

Director's Protest Resolution Report

**Moab Master Leasing Plan
and Proposed Resource
Management Plan
Amendments/Final
Environmental Impact
Statement**

December 15, 2016



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Reader's Guide

How do I read the Report?

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

Report Snapshot

The diagram shows a report layout with several sections and callouts:

- Issue Topics and Responses** (Section heading)
- NEPA** (Section heading)
- Topic heading** (Callout pointing to the section heading)
- Submission number** (Callout pointing to the submission number)
- Issue Number: PP-CA-MOAB-16-20-10** (Text, highlighted with a red box)
- Protest issue number** (Callout pointing to the issue number)
- Organization: The Forest Initiative** (Text)
- Protesting organization** (Callout pointing to the organization name)
- Protester: John Smith** (Text)
- Protester's name** (Callout pointing to the protester's name)
- Issue Excerpt Text:** (Section heading)
- Direct quote taken from the submission** (Callout pointing to the excerpt text)
- Summary** (Section heading)
- General statement summarizing the issue excerpts (optional).** (Callout pointing to the summary text)
- Response** (Section heading)
- BLM's response to the summary statement or issue excerpt if there is no summary.** (Callout pointing to the response text)

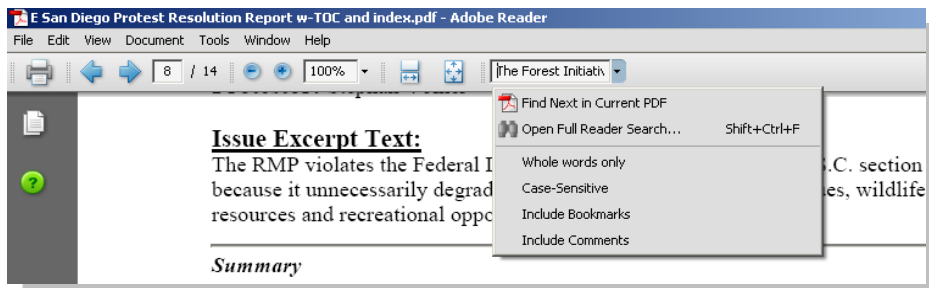
Issue Excerpt Text:
Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.

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

Response
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 surrounding properties), along with the identification of possible alternatives and mitigation measures.

How do I find my Protest Issues and Responses?

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

Protesting Party Index

Protester	Organization	Submission Number	Determination
Phil Lyman / Rebecca Benally / Bruce Adams	San Juan County	PP-UT-MOAB-16-01	Denied – Issues / Comments
Kathleen Clarke	State of Utah, Public Lands Policy Coordinating Office	PP-UT-MOAB-16-02	Denied – Issues / Comments
LaVonne Garrison	State of Utah, School & Institutional Trust Lands Administration	PP-UT-MOAB-16-03	Denied – Issues / Comments
James F. Kohler	K2O Resources, LLC	PP-UT-MOAB-16-04	Denied – Issues / Comments
Kathleen Sgamma	Western Energy Alliance	PP-UT-MOAB-16-05	Denied – Issues / Comments

Issue Topics and Responses

NEPA – Purpose and Need

Issue Number: PP-UT-Moab-16-02-20

Organization: State of Utah, Public Lands Policy Coordinating Office

Protestor: Kathleen Clarke

Issue Excerpt Text:

The BLM cannot point to public controversy as the kind of changed circumstance necessitating a MLP review. Such a justification is arbitrary and likely contrary to the Administrative Procedure Act (5 U.S.C. § 706(2)(A)). Determination of what sorts of events constitute “changing circumstances” under the IM must be objective and consistent with the intent of the IM.

Issue Number: PP-UT-Moab-16-02-22

Organization: State of Utah, Public Lands Policy Coordinating Office

Protestor: Kathleen Clarke

Issue Excerpt Text:

IM 2010-117 states that an MLP is required when all four of the following criteria are met (IM, at 2):

1. A substantial portion of the area to be analyzed in the MLP is not currently leased;
2. There is a majority Federal mineral interest;
3. The oil and gas industry has expressed a specific interest in leasing, and there is a moderate or high potential for oil and gas confirmed by the discovery of oil and gas in the general area;
4. Additional analysis or information is needed to address likely resource or cumulative impacts if oil and gas

development were to occur where there are:

- Multiple-use or natural/cultural resource conflicts;
- Impacts to air quality;
- Impacts on the resources or values of any unit of the Nation Park System, national wildlife refuge, or National Forest wilderness area, as determined after consultation or coordination with the NPS, the FWS, of the FS; or
- Impacts on other specially designated areas

Of the four criteria listed above, the Moab MLP fails criteria number 4. New information regarding likely resource impacts from oil and gas development is not needed, because these impacts were thoroughly analyzed in the 2008 Moab and Monticello RMPs.

Issue Number: PP-UT-Moab-16-02-24

Organization: State of Utah, Public Lands Policy Coordinating Office

Protestor: Kathleen Clarke

Issue Excerpt Text:

The information and analysis contained in the 2008 Moab MLP is still relevant and useful to address cumulative impacts of oil and gas development. The BLM has failed to identify any oil and gas related issues where the analysis or information in the 2008 RMP is not sufficient. Until the BLM can identify actual insufficiencies in the 2008 RMP related to oil and gas development, the Moab MLP will continue to fail the BLM’s own MLP criteria.

Issue Number: PP-UT-Moab-16-02-26
Organization: State of Utah, Public Lands
Policy Coordinating Office
Protestor: Kathleen Clarke

Issue Excerpt Text:

The IM also states that “An MLP may also be completed under other circumstances at the discretion of the Field Manager, District Manager, or State Director.” (IM, at 2). If the BLM intends to rely on this provision in the IM to justify the creation of the MLP, it must clearly articulate what the “other circumstances” are to warrant the MLP review. The BLM has failed to do so in the Moab MLP.

Issue Number: PP-UT-Moab-16-05-4
Organization: Western Energy Alliance
Protestor: Kathleen Sgamma

Issue Excerpt Text:

BLM chose to explicitly state that the purpose of the MLP was to further restrict leasing in the planning area. Because BLM crafted the MLP in such a narrow manner as to only allow for one outcome, the MLP was a “foreordained formality” in violation of NEPA.

Summary:

The purpose and need statement in the Moab Master Leasing Plan (MLP) and Proposed Plan Amendment and Final Environmental Impact Statement (“Moab Proposed Plan Amendment”) is flawed because it has not met the requirements for initiating a MLP, as described in BLM IM-2010-117.

Response:

In accordance with NEPA, the BLM has discretion to establish the purpose and need for a proposed action (40 CFR 1502.13). The BLM must construct its purpose and need to conform to existing decisions, policies, regulation, or law (BLM Handbook H-1790-1, Section 6.2). The BLM determined the planning area met the criteria in the Washington Office (WO) Instruction Memorandum (IM) 2010-117, for MLPs. Specifically, as outlined in the policy, the BLM identified lands within the Moab and Monticello Field Offices which met the following criteria: (1) largely unleased; (2) industry interest and high mineral development potential; (3) majority Federal mineral interest and; (4) the potential for impacts to important resource values.

Additionally, WO IM 2010-117 gives the BLM broad authority to initiate a plan as stated, “An MLP may also be completed under other circumstances at the discretion of the Field Manager, District Manager, or State Director.” The BLM prepared the MLP in accordance with a policy that was established after the 2008 Moab and Monticello RMPs were completed via WO IM 2010-117, which updated the BLM’s oil and gas leasing policy and introduced the MLP concept. The BLM determined that MLP concepts are also applicable to potash leasing decisions in the existing plans and that it would amend potash leasing decisions in the planning area, thus the BLM initiated this plan amendment to address potash leasing decisions.

As described in Chapter 1 (Section 1.1, Introduction and Background) of the Moab Proposed Plan Amendment, the BLM exercised its discretion to utilize the MLP process as a result of this

analysis. Through the MLP process, the BLM made changes to decisions in its existing land use plan for the area and prepared the Moab Proposed Plan Amendment, which makes land use plan decisions for leasing oil and gas and potash. The BLM has discretion under FLPMA and its land use planning regulations to amend Resource Management Plans. Specifically, an amendment is required to change the scope of resource uses or a change in the terms, conditions and decisions of an approved plan (43 CFR 1610.5-5).

The BLM established the purpose and need for the Moab Proposed Plan Amendment, which is described on page 1-2 of the MLP/PRMPA/FEIS. Section 1.2.2 describes the need for this effort, including changing circumstances, updated policies, and new information that was not identified or did not exist during the preparation of the 2008 Resource Management Plans (RMPs) for the Moab and Monticello Field Offices. Specifically, this section explains that potash prices spiked in 2008 leading to an unforeseen flood of applications for potash prospecting and increased interest in competitive potash leasing. Based on these changes, the BLM concluded that the recently-completed RMPs “did not adequately address the magnitude of potash development” (Moab MLP/PRMPA/FEIS, Chapter 1, p. 1-2). The Reasonably Foreseeable Development (RFD) Scenario for Potash in the Moab MLP Area (2014), the Socioeconomic Baseline Report for the Moab MLP (2012), and new wildlife habitat data from the Utah Division of Wildlife Resources are among the new information that the Moab MLP and Proposed Plan Amendment identifies in its purpose and need statement as support for the range of alternatives analyzed. The purpose and need statement does not identify public controversy or opinion as a circumstance warranting the initiation of the Proposed Plan Amendment.

This purpose and need is sufficient to allow the BLM to develop and analyze a reasonable range of alternatives that represent all reasonable approaches for managing the public lands in the planning area. The purpose and need statement does not seek to restrict oil and gas or potash leasing; rather, it establishes that additional planning and analysis is warranted before new leasing of oil and gas and potash occurs in the planning area. The Proposed Plan Amendment enables the BLM to “consider a range of new constraints, including prohibiting surface occupancy or closing areas to leasing” (Moab MLP/PRMPA/FEIS, Chapter 1, p. 1-2). However, the potential consideration of potential constraints does not mean there is a preference for any set of constraints.

The foregoing demonstrates that the BLM properly established the purpose and need for the Moab Proposed Plan Amendment.

FLPMA – Valid Existing Rights

Issue Number: PP-UT-Moab-16-05-10
Organization: Western Energy Alliance
Protestor: Kathleen Sgamma

Issue Excerpt Text:

Finally, FLPMA requires BLM to ensure that valid existing lease rights are unequivocally protected. However, through the imposition of overly restrictive stipulations and Conditions of Approval (COA), the MLP impedes lessees from exercising their valid existing rights. Although the MLP broadly states that “The

planning process will recognize the existence of valid existing rights,” it also states that “BLM can subject development of existing leases to reasonable conditions, as necessary, through the application of Conditions of Approval at the time of permitting.” While this is technically accurate, BLM fails to recognize and disclose that its authority with respect to development of existing leases is significantly different, and lesser, than its authority at the leasing stage.

Summary:

The Moab Proposed Plan Amendment violates valid existing rights by imposing overly restrictive stipulations and Conditions of Approval (COA) in the Amendment rather than at the leasing stage.

Response:

Existing oil and gas leases on valid existing rights, which cannot be modified through the land use planning process, as stated in FLPMA, Section 701(h). As specified in the Moab Proposed Plan Amendment, the lease stipulations proposed in the Moab MLP would only be applied to new oil and gas leases in the planning area. They would not modify existing leases (Moab MLP/PRMPA/FEIS, Sections 1.1 & 1.2, pp. 1-1, 1-2).

As described in the Moab Proposed Plan Amendment, the BLM may mitigate impacts associated with oil and gas development to resource values on an existing oil and gas lease through COAs. However, the application of COAs to a specific lease is outside the scope of this land use planning process. Such COAs have to be consistent with the stipulations attached to any individual leases. The BLM analyzes and develops specific COAs at a site-specific level once a project is proposed. When making a decision regarding discrete surface-disturbing activities (e.g. Application for Permit to Drill) following a site-specific environmental review, the BLM has the authority to impose reasonable measures (e.g. COAs) to minimize impacts on other resource values, including restricting the siting or timing of lease activities (43 CFR 3100; 43 CFR 3160; IBLA 2006-213, 2006-226; IBLA 2008-197, 2008-200). Consistent with the BLM Land Use Planning Handbook, the Moab Proposed Plan Amendment appropriately identifies potential COAs and best management practices that may be applied to authorizations for future projects following site specific environmental review, as described above (BLM Handbook H-1601-1, p. C-24).

As a result, the Moab Proposed Plan Amendment does not violate valid existing rights.

FLPMA – Withdrawal of land from mineral leasing

Issue Number: PP-UT-Moab-16-05-10
Organization: Western Energy Alliance
Protestor: Kathleen Sgamma

Issue Excerpt Text:

Under the MLP, 451,183 out of 785,000 acres (57%) in the MLP area would no longer be available for leasing or would be subject to No Surface Occupancy (NSO) leasing. More than 100,000 acres would also be set aside for potential potash development over a “MLP directed” ten-year period. This Potash Leasing Area

(PLA) would not be available for oil and natural gas leasing. The MLP would further designate 22,293 acres as Areas of Critical Environmental Concern and impose NSO on those acres. Finally, 210,884 acres have been removed from standard leasing and development operations, leaving zero acres in the MLP area for leasing with standard terms and conditions. These restrictions to the acreage in the planning area constitute a withdrawal under FLPMA, and BLM, therefore may not take the specified actions without Congressional approval.

Summary:

The decisions in the Moab Proposed Plan Amendment that would close areas to oil and gas leasing, and subject certain areas open to leasing to a No Surface Occupancy (NSO) stipulation in other areas, constitutes a withdrawal under FLPMA and cannot be authorized without Congressional approval.

Response:

The closure or restriction of public lands to oil and gas leasing does not constitute a withdrawal under FLPMA. Withdrawals are defined by Section 103(j) of FLPMA as follows:

“...the term ‘withdrawal’ means withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land . . . from one department, bureau or agency to another department, bureau or agency” (43 USC 1702(j)).

The land use planning decisions in the Moab Proposed Plan Amendment to close certain areas to oil and gas leasing and subject areas open to oil and gas leasing to a NSO stipulation are not “withdrawal” decisions triggering compliance with the withdrawal provisions of section 204 of FLPMA. The Moab Proposed Plan Amendment’s actions with respect to oil and gas leasing invoke the BLM’s planning authority under section 202 of FLPMA, not the withdrawal authority of Section 204 of FLPMA, since these allocation decisions could be revisited by a subsequent planning process. There is no withdrawal in the Moab Proposed Plan Amendment. Moreover, to the extent withdrawals are contemplated by a proposed plan, an identified area is only “recommended” for withdrawal. Withdrawing lands from entry under the mining laws is a formal action outside the land use planning process that would require Secretarial-level review

and decision making consistent with FLPMA 204 and applicable BLM regulations in 43 CFR 2300.

FLPMA – Consistency with State and Local Plans

Issue Number: PP-UT-Moab-16-01-11

Organization: San Juan County

Protestor: Phil Lyman

economic development (p. 20 of the Plan), endorses multiple uses of public lands (p.21) and supports achieving and maintaining a continuing yield of mineral resources at the highest reasonably sustainable levels (p.12 of the 2008 amendment).

Issue Excerpt Text:

Restrictions proposed in the MLP are inconsistent with San Juan County's Master Plan. This plan supports commerce and

Summary:

The Moab Proposed Plan Amendment is inconsistent with county plans, because it fails to support commerce and economic development, multiple-use of public lands in accordance with FLPMA, and the maintenance of a continuing yield of mineral resources. As a result, the BLM has failed to meet its obligations under FLPMA for this Proposed Plan Amendment.

Response:

The BLM has met its obligations under the FLPMA to coordinate its planning efforts with state and local governments and appropriately coordinated with the County under FLPMA as part of the MLP process. Section 202(c)(9) of FLPMA has directed BLM to coordinate its land use planning process with state and local governments. The BLM is required to coordinate land use planning with the land use planning and management programs of State and local governments, to the extent they are consistent with the laws governing the administration of public lands (43 USC § 1712(c)(9)). The BLM's planning regulations interpreting this statutory language state that RMPs "shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein" of State and local governments and Indian Tribes but only "so long as the guidance and resource management plans [of the State and local government and Tribe] are also consistent with the purposes, policies, and programs of Federal laws and regulations applicable to public lands" (43 CFR 1610.3-2(a)). If no such officially approved or adopted plans exist, then an RMP shall "to the maximum extent practical, be consistent with officially approved and adopted resource related policies and programs of other Federal agencies, State and local governments and Indian Tribes" (43 CFR 1610.3-2(b)). Such consistency is only required if the BLM's RMP would also be consistent with the policies, programs, and provisions of Federal laws and regulations applicable to the public lands (43 CFR 1610.3-2(b)).

The BLM identified and discussed inconsistencies with county plans, including San Juan County's plan, in the Moab Proposed Plan Amendment, so that the State and local governments would have a complete understanding of the impacts of the Amendment on any State and local management actions. A consistency review of the Moab Proposed Plan Amendment with State and County Master Plans is included in Chapter 5. In addition, as discussed in the Moab Proposed Plan Amendment, the relevant goals, objectives, or policies of a County are often equivalent to an activity or implementation-level decision and not a land use plan decision. The

very specific County goals would be addressed in any subsequent BLM activity or implementation level decision (Moab MLP/PRMPA/FEIS, Chapter 5, Section 5.2.6, pp. 5-4 through 5-5).

Table 5-2 outlines the planning consistency of the Proposed Plan Amendment with the approved management plans, land-use plans, and controls of other agencies with jurisdiction in or adjacent to the Planning Area.

With a few exceptions, the Moab Proposed Plan Amendment is consistent with the Grand County and San Juan County Plans. Moreover, the authorized officer will continue to collaborate with Federal agencies, state and local governments, and Indian tribes as it implements the Moab Plan Amendment.

Recreation

Issue Number: PP-UT-Moab-16-01-4

Organization: San Juan County

Protestor: Phil Lyman

Issue Excerpt Text:

As to recreation, the FEIS states that recreation use has increased approximately 3% over the past 10 years and that growth rate is expected to continue. This growth

rate has occurred under current RMP management, including oil and gas leasing and production management. The EIS identifies no “tipping point” where mineral leasing would cause a decrease in recreation use. Therefore it is arbitrary to impose additional restrictions on mineral activities to fix another non-existent problem.

Summary:

The BLM failed to adequately analyze the impacts of oil and gas development and production on recreation, resulting in the Moab Proposed Plan Amendment being arbitrary.

Response:

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Moab Amendment.

The level of detail in a NEPA analysis must be sufficient to support reasoned conclusions by the decisions comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative and focused on site-specific impacts. The baseline data included in such analysis provides the necessary basis to make informed land use plan-level decisions. There is no requirement that there be a defined “tipping point” for any particular resource in order to make management decisions. As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill in a plan), the scope of the analysis was appropriately conducted at a regional, programmatic level.

In Section 4.10.3, the BLM describes the conflicts between oil and gas development and production and recreation uses in the planning area as part of Alternative A, the “no action” alternative. Some examples of potential effects of oil and gas development and production in the planning area under Alternative A include: heavy truck traffic in popular recreation areas, such as Needles Overlook and Anticline Overlook Roads, “which could create poor road conditions, industrial level traffic, and fugitive dust that could degrade recreation experiences and could conflict with recreational use within the Canyon Rims [Special Recreation Management Area]

SRMA” (Moab MLP/PRMPA/FEIS, p. 4-61); reduced the quality of recreation experiences and the possible displacement of recreationists to other areas due to “[w]ells and associated facilities, potash processing facilities, pipelines[,] increased road traffic, noise, dust, and the visual impact of facilities in otherwise natural areas” (Moab MLP/PRMPA/FEIS, p. 4-62); and degradation of the values associated with primitive forms of recreation (e.g., opportunities for unconfined recreation and solitude) as a result of “not applying lease stipulations specifically for the mitigation of potential impacts to lands with wilderness characteristics...” Section 4.10.6 of the MLP and Proposed Plan Amendment analyzes the effects of Alternative D, the proposed alternative, on recreation. For example, applying a CSU limiting the use of heavy trucks on the Needles Overlook and Anticline Overlook Roads could address the potential impacts of mineral industry traffic on the quality of recreation experiences in the Canyon Rims SRMA (Moab MLP/PRMPA/FEIS, p. 4-65). Further, this section concludes that NSO stipulations and the closure of land to oil and gas leasing “would protect recreation from within these areas by precluding development. Alternative D offers far more protection for recreation from impacts associated with oil and gas leasing and development than Alternative A (Moab MLP/PRMPA/FEIS, p. 4-73).

The BLM’s analysis complies with NEPA and, therefore, appropriately used this analysis to make informed land use plan decisions for oil and gas consistent with the its multiple-use mandate.

IM 2010-117

Issue Number: PP-UT-Moab-16-04-7

Organization: K2O Resources LLC

Protestor: James Kohler

Issue Excerpt Text:

2. As is pointed out in IM 2010-117, the BLM's planning handbook (H-1601-1) specifically provides that the Resource Management Plan (RMP) underlies oil and gas leasing decisions. BLM guidance on planning decisions for oil and gas provide that "Fluid mineral leasing allocation decisions are made at the planning stage. The EIS associated with the RMP is intended to meet the NEPA requirements in support of leasing decisions" (IM 2004-110). This is not the case with solid mineral leasing under the regulations at 43 CFR 3500. For potash, and other solid leasable

minerals, the planning decision is supposed to identify areas open or closed to non-energy leasing and development, and any area-wide terms, conditions, or other special considerations needed to protect other resource values while exploring or developing minerals under the non-energy leasable regulations (BLM H-1601-1, Appendix C, p. 26). Additional environmental review beyond the RMP is necessary for any potash leasing actions. The MLP process, which reforms the oil and gas program to provide additional environmental review, is not necessary for potash leasing which already requires additional environmental review beyond the RMP before leasing actions can proceed.

Summary:

The Moab Proposed Plan Amendment does not comply with BLM planning policy because it inappropriately includes decisions regarding potash leasing and development.

Response:

The BLM has discretion under FLPMA and its land use planning regulations to amend Resource Management Plans. Specifically, an amendment is required to change the scope of resource uses or a change in the terms, conditions and decisions of an approved plan (43 CFR 1610.5-5). In addition, the BLM has broad discretion to establish the purpose and need for its land use planning actions (40 CFR 1502.13).

The BLM determined that the preparation of the Moab MLP and Proposed Plan Amendment (77 Federal Register 13141-13142) was warranted. The BLM documented its rationale for preparing for the Plan Amendment in the Purpose and Need section and detailed the changing circumstances, updated policies, and new information that comprise the BLM's need to undertake the planning process (see Section 1.2.2).

As part of the process, the BLM properly exercised its discretion to address potash leasing and oil and gas leasing and development, with respect to potash and recreation. The Moab MLP and Proposed Plan Amendment specifically documented the need to address potash leasing in the planning area: "due to a spike in potash prices in 2008, there was renewed interest in the potash resources within the Planning Area for the Moab MLP and Proposed Plan Amendment The BLM was inundated with applications for potash prospecting and expressions of interest for competitive leasing. It was concluded that the existing RMPs did not adequately address the

magnitude of potential potash development. Additional planning was necessary prior to considering new potash leasing (Moab MLP/PRMPA/FEIS, p. 1-2). Further, consistent with BLM regulations and policy, the Proposed Plan Amendment: (1) identifies areas as open and closed to potash leasing and development; and, (2) identifies area wide terms and conditions needed to protect other resource values while exploring or developing potash.

Master Leasing policies, including IM 2010-117, do not limit the BLM's ability to exercise its discretion under FLPMA and its planning regulations to make changes to land use plans and other resources even though the policies do not expressly refer to potash. The Proposed Plan Amendment adequately explains how the MLP concepts in these policies are applicable to potash leasing decisions in the planning area and why they are folded into this process (Moab MLP/PRMPA/FEIS, p. 1-1).

Mineral Leasing Act

Issue Number: PP-UT-Moab-16-04-11

Organization: K2O Resources LLC

Protestor: James Kohler

Issue Excerpt Text:

In Chapter 2 of the MLP/PEIS (p. 2-28), the Moab BLM suggests a stipulation to include diligent development requirements that, “The Authorized Officer would pursue lease cancellation if after ten years from the date of lease issuance, potassium or related products are not being produced in paying quantities...” This is contrary to the provisions of the statutory authority for potash leasing which provides that: “Any lease issued under this subchapter shall be for a term of twenty years and so long thereafter as the lessee complies with the terms and conditions of the lease and upon the further condition that at the end of each twenty-year period succeeding the date of the lease such reasonable adjustment of the

terms and conditions thereof may be made therein as may be prescribed by the Secretary of the Interior unless otherwise provided by law at the expiration of such periods.” (30 USC, Chapter 3A, Subchapter IX, section 283, emphasis added).

Issue Number: PP-UT-Moab-16-04-3

Organization: K2O Resources LLC

Protestor: James Kohler

Issue Excerpt Text:

II. The MLP/FEIS contains a proposal to add a stipulation to limit the term of a potash lease to 10 years which is contrary to the statutory authority and federal regulations for potash leasing. The Moab BLM lacks the authority through the planning process to change the existing law.

Summary:

The Controlled Surface Use (CSU) stipulation for potash development in the Moab Proposed Plan Amendment is inconsistent with statutory authority.

Response:

The agency has broad authority to regulate leasable minerals under its statutory authority. Specifically, 30 U.S.C. §187 authorizes the BLM to include lease stipulations requiring diligent development.

As discussed in the Moab Proposed Plan Amendment, the BLM has reasonably determined that, for the areas identified in the Amendment, there is a need for a lease stipulation that would require the lessee to diligently pursue development of a paying potash mine within a certain time (Moab MLP/PRMPA/FEIS, Chapter 2, pp. 2-28 – 2-29). The area identified in the Moab Proposed Plan Amendment is subject to competition between existing and foreseeable oil and gas development and possible potash development. The area has a high potential for the development of oil and gas that is capable of being produced by conventional means. In addition, the area is currently subject to increased interest for potash exploration; however, it is unclear whether the development potential is as high for oil and gas or whether potash production can be achieved utilizing solution mining methods. Based on the BLM’s experience in other regions of the country, such as New Mexico, concurrent oil and gas production and

potash production is difficult and prone to conflict (Moab MLP/PRMPA/FEIS, Appendix G, pp. G-179 – G182).

The BLM properly exercised its authority for establishing stipulations in order to manage this development and address these conflicts.

Mineral Resource Allocations (Open, Closed, NSO, Lease Stipulations, etc)

Issue Number: PP-UT-Moab-16-01-8

Organization: San Juan County

Protestor: Phil Lyman

Issue Excerpt Text:

Designation of a corridor 3-4 miles wide along the east boundary of the Needles District of Canyonlands National Park as closed to leasing with an adjoining corridor 3 or more miles wide as NSO equates to “buffer zone” management. This effectively extends the boundary of the park.

Issue Number: PP-UT-Moab-16-03-2

Organization: State of Utah, School and Institutional Trust Lands and Administration

Protestor: LaVonne Garrison

Issue Excerpt Text:

SITLA protests BLM’s decision to impose No Surface Occupancy (NSO) stipulations on all lands (324,721 acres) located within VRM Class II areas. MLP Appendix A, page A-39. BLM’s decision relied upon an incorrect assumption - that directional and horizontal drilling could be used to access hydrocarbon resources under areas constrained by surface use restrictions. See BLM Response to Comment No. 705 (MLP Appendix G, page G-169); BLM Assumption at 4-39. As both SITLA and Fidelity Exploration Company pointed out in their comments (see, e.g. comments 147, MLP G-102, and 705, MLP G-169), the complex Paradox Formation geology in the area limits the effectiveness of directional drilling to a maximum of approximately one mile. Although some oil and gas resources could be reached from outside NSO areas, or from scattered state sections, the oil and gas resource within NSO areas will never be recovered to the extent that the resources lie

beyond the extent of directional drilling. BLM’s analysis failed to take into account the sterilizing effect of the NSO designation on significant resources. As noted above, if sufficient BLM lands are not available for oil and gas development in a particular area to constitute a viable economic unit, the in-held state trust lands will be rendered undevelopable.

The exception allowed to the NSO designation - where the Authorized Officer may grant an exception if the proposed operation meets certain discretionary visual determinations by BLM is insufficient to prevent loss of otherwise developable oil and gas resources, a loss that was not analyzed by BLM either as to BLM lands or in-held state trust lands.

Issue Number: PP-UT-Moab-16-04-14

Organization: K2) Resources LLC

Protestor: James Kohler

Issue Excerpt Text:

The BLM has determined that the Hatch Point area does not contain a known valuable deposit of potash, so leasing in this area would first require a prospecting permit to establish the existence of a valuable deposit of potash, followed by an application for a preference right lease. The MLP/PEIS does not make it clear whether the NSO condition would apply to the issuance of a prospecting permit. According to the regulations, 43 CFR 3505.10 provides that a prospecting permit gives an applicant “the exclusive right to prospect on and explore lands available for leasing under this part to determine if a valuable deposit exists” (emphasis added). Once the existence of a valuable deposit of potash has determined through prospecting,

it may be reasonable to utilize some directional drilling to develop the deposit, but the prospecting would require use of the surface. Application of the NSO stipulation

to prospecting is arbitrary, capricious and unreasonable.

Summary:

The No Surface Occupancy (NSO) stipulation in the Moab MLP/RMPA/FEIS is too restrictive and does not reasonably provide justification for the designation. Specifically, the BLM:

- failed to adequately analyze the effects of a No Surface Occupancy stipulation in the Moab Plan Amendment;
- imposed an NSO stipulation within VRM Class II areas that relied on an incorrect assumption that directional and horizontal drilling could be used to access resources in the area; and
- does not make clear that the NSO stipulation in the Proposed Plan Amendment will apply to potash prospecting permits. An NSO for potash prospecting permits is inconsistent with BLM regulations at 43 CFR 3505.10.

Also, in using buffer zones to determine NSO, the BLM may have improperly extended the boundary of Canyonlands National Park.

Response:

Under the Mineral Leasing Act (MLA), the Secretary of the Interior has broad authority to regulate environmental aspects of oil and gas operations. The MLA is the principle authority for regulation of oil and gas lease operations, as it gives the Secretary the opportunity to require environmental protection when it is determined necessary or needful. Additionally, Section 302(b) of FLPMA supports that authority by allowing the Secretary to prevent “undue and unnecessary” degradation of public lands.

The BLM fully analyzed the impacts of the lease stipulations for each of the alternatives, which is discussed further in sections 4.8.1 and 4.8.2 and Appendix A of the Moab MLP/PRMPA/FEIS.

In the response to comments from the Moab Draft Plan Amendment, the BLM noted that the NSO stipulation still allows various ways to access Federal oil and gas resources, mainly through horizontal and directional drilling (Moab MLP/PRMPA/FEIS, Appendix G, pp. G-94 – G-95). Together, the effects analysis for oil and gas in Chapter 4, section 4.8.1, and the socioeconomics analysis in Chapter 4, section 4.12, provide reasoning for application of the NSO stipulation.

In regards to the concern about the NSO stipulation and limitations of horizontal and directional drilling, Alternative D provides an exception to the NSO stipulation pertaining to VRM Class II areas that allows for oil and gas operations not visible from key observation points. This exception could allow for more flexibility and some additional well drilling in VRM Class II areas as compared to Alternatives B1, B2, and C (Moab MLP/PRMPA/FEIS, Chapter 4, p. 4-47).

In a discussion regarding minerals access under the NSO stipulation, the BLM notes that a stipulation resulting from the MLP would not be applied to an existing lease (Moab

MLP/PRMPA/FEIS, Appendix G, p. G-95). Chapter 2 of the Moab Proposed Plan Amendment states that the Potash Leasing Area (PLA) within the Hatch Point area allows for prospecting where permits are issued (Moab MLP/PRMPA/FEIS, Chapter 2, p. 2-27). The existence of prospecting permit applications within the PLA would demonstrate continuing interest in pursuing potash development in the area. Therefore, the PLA would not be removed until the potash prospecting applications were processed (Moab MLP/PRMPA/FEIS, Appendix G, p. G-244).

Based on the impacts analysis performed, the BLM determined that the stipulations considered are not overly restrictive, and are necessary to meet the goals and objectives of the Moab MLP/PRMPA/FEIS.

Regarding the boundary concern at Canyonlands National Park, the BLM can only make decisions on BLM land and does not have the authority to change the boundaries of a National Park. The BLM previously responded to this in the response to comments in the Moab Draft Plan Amendment. In short, the buffer zone analysis for NSO management did not modify existing boundaries of the planning area or the Canyonlands National Park, but rather was used to protect the high-quality scenic values in the adjacent National Park (Moab MLP/PRMPA/FEIS, Appendix G, p. G-114).

The BLM properly exercised its authority to manage the lease stipulations in the Moab MLP and Proposed Plan Amendment.
