



***Bureau of Land Management  
Director's Summary Protest Resolution  
Report***

**Oklahoma, Kansas, and Texas  
Final Joint Environmental  
Impact Statement/Proposed  
BLM Resource Management  
Plan and Proposed BIA  
Integrated Resource  
Management Plan**

February 7, 2020

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## *Acronyms*

<b>ABB</b>	American Burying Beetle
<b>BIA</b>	Bureau of Indian Affairs
<b>BLM</b>	Bureau of Land Management
<b>CBMA</b>	Cross Bar Management Area
<b>CCAAs</b>	Candidate Conservation Agreements with Assurances
<b>Center</b>	Center for Biological Diversity
<b>CFR</b>	Code of Federal Regulations
<b>COAs</b>	Conditions of Approval
<b>CSU</b>	Controlled Surface Use
<b>DD</b>	Directional Drilling
<b>DEIS</b>	Draft Environmental Impact Statement
<b>ESA</b>	Endangered Species Act
<b>FLPMA</b>	Federal Land Policy and Management Act
<b>GHG</b>	greenhouse gas
<b>IBAs</b>	Important Bird Areas
<b>IBLA</b>	Interior Board of Land Appeals
<b>MBTA</b>	Migratory Bird Treaty Act
<b>MLA</b>	Mineral Leasing Act
<b>ND</b>	No Drilling
<b>NEPA</b>	National Environmental Policy Act
<b>NSO</b>	No Surface Occupancy
<b>OFO</b>	Oklahoma Field Office
<b>OKT DJEIS/RMP</b>	Oklahoma-Kansas-Texas Draft Joint Environmental Impact Statement and Proposed Resource Management Plan
<b>OKT FJEIS/RMP</b>	Oklahoma, Kansas, and Texas Final Joint Environmental Impact Statement and Proposed Resource Management Plan
<b>RCW</b>	Red-Cockaded Woodpecker
<b>RMA</b>	Resource Management Area
<b>ROW</b>	right-of-way
<b>RPZ</b>	resource protection zone
<b>SMA</b>	Surface Management Agency
<b>SRMA</b>	Special Recreation Management Area
<b>TL</b>	Timing Limitation
<b>USACE</b>	U.S. Army Corps of Engineers
<b>USC</b>	US Code
<b>USFWS</b>	U.S. Fish and Wildlife Service

## *Protesting Party Index*

<b>Protester</b>	<b>Organization</b>	<b>Determination</b>
Bret Sumner	The Petroleum Alliance of Oklahoma	Denied – Issues and Comments
Wendy Park	Center for Biological Diversity	Denied – Issues and Comments
Shawna Turner		Dismissed – No Standing
Bradford Holt		Dismissed – No Standing
Craig Harper	Peoria Tribe of Indians of Oklahoma	Dismissed – Comments Only
Rebecca Earl & Jim Hatley	Local Environmental Action Demanded Agency, Inc.	Dismissed – No Standing

## ***Fluid Minerals – Valid Existing Lease Rights***

### ***The Petroleum Alliance of Oklahoma***

#### ***Bret Sumner***

**Issue Excerpt Text:** NSO-3 and NSO-4 are not supported by the cited legal authorities or the Administrative Record, and they violate valid existing rights. Final EIS/Proposed RMP at ES-14 to 15. In particular, the legal citations referenced in NSO-3 and NSO-4 do not authorize the imposition of NSO restrictions. Further, the Agencies do not present sufficient data to support the need for these blanket restrictions, without allowing exceptions, modifications, and/or waivers to NSO-3 and NSO-4 under 43 C.F.R. § 3101.1-2.

### ***The Petroleum Alliance of Oklahoma***

#### ***Bret Sumner***

**Issue Excerpt Text:** NSO-8 is not supported by the Administrative Record and encroaches on valid existing lease rights because the Agencies do not provide sufficient data or legal authorities to support imposing a blanket NSO on National and State Historic Trails. Specifically, NSO-8 imposes an “NSO within the National Scenic and Historic Trails Right-of-Way and Management Corridor, or similar protected area or measures identified in the applicable land use plan.” The BLM imposes a half-mile corridor from the center line of national historic trails. The Final EIS/Proposed RMP at 4-213 and D-9. The half-mile buffer zone is arbitrary and not supported by the Administrative Record evidence

### ***The Petroleum Alliance of Oklahoma***

#### ***Bret Sumner***

**Issue Excerpt Text:** NSO-10 is not supported by the cited legal authorities or the Administrative Record and violates valid existing lease rights. The Final EIS/Proposed RMP at D-10. Specifically, NSO-10 imposes an NSO on a “lease or a portion of a lease [that] is located within the Cross Bar RMA . . . [allowing for no] waivers, exceptions, and/or modification.” Id. at D-10. The legal citations referenced in NSO-10 do not authorize the imposition of this NSO restriction. Additionally, the Agencies do not present enough data to support the need for this blanket restriction, without allowing exceptions, modifications, and/or wavers to NSO-10. Moreover, the Alliance is unable to locate a definition and analysis of the Cross Bar Resource Management Area (RMA), within the Final EIS/Proposed RMP, that justifies this designation.

### ***The Petroleum Alliance of Oklahoma***

#### ***Bret Sumner***

**Issue Excerpt Text:** CSU-3 does not adequately protect the Alliance members’ valid existing lease rights as required under the FLPMA, the MLA, and the caselaw. CSU-3 imposes a lease notice on special status species and/or habitats for Alternatives B. Specifically, “The lease area may now or hereafter contain plants, animals, or their habitats determined to be threatened, endangered, or other special status species. The BLM may recommend modifications to exploration and development proposals to further their conservation and management objectives to avoid any BLM-approved activity that would contribute to a need to list such a species or its habitat. The BLM may require modifications to or may disapprove any proposed activity that is likely to result in jeopardy to the continued existence of a proposed or listed threatened or endangered species or to result in the destruction or adverse modification of a designated or proposed critical habitat. The BLM will not approve any ground-disturbing activity that may affect any such species or critical habitat until it completes its obligations under applicable requirements of the ESA (16 USC 1531 et seq.) . . . applie[d] to Oklahoma . . . [allowing for no] waivers, exceptions, and/or modification.” The Final EIS/Proposed RMP at D- 13.

**Summary:**

The Oklahoma, Kansas, and Texas Final Joint Environmental Impact Statement and Proposed Resource Management Plan (OKT FJEIS/RMP) (BLM 2019) does not present sufficient data to support the need for blanket restrictions without allowing exceptions, modification, or waivers. The stipulations and lease notices are unsupported by the Administrative Record and law, and encroach on valid existing lease rights. The Bureau of Land Management (BLM) failed to define the Cross Bar Management Area (CBMA) and management for associated isolated tracts and provide rationale for a half-mile buffer zone for National and State Historic Trails.

**Response:**

The OKT FJEIS/RMP does not violate valid, existing rights. An existing oil and gas lease is a valid, existing right, which cannot be modified through the land use planning process (Federal Land Policy and Management Act [FLPMA] Section 701(h)). Lease stipulations proposed in the OKT FJEIS/RMP would not be applied to existing oil and gas leases. Section 2.4.1 (p. 2-3) of the OKT FJEIS/RMP states that each alternative preserves valid existing rights. Section 2.4.2 (p. 2-7) of the OKT FJEIS/RMP further notes that valid existing rights will be preserved, including “any leases, claims, or other use authorizations established before a new or modified authorization, change in land designation, or new or modified regulation is approved.”

The BLM is not required to allow exceptions, modifications, and/or waivers to lease stipulations. Waivers, exceptions, and modifications to lease stipulations are developed at the discretion of the BLM. Any exception, waiver, or modification must be based on one of two criteria listed in 43 Code of Federal Regulations (CFR) 3101.1-4, specifically, “A stipulation included in an oil and gas lease shall be subject to modification or waiver only if the authorized officer determines that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or if the proposed operations would not cause unacceptable impacts.”

Appendix N of the OKT FJEIS/RMP includes legal land descriptions of isolated tracts of public land, as well as certain lands in the CBMA. The CBMA is depicted on figures provided throughout Appendix A of the OKT FJEIS/RMP. FLPMA’s multiple-use sustained-yield mandate and the National Environmental Policy Act’s (NEPA’s) guidance to BLM land managers, as well as regulations (43 CFR 1601.0-2), provide the BLM land manager the authority and the responsibility to manage Federal lands in a manner supportive of the public’s interest (43 CFR 1601.0-3 Authority; 43 CFR 1601.0-4 Responsibilities). These public lands have been proposed to be used and managed primarily as a Special Recreation Management Area (SRMA), but also for other use and conservation purposes. NSO-10 is directly supported by FLPMA’s multiple-use sustained-yield guidance through the following land use allocations and resource management decisions: (1) provides for off-site development and production of Federal mineral estate through directional drilling techniques; (2) provides the public with access to highly sought after recreation opportunity in Texas, a state with minimal public lands (43 CFR 1610.4-2); (3) provides the appropriate level of safeguard for a U.S. Fish and Wildlife Service (USFWS) listed threatened and endangered species, the Arkansas River shiner, and its habitat; (4) provides the appropriate level of protection for cultural resources and historic properties existing on the CBMA; (5) provides the appropriate level of conservation stewardship for a 7.25-mile segment of the Canadian River that meets eligibility and suitability criteria for inclusion into the National Wild and Scenic River system; (6) provides the appropriate level of safeguard for visual resources located on the CBMA; and (7) provides for additional livestock grazing opportunities on the CBMA. The BLM solicited and considered public input regarding the proposed land use allocation and resource management decisions associated with the proposed Cross Bar SRMA, as is required by regulation during the development of planning criteria. (43 CFR 1610.4-1, 1610.4-2).

The BLM may restrict development of an existing oil and gas lease through Conditions of Approval (COAs). However, the application of COAs is outside the scope of the land use planning process; rather, the BLM analyzes and develops 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 site-specific environmental review, the BLM has the authority to impose reasonable measures (e.g., COA) to minimize impacts on other resource values, including restricting the siting or timing of lease activities (43 CFR 3100; 43 CFR 3160; 176 Interior Board of Land Appeals [IBLA] 144; 177 IBLA 1). In its RMPs, the BLM may identify “general/typical conditions of approval and best management practices” that may be employed in the planning area (BLM Handbook H-1601-1, p. C-24).

The OKT FJEIS/RMP does not modify or apply stipulations to existing oil and gas leases. Rather, the OKT FJEIS/RMP appropriately identifies potential COAs that may be applied to existing oil and gas leases following site-specific environmental review in the planning area.

## ***Fluid Minerals – Stipulations***

### ***The Petroleum Alliance of Oklahoma***

***Bret Sumner***

**Issue Excerpt Text:** NSO-6 is not supported by the cited legal authorities. The Final EIS/Proposed RMP at D- NSO-6 imposes a 415-foot buffer resource protection zone (RPZ) “that the BLM built” for riparian-wetland areas and waterbodies, including but not limited to, perennial, ephemeral, or intermittent streams; springs, seeps, lakes, ponds, reservoirs, and playas. Id. at D-7, O-38. The Alliance previously requested that the Agencies amend stipulation NSO-6 to remove the inclusion of intermittent streams and ephemeral channels from waterbodies encompassed by the stipulation because these waters are generally not jurisdictional waters of the U.S. under the Clean Water Act. Id. at O-40. See *Rapanos v. United States*, 547 U.S. 715 (2006). In response, the Agencies stated, “No change. All NSO stipulations, except at the Cross Bar Management Area, are stipulations assigned by the other Federal SMA with surface management authority. The BLM does not have authority to grant waivers, exceptions, or modifications to other SMA’s stipulations (see LN-15 for further explanation). Table ES-1 identifies surface management authorities.” Id. As drafted, NSO-6 appears to be overbroad and not supported by legal authority.

### ***The Petroleum Alliance of Oklahoma***

***Bret Sumner***

**Issue Excerpt Text:** CSU-4 is unsupported by the cited legal authorities and is overly restrictive due to the existence of existing Candidate Conservation Agreements with Assurances (CCAAs) covering the American Burying Beetle. The Final EIS/Proposed RMP at D-15. Specifically, the Agencies state that, “This lease may contain suitable habitat for American Burying Beetle (ABB), a Federally listed species (proposed for downlisting)” and is required to “adhere to the current protocol for ABB as determined by the USFWS.

### ***The Petroleum Alliance of Oklahoma***

***Bret Sumner***

**Issue Excerpt Text:** TL-6 is not supported by the Administrative Record and the cited legal authorities. TL-6 is categorized as a Timing Limitation (TL) and a Lease Notice for the Red-Cockaded Woodpecker; however, the stipulation fails to expressly state or describe the timing restriction within TL-6. The Final EIS/Proposed RMP at D-26. Moreover, TL-6 does not permit, or even mention, waivers, exceptions, and/or modifications consistent with 43 C.F.R. § 3101.1-2.



***The Petroleum Alliance of Oklahoma***

***Bret Sumner***

**Issue Excerpt Text:** LN-5 is not supported by the cited legal authorities or the Administrative Record and is unreasonable and unnecessary. Pursuant to the legal authorities referenced by the Agencies in LN-5 and Solicitor’s Opinion M-37050, incidental take of migratory birds during lawful activity is permitted. Therefore, the Agencies are unreasonably and unnecessarily requiring surveys for the potential lawful incidental taking of nesting birds without providing supporting legal authority and data.

***The Petroleum Alliance of Oklahoma***

***Bret Sumner***

**Issue Excerpt Text:** The Final EIS/RMP’s inclusion of “crucial habitat” and related restrictions are not supported by law and must be removed from the Proposed RMP. ...Significantly, the lesser prairie chicken is not a listed species under the Endangered Species Act (ESA) and therefore, BLM lacks authority to limit surface occupancy within lesser prairie chicken habitat. The ESA provides the exclusive mechanism for protecting habitat of listed species. The U.S. Fish and Wildlife Service must designate critical habitat at the time a species is listed. 16 U.S.C. § 1533(a)(3); 50 C.F.R. § 424.12(a). ...BLM’s designation of “crucial habitat” amounts to a de facto designation of critical habitat for a non-listed species in violation of Section 4 of the Endangered Species Act. This de facto designation is contrary to law and improperly attaches special management considerations and protections in violation of valid existing rights. In addition, Executive Order 13186, cited by the Agencies, to support the inclusion of crucial habitat, does not mandate or authorize the designation of habitat, potential habitat, or NSO restrictions. Rather, this Executive Order directs the agencies to protect, restore, and conserve migratory bird habitat as practicable. It does not authorize circumvention of the ESA. The Alliance respectfully requests the Agencies revise the Final EIS/Proposed RMP to remove the term “crucial habitat” and related restrictions because they violate the Endangered Species Act, are otherwise unsupported by law, and violate valid existing rights.

**Summary:**

The following OKT FJEIS/RMP (BLM 2019) proposed stipulations are not supported by applicable laws, or are unreasonable and unnecessary:

- NSO-6 (Riparian-Wetland Areas and Waterbodies)
- CSU-4 (American Burying Beetle)
- TL-6 (Red-Cockaded Woodpecker)
- LN-5 (Migratory Birds and Birds of Conservation Concern)

Additionally, the BLM’s designation of crucial habitat for lesser prairie chicken violates Section 4 of the ESA.

**Response:**

It is BLM’s policy for RMPs to identify areas subject to constraints for oil and gas leasing and identify specific lease stipulations that will be employed to accomplish resource condition objectives (BLM Handbook H-1601-1, pp. C-23 and C-24). The Mineral Leasing Act (MLA) requires that the “the Secretary of Interior...shall regulate all surface-disturbing activities conducted pursuant to any lease issued under this chapter and shall determine reclamation and other actions as required in the interest of conservation of the surface resources.” This requirement under the MLA applies to all Federal oil and gas leases, regardless of surface ownership. The OKT FJEIS/RMP establishes lease stipulations in compliance with statute (MLA, Section 17), regulation (43 CFR Subpart 3101 - Issuance of Leases), and BLM policy (H-1601-1).

As indicated in Lease Notice 15 (p. D-38 of the OKT FJEIS/RMP), lease parcels under regulatory authority of another Surface Management Agency (SMA), where the BLM administers mineral estate, require consent, concurrence, and stipulations, if any should apply, from the authorized Other SMA official prior to the BLM leasing minerals under any Other SMA lands. The Other SMA's consent or concurrence letter and current stipulation(s), if any should apply, for the proposed lease parcel will be made available for public review prior to the lease sale. Examples of Other SMA stipulations that may be applied include, but are not limited to: No Surface Occupancy (NSO), No Drilling (ND), Directional Drilling (DD), Controlled Surface Use (CSU), and Timing Limitations (TL).

The OKT FJEIS/RMP allows waivers, exceptions, and modifications for NSO-6 (see p. D-7 of the OKT FJEIS/RMP). Specifically, a modification or waiver may be granted if a portion or all of an area does not qualify as a riparian-wetland area or waterbody. NSO-6 states that the BLM may, after a survey has been completed by a BLM Biologist, require the establishment of a Resource Protection Zone “within an area that begins and extends up to 415-foot landward from the outside edge of the riparian-wetland area” (OKT FJEIS/RMP p. D-7). The BLM revised the NSO-6 language as a result of the Petroleum Alliance of Oklahoma comment submission regarding NSO-6's language during the 125-day public comment period on the Oklahoma-Kansas-Texas Draft Joint Environmental Impact Statement and Proposed Resource Management Plan (OKT DJEIS/RMP). The BLM developed NSO-6 using pragmatic, science-based conservation stewardship and adaptive management principles intended to allow the BLM Biologist/SMA to conduct on-the-ground surveys and determinations at the appropriate time and space the stipulation would be applied to the proposed action. Additionally, the BLM has the authority to apply site-specific lease stipulations, including NSO, to a federally nominated oil and gas lease parcel during the NEPA analysis, which is conducted prior to the nominated lease parcel being offered for sale at competitive auction. (43 CFR 3101.7-1 and 3101.7-2). BLM Form 3100-11 (Offer to Lease and Lease for Oil and Gas) standard “Lease Terms” (p. 3; Sec. 6) further substantiate the BLM's authority to “minimize adverse impacts to...water, other resources, and land uses through application of reasonable measures deemed necessary by lessor to accomplish the intent of this section.” NSO-6 represents a valid, authorized, and substantiated lease stipulation intended to protect riparian-wetland areas in accordance with FLPMA's multiple-use sustained-yield mandate and NEPA's direction to engage in pragmatic, science-based conservation stewardship practices to safeguard public lands and resources.

As stated on page O-53 of the OKT FJEIS/RMP, the BLM would follow the current protocol for American burying beetle in applying CSU-4. As of April 2019, this is the USFWS' Region 6 Presence/Absence Survey Protocol for the American burying beetle (March 2016), but the protocol may be revised over the life of the OKT FJEIS/RMP. As such, the wording ensures that the most current guidance would be applied. CSU-4 clearly states that waivers, exceptions, and modifications would be determined during consultation with the USFWS.

In order to facilitate an adaptive management strategy that ensures compliance with the ESA, the BLM developed TL-6 to align with the current USFWS protective protocol for threatened and endangered species. TL-6 includes: (1) continuous joint interagency cooperation between the BLM and the USFWS; and (2) reliance on the authoritative agency's (USFWS) official protocol for protection of the Red-Cockaded Woodpecker (RCW) and its habitat, the USFWS RCW Recovery Plan (1979). The BLM believes linking TL-6 to the USFWS' species conservation plan is an appropriate application of the BLM's adaptive management principle to support conservation stewardship. The USFWS RCW Recovery Plan is readily available at [https://www.fws.gov/rcwrecovery/recovery\\_plan.html](https://www.fws.gov/rcwrecovery/recovery_plan.html).

Regarding the availability of waivers, exceptions, and modifications, the USFWS is the agency charged with conserving the RCW; therefore, it is appropriate for the BLM to defer to USFWS protocol specifications for protected threatened and endangered species or habitat. The ESA requires consultation with the USFWS on proposed Federal actions that may affect a listed species or designated critical habitat. TL-6 appropriately requires a qualified biologist to conduct a foraging analysis survey prior to the

application of this timing stipulation. The complexities of RCW mating, reproduction, and foraging preclude the BLM from identifying static dates for TL-6. (Please refer to Section B, *Sociobiology and Cooperative Breeding*, of the RCW Recovery Plan, 1979, for additional information on RCW mating and reproductive requirements and behaviors). Appropriate dates associated with TL-6 will be determined through biological surveys during implementation-level environmental review. The TL-6 stipulation is the most effective and least operationally intrusive means of RCW conservation stewardship.

The lesser prairie-chicken crucial habitat discussed in the OKT FJEIS/RMP is not the same as critical habitat and is not afforded the same protections. The Crucial Habitat Assessment Tool is a spatial model developed by the Kansas Biological Survey and is used to designate and prioritize areas for lesser prairie-chicken conservation activities and industry development. The BLM is using this Crucial Habitat Assessment Tool as a part of its best available science analysis in making more site-specific determinations regarding impacts of the leasing decision. In accordance with the Memorandum of Understanding between the U.S. Department of the Interior Bureau of Land Management and the USFWS to Promote the Conservation of Migratory Birds (BLM 2010), the BLM shall “As practicable, protect, restore, and conserve habitat of migratory birds, addressing the responsibilities in Executive Order 13186.” Furthermore, the Memorandum of Understanding states that the BLM shall “Address the conservation of migratory bird habitat and populations when developing, amending, or revising management plans for BLM lands.” This land use planning effort does not restrict the use of public lands as a result of the lesser prairie-chicken or its crucial habitat. As such, management under the OKT FJEIS/RMP is within the BLM’s authority. The application of crucial habitat in the OKT FJEIS/RMP is therefore not a de facto designation of critical habitat for lesser prairie-chicken and is not in violation of the ESA.

The OKT FJEIS/RMP stipulations are supported by applicable laws and policy and are within the BLM’s authority for this land use planning effort.

## ***Lands and Realty – Valid Existing Lease Rights***

### ***The Petroleum Alliance of Oklahoma***

***Bret Sumner***

**Issue Excerpt Text:** The Agencies’ designation of ROW avoidance and exclusion areas significantly encroaches on valid existing lease rights held by Alliance members and are overly broad without adequate justification and legal authorities. Moreover, the definitions of ROW avoidance and exclusion areas create business uncertainty surrounding whether operators will be able to secure ROWs. ...The Agencies fail to provide legal authority, data, and analysis to support these overly broad ROW avoidance and exclusion area designations. In addition, the Proposed RMP does not provide any guidance or criteria for the Agencies’ ROW decision-making in these areas. The Agencies state in Appendix O that applicants could apply for new land use authorizations in ROW avoidance areas; however, the Agencies do not provide specific criteria for when authorizations would be granted or withheld. Final EIS/Proposed RMP at O-11. As written, the Final EIS/Proposed RMP is overbroad, vague, and fails to provide regulatory and business certainty. Specifically, the Proposed RMP fails to affirmatively state that ROW authorizations may be granted in exclusion or avoidance areas and it does not provide objective criteria for when access necessary to develop minerals may be granted.

### ***The Petroleum Alliance of Oklahoma***

***Bret Sumner***

**Issue Excerpt Text:** The Final EIS/Proposed RMP imposes ROW avoidance based on the Audubon Society’s Important Bird Areas (IBAs). As the Agencies acknowledge in their response to comments, this IBA “designation” is not imposed or assigned by the Proposed RMP. Nevertheless, the Proposed RMP purports to manage these areas as ROW avoidance without any process for waivers, exceptions, or

modifications. Appendix O at 32. As such, this ROW restriction is not legally supported and violates valid existing rights. The MBTA does not authorize ROW avoidance or exclusion areas. Specifically, as explained in the Solicitor’s Opinion M-37050, the incidental taking of migratory birds is not unlawful. The Agencies should remove unsubstantiated ROW restrictions. At a minimum, the Agencies must revise the Final EIS/Proposed RMP to expressly state that IBAs are not designations imposed by the RMP, to provide specific legal authority to support these restrictions, and affirmatively state that ROW authorizations will be granted in exclusion or avoidance areas as necessary to allow access for development of valid existing lease rights and specify objective criteria for granting ROWs.

### ***The Petroleum Alliance of Oklahoma***

#### ***Bret Sumner***

**Issue Excerpt Text:** As noted above, the Agencies propose to manage Federal land in the Red River Area as ROW avoidance and exclusion areas. This proposal is vague, overbroad, unsupported by the Administrative Record, and without legal justification. The Final EIS/Proposed RMP provides no description of the Red River Area and provides no data or law to support this proposed restriction. There are fee minerals in close proximity to the Red River which may require access to federal lands to develop. Accordingly, a ROW avoidance or exclusion has the potential to prohibit development and result in a constructive taking. The Alliance requests the Agencies remove this unsupported ROW restriction. At a minimum, the Agencies must revise the Final EIS/Proposed RMP to include a description of the Red River Area, data, analysis, and legal authorities to support the proposed restriction.

#### **Summary:**

The OKT FJEIS/RMP (BLM 2019) right-of-way (ROW) avoidance and exclusion areas encroach on valid existing lease rights and are overly broad without adequate justification and legal authorities. The agencies failed to specify the process for new land use authorizations in ROW avoidance and exclusion areas. The OKT FJEIS/RMP also improperly imposes ROW avoidance based on the Audubon Society’s IBAs and fails to specify how fee minerals near the Red River would be accessed with the proposed ROW restrictions.

#### **Response:**

The OKT FJEIS/RMP adequately addresses the preservation of valid existing rights for ROWs (see pp. ES-11, ES-12, 2-3, and 2-7). The OKT FJEIS/RMP will not vacate or modify any valid existing ROW authorization. However, in locations where no valid existing ROW authorization exists, the OKT FJEIS/RMP will not result in a de facto authorization for that use. The BLM need not guarantee access to Federal mineral leases, nor access across Federal surface estate to access private mineral leases, and designation of ROW avoidance or exclusion areas therefore does not violate the preservation of any valid existing rights.

As stated on page O-63 of the OKT FJEIS/RMP, the inclusion of management prescriptions for IBAs are consistent with the BLM’s obligations to protect migratory birds under Executive Order 13186, the Migratory Bird Treaty Act, and the ESA. BLM Handbook H-1601-1, Appendix C, Section E, directs the BLM to identify ROW avoidance or exclusion areas consistent with the goals and objectives for natural resources in the planning area. As described in Chapter 2 of the OKT FJEIS/RMP (Table 2-2), the BLM and Bureau of Indian Affairs (BIA) considered a reasonable range of alternative management, which included the application of appropriate ROW avoidance and exclusion areas. Management under all alternatives for ROW avoidance and exclusion areas is consistent with laws and BLM policies, including the Land Use Planning Handbook (H-1601-1). Acres of IBAs presented in Table 2-2 of the OKT FJEIS/RMP (p. 2-12) apply to BLM-administered Federal mineral estate, whereas acres presented in Chapter 3 show acres of IBAs in the planning area, regardless of surface administration. As stated on

page 3-74 of the OKT FJEIS/RMP, “No BLM-administered or BIA-managed surface lands in the planning area are IBAs.”

The OKT FJEIS/RMP adequately defines the “Red River area” on pages ES-9, ES-16, 1-13, 1-22, and 2-8 as “along the 116-mile stretch of the Red River between the North Fork of the Red River and the 98<sup>th</sup> Meridian (referred to as the “Red River area”).” For lands along the 116-mile stretch of the Red River between the North Fork of the Red River and the 98<sup>th</sup> Meridian, such lands would be more specifically identified and mapped when they are surveyed. No exact acreages and no legal land descriptions of Federal lands are available at this time because the full 116-mile stretch has not been surveyed. Any such survey would be conducted in accordance with applicable law (p. ES-15). Additionally, the area is subject to more specific survey and identification as provided in the Dingell Act. Valid existing rights are secured in the Oil and Gas Lease terms and conditions and the OKT FJEIS/RMP. Federal mineral estate has been proposed with a land use allocation status of “OPEN with Stipulations” in all instances where BLM-administered surface estate has been identified as a ROW exclusion or avoidance area, inclusive of the Red River area. Therefore, the OKT FJEIS/RMP will preserve valid existing lease rights in the Red River area.

## ***NEPA – Public Involvement***

### ***Center for Biological Diversity***

#### ***Wendy Park***

**Issue Excerpt Text:** BLM failed to notify the Center for Biological Diversity and other interested parties of the availability of the DEIS or of public meetings about the proposed RMP....NEPA requires agencies to “[m]ake diligent efforts to involve the public in preparing and implementing their NEPA procedures,” and to “[p]rovide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.” 40 C.F.R. § 1506.6(b) (emphasis added). For those actions “with effects of national concern notice shall include publication in the Federal Register and notice by mail to national organizations reasonably expected to be interested in the matter.” 40 C.F.R. § 1506.6(b)(2). The management of federal lands and minerals in Texas, Oklahoma, and Kansas is an issue of national concern, and the Center for Biological Diversity is a national organization that has been heavily involved in commenting on and protesting leasing decisions in Oklahoma, Kansas, and Texas since 2016, and has raised questions about the sufficiency of the governing RMPs and RMP-EISs to support proposed leasing. Accordingly, we should have received notice of the proposed RMP-DEIS at the time of its release, but did not. BLM’s public notices also failed to notify other individuals and local governments in Texas and Oklahoma about the RMP revision process, and the public’s opportunity to weigh in on whether minerals below public drinking water reservoirs should be made available for oil and gas leasing and how oil and gas activities on these parcels should be managed. This includes Lewisville Lake, the drinking water supply for Dallas, Texas; Choke Canyon Reservoir, the drinking water supplies for Corpus Christi; Lake Somerville, the drinking water supply for Brenham Texas; and Lake Canton, a water supply for Oklahoma City. For an April 2016 lease sale involving parcels beneath these lakes, BLM received over 500 protests opposing leasing below these water supplies. (See public protests of 2016 Oklahoma-Texas-Kansas lease sale.) This includes protests from numerous towns and cities in the Dallas area who opposed leasing beneath Lewisville Lake. Before the April 2016 lease auction, BLM also received a February 9, 2016 letter signed by numerous organizations in all three states requesting BLM to hold public meetings concerning the proposed leasing in Oklahoma, Kansas, and Texas. (Footnote 2: [http://www.biologicaldiversity.org/programs/public\\_lands/energy/dirty\\_energy\\_development/oil\\_and\\_gas/pdfs/2016\\_11\\_21\\_BLM\\_Protest\\_Letter.pdf](http://www.biologicaldiversity.org/programs/public_lands/energy/dirty_energy_development/oil_and_gas/pdfs/2016_11_21_BLM_Protest_Letter.pdf)) In addition, the cities of Brenham and Corpus Christi later opposed leasing below their water supply lakes, when parcels were offered in a subsequent 2017 lease auction. (Footnote 3: 3 [---

February 7, 2020](http://www.brenhambanner.com/oil-</a></p></div><div data-bbox=)

leases-around-lake-generate-protests/article\_7502c983-b11c-5e46-a45d-c72e20f12dce.html; [http://www.biologicaldiversity.org/programs/public\\_lands/energy/dirty\\_energy\\_development/oil\\_and\\_gas/pdfs/2016\\_11\\_21\\_BLM\\_Protest\\_Letter.pdf](http://www.biologicaldiversity.org/programs/public_lands/energy/dirty_energy_development/oil_and_gas/pdfs/2016_11_21_BLM_Protest_Letter.pdf).) However, BLM failed to notify any of these organizations or individuals who had previously weighed in on oil and gas leasing below these lakes about its proposed management action. Nor did any of BLM’s public notices mention that management decisions concerning oil and gas development below these specific public drinking water supplies (or the dozens of other water supply lakes throughout the planning area [FEIS at 1-9 - 1-11]) was at issue in the planning process. In addition, BLM failed to provide adequate public notice of its public meetings concerning its proposed plan. It only put out a press release on its website on March 4, 2018 only several days before a March 8, 2018 public meeting in Corpus Christi, Texas, and again, failed to reach out to groups and members of the public who had previously weighed in on leasing in Texas about its proposed action. In sum, BLM’s public involvement efforts fall short of NEPA’s requirements for agencies to “[p]rovide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.” 40 C.F.R. § 1506.6(b).

### Summary:

The BLM failed to adequately notify the public of the availability of the OKT DJEIS/RMP (BLM 2018) or of public meetings about the OKT FJEIS/RMP (BLM 2019). In addition, the BLM’s notices to the public failed to adequately describe the resources potentially affected by the land use plan.

### Response:

The BLM and BIA conducted the OKT RMP/EIS planning effort in accordance with FLPMA and NEPA, and regulations, policies, and guidance implementing these statutes. In addition, the BLM and BIA complied with the ESA, Section 106 of the National Historic Preservation Act, Federal government-to-government trust responsibilities, and other requirements applicable to Federal agency decision-making. Both FLPMA and NEPA and their respective implementing regulations, policies, and guidance require agencies to facilitate public involvement early on and throughout the planning process.

The Administrative Record, along with Chapter 6 of the OKT FJEIS/RMP, demonstrate the BLM met the NEPA and FLPMA requirements to facilitate early and constant public involvement throughout this land use planning effort. The BLM and BIA complied with the direction in NEPA and FLPMA and other statutory, regulatory, and agency policy to involve Federal, state, tribal, and local governments, as well as the public, cooperating agencies, interested parties, and organizations. Moreover, at the Center for Biological Diversity’s request, the OKT RMP Team Lead emailed notifications to the Center for Biological Diversity at key public participation opportunities.

The BLM and BIA involved the public and other agencies by way of *Federal Register* notices, newsletters, news releases, postcard mailings, emails, and updates on the Joint EIS/BLM RMP and BIA Integrated RMP project website at <https://go.usa.gov/xVPk3>.

The BLM and BIA facilitated early and consistent public input into the OKT Joint EIS/BLM RMP and BIA Integrated RMP planning process during the following four phases:

- Public scoping before NEPA analysis in order to determine the scope of issues and alternatives to be addressed in the OKT Joint EIS/BLM RMP and BIA Integrated RMP
- Public outreach via newsletters, news releases, and updates on the OKT Joint EIS/BLM RMP and BIA Integrated RMP project website at <https://go.usa.gov/xVPk3>.
- Collaboration with cooperating agencies/entities (participating Federal, state, and local governments) and tribal governments
- Public review of and comment on the OKT DJEIS/BLM RMP and BIA Integrated RMP, which analyzes likely environmental effects and identifies the BLM’s preferred alternative and the BIA’s

### proposed action

The formal public scoping process for the OKT Joint EIS/BLM RMP and BIA Integrated RMP began with the publication of the Notice of Intent in the *Federal Register* on July 26, 2013. A Notice of Intent to Extend the Public Scoping Period was published in December 2013 (78 *Federal Register* 76318-76319, December 17, 2013). This extended the formal scoping comment period to January 31, 2014, 190 days following publication of the initial Notice of Intent. From November 18, 2013, to January 15, 2014, the BLM and BIA hosted 17 public scoping meetings at six locations across the planning area. The BLM and BIA received a total of 143 unique written comment letters and two different form letters during the public scoping period. These submissions contained 683 unique comments. The issues identified during public scoping and outreach helped refine the list of planning issues, which guided the development of management strategies for the alternatives.

The BLM published a Notice of Availability for the Draft Joint EIS/BLM RMP and BIA Integrated RMP in the *Federal Register* on November 19, 2018, initiating a 90-day public comment period. However, due to a lapse in government appropriations and a subsequent partial government shutdown, the RMP Team Lead requested the comment period be extended an additional 45 days, until March 24, 2019. The BLM notified the public of open house meetings via a press release on February 7, 2019, a postcard mailing, emails, newspaper announcements, and BLM newsletters, and posted the meeting dates/times and locations on the project website. The February 7, 2019, press release provided the accurate date and location for the public meeting in Corpus Christi, Texas (held on March 8, 2019). The March 4, 2019, “press release” was a Public Notice Correction postcard that was necessary to correct the address of the public meeting in Amarillo, Texas. This Public Notice Correction was not associated with the public meeting in Corpus Christi, Texas. The BLM and BIA held six public comment open-house meetings for the OKT DJEIS/BLM RMP and BIA Integrated RMP between February 26 and March 8, 2019. The venues were in Wichita, Kansas; Muskogee and Norman, Oklahoma; and Amarillo, Fort Worth, and Corpus Christi, Texas. A total of 110 people attended the six meetings, as discussed in Section 6.2.2 of the OKT FJEIS/RMP (p. 6-2).

The BLM and BIA compiled a mailing list of 1,005 individuals, agencies, federally recognized tribes, and organizations that had participated in past BLM or BIA activities, that had been included on past BLM or BIA distribution lists, or that had expressed an interest in BLM or BIA land management decisions. The agencies mailed or emailed each entity the initial newsletter with project and scoping meeting information. Attendees at the scoping meetings were added to the mailing list if they wanted to receive or continue to receive project information. In addition, all individuals or organizations who submitted scoping comments were added to the mailing list. Throughout this process, the BLM and BIA have revised the mailing list to remove undeliverable addresses and to add new interested parties. Requests to be added to, or to remain on, the official distribution list continued to be accepted throughout the planning process.

The BLM and BIA have implemented an extensive collaborative outreach and public involvement process. This has included coordinating with federally recognized tribes and cooperating agencies/entities. The BLM and BIA are working closely with the affected federally recognized tribes and the local Tribal and State Historic Preservation Officers. The BLM and BIA will continue to meet with interested agencies and organizations, as appropriate, and continue coordinating closely with cooperating partners.

The BLM and BIA completed the necessary requirements under NEPA and FLPMA to facilitate early and constant public involvement throughout the OKT EIS/RMP planning effort.

## *NEPA – Range of Alternatives*

### *Center for Biological Diversity*

#### *Wendy Park*

**Issue Excerpt Text:** BLM improperly rejected alternatives that would prohibit or substantially limit oil and gas leasing within the planning area. The Center suggested alternatives restricting leasing around dams and reservoirs (or stipulations that excluded drilling and/or fracking within certain buffer zones), closing lands to leasing in the planning area, and prohibiting fracking throughout the planning area. (DEIS Comment at 1, 37, 40, 47.) The Center raised numerous concerns about the impact of these activities on sensitive environmental resources in its comments on the DEIS. (DEIS comment at 17-39, describing impacts of fracking on public health); *id.* at 47, citing Exhibit K to Exhibit K to 2018 Lease Sale Scoping Comments at pp. 36-45, which explains limited carbon budget to stay within scientifically advised temperature limits; see also Attachment A attached hereto (providing science summary in support of need to limit opening up new areas to oil and gas development and phaseout of existing oil and gas development); and *id.* at 3-17, describing impacts on fracking and drilling on public drinking water supplies, including seismic and water quality impacts on reservoirs and dams). BLM’s chief response to comments suggesting the above alternatives is that prohibiting leasing or fracking would violate its multiple-use mandate: Section 1.4.1, page 1-23 [of the DEIS], clearly states that “the purpose of this RMP is to ensure that BLM-administered lands in the planning area are managed in accordance with the multiple-use and sustained-yield principles mandated by the FLPMA (43 US Code [USC] 1702).” A no-leasing or no-fracking alternative would not meet the purpose and need, so was not considered (see Section 2.5.2). (FEIS, vol. 6 at O-72; see also *id.* at O-25 [“Only an alternative that would prevent development across all BLM-administered or BIA-managed lands would be inconsistent with the Energy Policy Act of 2005, which was dismissed from further analysis in Section 2.5.2 of the Draft Joint EIS/ BLM RMP and BIA Integrated RMP.”]). The Tenth Circuit has rejected the argument that closing an area entirely to oil and gas development would “violate the concept of multiple use.” *N.M. ex rel. Richardson v. BLM*, 565 F.3d 683, 710 (10th Cir. 2009).

### *Center for Biological Diversity*

#### *Wendy Park*

**Issue Excerpt Text:** Moreover, the failure to consider closures of the planning area to oil and gas leasing short of closing the entire planning area to leasing violates NEPA. ... BLM only considered the no-action alternative, which would have maintained the status quo in terms of the amount of lands available for leasing; two alternatives that increased lands available to oil and gas leasing throughout the planning area by roughly ten percent compared to the no-action alternative (Alternatives B and D); and an alternative that reduced the acreage available to leasing in the planning area by only three percent compared to the no-action alternative (Alternative C). (See FEIS vol. 1 at Table 2-1.) Respectively, these alternatives would close 10.3%, 1%, and 13.9% of the planning area to oil and gas leasing. (*Id.*) This is not a reasonable range of alternatives.

### *Center for Biological Diversity*

#### *Wendy Park*

**Issue Excerpt Text:** The FEIS also incoherently suggests that closing areas to leasing could conflict with the management decisions of surface management agencies: BLM did not consider alternatives proposing a maximum resource use or maximum protection strategy, where one resource value or use would be adopted at the expense of another. This is because most BLM-administered lands in the planning area have mineral estate underlying other SMA surface estate or split private surface estate. In these areas, management decisions must first be authorized by the resident surface manager. This administrative arrangement precludes a maximum or minimum resource use alternative option.



***Center for Biological Diversity  
Wendy Park***

**Issue Excerpt Text:** (FEIS vol. 6 O-72, citing section 2.5.2, vol. 1 at 2-8.) Along similar lines, in response to comments that BLM require that leases prohibit drilling within certain buffer zones around reservoirs and dams, BLM arbitrarily rejected this alternative on the improper basis that it lacks the authority to do so: Stipulations for lakes and dams in the planning area are defined by other surface management agencies. For example, USACE special stipulation CE-SS 1-A (USACE special stipulation 1-A) requires a 3,000-foot-wide buffer zone around all dams, spillways, and embankments. The BLM has no authority over the surface estate managed by these agencies.

***Center for Biological Diversity  
Wendy Park***

**Issue Excerpt Text:** To the extent BLM intends to rely on the determinations of other surface management agencies as to which lands should remain open to leasing, BLM does not point to any NEPA-compliant planning process by another agency that has already made this determination or show that BLM has adopted the NEPA document of the surface-management agency. 40 C.F.R. § 1506.3 (“A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.”)... In sum, BLM should have analyzed a reasonable range of alternatives under NEPA, including the alternatives of no leasing or closing substantial areas to leasing (greater than 14%), no fracking, and no leasing, drilling, and/or fracking beneath and around dams.

**Summary:**

The BLM failed to consider a reasonable range of alternatives for the OKT FJEIS/RMP (BLM 2019) by:

- Rejecting alternatives that would prohibit or substantially limit oil and gas leasing within the planning area;
- Failing to consider closures of the planning area to oil and gas leasing;
- Failing to consider alternatives proposing a maximum resource use or maximum protection strategy;
- Failing to consider an alternative that would require that leases prohibit drilling within certain buffer zones around reservoirs and dams; and
- Failing to consider an alternative that would prohibit leasing, or would close substantial areas to leasing (greater than 14 percent), as well as hydraulic fracturing, or drilling beneath and around dams.

**Response:**

The Department of the Interior’s NEPA procedures at 43 CFR 46.420(b) specify that the range of alternatives include those reasonable alternatives that are technically and economically practical or feasible and meet the purpose and need of the proposed action. Agencies are permitted to dismiss an alternative from detailed analysis (40 CFR 1502.14). The agency must briefly discuss the reasons for having dismissed the alternative from detailed analysis (40 CFR 1502.14). An alternative may be eliminated from detailed study if: it is determined not to meet the proposed action’s purpose and need; it is determined to be unreasonable given the BLM mandates, policies, and programs; it is substantially similar in design to an alternative that is analyzed; its implementation is speculative or remote; or it is technically or economically infeasible (BLM Handbook, H-1790-1, Section 6.6.3).

In this planning initiative, for instance, the BLM’s purpose and need for the planning initiative focuses on maintaining multiple use and sustained yield in the context of, for example, the BLM policy that, in general, supports facilitating fluid mineral development on public lands. To illustrate, the BLM’s Land Use Planning Handbook specifies, “When applying leasing restrictions, the least restrictive constraints to meet the resource protection objective should be used” (H1601-1, Rel. 1-1693, 03/11/05, Appx. C. H.

Fluid Minerals: Oil and Gas, Tar Sands, and Geothermal Resources, p. 24). As explained in Section 2.5.2, *Maximum Resource Use or Maximum Resource Protection*, of the FEIS, the BLM did not consider in detail alternatives proposing a maximum resource use or maximum protection strategy, where one resource value or use would be adopted at the expense of another. This is because most BLM-administered lands in the planning area have mineral estate underlying other SMA surface estate or are split—i.e., the BLM manages the mineral estate, but the surface estate is non-Federal or private. In these areas, management decisions, including those pertaining to the mineral estate, must first be authorized or allowed by the resident surface manager. This administrative arrangement precludes an absolute maximum or minimum resource use alternative option for the planning area. In a planning context within which the BLM Oklahoma Field Office (OFO) administers approximately 4,810,900 acres of sub-surface mineral estate and only 15,100 acres of surface estate across the OKT planning area (that is, in which 99.997 percent of the BLM-managed public lands/resources within the OKT planning area consist of sub-surface mineral estate), the BLM did, in fact, consider reasonable alternatives, including both the effective maximum use and maximum protection of these resources, considering these technical and policy parameters. That is, the “maximum” that the mineral estate, for example, can be developed will always be constrained by the limits placed on this resource use by the resident SMA, to protect that SMA’s use of the surface resources. The BLM did include an alternative that evaluated in detail (Alternative D) the effects of maximum production of the mineral estate, considering the restrictions established by the SMAs.

It also would not have been reasonable for BLM to consider an absolute maximum protection alternative, both because such an alternative would not meet the purpose and need for this planning area in light of the kinds of BLM policies referenced above, and because, given the technical constraint of managing the mineral estate under majority non-BLM SMA lands, analysis of an alternative that closed the entire planning area to fluid mineral leasing, regardless of whether or not the SMA management regimes would allow for this use, would not provide appreciably greater analytical information than the conservation alternative (Alternative C) evaluated in detail during this planning initiative. Because 99.997 percent of the public lands/resources administered by the BLM OFO within the OKT planning area consist of sub-surface mineral estate, this means that the overwhelming majority of the planning area is already subject to major leasing stipulations (e.g., NSO stipulation, Dam/Levee Buffers Zones, drilling/completion barriers) as required by the non-BLM SMAs. These non-BLM SMA residents also place other restrictions on mineral drilling, development, completion, and production operations to mitigate for or protect non-BLM SMA-administered resource values, to the extent that little analytical value would be added by considering the environmental consequences of closing the entire planning area to mineral development, especially because such a management approach would not be consistent with the way the purpose and need for this plan is constrained by BLM policy. Therefore, the BLM did not analyze in detail a largely hypothetical alternative that would completely close the planning area to this resource use.

Furthermore, for those areas within the three-state planning area for which the BLM OFO administers the sub-surface mineral estate, the other Federal and State SMAs, at least, have evaluated the various uses and values to which they put their acres and have determined what kinds of restrictions on mineral development are appropriate to protect those uses and values. In these areas, the SMA, not the BLM, possesses land use allocation or resource management decision authority; therefore, at least for the Federal SMAs, their own NEPA analysis has already considered the implications of different management regimes for surface values overlying that mineral estate, and the protections necessary to preserve the resource values that are their focus. During the development of the OKT FJEIS/RMP, the BLM coordinated closely with other SMAs (e.g., U.S. Army Corps of Engineers, Bureau of Reclamation, Department of Defense, International Boundary Water Commission, Department of Energy) within the planning area to understand the other SMAs’ positions on land use allocations, consent to use, and the application of lease stipulations, if any, required to protect existing resource values located on the other SMAs’ lands. For instance, other SMAs that manage reservoirs, dams, levees, and other such facilities

(e.g., U.S. Army Corps of Engineers, Bureau of Reclamation, International Boundary Water Commission) have placed stringent lease stipulations on the lands they identify to the BLM as available to be open to standard lease terms and conditions, or minor restrictions to ensure appropriate protection of those resource values.

Similarly, where the BLM not only manages the mineral estate, but is also the SMA (for instance, over the 15,100 acres where BLM OFO manages both the surface and sub-surface estate), the BLM has proposed and evaluated, through this planning process, management of these 15,100 acres for use as a SRMA with an NSO leasing stipulation attached to BLM surface estate, which is the least restrictive stipulation that still supports the resource goals, consistent with BLM policy.

It is also important to note that just because an area is identified as open for fluid mineral development under standard terms and conditions, or minimal restrictions, does not mean that development or even leasing of those parcels will ever occur. The BLM conducts not only pre-development, but also pre-lease review, with additional NEPA analysis as appropriate, to determine whether any resource conflicts exist at a lease- or site-specific scale that would make fluid mineral development of particular parcels inappropriate.

Consistent with 40 CFR 1502.14, the BLM properly dismissed alternatives that would prohibit or limit even more substantially oil and gas leasing within the planning area from detailed analysis in the OKT FJEIS/RMP.

#### Qualitative Impacts of Hydraulic Fracturing as Compared with Conventional Oil and Gas Completions

As used here, “conventional” oil and gas drilling and completion refer to a vertical or directional well completed in a permeable stratum believed to contain fugacious oil and gas. Hydraulic fracturing has been used for decades as a relatively small-scale completion or re-completion operation to improve the permeability of the rock near the well bottom.

Modern high-pressure hydraulic fracturing techniques, coupled with horizontal drilling, have made feasible production of oil and gas from naturally porous but impermeable reservoir strata (e.g., certain shales).

Developing a lease with horizontally drilled and hydraulically fractured wells has many of the same environmental impacts as conventional development operations, but there are some differences. At the resource management planning stage, it is not possible to quantify the additional or total impacts in a useful or meaningful way, but they can be described qualitatively.

As compared with conventional drilling and completion operations, horizontally drilled and hydraulically fractured wells:

- Often have many more wells on each pad. This often results in the need to construct fewer pads on a lease (and fewer ROWs), but each pad is likely to cover substantially more area to accommodate both the multiple wells and the additional equipment and supplies need to hydraulically fracture the wells.
- Have a prolonged period of significant industrial activity (including noise, lights, and mechanical operations) on each pad as each well is sequentially drilled, hydraulically fractured, and brought into production. Nearby persons and animals may experience prolonged stress or avoid the area until the drilling and hydraulic fracturing operations are completed.
- Require substantial amounts of water, either from natural sources or from re-use or recycling facilities. Some hydraulic fracturing operations use compressed gas (such as carbon dioxide) or some other medium, but water-based fracturing solutions are most common. Note that neither an RMP, nor an oil and gas lease, nor a permit to drill conveys a water right. Operators need to obtain their water in compliance with State law and existing water rights.
- Require disposal, re-use, or recycling of substantial amounts of recovered fluids. Those include

recovered fracturing fluids and water produced with the oil or gas from the formation. Note that neither an RMP, nor an oil and gas lease, nor a permit to drill conveys a right to dispose of recovered fluids by discharge into surface waters or by underground injection. Operators need to dispose of recovered fluids in compliance with State law.

- Require delivery, storage, and handling of chemicals and proppants (usually sand). The chemicals used depend upon the geochemistry, the technologies employed, and the needs of the operator, but usually include such things as biocides to prevent the growth of biological material that would otherwise impede the flow of oil and gas into a well. Chemical additives are usually less than 2 percent of the volume of fracturing fluids. Storage and handling of chemicals must be in compliance with the law, such as the Toxic Substances Control Act.
- Require substantially greater truck traffic to deliver, store, and remove equipment and supplies, including water, proppants, and chemicals. In some instances, water might be delivered, or recovered fluids removed, by other means (such as temporary pipelines), but delivery and removal by truck is foreseeable. Those who may be near or on local roads or highways may be adversely affected by the increased truck traffic. Wear and tear on local roads or highways may be accelerated by the increased truck traffic.
- Might have surface facilities located off of Federal leased areas. BLM oil and gas leases with NSO stipulations require that surface facilities be located off of the leased area. However, even with non-NSO leases, operators may prefer to locate their surface facilities (well pads and ROWs) on non-Federal lands, depending upon geology, land ownership, the availability of Federal and non-Federal oil and gas leases, unitization or communitization, and technological constraints. That would significantly reduce or eliminate impacts on the public lands. Impacts from the surface operations would be regulated by agreements with the non-Federal landowner, and by the appropriate State, local, or tribal government. Depending on how close the surface facilities are to public lands, though, persons or wildlife on nearby public lands may be adversely affected or avoid the area because of visual or auditory impacts.
- May pose a risk of induced seismicity. For several years, seismic events near hydraulic fracturing activities have been more closely linked to disposal of recovered fluids in injection wells. Recently, however, there is some evidence for a causal connection of some seismic events to hydraulic fracturing operations in some areas. Induced seismicity is a concern for seismologists and State regulators. At this time, though, there is no scientific data or analysis that could provide meaningful information at this RMP stage about the risk of induced seismicity from oil and gas operations within the planning area.

## ***NEPA – Inadequate Analysis – Water Resources***

### ***Center for Biological Diversity***

#### ***Wendy Park***

**Issue Excerpt Text:** BLM failed to take a hard look at the impacts of fracking, drilling, induced seismicity, wastewater injection disposal, and other indirect effects of making lands available for oil and gas leasing on localized water resources throughout the planning area. (See DEIS Comments at 3-17; FEIS at O-88 - O-93.) The proposed RMP would allow drilling and fracking beneath dozens of lakes throughout the planning area in Kansas, Texas, and Oklahoma, but the EIS fails to analyze the potential for significant harm to these drinking water supplies from seismicity (e.g., destabilization of dams), water depletion, spills and leaks, frack hits, and communication between old wells and new wells, among other issues. The EIS fails to describe existing conditions at each of these lakes, reservoirs, or dams; only provides the most general of statements as to the potential for environmental impacts; and fails to analyze the potential severity of harm that could result from leasing (e.g., the potential for major spills and loss of a community’s drinking water supply, or flooding of downstream communities if seismicity led to dam instability). The EIS is deficient in its failure to analyze these risks and impacts.

**Summary:**

The BLM’s analysis of water resources in the OKT FJEIS/RMP (BLM 2019) failed to take a hard look at the impacts of hydraulic fracturing, drilling, induced seismicity, wastewater injection disposal, and other indirect effects.

**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 OKT FJEIS/RMP.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by 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 or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan-level decisions.

The BLM provided an analysis of the risk to water resources from oil and gas development (including hydraulic fracturing, drilling, induced seismicity, and wastewater injection disposal) and associated assumptions in Section 4.2.1.6 of the OKT FJEIS/RMP (pp. 4-40 through 4-55). Table 4-16 of the OKT FJEIS/RMP (p. 4-48) and the analysis that follows specifically addresses potential impacts on drinking water resources from oil and gas development in the planning area. As noted on page 4-49 of the OKT FJEIS, “Induced seismicity may also result from wastewater being injected into wells, though data show a lack of such wells. Indirect impacts on water resources from induced seismicity may result in aquifer disturbances, shifting saturated zones, particularly near fault lines, potential well damage, and potential oil and gas release into aquifers. Impacts would not occur in areas closed to fluid minerals. Indirect impacts on water resources as a result of hydraulic fracturing cannot be identified at the land use planning stage; as such, impacts on water resources will be addressed at the development stage, during RMP implementation under subsequent NEPA analysis.”

The BLM complied with NEPA’s requirement to analyze the reasonably foreseeable impacts on water resources in the OKT FJEIS/RMP.

***NEPA – Inadequate Analysis – Climate Change***

***Center for Biological Diversity***

***Wendy Park***

**Issue Excerpt Text:** BLM failed to adequately analyze the direct, indirect, and cumulative effects of its action on climate change. (See FEIS at 4-17, 4-19, Appendix G.) It failed to fully quantify and analyze the greenhouse gas emissions (GHG) from making available lands within the planning area for oil and gas and coal leasing, as well as cumulative emissions from past, present, and future oil and gas wells and coal development throughout the entire planning area. (Id.) For example, BLM failed to fully quantify emissions from flaring and venting, fugitive emissions (e.g., leaks from pipelines and tanks), vegetation clearing, and downstream emissions from refining and transporting the extracted oil and gas. As explained in our comments on the DEIS, BLM must fully quantify all emissions from oil and gas leasing. (DEIS Comment at 39- 47.)

***Center for Biological Diversity  
Wendy Park***

**Issue Excerpt Text:** Moreover, the FEIS lacks a clear explanation of the methodology and the assumptions used in projecting total GHGs (e.g., emissions factors it used and the specific emissions sources it quantified), making it impossible for the public to understand how BLM derived its total GHG emissions estimates.

***Center for Biological Diversity  
Wendy Park***

**Issue Excerpt Text:** BLM also failed to quantify cumulative emissions from all federal and non-federal oil and gas wells and coal development throughout the planning area, precluding an adequate cumulative impacts analysis. Further, BLM failed to analyze the cumulative impact of the proposed action on climate change in connection with other past, present, and reasonably foreseeable oil and gas wells in the planning area (including non-federal wells and non-federal coal development), and the significance of these impacts at the local, regional, and national scale. (See FEIS at 5-30, Appendix G.) See *Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008) (requiring agency to consider cumulative impacts of rule governing auto emissions standards on climate change in connection with similar rulemakings); *Indigenous Env’tl. Network v. U.S. Dep’t of State*, 347 F. Supp. 3d 561, 578-79 (D. Mont. 2018) (requiring agency to consider climate change effects of pipeline combined with effects of other pipeline in its vicinity).

**Summary:**

The BLM inadequately analyzed direct, indirect, and cumulative impacts on climate change from oil, gas, and coal leasing in the OKT FJEIS/RMP (BLM 2019). The BLM failed to clearly describe the methodology and assumptions used in projecting total greenhouse gas (GHG) emissions.

**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 OKT FJEIS/RMP.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by 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 or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decisions or actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Direct impacts on climate change and GHGs are analyzed in the OKT FJEIS/RMP. Specifically, Section 4.2.1.3, *Climate Change*, includes discussions on the methods of analysis and emissions inventories, and analyzes the nature and type of impacts related to primary sources of GHG emissions on BLM-administered lands where oil and gas development and coal mining occur (Volume 2, p. 4-19). This analysis involves a quantitative approach for assessing GHG emissions from mineral development, using

the methods of analysis described for air quality. GHG emissions were also estimated for livestock grazing, based on authorized animal unit months. A qualitative approach was used to evaluate GHG emissions for other resource uses, including travel management and ROW development, including renewable energy, when data were not available to quantify the level of use or development. This analysis provides a comparison among alternatives, rather than providing an exact account of total GHG emissions by alternative. As stated in the OKT FJEIS/RMP, “Emissions from management actions and authorized uses not discussed quantitatively or qualitatively may contribute air pollutant emissions; however, they would have a negligible impact on local or regional air quality. This is based on the low potential for development, which itself is based on the RFDS, the low level of use, or the small amount of allocated acreage in the planning area” (Volume 2, p. 4-7).

Cumulative impacts related to climate change and GHG emissions are discussed in Section 5.4.1.1, *Air Resources* (Volume 2, p. 5-30). This analysis includes a discussion of GHG emissions associated with the extraction of resources, as well as GHG emissions from combustion of oil and gas and coal extracted from Federal lands. Table 5-8 illustrates the “Proposed CO<sub>2</sub> Emissions from End Use of Oil and Gas in the Planning Area,” while Table 5-8 illustrates the “Projected CO<sub>2</sub> Emissions from End Use of Coal in the Planning Area.”

In addition to the abovementioned sections, climate change is discussed under the following topic areas in Chapter 5, *Cumulative Impacts*: water resources; vegetation; fish and wildlife, including special status species; cultural resources; paleontological resources; visual resources; wildland fire management; livestock grazing; prime and unique farmlands; Areas of Critical Environmental Concern; Wild and Scenic Rivers; treaty rights and tribal concerns; public health and safety; and environmental justice.

Consequently, the BLM has complied with climate change analysis requirements in developing the OKT FJEIS/RMP.

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## References

- Bureau of Land Management (BLM). 2010. Memorandum of Understanding between the Bureau of Land Management and the U.S. Fish and Wildlife Service to Promote the Conservations of Migratory Birds. August 31. Available: <https://www.blm.gov/policy/ib-2010-110>. Accessed December 11, 2019.
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