive roads" and "trails," by definition (stated in the section above), do not meet the definition of a "road," and thus cannot be used by motorized and mechanized vehicles.

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Issue Number: PP-CO-Ancients-09-0011-2  
Organization: The Wilderness Society, National Trust for Historic Preservation  
Protester: Nada Culver, Ti Hays

Issue Excerpt Text:

ISSUE 1: The definition of "road" incorporated into the plan. Parts of the RMP raising this issue: Glossary at page 10

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Issue Number: PP-CO-Ancients-09-0011-20  
Organization: The Wilderness Society, National Trust for Historic Preservation  
Protester: Nada Culver, Ti Hays

Issue Excerpt Text:

The Proclamation requires the BLM to "prohibit all motorized and mechanized vehicle use off road . . ." However, the BLM has not determined which of the many routes designated for use in the Proposed RMP actually meet the agency's official definition of a road and, therefore, cannot be said to have prohibited use off of roads.

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Issue Number: PP-CO-Ancients-09-0011-21  
Organization: The Wilderness Society, National Trust for Historic Preservation  
Protester: Nada Culver, Ti Hays

Issue Excerpt Text:

Additionally, the Proposed RMP defines "off-road" as "cross-country travel between designated routes." Proposed RMP, Glossary-7. "Cross-country travel" is also defined as "travel between designated routes." Proposed RMP, Glossary-2. Thus, according to the Proposed RMP, as long as motorized or mechanized travel is limited to "routes" shown on Map 5e, the travel is not considered "off-road" - even if the travel is not actually on a "road" as defined by BLM's guidance (IM 2006-173, IM 2008-014).

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Issue Number: PP-CO-Ancients-09-0011-22  
Organization: The Wilderness Society, National

Trust for Historic Preservation  
Protester: Nada Culver, Ti Hays

Issue Excerpt Text:  
The approach to designation of routes in the Proposed RMP is contrary to BLM policy and the Monument Proclamation

Issue Number: PP-CO-Ancients-09-0011-26  
Organization: The Wilderness Society, National Trust for Historic Preservation  
Protester: Nada Culver, Ti Hays

Issue Excerpt Text:  
The Proposed RMP essentially claims that this use can be permitted because of the definition of "off-road" and "route" that the BLM is using in the RMP. See, Proposed RMP, p. ES-6. However, as shown above, there is an official agency definition of "road" and the BLM cannot permit use of motorized or mechanized vehicles on any other type of linear feature.

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Issue Number: PP-CO-Ancients-09-0011-28  
Organization: The Wilderness Society National Trust for Historic Preservation  
Protester: Nada Culver, Ti Hays

Issue Excerpt Text:  
We appreciate the difficulty facing the agency in trying to comply with both the plain language of the Proclamation prohibiting off-road use and the direction issued by the Secretary of the Interior to "address" continued use of a mountain bike trail that has a long history of use, but which is clearly not a road. We strongly support the approach taken in the Proposed RMP to identifying the use of the Sand Canyon/Rock Creek mountain bike loop as a "conditional use" and monitoring it (as part of the corrected transportation network), rather than simply designating it as a part of the transportation network. However, we cannot support ignoring the definition of a road and broadening the way that motorized and mechanized use are managed in the Monument so as to risk expanded violations of the Proclamation.

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Issue Number: PP-CO-Ancients-09-0011-3  
Organization: The Wilderness Society, National

Trust for Historic Preservation  
Protester: Nada Culver, Ti Hays

Issue Excerpt Text:  
ISSUE 2: The designation of "routes" for motorized/mechanized travel.  
Parts of the RMP raising this issue:  
Chapter 2 Alternatives, Section 2.3.7 Major Differences between the Draft and Proposed Plans, Page 30  
Chapter 2 Alternatives, Table 2-2, Page 111  
Chapter 3 Affected Environment, 3.2.9 Transportation, Page 229  
Chapter 4 Environmental Consequences, 4.3.8 Transportation, Page 445

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Issue Number: PP-CO-Ancients-09-0011-4  
Organization: The Wilderness Society, National Trust for Historic Preservation  
Protester: Nada Culver, Ti Hays

Issue Excerpt Text:  
I. THE DEFINITION OF "ROAD" IN THE PROPOSED RMP IS CONTRARY TO BLM POLICY GUIDANCE.  
BLM has adopted an official definition of the term "road" and that definition must be used in the Canyons of the Ancients RMP. However, the Glossary in the Proposed RMP created a new definition, which does not comply with agency guidance

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Issue Number: PP-CO-Ancients-09-0011-7  
Organization: The Wilderness Society, National Trust for Historic Preservation  
Protester: Nada Culver, Ti Hays

Issue Excerpt Text:  
However, the Proposed RMP creates a new definition of "road" that is simply "a named county route of travel." Proposed RMP, Glossary-10. This definition is contradictory to the plain language and spirit of IM 2006-173 and should be replaced with the definition of "road" in that policy: "A linear route declared a road by the owner, managed for use by low-clearance vehicles having four or more wheels, and maintained for regular and continuous use."



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## *Summary*

BLM's treatment of the travel management is inconsistent with the Proclamation and Instruction Memoranda; the manner in which the BLM applied the definition of "roads" and "routes" is inconsistent with policy.

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## *Response*

The PRMP identified a transportation system that reconciles past planning decisions, management direction from the Secretary, the Proclamation, , and Interim Guidance. Additionally, the transportation system is consistent with the goals, objectives, and other considerations described in the land use plan. The PRMP/FEIS's definition of route is consistent with the BLM's current policy on "routes". Specifically, a route is an all-inclusive term defined as: "a group or set of roads, trails and primitive roads that represent less than 100% of the BLM transportation system. In general, components of the transportation system are described as 'routes'". Thus, roads, trails, and primitive roads "represent subsets of the BLM's transportation system". As required, BLM has identified a transportation network available for motorized, nonmotorized and nonmechanized use (IM 2008-014; PRMP/FEIS, p. 30).

In accordance with the current policy, the word route in the PRMP/FEIS was used to describe all roads, trails and primitive roads in the Monument. The only time we used the word road in the PRMP was when we referred to a specific county named route such as "County Road G". Therefore, we defined the word road in the PRMP glossary as "a named county route of travel". In order to be consistent with BLM guidance, the ROD will clarify the definition of "road" which is "a linear route declared a road by the owner, managed for use by low-clearance vehicles having four or more wheels, and maintained for regular and continuous use." (BLM Technical Notes 422, November 2006). Our use of the word road in the PRMP, however, will remain the same.

In the Proposed Alternative, travel is limited to designated routes and cross-country travel is prohibited. Map 5e specifically identifies designated routes and specifically identifies allowable uses on each route (motorized, mechanized, foot, horse, etc.) on each designated route. The PRMP addresses the unique circumstances identified above and meets the intent of the Proclamation, the Secretary's direction, and IM 2008-014, (PRMP/FEIS ES-6).

The PRMP was developed through an interdisciplinary process to provide public, resource management, and administrative access. Decisions made in the PRMP are exclusive to Canyons of the Ancients National Monument and address unique circumstances for the planning area. The application of these decisions to any other planning area would be required to complete the rigorous transportation planning analysis and processes outlined in the BLM Land Use Planning Handbook H-1601-1.

## *Tribal Interests*

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Issue Number: PP-CO-Ancients-09-0005-1  
Organization: Ute Mountain Ute Tribe  
Protester: Ernest House, Sr.

Issue Excerpt Text:  
Limitation of Ute Mountain Ute tribal access to the Brunot hunting area.  
Limitation of Ute Mountain Ute tribal access to traditional and cultural areas.

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Issue Number: PP-CO-Ancients-09-0005-10  
Organization: Ute Mountain Ute Tribe  
Protester: Ernest House, Sr.

Issue Excerpt Text:  
For the reasons stated above, the Proposed RMP and FEIS inadequately addresses the Ute Mountain Ute Tribe's treaty hunting rights and rights to consultation and access to traditional and cultural areas under the American Indian Religious Freedom Act, 42 U.S.C. § 1996, E.O. 13007, E.O. 13084, and E.O. 13175. Consequently, the Washington Office must revise the parts of the plan challenged in this protest and require the Colorado State Office or Monument Manager to conduct an individual, government-to-government consultation with the Ute Mountain Ute Tribe regarding access rights to the Monument.

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Issue Number: PP-CO-Ancients-09-0005-15  
Organization: Ute Mountain Ute Tribe  
Protester: Ernest House, Sr.

Issue Excerpt Text:  
Here, it appears that BLM is willing to grant administrative access for Native Americans like the Ute Mountain Ute tribal members to access "recognized traditional and cultural areas." Vol. I, Ch. 2, p. 115,445-452. However, it is not clear how the BLM will designate these "recognized" areas or whether the transportation component of the Proposed RMP is flexible enough to allow for any access to traditional and cultural areas without notification. In addition, particularly given the BLM's suggested limitation of tribal hunting access to foot or horse travel, see Vol. II, Appendix U, p. U-8, the Ute Mountain Ute Tribe is concerned that the BLM may strictly limit the use of administrative access to traditional and cultural areas.

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Issue Number: PP-CO-Ancients-09-0005-5

Organization: Ute Mountain Ute Tribe  
Protester: Ernest House, Sr.

Issue Excerpt Text:  
The Ute Mountain Ute Tribe's close geographic proximity to the Monument and its intergenerational use of the Monument for cultural practices and the exercise of treaty rights uniquely positions the Tribe to suffer harm from the transportation policies in the Proposed RMP. Although the Ute Mountain Ute Tribe acknowledges the BLM's efforts to consult with Tribes on protections and access to the Pueblo ruins, the Tribe must protest the Proposed RMP's vague and conflicting statements concerning our access to the Monument.

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Issue Number: PP-CO-Ancients-09-0005-6  
Organization: Ute Mountain Ute Tribe  
Protester: Ernest House, Sr.

Issue Excerpt Text:  
The RMP recognizes that the Ute Mountain Ute Tribe has a valid existing right to hunt in the Brunot hunting area and that the Tribe currently exercises its hunting rights within the area by agreement with the State of Colorado as set forth in a Consent Decree. See Vol. I, Ch. 1, p. 19-20. However, the existence of that Consent Decree does not relieve the United States government-and particularly the BLM-from its duty to manage federal lands to protect the Tribe's treaty rights and the Tribe's access to treaty resources.

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Issue Number: PP-CO-Ancients-09-0005-7  
Organization: Ute Mountain Ute Tribe  
Protester: Ernest House, Sr.

Issue Excerpt Text:  
Indeed, the Proclamation has directed the BLM to manage the Monument in a manner that does not "diminish the rights of any Indian tribe." See Proclamation, Vol. II, Appendix A, A-4.

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Issue Number: PP-CO-Ancients-09-0005-8  
Organization: Ute Mountain Ute Tribe  
Protester: Ernest House, Sr.

Issue Excerpt Text:  
Although the Tribe recognizes the BLM's goal in limiting the use of motorized and mechanized vehicle use in the Monument, the Tribe still asserts that

motorized or off-road vehicle use may be required for game hauling and other hunting and gathering purposes. Id.

Religious Freedom Act, 42 U.S.C. § 1996, E.O. 13007, and E.O. 13084-apply to the BLM); E.O. 13175 (2000).

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Issue Number: PP-CO-Ancients-09-0005-9

Organization: Ute Mountain Ute Tribe

Protester: Ernest House, Sr.

Issue Excerpt Text:

In earlier meetings and comments, the Ute Mountain

Ute Tribe repeatedly raised questions about the ability to access traditional and cultural areas outside of the Pueblo ruins or "cultural resources" designated by the BLM. See SWRAC Subgroup Meeting Minutes 1/25/08, Ute Mountain Ute Tribe Comments Regarding Draft RMP and DEIS 1/30/2008; Vol. II, Appendix U, U-8. Although the Tribe recognizes the BLM's goal in limiting the use of motorized and mechanized vehicle use in the Monument, the Tribe still asserts that mechanized or off-road vehicle use may be required to allow tribal members, especially elders and the handicapped, proper access to sites at the Monument. Id

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### ***Summary***

The BLM cannot limit tribal access to the Brunot hunting area and access to traditional and cultural areas. The PRMP/FEIS is also not clear how the BLM will designate recognized traditional and cultural areas.

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### ***Response***

The decision for limited access in the Brunot hunting area was determined by considering surrounding access issues, including whether routes passed through private lands. Permission to cross private property must be granted by the landowner in order to reach BLM-administered lands in the Brunot area. Therefore, BLM designated the three routes as "Limited". Limited routes are for administrative access, restricted from general public use, and prohibit off-road (cross country) use. Cross country travel by horse or on foot is allowed.

The BLM will follow all Executive Orders, laws, and regulations regarding our government-to-government relationship with Native American tribes and pueblos. We will consult with tribes and pueblos during implementation of the RMP when determining recognized traditional and cultural areas, and to determine procedures for obtaining administrative access to them. The BLM will continue collaboration between Monument management and Native American tribes and pueblos to enhance the overall management of the Monument.

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### ***Visual Resource Management*** ***Management Class Assignments***

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Issue Number: PP-CO-Ancients-09-0002-55

Organization: Bjork Lindley Little PC, Bill Barrett Corporation

Protester: Robert C. Mathes

Protester Type: Organization

Other Sections: Visual Resource Management and Valid Existing Rights

Issue Excerpt Text:

The Bureau of Land Management's Proposed Visual Resource Management Is Inappropriate BBC protests the BLM's proposed Visual Resource Management Classifications in the CANM. See Proposed CANM RMP, pgs. 71 - 73. The BLM is

attempting to improperly impose Visual Resource Management (VRM) Class II objectives on significant portions of the CANM, including areas currently leased for oil and gas development.

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Issue Number: PP-CO-Ancients-09-0002-57  
Organization: Bjork Lindley Little PC, Bill Barrett Corporation  
Protester: Robert C. Mathes  
Other Sections: Visual Resource Management and Valid Existing Rights

Issue Excerpt Text:  
The existing RMP for the lands contained within the

CANM does not specify VRM requirements. See CANM Draft RMP, pg. 206 (noting that "no management objectives were identified for VRM, and no management classes were established for the [San Juan] resource area. ),,2 As such the BLM cannot simply impose VRM classifications in a vacuum, the BLM has already made specific management decisions that undeniably impact its future management options. For example, when proposing VRM restrictions in areas already leased for oil and gas development, the BLM cannot attempt to impose the new VRM objective on operations on existing leases.

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### ***Summary***

The BLM improperly imposes VRM Class II objectives on portions of the CANM including areas currently leased for oil and gas development; BLM cannot add objectives if none existed before.

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### ***Response***

The BLM must consider the visual resource values of public lands in all land-use planning efforts and surface disturbing activities. The visual values are determined through conducting a visual resource inventory and considered along with natural resource allocations when designating Visual Resource Management Classifications during the land use planning process. Visual Resource Management Classifications establish visual management objectives and are required to be designated for all BLM administered public lands. Visual resource management classes range from VRM Class I as the most restrictive to VRM Class IV as the least restrictive. The VRM Class II objective is to “retain the existing character of the landscape. The level of change to the characteristic landscape should be low. Management activities may be seen, but should not attract the attention of the casual observer. Any changes must repeat the basic elements of form, line, color, and texture found in the predominant natural features of the characteristic landscape.” Areas already leased for oil and gas development would be required to meet the respective VRM Class objectives assigned in the land use plan.. VRM II management objectives allow for currently leased areas to be developed, but require projects to conduct effective planning and design, consider environmental and social factors and apply appropriate BMPs in order to meet the corresponding management objectives.

If it is discovered through the project planning process that mitigation of the adverse visual impacts associated with valid existing rights cannot meet the VRM objective, then the BLM will be obligated to allow these existing rights to move forward while still mitigating visual impacts to the greatest extent possible (Appendix U, p. U-28).