

McGREGOR RANGE



Proposed Resource Management Plan Amendment and
Final Environmental Impact Statement



Prepared for
United States Department of the Interior
Bureau of Land Management
Las Cruces District Office



DECEMBER 2005



BUREAU OF LAND MANAGEMENT

The Bureau of Land Management is responsible for the balanced management of the public lands and resources and their various values so that they are considered in a combination that will best serve the needs of the American people. Management is based upon the principles of multiple use and sustained yield, a combination of uses that takes into account the long-term needs of future generation for renewable and nonrenewable resources. These resources include recreation, range, timber, minerals, watershed, fish and wildlife, wilderness, and natural, scenic, scientific, and cultural values.

BLM/NM/PL-06-02-1610



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Las Cruces District Office
1800 Marquess
Las Cruces, New Mexico 88005
www.nm.blm.gov

IN REPLY REFER TO:
1600 (03000)

Dear Reader:

Enclosed is the Proposed Resource Management Plan Amendment (RMPA) and Final Environmental Impact Statement (EIS) for McGregor Range in southern Otero County, New Mexico.

This Proposed RMPA/Final EIS includes a summary of the planning process and results, copies of public comments received on the adequacy of the Draft RMPA/EIS (issued in January 2005) and Bureau of Land Management (BLM) responses to those comments, and addenda or corrections to the Draft RMPA/EIS. The full text of the Draft RMPA has not been reproduced in this document; this proposed RMPA/Final EIS is intended to be reviewed in conjunction with the Draft RMPA/EIS for a full understanding of the planning process and environmental analysis. Copies of the Draft RMPA/EIS are available for review at the BLM Las Cruces District Office.

BLM planning regulations (43 CFR 1610.5-2) state that any person who participated in the planning process and has an interest that may be affected may protest. A protest may raise only those issues that were submitted for the record during the planning process. The protest must be filed within 30 days of the date that the Environmental Protection Agency publishes the notice of receipt of the Final EIS. All protests must be in writing and mailed to the following address:

Regular Mail:

Director (210)
Attention: Brenda Hudgens-Williams
P.O. Box 66538
Washington, D.C. 20035

Overnight Mail:

Director (210)
Attention: Brenda Hudgens-Williams
1620 L Street, N.W., Suite 1075
Washington, D.C. 20035

E-mailed and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, BLM will consider the e-mailed or faxed protest as an advance copy and it will receive full consideration. If you wish to provide BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at (202) 452-5112, and e-mails to Brenda_Hudgens-Williams@blm.gov. Please direct the follow-up letter to the appropriate address above.

Each protest must contain the following:

- a. The name, mailing address, telephone number, and interest of the person filing the protest;
- b. A statement of the part or parts of the plan and the issue or issues being protested;

- c. A copy of all documents addressing the issue(s) that the protesting party submitted during the planning process or a statement of the date they were discussed for the record; and
- d. A concise statement explaining why the protestor believes that the State Director's decision to approve the Proposed RMPA/Final EIS is in error.

Freedom of Information Act Considerations: Public submissions for this planning effort, including names and street addresses of respondents, will be available for public review in their entirety, after the protest period closes, at the Las Cruces District Office during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish to withhold your name and street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of the submission. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals representing organizations or businesses, will be made available for public inspection in their entirety.

Upon completion of the protest period and resolution of protests, BLM will issue a Record of Decision that will be made available to the public and mailed to all interested parties. Once the Record of Decision is issued, BLM will begin implementing the RMPA. The Las Cruces District Office plans to use the RMPA as the framework for collaborative management of public land and its resources on McGregor Range in Otero County, New Mexico.

Questions regarding this document can be directed to Tom Phillips, Planning Team Leader at (505) 525-4377.

Sincerely,



Edwin L. Roberson
District Manager

Enclosure

**McGREGOR RANGE
RESOURCE MANAGEMENT PLAN AMENDMENT/
ENVIRONMENTAL IMPACT STATEMENT**

Draft ()

Final (X)

LEAD AGENCY: U.S. Department of the Interior, Bureau of Land Management

TYPE OF ACTION: Administrative

JURISDICTION: Otero County, New Mexico

ABSTRACT

This Proposed Resource Management Plan Amendment (RMPA) and Final Environmental Impact Statement (EIS) considers and responds to comments received on the adequacy of the Draft RMPA/EIS. The Draft RMPA/EIS, issued in January 2005, evaluates alternative resource management plans for managing public land and its resources on McGregor Range in southern Otero County, New Mexico. Land status within McGregor Range is a mix of land owned-in-fee by the U.S. Army (10 percent), Federal land administered by the U.S. Forest Service (3 percent), and public land administered by the Bureau of Land Management (BLM), Las Cruces District Office but withdrawn from the public domain for military use (87 percent). While recognizing the need to accommodate military use, BLM's management actions must nevertheless remain consistent with the principles of multiple use and sustained yield as directed by the Federal Land Policy and Management Act of 1976.

BLM's Proposed RMPA is Alternative A in the Draft RMPA/EIS. This alternative would modify existing management to provide a balance between resource use and resource conservation, fully considering military use. When complete, this RMPA will amend the 1986 White Sands Resource Management Plan and replace the 1990 McGregor Range RMPA.

For further information, please contact:

Tom Phillips, RMPA/EIS Team Leader
Bureau of Land Management
Las Cruces District Office
1800 Marquess
Las Cruces, NM 88005
Telephone: (505) 525-4377

Protests of this Proposed RMPA/Final EIS must be postmarked within 30 days following the date that the Environmental Protection Agency Notice of Receipt is published in the *Federal Register*.

RECOMMENDED:



Edwin L. Roberson
Las Cruces District Manager

APPROVED:



Linda S. C. Rundell
State Director New Mexico

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READER'S GUIDE

The Bureau of Land Management (BLM) has prepared the McGregor Range Resource Management Plan Amendment and Environmental Impact Statement (RMPA/EIS) to address the management of public land within the boundaries of McGregor Range in southern Otero County, New Mexico. Upon approval, the RMPA would amend BLM's 1986 White Sands Resource Management Plan and replace BLM's 1990 RMPA for McGregor Range. A Draft RMPA/EIS was published in January 2005. This Proposed RMPA/Final EIS considers and responds to public comments on the adequacy of the Draft RMPA/EIS.

The full text of the Draft RMPA/EIS has not been reproduced in this document. In accordance with the Council on Environmental Quality regulations (40 CFR 1503.9), when possible it is prudent to produce final environmental impact statements that document the public review and are formatted to contain the comments on the draft, responses to those comments, and substantive changes to the draft rather than rewriting and reprinting the draft. Therefore, this Proposed RMPA/Final EIS should be reviewed in conjunction with the Draft RMPA/EIS for a full understanding of the planning process and environmental analysis. Copies of the Draft RMPA/EIS are available for review at the BLM Las Cruces District Office.

Draft RMPA/EIS

The Draft RMPA/EIS provides descriptions of (1) the alternative plans that were evaluated for managing public land within the boundaries of McGregor Range; (2) the existing environment of McGregor Range, and (3) the environmental consequences of implementing each of the alternative plans. The Draft RMPA/EIS contains five chapters, six appendices and other reference materials including bibliographic references, list of preparers and contributors, list of acronyms, glossary, and index.

Subsequent to the publication of the Draft RMPA/EIS, a public review period ensued. Written comments on the adequacy of the Draft RMPA/EIS were received from agencies and individuals. Two public hearings also were held; however, no oral comments were presented.

Proposed RMPA/Final EIS

This document includes a summary of the planning process and its results, the public comments received on the adequacy of the Draft RMPA/EIS and BLM's responses to those comments (Chapter 1.0), and a list of addenda or corrections to the Draft RMPA/EIS (Chapter 2.0).

Copies of the Proposed RMPA/Final EIS have been sent to all agencies with relevant jurisdiction or authority associated with the McGregor Range Planning Area, and to organizations and individuals that have requested a copy.

SUMMARY



SUMMARY

The Las Cruces District Office of the Bureau of Land Management (BLM) has prepared this Resource Management Plan Amendment (RMPA) and Environmental Impact Statement (EIS) to address the management of public land within the boundaries of McGregor Range in southern Otero County, New Mexico (see map on page S-3). The RMPA will amend BLM's 1986 White Sands Resource Management Plan (RMP) and replace BLM's 1990 RMPA for McGregor Range. When approved, the RMPA would be implemented for as long as it is considered adequate to manage the resources, resource uses, and programs on McGregor Range.

Military use has occurred on McGregor Range since the 1940s. In 1957, public land administered by the BLM was withdrawn from the public domain for use by the military for a period of 10 years (Public Land Order 1470); this status was renewed for an additional 10 years in 1967. In 1976, the U.S. Army submitted an application for renewal of the withdrawal under the provisions of the Federal Land Policy and Management Act of 1976 (FLPMA) (Public Law [PL] 94-579) and the Engle Act (PL 85-337). Approximately 608,385 acres were later made available to the U.S. Army for training and weapons testing through the Military Lands Withdrawal Act of 1986 (PL 99-606), which expired in 2001. In 1999, Congress passed the Military Lands Withdrawal Act (PL 106-65), which withdrew large tracts of public land, including McGregor Range, for military purposes. Today, the status of lands within McGregor Range is a mix of land owned-in-fee by the U.S. Army (approximately 10 percent), Federal land administered by the Department of Agriculture through the U.S. Forest Service (approximately 3 percent), and public land administered by the U.S. Department of the Interior through the BLM (approximately 87 percent).

When the withdrawal of McGregor Range was renewed in 1999, PL 106-65 also directed BLM to manage withdrawn public land within McGregor Range under FLPMA and to develop

a management plan. In addition to the legislative requirement to prepare an RMPA for McGregor Range, ongoing military training has changed land uses on portions of the range and BLM has updated resource management guidelines and/or requirements since the previous RMPA. Therefore, BLM must update the 1990 RMPA to comply with PL 106-65 and address new uses and resource management guidelines and/or requirements on McGregor Range. Recognizing the land use restrictions necessary to accommodate military uses, BLM's management actions on this withdrawn public land must nevertheless remain consistent with the principles of multiple use and sustained yield as directed by FLPMA.

The planning process to update the RMP was initiated in May 2001 with the scoping phase, which included public meetings, the distribution of newsletters, and other activities to identify issues early in the analysis. The results of scoping are documented in the Scoping Report dated August 2001. A Management Situation Analysis (MSA) was prepared to compile available resource data and analyze the opportunities for modifying the existing management of McGregor Range. The MSA was finalized in January 2004. Alternatives that were evaluated in the Draft RMPA/EIS were derived from the MSA analysis, broad objectives (or desired future conditions) that were established for each resource or resource use, and the issues and concerns that were identified throughout scoping and the planning process.

The Draft RMPA/EIS, issued in January 2005, provides an explanation of continuing management guidance and a description of the alternative management strategies analyzed (Chapter 2.0); provides a characterization of the existing environment (Chapter 3.0); provides the analysis of potential impacts that would result from each alternative, and cumulative impacts that also consider past, present, and reasonably foreseeable future actions (Chapter 4.0); and provides a description of the agency coordination and public participation conducted as part of the planning process (Chapter 5.0).

ALTERNATIVES

Four alternatives were considered in the Draft RMPA/EIS. Under the No-Action Alternative, management decisions and guidance would continue as directed in the 1986 RMP and 1990 RMPA. Alternatives A, B, and C provided a range of management options representing varying levels of emphasis on resource use and production or conservation, protection, and enhancement of natural and cultural resources. These are summarized in Table 2-2 beginning on page 2-29 of the Draft RMPA/EIS.

Several alternatives were considered but eliminated from detailed analysis. First, BLM considered designating an area of critical environmental concern (ACEC) for black-tailed prairie dogs. The proposed Black-tailed Prairie Dog ACEC met the criteria for relevance and importance. However, the BLM determined that the area does not require special management on McGregor Range to avoid adverse effects to black-tailed prairie dog habitat. Although disease has been identified as the most likely factor that may be limiting black-tailed prairie dog populations, BLM also recognizes that surface management actions may have a very significant effect on local populations on McGregor Range. Therefore, general management guidance and best management practices were established for all BLM-permitted surface management activities designed to avoid adverse impacts to special status species habitats. Best management practices limit surface disturbance within 0.25 mile of occupied special status species habitat, including black-tailed prairie dog colonies. Research, monitoring, and other conservation planning activities will continue on McGregor Range regardless of the ACEC designation.

Second, several ACECs for cultural resources were proposed. However, only those cultural resources on public land that met the criteria for relevance and importance and required special management were carried forward in the alternatives considered.

Finally, additional utility corridors were considered for designation. However, some of

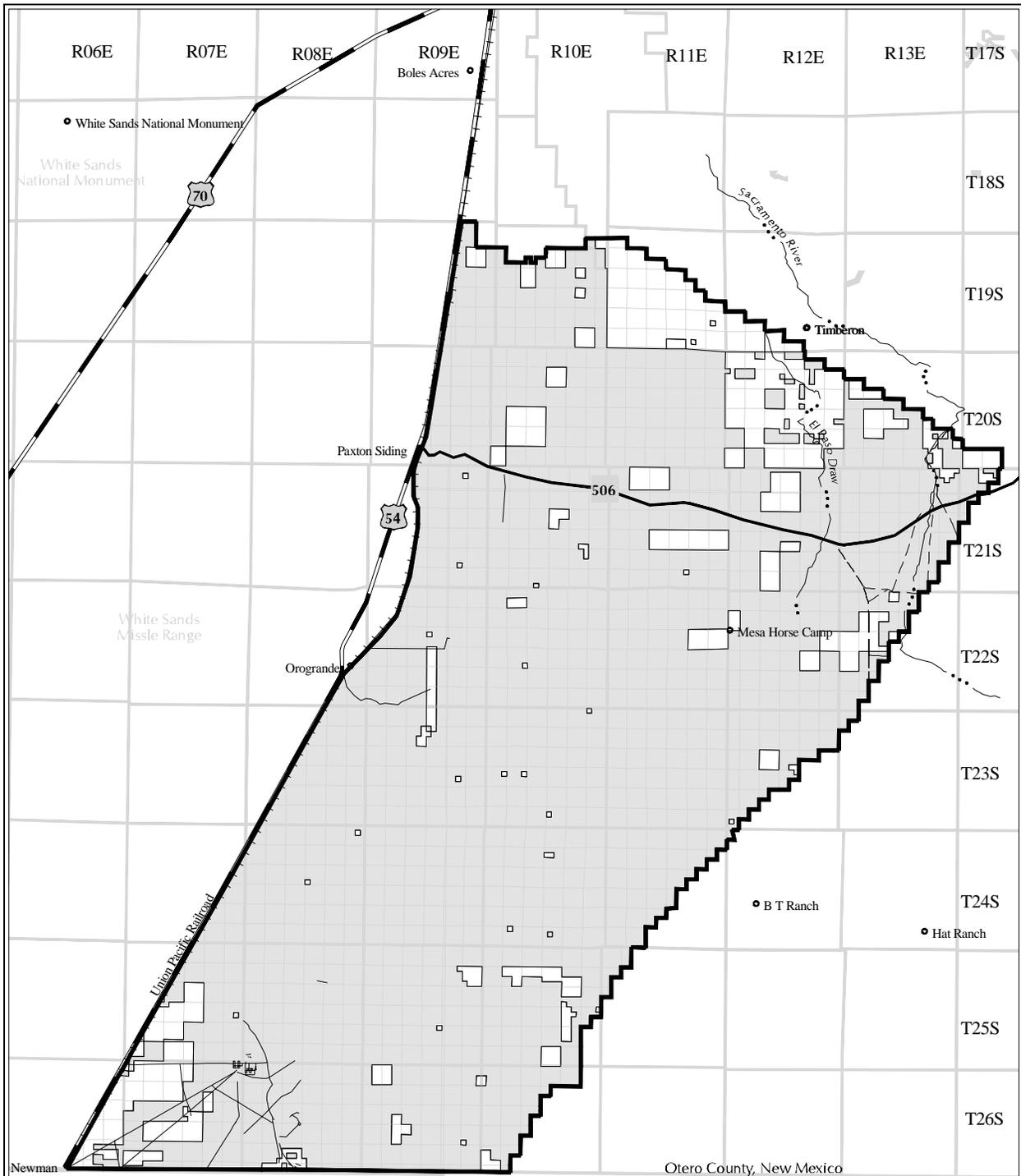
these alternatives potentially were incompatible with military activities on McGregor Range. Some of the corridor options were refined and incorporated, as appropriate, into the alternatives that are considered in the Draft RMPA/EIS. Other segments or corridors were eliminated from further analysis.

The alternatives that were considered and analyzed are detailed in Chapter 2 of the Draft RMPA/EIS. Overall, the alternatives may be distinguished generally as follows:

- The No-Action Alternative represents the continuation of existing management plans, policies, and decisions as established in the 1990 RMPA for McGregor Range.
- Alternative A represents a balance of resource use and conservation (hereafter referred to as the Proposed RMPA).
- Alternative B emphasizes resource use and production.
- Alternative C represents an emphasis on the conservation, protection, and enhancement of natural and cultural resources.

The major issues addressed in the alternatives include rights-of-way, priority watershed and habitat management, vegetative sale areas, ACECs, livestock grazing, and recreation. The alternatives identified right-of-way exclusion and avoidance areas for the first time on McGregor Range, with the Proposed RMPA identifying exclusion areas and Alternative C identifying both exclusion and avoidance areas. No exclusion or avoidance areas were identified under Alternative B or the No-Action Alternative. Utility corridors also were identified for the first time on McGregor Range, with two corridors identified under the Proposed RMPA, and three identified under Alternative B. No utility corridors would be established under Alternative C or the No-Action Alternative.

The need for watershed management plans was identified in the 1990 RMPA; however, because these plans were not developed during the life of the 1990 RMPA, BLM recognized the need to reprioritize efforts with regard to



Decision Area and Planning Area

McGregor Range RMPA/EIS

October 21, 2004



Universal Transverse Mercator
Zone 13, Units Meters
Clarke 1866 Spheroid
NAD27 Datum

SCALE 1 : 500,000



Legend:

- Areas:**
 Planning Area
 Decision Area

General Reference:

- Primary Roads
- Secondary Roads
- County Roads
- Paved or Military Restricted Roads
- Public Land Survey System
- Union Pacific Railroad
- Streams
- Geographic Place



SOURCE: Base Map information: BLM, Las Cruces Field Office, 2001
 Jurisdiction Information: BLM, Las Cruces Field Office, 2001

No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual use or aggregate use with other data. Original data were compiled from various sources. Spatial information may not meet National Map Accuracy Standards. This information may not be updated without notification.

watershed management. The strategy for watershed management presented in the

Proposed RMPA and Alternative C focused on areas BLM identified on McGregor Range that are most in need of management actions to reduce erosion. Alternative B did not include development of a watershed management plan or priority areas. Under the No-Action Alternative, watershed management plans would be developed as planned in the 1990 RMPA.

The No-Action Alternative has several activities related to habitat management. As with watershed management, many of these activities were not implemented during the life of the 1990 RMPA, necessitating a change in focus for habitat management. The Proposed RMPA proposes two habitat management plans (HMPs) that encompass a large part of McGregor Range—one for the management of the Sacramento Mountains foothills habitat and one for the grassland habitat. Alternative C allowed for development of the same HMPs, but they would include larger areas, while Alternative B allowed for management of wildlife habitat without development of HMPs.

Sale of vegetative material historically has been allowed on McGregor Range; however, changes in the military mission have necessitated changes in the areas designated for vegetative sales. Since the 1990 RMPA, Centennial Range has been developed as a military impact area, and areas of Centennial Range and the Class C Bombing Range are within areas designated in 1990 for vegetative sales. Because vegetative sales cannot occur in military impact areas, the Proposed RMPA does not identify these areas as available for vegetative sales. Alternative B increased the size of the vegetative sale areas to allow the potential for increased use of the vegetative resource (excluding military impact areas). In order to provide increased protection for vegetation resources, vegetative sales would not occur under Alternative C.

BLM also has proposed several changes in the management of ACECs. Under the No-

Action Alternative, there is one ACEC—the Black Grama Grassland ACEC. This ACEC would be maintained under all alternatives except Alternative B, where this designation was eliminated. In addition, the Proposed RMPA and Alternative C proposed designating the Escondida Site as an ACEC, and Alternative C proposed two additional ACECs—one for historic and one for prehistoric cultural resources.

Although varying degrees of management were proposed under each alternative for livestock grazing and recreation, the most substantive changes in management would occur under Alternative C. In order to provide increased resource protection, livestock grazing and recreation would not be allowed on McGregor Range under Alternative C.

AFFECTED ENVIRONMENT

To document the existing conditions on McGregor Range and establish a baseline for evaluating potential impacts, the current conditions of resources and land uses are described in Chapter 3 of the Draft RMPA/EIS. Most information was gathered from existing data maintained by the BLM. The discussion is organized by resource, resource use, and related issues, and includes the following sections:

- Lands and Realty
- Transportation and Access
- Geology, Mineral and Energy Resources
- Soils, Water, and Watershed Management
- Air Quality
- Vegetation
- Wildlife
- Special Status Species
- Livestock Grazing
- Fire Management
- Hazardous Materials
- Cultural Resources
- Paleontological Resources
- Recreation
- Visual Resources
- Special Management Areas

- Social and Economic Conditions
- Unexploded Ordnance

ENVIRONMENTAL CONSEQUENCES

The predicted consequences, or potential effects, on the environment resulting from implementation of the alternatives were identified for each resource or resource use. The results of this analysis are presented in Chapter 4 of the Draft RMPA/EIS. A summary of potential impacts, by resource and alternative, is provided in Table S-1 of the Draft RMPA/EIS.

Overall, potential impacts on environmental resources are anticipated to be minimal under all alternatives. The Proposed RMPA provides management decisions that, relative to the No-Action Alternative, are expected to improve resource conditions. These decisions include the designation of utility corridors that would consolidate linear facilities (e.g., transmission lines, pipelines), development of watershed plans based on range assessment criteria, establishment of the Escondida Site ACEC, and identification of conditions on vegetative sales based on ecological conditions. In addition, the Proposed RMPA includes the development of an access management plan that would lead to individual route designations, and would enhance the recreation program through educational materials, the identification of areas suitable for recreation opportunities, and the development of terms and conditions for each use. These efforts would result in more consistent management of the recreation and public access programs, and would promote public safety and resource protection on McGregor Range.

Alternative B shared the same general management guidance as the Proposed RMPA, but emphasized public access and use of McGregor Range. Access is necessarily limited in all alternatives due to military use on McGregor Range. Alternative B would result in relatively more access for off-highway vehicle and recreational use generally. However, the lack of watershed plans and elimination of the existing ACEC may have resulted in degradation of habitat and cultural resources.

Alternative C was the most restrictive alternative in terms of public access to McGregor Range. Restricted access limits recreation use, an impact that has social and minor economic repercussions. Natural and cultural resource protection was most extensive under this alternative, but had to be balanced with BLM's policy guidance and requirements including the FLPMA mandate of multiple use and sustained yield.

Cumulative effects are the effects that result from incremental impact of an action when added to other past, present, and reasonably foreseeable future actions regardless of which agency (Federal or non-Federal) or person undertakes such other actions. Overall, past and present actions on McGregor Range have resulted in minimal disturbance to environmental resources on the range. This is because public access and resource uses have been largely restricted, and military activities affect only small portions of McGregor Range. This resulting positive effect on resources is enhanced further by McGregor Range's location adjacent to other military ranges with similar use patterns and restrictions. Reasonably foreseeable future actions and the Proposed RMPA for McGregor Range would continue this pattern of limited resource use.

Due to BLM's adoption of the New Mexico Standards for Public Land Health and Guidelines for Livestock Grazing Management (Standards and Guides), the mitigation of potential cumulative impacts to watersheds, vegetation, soils, and other resources that could result from grazing should be well-integrated throughout McGregor Range. These range management strategies are currently consistent with the research on arid Southwestern grasslands ecological science and would be adapted to future research and the conditions on McGregor Range as appropriate to maintain conformity to BLM policy and regulations. In addition, implementation of the Standards and Guides would mitigate potential impacts to resources that may result from the construction of facilities associated with land use authorizations, right-of-way grants, recreation, or other activities.

BLM has developed a suite of best management practices, which are designed to minimize surface disturbance and effects on resources and retain the reclamation potential of disturbed areas. The practices represent effective and practical means of accomplishing the management goals and objectives of the BLM and should be used as a guide when preparing plans for individual projects.

The RMPA/EIS does not address the potential effects of specific actions that may occur in the future. More specific mitigation measures or additional National Environmental Policy Act (NEPA) analysis may be required for future proposed uses and actions, and would be determined on a case-by-case basis in accordance with the management framework provided in the approved RMPA.

CONSULTATION AND COORDINATION

The analysis for the RMPA/EIS was completed in consultation with other agencies, State and local governments, and the public. These activities and participants are discussed in Chapter 5 of the Draft RMPA/EIS. The U.S. Fish and Wildlife Service concurred with the determinations of the 2005 Final Biological Assessment; consultation between the two agencies has been ongoing throughout the planning process. The New Mexico Department of Game and Fish and State Historic Preservation Office also were contacted regarding the Draft RMPA/EIS. BLM contacted the Mescalero Apache Tribe, Fort Sill Apache Tribe, and Ysleta del Sur Pueblo to inform them of the planning effort, request the identification of traditional cultural places and resources that should be considered, and invite them to participate in the preparation of the RMPA/EIS. The U.S. Army, Fort Bliss, plays a critical role in the management and use of McGregor Range, and has been involved throughout the process by sharing information, participating in RMPA development, and reviewing draft documents.

A notice announcing the availability of the Draft RMPA/EIS for public review, the initiation of the 90-day comment period, and public hearing dates appeared in the *Federal*

Register on January 31, 2005. On March 8 and 9, 2005, BLM conducted public hearings to listen to and understand the public's comments on the adequacy of the Draft RMPA/EIS. Although no oral comments were received during these hearings, eight letters were received during the 90-day comment period. All comments on the Draft RMPA/EIS are considered and addressed in this Proposed RMPA/Final EIS. Copies of the letters received and responses to those comments are included in Chapter 1.0 – Public Comments and Agency Responses and addenda or corrections are provided in Chapter 2.0.

Following publication of a Notice of Availability in the *Federal Register*, distribution of the Proposed RMPA/Final EIS, a 60-day Governor's Consistency Review, and a 30-day protest period, the BLM will issue a Record of Decision summarizing the findings and decisions regarding the Proposed RMPA and its determination regarding compliance with NEPA and other regulations. Also, the RMPA will be prepared to document the resource management planning process for McGregor Range.

1.0

Public Comments
and Agency Responses



1.0 PUBLIC COMMENTS AND AGENCY RESPONSES

During the 90-day public review period, a total of eight parties submitted written comments. BLM conducted public hearings in Alamogordo and Las Cruces in March 2005 and, although nearly 15 people attended the hearings, no oral comments were presented. Each written comment letter was assigned a unique sequential number representing the order in which the letter was received. The comment letters have been reproduced on the left sides of the pages that follow, and each substantive comment has been identified in brackets. These comments have also received a unique number that corresponds to the letter number and comment number. For

example, the first comment in the second letter is identified as comment 2-1. Substantive comments were considered to be those that addressed the adequacy of the Draft RMPA/EIS, the merits of the alternatives, or both. BLM's responses appear adjacent to the comments on the right side of the page and have been numbered to correspond with the comment number.

Written comments were received from the parties noted in Table 1-1. Addenda and corrections to the Draft RMPA/EIS are provided in Chapter 2.0.

**TABLE 1-1
WRITTEN COMMENTS RECEIVED**

Letter No.	Submitted By
1	B. Sachau
2	Charles R. Nelson
3	Kenneth Chapmen
4	Name withheld
5	Ron Curry, Secretary State of New Mexico, Environment Department
6	S. D. Schimnitz, Chairman Southwest Consolidated Sportsmen
7	Lisa Kirkpatrick, Chief Conservation Services Division State of New Mexico Department of Game & Fish
8	Rhonda M. Smith, Acting Chief Office of Planning and Coordination Environmental Protection Agency Region 6

Letter 1

Responses

02/06/2005

1-1 [USDOJ USBLM NM 030 1610-DS
NOA DEIS MCGREGOR RANGE RMP - I THINK THE COMMENT
PERIOD SHOULD BE EXTENDED BY 60 DAYS. THERE IS NO RUSH
TO JUDGMENT THAT NEEDS TO TAKE PLACE HERE AND THE
PUBLIC NEEDS MORE TIME TO COMMENT.

1-2 [ban the following at mcgregor"
1. hunting
2. trapping
3. new roads
4. burning which pollutes the air and causes heart
attacks, strokes, lung cancer and asthma
5. all two stroke vehicles of any kind
6. logging
7. grazing
8. mining

1-3 [keep greedy local profiteers out of the area. this has
been supported by national taxpayers who deserve fair
representation of their interests from local greed.

b. sachau

1-1 During the course of the 90-day public review period, the BLM received 11 comments on the Draft RMPA/EIS, all of which were considered timely. Because of the low volume of comments and the fact that no comments were received outside the comment deadline, BLM did not consider the need for a comment period extension.

1-2 As discussed in individual resource sections in the Draft RMPA/EIS, public use and access to McGregor Range is limited by PL 106-65, primarily for safety reasons and to prevent conflict with ongoing military activities on the Range. Public access and hunting are subject to use permit requirements. The Proposed RMPA would not create any new roads and would likely close some roads currently available. Vegetative sales areas would decrease from those available under the current management (No-Action Alternative), grazing would not increase beyond the 14 existing grazing units, and the Range would continue to be closed to entry for mining of locatable minerals and the leasing and development of fluid minerals.

As stated in the Draft RMPA/EIS, page 3-38, Section 3.14.4.1 – Prescribed Burns, any prescribed fires are subject to an interagency memorandum of understanding (MOU) for smoke management, which includes the requirement of an annual permit from the New Mexico Environment Department for air pollutant emissions resulting from prescribed fires. As noted on page 4-26, Section 4.2.10.4, Impacts Common to all Alternatives, measures outlined in the MOU would mitigate, or reduce, potential smoke-related impacts on urban interface areas. As noted in the Draft RMPA/EIS, Table 2-3, consistent with the BLM Statewide Fire and Fuels Management Plan Amendment (2004), a plan for prescribed burning would be developed to include criteria guiding prescribed burns, including monitoring the success, and developing plans to support the recovery of special status species.

1-3 As stated above, PL 106-65 limits public access and activities on the McGregor Range, including for-profit activities such as logging, mining, and recreation concessionaires.

Letter 2



"Charles R. Nelson"

02/08/2005

2-1 [do not release the land to the public!!
Charlie

13

Responses

2-1 As noted in the Draft RMPA/EIS, page 2-3, Section 2.2.1 – Lands Realty, and Access, PL 106-65 withdrew large tracts of public land, including McGregor Range, for military purposes for a period of 25 years. PL 106-65 closed McGregor Range to minerals leasing and entry for mining of locatable minerals. The law also excludes McGregor Range from the disposal authority of FLPMA; therefore, disposal of public land through sales, recreation and public purposes, and exchange is not allowed. Any use authorization is subject to concurrence by the Secretary of the Army.

Letter 3



BLM wants to hear from you

I think this was meant to be comment to Draft Mabreson RMPA/EIS (copy to both files) Tom P.

The following form was designed to help us understand public views and values relevant to Sierra, Otero, and Doña Ana Counties. Please feel free to enclose more information on a form so the BLM address is showing and tape or staple the edges together to mail it (post if you submit your comments by March 28, 2005. Thank you!

Keep my name and address information confidential* Add me to the project mail

Name: KENNETH CHAPMAN

Address: 79007

1. County of Residence: Sierra County Otero County Doña Ana County Other: HUECHINSON - TEXAS
County, State

Community of Residence: BORGON TX

2. What do you value about the public land in Sierra, Otero, and/or Doña Ana Counties (see map) and why? Grazing
wine stock

3. Do you participate in outdoor recreation activities on public land in Sierra, Otero, and/or Doña Ana Counties? Yes No

If yes, what types of recreational activities to you participate in or value? (list as many as apply) _____

If yes, where do you participate in outdoor recreation activities? _____

If no, please let us know why not. _____

4. What activities on or uses of the public land in Sierra, Otero, and/or Doña Ana Counties, other than outdoor recreation, are important to you and why? Grazing wine stock - GOOD PASTURE

5. We want to know the types of information BLM should provide to educate the public about BLM and its programs. How familiar are you with BLM management policies and programs?
 very familiar somewhat familiar somewhat unfamiliar very unfamiliar

6. Major BLM programs that currently are active in the Las Cruces Field Office are listed below. On a scale of 1 to 5, with 1 representing the least and 5 the most, how much do you value each of these programs for future management of public land in Sierra, Otero, and Doña Ana Counties?

BLM Management Programs	Least Value					Most Value
	1	2	3	4	5	
Forestry	<input type="checkbox"/>	<input checked="" type="checkbox"/>				
Cultural Resources	<input type="checkbox"/>					
Wildlife (Habitat)	<input type="checkbox"/>					
Threatened and Endangered Species	<input type="checkbox"/>					
Fluid Minerals (oil, gas, geothermal)	<input type="checkbox"/>	<input checked="" type="checkbox"/>				
Lands and Realty (acquisition, exchange, disposal)	<input type="checkbox"/>					
Hazardous Materials	<input type="checkbox"/>					

14

Letter 4



03/12/2005

Howdy: Thanks for the opportunity to submit comments. Please do not use or release my name or address publicly unless required by law to do so.

4-1 [My greatest concern with all federal lands is the allowance of cattle grazing in areas that are marginal for grass production. It is quite common to see the water resources polluted by animal waste and in some cases soil erosion is exacerbated by the animals, and if you decide to continue with the animal grazing allotments, I would suggest water quality could be enhanced if you allow or mandate the use of watering tanks in specific areas. This might require the running of plastic pipe or other methods of routing the water to the tank or pond, even the drilling of water wells, but if it helps keep the animals from polluting their water supply, it is preferable to develop the area with fences, tanks, ponds, etc. If this is opposed by the ranchers, tell them to ship their cattle to Missouri where there is plenty of grass going to waste! I realize you have to try and keep the local ranchers and natives satisfied, but they need to work with our public lands to reduce unnecessary water contamination by cattle. As a hiker, I get disgusted to find a pristine area of nature ruined by cattle droppings in a riparian area, when the financial gain to one particular cattleman may not be offset by the degradation to our public lands, especially since we have much grassland available in other parts of the country. Just because this land was cattle country 150 years ago doesn't mean it will always be best suited for that use.

Sincere :r

u

Responses

4-1 As stated in the Draft RMPA/EIS, page 2-18, Section 2.3.2.2 – Preferred Alternative, the BLM would adjust grazing seasons for each unit as needed to maintain desired future conditions and appropriate forage levels and prevent over-grazing. The Proposed RMPA would also incorporate the New Mexico Standards for Public Land Health and Guidelines for Livestock Grazing Management (see the Draft RMPA/EIS, page 3-2, Section 3.1.1). The Proposed RMPA is expected to have a positive impact on water, soil, and watershed resources (page 4-15). The Proposed RMPA also includes implementation of watershed management plans to address erosion concerns. In addition, as stated on page 3-21 of the Draft RMPA/EIS, although grazing could be expected to be a primary source of nonpoint-source pollution, under the State Nonpoint Source Management Plan the BLM is responsible for the prevention of nonpoint-source pollution on and from public land. On page 3-18 of the Draft RMPA/EIS, it is stated that groundwater resources in and surrounding the McGregor Range have not been significantly developed due to poor water quality, primarily because of the saline levels. However, current data suggests that the quality of surface water on McGregor Range is adequate for livestock and wildlife uses (Draft RMPA/EIS, page 3-20).

Letter 5

Responses



BILL RICHARDSON GOVERNOR

State of New Mexico ENVIRONMENT DEPARTMENT Office of the Secretary Harold Runnels Building 1190 St. Francis Drive, P.O. Box 26110 Santa Fe, New Mexico 87502-6110 Telephone: (505) 827-2855 Fax: (505) 827-2836 RECEIVED BLM MAIL ROOM 2005 MAR 28 PM 12:30 LAS CRUCES FIELD OFFICE LAS CRUCES, NM 88005



RON CURRY SECRETARY

DERRITH WATCHMAN-MOORE DEPUTY SECRETARY

March 21, 2005

Tom Phillips, RMPA/EIS Team Leader Bureau of Land Management Las Cruces Field Office 1800 Marquess Las Cruces, N.M. 88005

Dear Mr. Phillips:

RE: MCGREGOR RANGE: DRAFT RESOURCE MANAGEMENT PLAN AMENDMENT AND ENVIRONMENTAL IMPACT STATEMENT; PREPARED FOR U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, LAS CRUCES FIELD OFFICE, JANUARY 2005

This transmits New Mexico Environment Department (NMED) comments concerning the above- referenced Draft Resource Management Plan Amendment (RMPA) and Environmental Impact Statement (EIS). The purpose of this document is for the Bureau of Land Management (BLM) to analyze various alternatives for managing public lands within the boundaries of the MacGregor Range.

SURFACE WATER QUALITY

Overall, potential impacts on environmental resources are anticipated to be minimal under all alternatives. The objective of the water resources program on the withdrawn public land is to maintain adequate supply of water appropriate for the livestock management program and for wildlife habitat; we agree with this approach.

5-1 [Since New Mexico laws stipulate that surface water quality standards for the designated uses of livestock watering and wildlife habitat extend to all perennial and non-perennial reaches of waters of the State, McGregor Range needs to commit to the implementation of non-point source control guidance for roads, drainage crossings, and discharge from disturbances over one acre, utilizing the best available management practices.

5-2 [To be noted is that the BLM identifies concerns about water quality due to high erosion rates, specifically on three watershed management plans previously identified in the 1990 RMPA for development on 86,450 acres. These need to be revisited and mitigation measures developed as appropriate, and their plans need to include follow-up monitoring.

GROUND WATER QUALITY

5-1 As noted in Table 2-3, page 2-19 of the Draft RMPA/EIS, general management guidance common to all alternatives includes the development of nonpoint-source control guidelines for roads, stream crossings, and disturbances more than one acre using best management practices.

5-2 As noted in the Draft RMPA/EIS, page 4-14, current range assessment data have been collected and therefore the Proposed RMPA would change the location of watershed management plans from those identified in the 1990 RMPA to new locations identified based on current data. Progress towards goals identified for diversity, plant productivity, surface erosion, and runoff would be measured regularly.

Letter 5 (continued)

The alternatives considered do not include specific impacts to ground water; however, we have two general comments to make on this topic in reference to the document:

5-3 1. Section 3.8 WATER RESOURCES, 3.8.1 Groundwater, Page 3-18. When it comes to protecting ground water, no matter the future use planned at the MacGregor Range, the document should clearly state that according to New Mexico Water Quality Control Commission Regulation 6.2.3101 NMAC, ground waters with a Total Dissolved Solids (TDS) concentration of 10,000 mg/L or less are protected. If there is a discharge that threatens such ground water, then abatement may be required. The text in this section is not clearly written and implies that waters with a TDS as low as 1,000 mg/L may be classified as saline. The general definition used commonly in the literature for salinity is 10,000 mg/L, and that definition is used in the regulation cited above.

5-4 2. Section 3.15, Hazardous Materials, Page 3-39, second paragraph in the section. From a ground water perspective, there is no de minimis volume of an oil or water contaminant that is not reportable, if a discharge occurs. According to New Mexico Water Quality Control Commission Regulation 20.6.2.1203.A NMAC, "With respect to any discharge from any facility of oil or other water contaminant, in such quantity as may with reasonable probability injure or be detrimental to human health, animal or plant life, or property, or unreasonably interfere with the public welfare or the use of the property, the following notifications and corrective actions are required:..." The text of Section 3.15 implies that because the chemicals stored on site are used in de minimis quantities they are not regulated; although this may be the case, if a release occurs that meets the description provided in the regulation cited above, then NMED must be notified.

HAZARDOUS WASTE

We have a number of comments concerning those portions of the above-referenced document relating to RCRA hazardous waste and contaminated environmental areas.

5-5 1. We suggest that NMED be notified before transfer of land that is part of Fort Bliss and provide information related to corrective action requirements on that land. This will ensure that Army's corrective action obligations on any land proposed for transfer will be met either before transfer or through adequate mechanisms in place to allow corrective action beyond the facility boundary after transfer, pursuant to 42 U.S.C. 6924(v) and 20.4.1.500 NMAC (incorporating 40 CFR 264.101(c)).

5-6 2. We recommend that the Army conduct a geophysical survey of the unexploded ordnance (UXO) areas and remove all detected waste military munitions prior to transfer of the property. It is important that further clearance be conducted at a specific frequency to identify and remove any potential concerns in those areas. We suggest that if the UXO property areas are transferred to BLM control that they be limited in access by fencing and that signage be placed to warn of the UXO concerns. We also recommend that an agreement be made between the Army and BLM for continued clearance of the UXO areas.

Responses

5-3 The following sentence is to be added to the Draft RMPA/EIS, page 3-18, second paragraph under Section 3.8.1, following the third sentence: "According to New Mexico Water Quality Control Commission Regulation 6.2.3101 NMAC, ground waters with a Total Dissolved Solids concentration of 10,000 mg/L or less are protected. If there is a discharge that threatens such ground water, then abatement may be required."

5-4 The following sentence is to be added to the the Draft RMPA/EIS, page 3-39, Section 3-15, right column, end of the first paragraph: "Any discharge of hazardous materials, even those stored in de minimis quantities, is regulated by New Mexico Water Quality Control Commission Regulation 20.6.2.1203.A NMAC, which indicates that discharge in any quantity that may with reasonable probability injure or be detrimental to human health, animal or plant life, or property, or unreasonably interfere with the public welfare or the use of the property, requires notifications and corrective actions."

5-5 This RMPA/EIS only addresses the continued management of withdrawn public lands by BLM. Any transfer of land that is part of Fort Bliss is not addressed in this document. Should any Fort Bliss lands be transferred to BLM, additional NEPA compliance would be required. If the Department of the Army determines that the use of all or portions of McGregor Range is no longer required, then further analysis would be conducted. This analysis would include the identification of appropriate corrective and clean-up actions required prior to the withdrawal being relinquished and returned to full BLM management, and would take place prior to BLM accepting the return of the land to public land management.

5-6 See response to comment 5-5 regarding land transfers. UXO management and clearance is conducted in accordance with the U.S. Army's 1999 Legislative Environmental Impact Statement (LEIS), and are not subject to alteration in this RMPA/EIS. The LEIS states: "When feasible after an exercise, the area used is groomed to ensure proper disposal of all ordnance, including that which is considered an ordnance or explosive hazard, or malfunctioned ordnance. Impact areas are not sanitized on a regular basis."

As noted in the Draft RMPA/EIS, page 4-44, Section 4.2.18.4, Impacts Common to All Alternatives, public access is limited to McGregor Range under all alternatives. The U.S. Army would conduct UXO clearance on an as-needed basis in the event of BLM ground-disturbing activities.

Signage is already posted along State Route 506 to indicate that the public must stay on the roadway. A change in signage or placement of additional signage would not require a plan-level decision to implement, and would be addressed as part of the analysis that would occur if withdrawn land is returned to public land management (as described in comment 5-5).

Letter 5 (continued)

Responses

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5-7 3. The document does not discuss the current RCRA Hazardous Waste Permit with regards to the solid waste management units (SWMUs) that are currently listed on the permit for RCRA investigation. The authority for corrective action for SWMUs is provided for under the RCRA Permit issued to Fort Bliss. Although some SWMUs on the Fort Bliss RCRA Permit have a no further action determination there are sites that may require further investigation and potential remedy on the McGregor Range. The SWMUs that have a no further action determination on the McGregor Range include: SWMU 21 – Inactive FFTA McGregor; SWMU 22 – Inactive Waste Drum McGregor; and SWMU 66 McGregor Drum Burial. There are still unresolved issues with regards to the sites requiring corrective action that are listed on the Fort Bliss RCRA Permit at the McGregor Range. If a petition for no further action has been requested by Fort Bliss it does not indicate that the sites are necessarily ready for a no further action determination. Further investigation or other activities may be required for these sites.

5-8 4. If property is transferred to BLM from the Army prior to cleanup and remedy of sites an agreement should be made between the Army and BLM. After the property is transferred NMED does not have authority under RCRA to require cleanup and remedy of such sites. Therefore, NMED strongly recommends that any corrective action activities at sites listed on the Fort Bliss RCRA Permit be completed prior to transfer of lands to BLM

5-9 5. Table 3-9 refers to several sites that are included on the RCRA Permit for Fort Bliss. It is difficult to identify these sites and match them to those listed on the permit. Please provide an identifying SWMU number for ease in identification so as to relate them to the current Fort Bliss RCRA Permit.

5-10 6. Finally, a map or diagram should be included to indicate the SWMUs and UXO areas.

AIR QUALITY

This project area is located in Otero County, which currently is not in nonattainment for any of the National Ambient Air Quality Standard (NAAQS). At this time, it does not appear that the proposed action would adversely impact air quality in Otero County.

5-11 In January of 2004, the New Mexico Environment Department adopted a new regulation 20.2.65 NMAC-- Smoke Management, which includes requirements for the use of prescribed fires. This regulation should be referenced in the final EIS as an applicable state requirement for maintaining air quality standards under the RMPA.

As stated in the EIS, the dust control measure should be used when feasible within the project area. Several counties within the southern region of state have experienced exceedances of the PM10 standard, including Doña Ana County. Doña Ana County is currently under a Natural Events Action Plan to help control man-made sources of windblown dust.

5-7 The solid waste management units (SWMUs) are noted in the Draft RMPA/EIS, pages 3-39 and 3-40 as Installation Restoration Program (IRP) sites. The following sentence is to be added to the end of the third paragraph, right column of page 3-39 in the Draft RMPA/EIS: “The authority for corrective action on the IRP sites, also known as solid waste management units (SWMUs), is provided for under the RCRA permit issued to Fort Bliss.”

Table 3-9 on page 3-40 of the Draft RMPA/EIS, is to be modified to indicate which sites have received a no further action determination (currently the three sites that have received this determination are noted in the table as having submitted the petition), and that those SWMUs noted as planned for closure may still require further remediation. The revised table is included in the addenda and corrections in Chapter 2. Further investigation of these sites may be conducted by Fort Bliss as appropriate; such activities do not fall under the jurisdiction of this RMPA/EIS.

5-8 See response to comment 5-5.

5-9 The most recent information related to these permits is available from the permittee (Fort Bliss) and the permitting agency (New Mexico Environment Department).

5-10 Maps depicting the locations of SWMUs and UXO areas are available to the New Mexico Environment Department by contacting Fort Bliss. However, locations of these areas are not being depicted in the RMPA/EIS due to public safety concerns.

5-11 The following sentence is to be added to the Draft RMPA/EIS, page 3-38, the end of Section 3.14.4.1 – Prescribed Burns, as follows: “Prescribed burns are also subject to NMED regulation 20.2.65 NMAC – Smoke Management, which includes requirements for the use of prescribed fires.”

Letter 5 (continued)

We appreciate the opportunity to comment on this document. Please let us know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ron Curry', written over a horizontal line.

Ron Curry
Secretary

NMED File No. 2024ER

Letter 6

Responses

The following text is the body of this letter retyped for clarity.

3/22/05

Tom Phillips:

The McGregor EIS needs to include emphasis on mule deer habitat management particularly at the north end of the area. Your boss (Ed Roberson) mentioned that military and BLM funds are available at a recent Southwest Consolidated Sportsmen meeting. Dr. Brian Locke also mentioned this at the Las Cruces scoping meeting.

S. D. Schemnitz, Chairman
Southwest Consolidated Sportsmen

6-1 Management of wildlife habitat and vegetation (including woodlands) under the proposed alternative is described on pages 2-18 through 2-21 of the Draft RMPA/EIS. Table 2-2 on page 2-34 of the Draft RMPA/EIS also provides information on wildlife habitat management under the preferred alternative. Mule deer habitat would be considered in the habitat management plans.

Tom Phillips:

3/22/05

The McGregor EIS

needs to include emphasis on mule deer habitat management particularly at the north end of the area. Your boss mentioned that military and BLM funds are available at a recent Southwest Consolidated Sportsmen meeting. Dr. Brian Locke also mentioned this at the Las Cruces scoping meeting.
S. D. Schemnitz, Chairman
Southwest Consolidated Sportsmen

6-1

1-11

RECEIVED
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Letter 7

Responses

GOVERNOR
Bill Richardson



DIRECTOR AND SECRETARY
TO THE COMMISSION
Bruce C. Thompson

STATE OF NEW MEXICO DEPARTMENT OF GAME & FISH

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M. H. "Duteh" Selmon, Commissioner
Silver City, NM

April 28, 2005

Draft McGregor Range RMPA/EIS
Bureau of Land Management Las Cruces Field Office
1800 Marquess
Las Cruces, NM 88005

Re: McGregor Range Draft Resource Management Plan Amendment and Environmental Impact Statement
NMGF Doc. No. 9880

Dear Sirs:

The Department of Game and Fish (Department) has reviewed the McGregor Range Draft Management Plan Amendment and Environmental Impact Statement (DEIS). The DEIS analyzes the potential impacts of four alternative management plans on 606,233 acres of Bureau of Land Management (BLM) withdrawn public lands within McGregor Range.

The DEIS is well-organized and well-written, and in general, the Department concurs with the direction prescribed by (Preferred) Alternative A. Alternative A maintains public access for hunters and non-consumptive wildlife users, and proposes two Habitat Management Plans (HMPs) that "...encompass a large part of McGregor Range..."; one for the management of the Sacramento Mountain foothills habitat, and one for grasslands. The existing Black Grama Grassland Area of Environmental Concern (ACEC) would be maintained by adoption of Alternative A. The decision in the 1990 RMPA to limit grazing to cattle and no more than three horses and to the existing grazing units would be carried forward under Alternative A (p. 2-9).

The Department does not support the selection of any alternative or combination of alternatives that further restricts or eliminates hunter and non-consumptive wildlife user access. The Department also does not support the portion of Alternative C that would completely eliminate livestock grazing, as we believe this step to be unnecessary, but do support the implementation of the New Mexico Standards for Public Land Health and Guidelines of Livestock Grazing Management (January 2000).

7-1 The Proposed RMPA would continue to allow public access on a permitted basis. Under all alternatives, off-highway vehicle use would be limited to existing or designated roads and trails, and some areas would be closed for resource protection and public safety (Draft RMPA/EIS, page 4-33). The Proposed RMPA would incorporate the New Mexico Standards for Public Land Health and Guidelines for Livestock Grazing Management (Draft RMPA/EIS, page 3-2, Section 3.1.1).

Letter 7 (continued)

Responses

Draft McGregor Range RMPA/EIS

2

April 28, 2005

The Department is concerned with the continued conservation of 1) relatively unfragmented grassland habitats of McGregor Range and the greater Otero Mesa region; and 2) black-tailed prairie dogs (*Cynomys ludovicianus*) on McGregor Range and other portions of Otero Mesa that have been opened for oil and gas development under the October 2000 Draft Resource Management Plan Amendment and Environmental Impact Statement for Federal Fluid Minerals Leasing and Development in Sierra and Otero Counties (Fluid Minerals RMPA).

1) Grassland Conservation

With regard to mineral and energy resource development, page S-7 of the DEIS states: "Overall impacts are expected to be minimal since mineral entry on the range is prohibited by PL 106-65."

However, Chapter 4.2.3.3 *Assumptions* (p.4-8) states: "Under all alternatives, it is assumed that McGregor Range **likely** [emphasis ours] will remain closed to mineral entry throughout the planning timeframe of 15 to 20 years. However, PL 106-65 requires that, every 5 years, BLM compile expressions of interest and information related to leasable and locatable mineral activities on McGregor Range and review new information to determine whether a plan amendment would be needed."

It is not clear to the Department that hydrothermal and/or oil and gas development, with accompanying industrial infrastructure development and associated habitat fragmentation, are not imminent on McGregor Range within the foreseeable future. The DEIS does not identify whether BLM has already received any expressions of interest for hydrothermal or oil and gas development on McGregor Range. What are the criteria that BLM would use to determine whether or not to open McGregor Range for hydrothermal or oil and gas leasing?

2) Black-tailed Prairie Dogs (BTPDs)

The DEIS is not clear regarding the status of black-tailed prairie dogs. Page 2-16 states:
Special Status Species: The 1990 RMPA included a decision to nominate all colonies of Tularosa black-tailed prairie dogs in Otero County as a BLM sensitive species; however, the decision is no longer needed because the species is now a Federal candidate species for listing threatened or endangered. No other specific management decisions were identified in the 1990 RMPA for special status species.

Page 4-21 later states that black-tailed prairie dogs have "...subsequently been dropped from ESA listing...". We note that this statement is correct regarding the current federal status of BTPDs.

Under 2.3.1 *Alternatives Considered but Eliminated from Further Impact Analysis*, p. 2-13 states: BLM considered designating an area as an ACEC for black-tailed prairie dogs. BLM policy (BLM Manual 1613 and 43 CFR 1610.7-2) requires that before an ACEC can be designated, it must meet certain criteria to determine its relevance and importance and require special management. Through the evaluation, BLM determined that, although the proposed black-tailed prairie dog ACEC met the relevance and importance criteria, the area does not require special management on McGregor Range. Special management is not required because, although potential factors may be limiting the population of black-tailed prairie dogs on McGregor Range (the most likely factor being disease), these factors are outside the control of BLM...Research and monitoring of the prairie dog population on McGregor Range has been conducted annually by Fort Bliss and periodically by BLM, and **could** [emphasis ours] be conducted without

7-2 The BLM has not received any recent expressions of interest for hydrothermal or oil and gas development on McGregor Range. As described in the Draft RMPA/EIS, BLM will evaluate the decision to withdraw McGregor Range from mineral leasing every five years in accordance with PL 106-65. The criteria that BLM would use in this evaluation include whether expressions of interest have been received, level of activity related to hydrothermal or oil and gas development in the vicinity of McGregor Range, and the likelihood of future interest. Any recommendation to amend the withdrawal from mineral leasing would be subject to concurrence from Fort Bliss.

7-3 The "Special Status Species" discussion on page 2-16, Section 2.3.2.1 has been revised as identified in Chapter 2.0 – Addenda and Corrections.

1-13

7-2

7-3

Letter 7 (continued)

Draft McGregor Range RMPA/EIS

3

April 28, 2005

- establishment of an ACEC. As a result, the management strategy was eliminated from further consideration.

We note that the BLM does not make a commitment in the DEIS to continue to conduct research and monitoring on BTPDs on McGregor Range.

The Department submitted comments on 13 April 2001 on the Fluid Minerals RMPA. Regarding BTPD conservation, we stated:

... we recommend that a strong commitment be made to protecting existing black-tailed prairie dog colonies on Otero Mesa from surface occupancy, regardless of which alternative is selected. We also recommend that suitable potential habitat within 0.25 miles of existing colonies be managed with a stipulation of controlled surface use, to allow for expansion of these known colonies. This buffer would be consistent with that provided in the preferred alternative for riparian areas.

The black-tailed prairie dog (*Cynomys ludovicianus*) is a Candidate species for listing under the federal Endangered Species Act, and occurs on the BLM portion of Otero Mesa in 22-23 colonies averaging approximately 5 acres each (Mike Howard, pers. comm.). These colonies are extremely important for future conservation efforts because they are some of the last extant populations within the Chihuahuan Desert in the U.S., are likely uniquely adapted to xeric environments, and represent most of the few surviving source populations for recovery elsewhere within the arid southern portion of their known historic range. Prairie dogs and their elaborate burrow systems also provide important habitat for many other vertebrate and invertebrate species such as the Federally-proposed mountain plover (*Charadrius montanus*), and state- and federally-protected burrowing owl (*Athene cunicularia hypugaea*), as well as being important prey species for state- and federally-protected raptors such as golden eagles (*Aquila chrysaetos canadensis*) and ferruginous hawks (*Buteo regalis*).

Because of the potential impacts to BTPD colonies on adjacent BLM lands on Otero Mesa that have been opened to fluid mineral leasing under the Fluid Minerals RMPA, and the lack of assurances that similar hydrothermal or oil and gas development will not occur in the future on McGregor Range, the Department believes that cumulative impacts to black-tailed prairie dog populations in the Otero Mesa region have not been adequately analyzed, nor has adequate mitigation been proposed within this DEIS and the Fluid Minerals RMPA. As an effort toward reducing the potential impacts of habitat fragmentation on BTPDs from the development of Otero Mesa, the Department therefore requests that the BLM include the development of a Black-tailed Prairie Dog ACEC for those existing colonies on McGregor Range in the (preferred) Alternative A, and that ultimately this Alternative be selected and a BTPD ACEC be implemented.

Other Issues

With regard to dredging and filling of channels on McGregor Range, page 2-6 states:

...the Regulatory Branch of the COE, Albuquerque District has interpreted the SWANCC memorandum to exclude all arroyos on McGregor Range from "waters of the U.S.". This would suggest that there is no need to obtain dredge and fill permits for any activities on McGregor Range."

The Department submitted lengthy comments to the Environmental Protection Agency on the SWANCC decision on 15 April 2003. The Department's position is that the ACOE is applying an

Responses

7-4 The second paragraph in Section 2.3.1 on page 2-13 has been changed as identified in Chapter 2.0 – Addenda and Corrections.

Letter 7 (continued)

Draft McGregor Range RMPA/EIS

4

April 28, 2005

unnecessarily broad interpretation of the SWANCC decision to eliminate Clean Water Act Section 404 jurisdictional protections from enclosed basins, which encompass as much as 20% of the land base in New Mexico. We have attached our comments on SWANCC for your consideration.

We appreciate the opportunity to comment on this project. Should you have any questions regarding our comments, please contact Mark Watson, Habitat Specialist, of my staff at (505) 476-8115, or <mwatson@state.nm.us>.

Sincerely,



Lisa Kirkpatrick, Chief
Conservation Services Division

Atch: (1)

LK/MLW

CC: Susan MacMullin (Ecological Services Field Supervisor, USFWS)
Tod Stevenson (Deputy Director, NMGF)
Jim Karp (Attorney, NMGF)
Roy Hayes (Southeast Area Operations Supervisor, NMGF)
Jim Stuart (Mammalogist, NMGF)
Mark Watson (Conservation Services Habitat Specialist, NMGF)

Letter 7 Attachment

Letter 7 Attachment (continued)

GOVERNOR
Bill Richardson



DIRECTOR AND SECRETARY
TO THE COMMISSION
Larry G. Bell

STATE OF NEW MEXICO DEPARTMENT OF GAME & FISH

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Leo Sims
Hobbs, NM

April 15, 2003

Water Docket
Environmental Protection Agency
Mailcode 4101T
1200 Pennsylvania Ave., NW
Washington, DC 20460
Attention Docket ID No. OW-2002-0050

Re: Advanced Notice of Proposed Rulemaking on the Clean Water Act Definition of "Waters of the United States"; NMGF Doc. No. 8241.

Dear Sirs:

The New Mexico Department of Game and Fish (Department) has reviewed the "Advanced Notice of Proposed Rulemaking on the Clean Water Act Definition of 'Waters of the United States'" (ANPRM), as announced 15 January 2003 in Federal Register (2003).

According to the ANPRM, the U. S. Supreme Court (Court) decision on the case of Solid Waste Agency of Northern Cook County (SWANCC) v. United States Army Corps of Engineers et al. (Corps) eliminates Clean Water Act (CWA) jurisdiction over isolated waters that are intrastate and non-navigable, where the sole basis for asserting CWA jurisdiction is the actual or potential use of such waters as habitat for migratory birds that cross state lines in their migrations. The ANPRM further states that SWANCC also calls into question whether CWA jurisdiction over isolated, intrastate, non-navigable waters could now be predicated on the other factors listed in the Migratory Bird Rule or the other rationales of 33CFR 328.3(a)(3)(i)-(iii).

The ANPRM solicits comment from the public on the following issues:

- (1) Whether, and if so, under what circumstances the factors listed in 33CFR 328.3(a)(3)(i)-(iii) (i.e., use of the water by interstate or foreign travelers for recreational or other purposes, the presence of shellfish that could be taken or sold in interstate commerce, the use of the water for industrial purposes by industries in interstate commerce) or any other factors provide a basis for determining CWA jurisdiction over isolated, intrastate, non-navigable waters.

EPA Docket OW-2002-0050

2

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- (2) Information regarding the functions and values of wetlands and other waters that may be affected by the issues discussed in the ANPRM.
- (3) Whether the regulations should define "isolated waters," and if so, what factors should be considered in determining whether a water is or is not isolated for jurisdictional purposes.

We address these issues in Sections 1-3 below, as well as provide background on the SWANCC decision and potential effects to New Mexico.

BACKGROUND

SWANCC. The January 2001 Court's ruling on the SWANCC case limited the jurisdiction of the Corps under Section 404 of the CWA. Specifically, the Court ruled that the "Migratory Bird Rule", adopted by the Corps in 1986, exceeded the authority granted to the Corps by Congress in CWA Section 404(a), and that the Corps' jurisdiction "...over an abandoned sand and gravel pit in northern Illinois, which provides habitat for migratory birds..." was lacking. The "Migratory Bird Rule" was an administrative interpretation that the presence of migratory bird aquatic habitat was sufficient to confer CWA jurisdiction over such aquatic habitat pursuant to the Commerce Clause under 33 CFG 328(a)(3). The Court held that regulation of isolated waters based solely on the use of such waters by migratory birds was not permissible (Wagner 2002).

Migratory Bird Rule. The Corps issued regulations in 1977 defining the term "waters of the United States" to include:

"waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters: i) which are or could be used by interstate or foreign travelers for recreational or other purposes..." 33 CFR 328.3(a)(3) (1999) (Kusler 2001).

In 1986 the Corps attempted to clarify its jurisdiction under the CWA by adopting the Migratory Bird Rule, which provided, in part, that Section 404(a) jurisdiction extended to intrastate waters:

- a. Which are or would be used as habitat by birds protected by the Migratory Bird Treaties; or
- b. Which are or would be used as habitat by other migratory birds which cross state lines...51 Fed. Reg. 41217." (Kusler 2001).

The Migratory Bird Rule was an administrative interpretation by the Corps stating that the presence of migratory bird aquatic habitat was sufficient to make such aquatic habitat jurisdictional under 33 CFR 328(a)(3), which provides for CWA jurisdiction over "other waters" based upon the Commerce Clause of the U.S. Constitution (Kusler 2001).

In the SWANCC case, the Court held that Congress did not intend Section 404(a) of the CWA to regulate isolated waters based solely upon the use of such waters by migratory birds (Kusler 2001). However, according to the ANPRM the Migratory Bird Rule does not apply only to migratory birds (Federal Register 2003: p. 1994):

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"In regulatory preambles, both the Corps and EPA provided examples of additional types of links to interstate commerce which might serve as a basis under 40 CFR 230.3(a)(3) and 33 CFR 328.3(a)(3) for establishing CWA jurisdiction over interstate waters, which were not part of the tributary system or their adjacent wetlands. These included use of waters (1) as habitat by birds protected by the Migratory Bird Treaties or which cross State lines, (2) as habitat for endangered species, or (3) to irrigate crops sold in commerce. 51 FR 41217 (November 13, 1986), 53 FR 20765 (June 6, 1988). These examples became known as the Migratory Bird Rule, even though the examples were neither a rule nor entirely about birds."

IMPLICATIONS FOR THE UNITED STATES

New regulations potentially adopted by remedial legislation of the CWA, in response to post-SWANCC interpretations by the Corps and the U.S. Environmental Protection Agency (EPA), could potentially remove CWA protections for 30% to 60% of the Nation's wetlands (Kusler 2001). The total amount of wetland acreage removed from CWA protections will depend upon the definitions used by the Corps and EPA and ultimately supported by the courts for the terms "adjacent", "tributary", and "significant nexus" (Kusler 2001).

IMPLICATIONS FOR NEW MEXICO

Both the Albuquerque and El Paso Districts of the Corps have recently interpreted the SWANCC decision broadly in New Mexico by asserting that closed basins are no longer jurisdictional under Section 404 of the CWA. This overly broad interpretation of the Court's decision threatens the health of rivers, streams, and wetlands within closed basins of New Mexico, which cover approximately 20% of the surface area of the state.

However, it is the professional opinion of the New Mexico Environment Department (NMED) and EPA's Region 6 that the only waters the Corps will no longer regulate as a result of SWANCC are those for which the sole basis of CWA jurisdiction was the presence of migratory bird habitat (NMED personal communication). In support of NMED's and EPA's interpretation, page 1994 of the ANRMP states "The SWANCC holding eliminates CWA jurisdiction over isolated, intrastate, non-navigable waters where the **sole basis** [emphasis ours] for asserting CWA jurisdiction is the actual or potential use of the waters as habitat for migratory birds that cross state lines on their migrations."

Interpretations of the SWANCC decision by the Corps and the EPA have major implications for the abundance of isolated wetlands and waters of closed basins in New Mexico, as well as the diverse and abundant wildlife resources that rely on these aquatic resources. Of the 867 species of vertebrates known to occur in New Mexico, approximately 479 (55%) rely wholly, or in part, on aquatic, riparian or wetland habitat for their survival (NMGF 1994). In arid New Mexico, Dahl (1990) reported that fully one third of the wetlands that once existed in the state have been lost, which represents an estimated loss of 3/4 acres per day over a 200-year period from the 1780's to the 1980's (NMED 2000). Currently wetlands comprise slightly less than 1% of the State's surface area: surface water represents only 0.2% (141,440 acres) (US DOI Geological Survey 1970) and wetlands and riparian areas comprise another 0.6% (481,900 acres) (Dahl 1990). The quality of these habitats has also diminished. Of the estimated 6,000 miles of

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streams in New Mexico, approximately 54% (3,226 miles) are impaired to some degree by water pollution (Water Quality Control Commission 1992).

Closed basins in New Mexico that could be removed from CWA jurisdiction as a result of new regulations, or a narrow administrative interpretation of SWANCC, include isolated wetlands and waters of the Tularosa, Mimbres, Estancia, San Augustine, Salt, Southwestern and North Plains basins (Figure 1). More than 84 miles of perennial and 3900 miles of intermittent waters exist within these closed basins, representing over 14% of the perennial and intermittent waters in the State. Isolated wetlands (playas, municipal lakes and ponds), which are abundant in the Eastern Plains of New Mexico and provide important waterfowl wintering habitat, are also at risk of losing CWA protection. The Department recognizes that isolated wetlands and waters of closed basins have designated uses for fish and wildlife indigenous to New Mexico under Sections 20.6.4.801-899 of the State's Standards for Interstate and Intrastate Surface Waters, NMAC 1978, as amended in 2002.

U.S. Clean Water Act and New Mexico Water Quality Act Although the SWANCC case specifically involves Section 404 *Dredged and Fill Material Permit Program* of the CWA, the administrative interpretation of the Court's decision may also affect the scope of regulatory jurisdiction under other provisions of the CWA, including sections 303 (*Water Quality Standards Program*), 311 (*Spill Program and the Oil Pollution Act*), 401 (*State Water Quality Certification Program*), and 402 (*National Pollutant Discharge Elimination System Permitting Program*). Under each of these CWA sections, the relevant federal agencies and appropriate state regulatory agencies (e.g., Energy, Minerals and Natural Resources Department, NMED) have jurisdiction over "waters of the United States."

The Water Quality Standards Program (Section 303) is particularly important to New Mexico since State and Tribal governments are authorized to establish water quality standards for waters of the U.S. to "protect the public health or welfare" and "enhance the quality of water", while also considering use and value of waters of the U.S. for public water supplies, propagation of fish and wildlife, recreation, agriculture, industrial, and other purposes.

Specific provisions of the CWA were designed to improve protection of the Nation's waters while recognizing "the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources..." 33 U.S.C. 1251(b). The coordination of state water quality certification under Section 401 programs for federal CWA 404 permits has allowed many states to exercise a significant measure of regulatory authority over wetlands without the expense of establishing independent state permitting, monitoring, and enforcement programs.

The state 401 program has also been particularly important in western states such as New Mexico where wetlands represent less than one percent of the State's surface area. In New Mexico, previous discharge practices to wetlands and waters of isolated basins associated with extractive-use industries resulted in contamination of ground- and surface-water (Boyer 1986, Rail 1989, McQuillan and Parker 2000), impairment of aquatic ecosystem functions (Davis and Hopkins 1993, Davis et al. 1996a, 1996b) and wildlife mortality (Dein et al. 1997, Bristol 1999).

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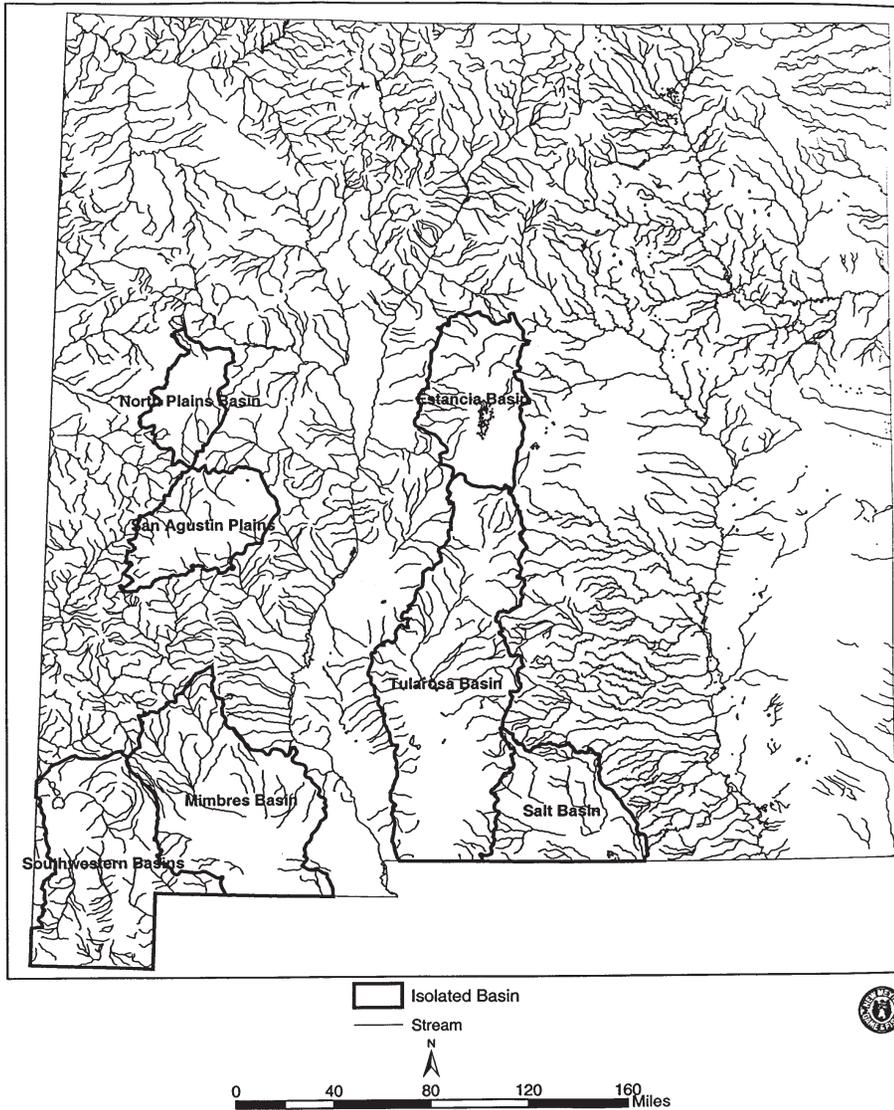


Figure 1. Map showing isolated watershed basins in New Mexico, 2003.

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Under the Section 401 program the NMED has made significant strides to protect surface water of the State from such activities.

By asserting that isolated, non-navigable, intrastate closed basins are no longer considered jurisdictional wetlands under Section 404 of the CWA, the Corp's narrow interpretation of the SWANCC decision reduces and, in many instances, eliminates the State's authority to effectively protect surface waters of New Mexico and to manage wetlands and waters of isolated basins for beneficial use by fish and wildlife.

1) OTHER RATIONALES FOR INTERSTATE COMMERCE

Decision makers should consider economic contributions to interstate commerce from socio-political activities related to wetlands and waters of isolated basins for: (1) recreational use (hunting, fishing, wildlife viewing); (2) enforcement of fishing and hunting regulations; (3) resource agency actions targeting management, conservation, protection and research of the aquatic resources of these areas; and (4) educational purposes.

Approximately 80 percent of the drainages in New Mexico are not perennial (USGS 1:2,000,000 Digital Line Graph). Many of these fit the definition of waters of the U.S. under 33 CFR 328.3(a)(5) as they are tributaries to waters of the U.S. However, even intermittent drainages in closed basins should be considered waters of the U.S. as they are designated for livestock, wildlife and fisheries uses. Many of these drainages supply water to stock tanks, and the livestock and wildlife uses of these waters affect interstate and foreign commerce (NMED personal communication). The potential degradation of wetlands and waters of isolated basins following broad post-SWANCC interpretations could result in impairment of aquatic habitat conditions for fish and wildlife in New Mexico, which potentially devalues wetlands and waters of isolated basins as areas for recreational use by hunters, anglers and recreationists.

Although the Court ruled against the presence of migratory bird habitat as the sole indicator of interstate commerce for CWA jurisdiction, it did not consider the interstate commerce of out-of-state sports persons hunting of big game, small game and waterfowl that use isolated, intrastate, nonnavigable waters for survival. Neither did the Court consider CWA jurisdiction based on the use of these waters by out-of-state anglers, or by recreationists involved in wildlife viewing. These uses by out-of-state hunters, anglers and recreationists provide critical revenue to the Department.

In the 2001-2002 hunting season 27,931 non-resident large and small game licenses were sold to out-of-state hunters, which provided \$5,739,050 dollars in revenue to the Department (NMGF statistics). Because New Mexico is an arid state, the loss of any of these waters to development or water pollution (if New Mexico Water Quality Act standards for wildlife, livestock and fisheries are removed) could adversely affect the persistence of wildlife populations in these arid areas. Waterfowl surveys in New Mexico have indicated a declining trend in waterfowl numbers wintering in the state, at least partially as a result of shrinking water supplies in lakes and rivers from the ongoing severe drought.

Pursuant to its statutory mandates to administrate Game and Fish and Outdoor Recreation (*Chapter 17 NMSA 1978*), the NMDGF actively manages 17 isolated wetlands (ponds, lakes) and five intermittent streams (Mimbres River, Running Water Draw, Tularosa Creek, Three

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Rivers, Tajique Creek) to provide fishing opportunities for resident and non-resident anglers. These cold- and warm-water fishery management activities are funded in part by a user-based licensure fee regulated by the NMDGF under sections 17-3-2 and 17-3-13 NMSA 1978, and include hatchery operations, population stocking and augmentation programs, and habitat improvement.

These enclosed basin waters are subject to interstate commerce by the use of these waters by out-of-state anglers. In 2001, 116,000 non-residents fished in New Mexico, spending \$310,893,000 for licenses, equipment and trip-related expenditures. These non-resident anglers provided more than \$1,345,000 in license fees to the Department.

These data support the position that broad interpretations of the SWANCC decision that exclude isolated wetlands from protection under the CWA may adversely impact recreational use of state-managed ponds, lakes and intermittent streams as a fishery resource in New Mexico. Such interpretations would undermine the Department's ability to manage these wetlands in accordance with its statutory mandates to provide fishing opportunities for the very user-based constituency that financially supports this commonwealth resource through a reduction or loss of revenues generated by fishing license sales. Under this scenario, intrastate and interstate commerce, especially local economies, could be adversely impacted.

New Mexico has some of the most diverse and important bird habitats in the United States, attracting thousands of visitors from all over the world. In 2001, 671,000 people spent more than \$558 million on wildlife viewing in New Mexico (USFWS 2002). Considering the fact that several of New Mexico's enclosed basins occur in the southern part of the state, particularly in the southwest part of the state where bird diversity is high and rare species occur, we believe that a significant percentage of wildlife viewing is conducted by out-of-state recreationists within closed basins, contributing to interstate commerce by the monies invested in local communities for travel-related expenses (e.g. food, lodging, gas, etc.)

Therefore, closed basin waters where these activities occur (hunting, fishing, wildlife viewing) contribute significantly to interstate commerce and represent a critical source of revenue for the Department, and thus should not be exempted from CWA jurisdiction and protection.

Significant benefits are received by local economies across interstate boundaries, generated by research and land management personnel while attending professional regional and international symposia, resource and regulatory policy meetings, and community planning initiatives, to exchange knowledge derived from the study of the values, functions and ecosystem services afforded by wetlands and waters of isolated basins.

Hydrologic and mineral resources extracted from waters and wetlands of isolated basins in New Mexico also provide significant sources of revenue for the State and private industries (e.g., oil and gas, potash, agricultural and livestock) that contribute to interstate and foreign commerce.

2) ECOSYSTEM SERVICES, FUNCTIONS AND VALUES

Wetlands and waters of isolated basins provide many ecosystem services (valuable commodities to society derived by natural processes) and functions inextricably tied to intrastate, interstate

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and foreign economies. These aquatic ecosystems are commonly linked to shallow groundwater aquifers and serve as collection basins for surface water drainage. As such, wetlands and waters of isolated basins serve as points for groundwater recharge, surface water storage, and material sinks that function in the water purification process (nutrient cycling, pollution abatement). These ecosystem functions provide clean water sources for human consumption, agricultural irrigation programs, and beneficial use by livestock, fish and wildlife. Wetlands perform valuable flood storage services during storm events which provides protection from flood damage.

The "biodiversity services" (Costanza et al. 1997) provided by wetlands are numerous and support a wide range of societal functions such as production of food and raw materials, biological control of pests, and buffering of human-caused landscape disturbances (see also Zedler 2003). Wetland flora serve as source of forage for rangeland livestock and wildlife. In the Southern High Plains of southeastern New Mexico and the Texas Panhandle, where playas are well-interspersed in an agricultural landscape, wetland plants provide for a greater diversity of insect pollinators that directly benefits the pollination of agricultural crops (Bolen 1989).

Moreover, wetlands and waters of isolated basins should be considered as self-contained, functional ecosystems that serve not only as critical feeding, resting and breeding areas for migratory waterfowl, but also as habitats that serve similar functions for a broader spectrum of fish and wildlife species. In New Mexico, these circumstances include a great diversity of animal taxa that derive beneficial use from aquatic habitats and riparian areas associated with isolated basins, including upland game and big game species, warm- and coldwater fisheries, threatened and endangered species, and non-game species with aspects of their life history critically linked to wetlands and waters of isolated basins.

Migratory Waterfowl. Currently, wetland conservation policies in the United States call for no net loss of wetland habitat into the future (Federal Register 1995). The Court's ruling on the SWANCC case is contrary to existing wetland conservation policies and cooperative management strategies between local, State, Federal, Tribal, provincial and private land stewards to protect and conserve migratory water fowl as set forth under The North American Wetlands Act. A key component of this legislation is "to sustain an abundance of waterfowl and other migratory birds consistent with the goals of the North American Waterfowl Management Plan..." by fostering partnerships in Canada, Mexico, and the United States (Graziano and Cross 1993). These efforts obviously support the role of wetlands and waters of isolated basins as it relates directly to interstate and foreign commerce of migratory waterfowl and associated abiotic components (hydrology, habitat diversity, etc.) and biotic resources (plants, animals) of isolated basins.

Non-game Species. In New Mexico, wetlands and waters of isolated basins consist of a diversity of aquatic habitats ranging from perennial to intermittent reaches of spring-fed streams, ephemeral drainages, palustrine wetlands (wet meadows, marshes, ponds, lakes), playas, vernal and ephemeral pools, and geologic depressions (erosional and collapse basins, rock pools). This diversity of aquatic ecosystems is home to an equally diverse fauna of non-game invertebrates and vertebrates, many of which are obligate aquatic taxa (crustaceans, mollusks [freshwater clams, aquatic gastropods], most amphibians and select reptiles [aquatic turtles and snakes], fish.

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birds and mammals). Many aquatic macroinvertebrates and vertebrates rely on wetland habitats and their associated riparian and ecotonal areas (the land-water interface) to complete critical stages of their life histories.

The presence and persistence of obligate aquatic biota (flora and fauna) in wetlands and waters of closed basins in New Mexico serve as biological indicators of aquatic ecosystem health and integrity, which ultimately reflects on land-use practices from a larger landscape perspective. Human-caused alterations and fragmentation of aquatic habitats of isolated basins have profoundly affected aquatic biodiversity in New Mexico (Cole 1996, Cole et al. 1996, Propst 1999). Ultimately, such habitat fragmentation and loss translates into accumulative, stepping-stone reductions of genetic, species and ecosystem levels of aquatic biodiversity, which can manifest irrevocable loss of wetland values, functions and services.

From this perspective, numerous authors have emphasized protection of wetlands and waters of isolated basins as unique, functioning ecosystems as the top priority for the conservation of aquatic habitats and non-game species (New 1995, Neves et al. 1997, Williams and Davis 1997, Belk 1998). Similar ecosystem-based approaches and integrated management strategies have gained momentum for the conservation of migratory waterfowl in North America (e.g., Playa Lakes Joint Venture, Ducks Unlimited, Inc.). However, such efforts have received broad-based support through national and international legislative authority, resource policy formulation and significant financial contributions from private, non-profit and government agencies. These contributions to research and conservation of isolated waters represent another link to interstate commerce.

Unfortunately, the “less charismatic” non-game fauna of isolated basins do not enjoy such broad-based support. To reverse this trend, resource agencies, working in collaboration with public and private lands stewards, commonly adopt “best management practices”, habitat conservation plans, conservation agreements, etc., as strategies to protect non-game species and their aquatic habitats. These collaborative efforts serve as public outreach to promote an understanding of the importance of protecting the aquatic habitat and non-game resources of isolated basins in New Mexico. Broad interpretations of the SWANCC decision, as witnessed recently in New Mexico, threaten to undermine these proactive conservation efforts by limiting aquatic habitat protection previously afforded to wetlands and waters of isolated basin under state Section 401 and Section 404 of the CWA. Ultimately, this post-SWANCC scenario can force resource agencies to adopt more restrictive and controversial conservation measures, such as listing species as threatened or endangered in order to protect their aquatic habitats and to prevent their unregulated take.

Threatened and Endangered Species. Wetlands and waters of isolated basins provide aquatic habitats and resources for threatened and endangered species in New Mexico. Under the Wildlife Conservation Act of 1974 (WCA), as amended in 1995, the Department has the primary responsibility to review, manage and maintain the status of wildlife indigenous to the state considered as threatened or endangered (17-2-37 to 17-2-46 NMSA 1978).

The Department’s technical and administrative staff, working in collaboration with colleagues at the federal level, are actively involved in recovery plan development and implementation, habitat monitoring and management (protection, restoration, improvement), population studies

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(augmentation, repatriation, controlled propagation), and public meetings to address conservation issues of threatened and endangered species that occur in isolated waters and wetlands in New Mexico and adjacent states, including Mexico.

These inter-agency, multi-state, and binational activities contribute significantly to intrastate, interstate and foreign commerce. During the period 2000 to 2003, the annual budget of the Department’s Non-game and Endangered Species Program averaged approximately \$94,000 for conservation and management activities related to non-game and state and federally listed animal species that occur in aquatic habitats of isolated basins.

Of the 118 species and subspecies of wildlife listed as threatened and endangered in New Mexico (NMDGF 2002), nearly 25% of these taxa (30 of 118) are restricted to or occur in wetlands, riparian areas and waters of isolated basins (Table 1). Several of these species occur in isolated desert spring systems and temporary waters (seasonal pools) that are not considered “perennial” (USGS 1:2,000,00 Digital Line Graph). Unlike the federal Endangered Species Act of 1973 (ESA), there are no provisions in the New Mexico WCA regulating the “take” of state-threatened species, nor is there provision for habitat protection of state-listed species (threatened or endangered) that occur in these aquatic ecosystems.

Under circumstances where state regulatory mechanisms of the WCA appear inadequate, and protection of animal species in New Mexico may not be warranted under the federal ESA, state-listed species could be afforded protection under the CWA Section 401 program, or other CWA sections (303, 311, 402), by a narrow interpretation of the SWANCC decision. The broad interpretation of SWANCC by the Corps in New Mexico potentially limits CWA protection to the aquatic habitats of state-listed wildlife or rare species that otherwise are not protected by the WCA or the federal ESA.

For example, Lang and Rogers (2002) reported on the occurrence of the Critically Endangered fairy shrimp, *Streptocephalus moorei*, (IUCN 1996, 2000) from three isolated ephemeral wetlands in southern New Mexico. While state listing of this species may not be presently warranted, questions remain whether the aquatic habitats of this globally-rare crustacean are considered jurisdictional “waters” under the current interpretation of Section 404 of the CWA or related sections (301, 303, 401, 402). Interpretation of the terms “isolated”, “waters of the U.S.” and “adjacent”, as referenced in the SWANCC decision, has major implications for protecting *S. moorei* and the macroinvertebrate taxa listed in Table 2 that occur in wetlands, riparian areas and waters of isolated basins in New Mexico.

3) DEFINITIONS

Considering the current trend of overly broad interpretations by the Corps of the Court’s ruling on the SWANCC case in New Mexico, a clear regulatory definition of “Waters of the United States” appears in order. This is particularly germane for New Mexico since the State Standards for Interstate and Intrastate Surface Waters (20.6.4 NMAC 1978, as amended in 2002) adopt water quality standards that are consistent with and serve the purpose of the New Mexico Water Quality Act (Section 74-6-1 through 74-6-17 NMSA 1978) and the federal CWA. It is the objective of the federal CWA to restore and maintain the chemical, physical, and biological

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integrity of the nation's waters, including those in New Mexico (20.6.4.6.B. NMAC 1978, as amended in 2002).

The mutual goal of these surface water quality standards provides for designated use or uses specified by the state under Sections 20.6.4.101 through 20.6.4.899 NMAC 1978, as amended in 2002, which includes the protection and propagation of fish, shellfish, wildlife, and other essential uses of New Mexico's surface waters considered as water supply for livestock, agricultural, municipal, domestic, and industrial purposes. While surface waters of the state include closed basins (see Sections 20.6.4.701 through 20.6.4.805 NMAC 1978, as amended in 2002), numerous isolated surface waters and wetlands of closed basins may not be protected by state or federal statutes. Whether or not these isolated surface waters are considered "waters of the U.S." or "waters of the State" that merit protection under the CWA is central to many issues posed by the current ANPRM. Since the State's surface water quality standards are modeled after similar standards set forth under the CWA, it behooves regulatory authorities to clearly define "waters of the United States."

The Association of State Wetland Managers, Inc. articulated the importance of how interpretations of key terminology by the EPA and Corps could play a critical role in determining post-SWANCC authority of CWA jurisdiction over "waters of the United States" (Kusler 2001). The amount of CWA protection potentially removed will depend upon the definitions used by the EPA and the Corps, and ultimately supported by remedial legislative and judicial actions for the terms "adjacent", "tributary" and "significant nexus" (see Kusler [2001]). The Court ruled against the application of the "Migratory Bird Rule" to assert CWA jurisdiction over "isolated, nonnavigable, intrastate waters" that are not tributary or adjacent to navigable waters or tributaries. In New Mexico, clarification of "isolated waters" would resolve current differences of post-SWANCC interpretations between the Corps, EPA Region 6 and state agencies.

The Department recommends that the terms "isolated waters" and "waters of the United States" be defined by considering both abiotic and biotic components of aquatic ecosystems that ascribe to wetland values, functions, services and designated uses of such waters. The abiotic components should include surface water and groundwater interactions, hydrologic factors, edaphic (soil) conditions and geomorphic setting. The biotic component should consider not only the presence of hydrophytic plants, but also include all obligate aquatic biota—flora and fauna (i.e., obligate aquatic macroinvertebrates).

The term "wetlands", as defined by the Corps, does indeed consider a combination of three of these abiotic and biotic components (i.e., hydrology, hydric soils, hydrophytic plants), where "...evidence of a minimum of one positive wetland indicator from each parameter (hydrology, soil, vegetation) must be found in order to make a positive wetland determination." (USACOE 2000, pp.9-10). However, this definition excludes the presence of obligate aquatic macroinvertebrates (Mollusca, Crustacea, Insecta; see Table 2) that, like the other component in this biotic nexus, hydrophytic plants, are also wholly dependent on "wetlands" for their persistence across the landscape and/or survivorship in "isolated waters." The fact that many of the aquatic macroinvertebrates listed in Table 2 occur in both "waters of the United States" and "isolated, nonnavigable, intrastate waters" supports the Department's position that these taxa

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could serve as equally well for making "wetland" determinations as the three indicators traditionally used in wetland identifications and delineations.

As regards the identification of "isolated waters", with particular reference to bodies of water (i.e., "playa lakes" and "prairie potholes") that fall under the broadly defined term "wetlands" (see 33 CFR 328.3(a)(3)), branchiopod crustaceans (fairy shrimp, clam shrimp, tadpole shrimp and water fleas) and several orders of aquatic insects (Odonata, Hemiptera, Coleoptera, Diptera), represent quintessential groups of aquatic macroinvertebrate that epitomize "isolated waters" of seasonally inundated aquatic habitats (temporary waters) that merit recognition as regulated "wetlands" and "waters of the United States."

Representatives of these taxonomic groups occur in temporary (seasonal) "wetlands" termed "playa lakes" and "prairie potholes" that are considered jurisdictional under the CWA. In numerous instances these macroinvertebrates occur in many other temporary aquatic habitats that possess all the attributes assigned to these so-named "wetlands", but these temporary waters are not termed as such. Many names have been given to these seasonally inundated wetlands, such as: vernal and ephemeral pools, rain and snow-melt pools, tinajas or rock pools, erosional depressions, geologic sinks, stock tanks, etc. (see Lang and Rogers 2002).

It would behoove all aquatic scientists and wetland regulatory authorities to: (1) consider using obligate aquatic macroinvertebrate taxa (e.g., Table 2*) as determinants of "wetlands" and "waters of the United States" since these biotic components are as equitably reliable indicators of "waters of the United States" as the three traditional "wetland" determinants (hydrology, soils, plants); and (2) standardize the plethora of terms (i.e., nomenclature) for these isolated, seasonally inundated "wetlands" (i.e., temporary waters) that provide similar "wetland" values, functions and services as have been identified for "playa lakes" and "prairie potholes" (Tiner et al. 2002). (* Additional species of these broad taxonomic groups particular to other geographic regions of the Nation should be considered for inclusion.)

We appreciate the opportunity to comment on this ANRMP. Should you have any further questions regarding our comments, please contact Mark Watson, Habitat Specialist, of my staff at (505) 476-8155 or mwatson@state.nm.us.

Sincerely,

Larry G. Bell, Director
New Mexico Department of Game and Fish

Attchs.

LGB/BKL/MLW

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CC: Joy Nicholopoulos (Ecological Services Field Supervisor, USFWS)
Ron Curry (Secretary, New Mexico Environment Department)
Tod Stevenson (Assistant Director, NMGF)
NMGF Area Chiefs
Mike Sloane (Fisheries Chief, NMGF)
Brian Lang (Conservation Services Invertebrate Biologist, NMGF)
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Letter 7 Attachment (continued)

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Table 1. (continued)

Common Name	State	Status		Isolated Aquatic Habitat Type		
		Federal	Riparian Areas	Spring-fed Wetlands	Isolated Bodies of Water	
Bald eagle	T	T	X		X	
Bell's vireo	T	-	X			
Abert's towhee	T	-	X			
Varied bunting	T	-	X			
Yellow-billed cuckoo	-	SC	X			
Arizona shrew	E	-	X			
Mexican long-nosed bat	E	E	X			
Petasco least chipmunk	E	-	X			
Arizona montane vole	E	-	X	X		
Desert bighorn sheep	E	-	X	X	X	
Least shrew	T	-	X			
Southern long-nosed bat	T	E	X			
Spotted bat	T	-	X			
Western yellow bat	T	-	X			
Southern pocket gopher	T	-	X			
Meadow jumping mouse	T	-	X	X	X	
Jaguar	Restricted	E	X			

¹ State: E=endangered, T=threatened, Ex=endangered, believed extirpated; X = extirpated.

² Federal: E = endangered; T=threatened; PEW=proposed endangered withdrawal, conservation agreement developed; C = formally designated as a candidate for listing under the Endangered Species Act; CW=candidate status withdrawn, conservation agreement developed; SC = species of concern.

Letter 7 Attachment (continued)

Table 1. Threatened and endangered wildlife species that utilize isolated aquatic habitats of New Mexico.

Common Name	State ¹ (WCA)	Status		Isolated Aquatic Habitat Type		
		Federal ² (ESA)	Riparian Areas	Spring-fed Wetlands	Isolated Bodies of Water	
Chupadera springsnail	E	E	X			
New Mexico springsnail	E	E	X			
Socorro isopod	E	E	X			
Beautiful shiner	X	-			X	
Chihuahua chub	E	T			X	
Palomas pupfish	X	-			X	
White Sands pupfish	T	CW			X	
Lowland leopard frog	E	-	X	X	X	
Chiricahua leopard frog	-	T	X	X	X	
Western boreal toad	Ex	C	X	X	X	
Great Plains narrowmouth toad	E	-			X	
Colorado River toad	T	-	X	X	X	
Piping plover	E	T			X	
Least tern	E	E	X		X	
Common ground-dove	E	-	X	X	X	
Elegant trozan	E	-	X			
Southwestern willow flycatcher	E	E	X	X	X	
Common black-hawk	T	-	X			

¹ State: E=endangered, T=threatened, Ex=endangered, believed extirpated; X = extirpated.

² Federal: E = endangered; T=threatened; PEW=proposed endangered withdrawal, conservation agreement developed; C = formally designated as a candidate for listing under the Endangered Species Act; CW=candidate status withdrawn, conservation agreement developed; SC = species of concern.

Letter 7 Attachment (continued)

Table 2. (*Continued*)

Phylum (Class)	Order	Family	Isolated Wetland Type			Comments
			Stream	Palustrine	Temporary Pools	
Insecta	Orthoptera	Acrididae	X	X	-	pygmy molecrickets
		Acrydiidae	-	-	X	grouse or pygmy locusts
	Plecoptera	-	X	-	-	stoneflies, numerous families
		-	X	-	-	water boatman, back swimmers, etc.
	Hemiptera	-	X	-	X	spongillates
		Sisyridae	X	X	-	alderflies
	Neuroptera	Sialidae	X	X	-	dobsonflies, hellgramites
		Megaloptera	X	X	-	caddisflies, numerous families
	Trichoptera	Corydalidae	X	X	-	aquatic moths, numerous families
		-	X	X	X	aquatic beetles, numerous families
	Lepidoptera	-	X	-	-	aquatic moths, numerous families
	Coleoptera	-	X	X	X	flies, gnats, midges, numerous families
		Diptera	-	X	X	flies, gnats, midges, mosquitoes, numerous families
	Hymenoptera	-	-	X	X	parasitic wasps, numerous families

Letter 7 Attachment (continued)

Table 2. Obligate aquatic macroinvertebrates that occur in "isolated waters" of New Mexico.

Phylum (Class)	Order	Family	Isolated Wetland Type			Comments
			Stream	Palustrine	Temporary Pools	
Mollusca	Veneroida	Sphaeriidae	X	X	-	peaclams, pillclams, fingernailclams
		Hydrobiidae	X	-	-	<i>Pyrrhulopsis chipadereae</i> , <i>P. neomexicana</i>
	Basommatophora	Lymnaeidae	X	X	-	pulmonate snails
		Physidae	X	X	-	pulmonate snails
	Stylommatophora	Planorbidae	X	X	X	pulmonate snails
		Ancylidae	X	-	-	freshwater limpits
		Carychiidae	X	X	-	<i>Carychium exiguum</i>
		Pupillidae	X	X	-	paludal species of <i>Gastrocopta</i> , <i>Pupilla</i> & <i>Verrugo</i>
	Crustacea (Branchiopoda)	Succineidae	X	X	-	<i>Oxylyma rehusum</i> , <i>Succinea</i> spp.
		Limacidae	X	X	-	slugs
		Polygyridae	X	X	-	<i>Limisa texasiana</i>
		Artemiidae	-	-	X	brine shrimp
	Branchinectida	Branchinectidae	-	-	X	fairy shrimp
		Chirocephalidae	-	-	X	fairy shrimp
		Streptocephalidae	-	-	X	fairy shrimp
		Triopsidae	-	-	X	fairy shrimp
Notostraca	Diplostraca	-	-	X	tadpole shrimp	
	3 families	-	-	X	clam shrimp (Lynceidae, Cyzicidae, Limnadiidae)	
	Cladocera	-	-	X	water fleas (<i>Daphnia</i> sp., etc.)	
	(Platycoptoida)	-	-	X	copepods	
(Ostracoda)	Calanoida	-	X	X	copepods	
	Cyclopoida	-	X	X	copepods	
	Harpacticoida	-	X	X	copepods	
	(Amphipoda)	Gammaridae	X	X	-	amphipods (side-swimmers, scuds)
Insecta	Decapoda	Hyalellidae	X	X	-	amphipods (side-swimmers, scuds)
		Cambaridae	X	X	-	crayfishes
	Collembola	-	X	X	X	springtails
		Ephemeroptera	-	X	-	mayflies
Odonata	-	X	-	X	dragonflies, damselflies	

Letter 8



REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

MAY 05 2005

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REGION 6 FIELD OFFICE
LAS CRUCES, NM 88005

Mr. Edwin L. Roberson
Field Manager
United States Department of the Interior
Bureau of Land Management
Las Cruces Field Office
1800 Marquess
Las Cruces, NM 88005

Dear Mr. Roberson:

In accordance with our responsibilities under Section 309 of the Clean Air Act, the National Environmental Policy Act (NEPA), and the Council on Environmental Quality Regulations (CEQ) for Implementing NEPA, the U.S. Environmental Protection Agency (EPA) Region 6 office in Dallas, Texas, has completed its review of the Draft Environmental Impact Statement (DEIS) for the McGregor Range in Southern Otero County, New Mexico. The EIS describes and analyzes alternative plans for managing public land within the boundaries of McGregor Range.

EPA classified your DEIS and proposed action as "LO," i.e., EPA has "Lack of Objections" to the proposed alternative. No specific issues were identified by EPA staff. The EIS is consistent with the CEQ regulations for implementing NEPA. Overall, potential impacts on the environmental resources are anticipated to be minimal under all alternatives. Alternative A is BLM's preferred alternative. It provides for management decisions that, relative to the No-Action Alternative, are expected to improve resource conditions. This alternative would result in more consistent management of the recreation and public access programs, and would promote public safety and resource protection on McGregor Range.

Our classification will be published in the Federal Register according to our responsibility under Section 309 of the Clean Air Act to inform the public of our views on proposed Federal actions. If you have any questions, please contact Michael Jansky of my staff at 214-665-7451 or by e-mail at jansky.michael@epa.gov for assistance.

Sincerely yours,

Rhonda M. Smith
Acting Chief, Office of Planning
and Coordination

2.0

Addenda and Corrections



2.0 ADDENDA AND CORRECTIONS

Page	Section	Column/ Table	Addenda or Correction
Summary			
S-6		Table S-1	Under the title “Summary of Potential Impacts by Resource and Alternative,” the following note has been added: “The following table highlights the considerations discussed in Chapter 4 that contribute to the selection of Alternative B as the preferred alternative.” This is to clarify that the discussion of impacts is not exhaustive, and potential impacts are more thoroughly described in Chapter 4.
S-8	Wildlife Habitat	Table S-1	The text under Alternative A column has been revised to read: “The evaluation of existing HMPs could result in changes to habitat management; however, any changes would occur in accordance with applicable laws, regulations, and current BLM policy [emphasis added to indicate location of change].” This revision is to clarify that any future alterations in management would still provide some level of resource protection.
S-9	Special Status Species	Table S-1	The first sentence of the text under Alternative A has been removed to avoid misleading statements about potential impacts, since special status species would continue to be managed in accordance with the requirements of the Endangered Species Act and other applicable statutes. The sentence had read: “The lack of surveys and potential identification of new special status species, as well as the lack of specific management directives could lead to long-term impacts on special status species.”
Chapter 2.0 – Alternatives			
2-7	2.2.7	Right	Fourth paragraph, last sentence, has been revised to read: “ Grazing unit contractors submit requests for predator control directly to the New Mexico Wildlife Service when livestock losses due to predation occur [emphasis added to indicate locations of changes].”
2-8	2.2.9	Left	The fourth sentence in the second paragraph of this section has been revised to read: “In accordance with the Military Lands Withdrawal Act of 1986, grazing is to be continued on McGregor Range and managed in accordance with FLPMA until Congress determines otherwise (BLM 1990a). ” This deletes reference to Section 608 of FLPMA.
2-13	2.3.1	Left	The second paragraph in this section has been replaced with: “BLM considered designating an area as an ACEC for black-tailed prairie dogs. BLM policy (BLM Manual 1613 and 43 CFR 1610.7-2) requires that before an ACEC can be designated, it must meet certain criteria to determine its relevance and importance and require special management. Through the evaluation, BLM determined that, although the proposed Black-tailed Prairie Dog ACEC met the relevance and importance criteria, the area does not require special management to avoid adverse effects to black-tailed prairie dog habitat on McGregor Range. Although disease has been identified as the most likely factor that may be limiting black-tailed prairie dogs populations, BLM also recognizes that surface management actions may have a very significant effect on local populations on McGregor Range. Therefore, General Management Guidance and Best Management Practices (BMPs) were established for all BLM permitted surface management activities designed to avoid adverse impacts to special status species habitats. BMPs limit surface disturbance within 0.25 miles of occupied special status species habitat, including black-tailed prairie dog colonies. In addition,

Page	Section	Column/ Table	Addenda or Correction
			research, monitoring, and other conservation planning activities will occur on McGregor Range regardless of the ACEC designation. BLM is currently engaged in a number of conservation planning activities that encompass the entire range of the black-tailed prairie dog, including supporting plague-related research for this species. Research and monitoring of the prairie dog population on McGregor Range has been conducted by Fort Bliss and periodically by BLM. As a result, the management strategy was eliminated from consideration.”
2-13	2.3.1	Right	The parentheses beginning in the last line of the left column and concluding in the first line of the right column have been changed to read: “(the most likely factors being disease and soil types)[emphasis added to indicate location of change]...”, to clarify that soil types in the Planning Area also contribute to limitations on the expansion of prairie dogs on McGregor Range.
2-16	2.3.2.1	Left	The “Special Status Species” bullet has been replaced with: “The 1990 RMPA included a decision to nominate the black-tailed prairie dog colonies in Otero County (at the time suspected to be the Tularosa subspecies) as a BLM sensitive species. In 1991 the Arizona black-tailed prairie dog was listed by the US Fish and Wildlife Service (USFWS) as a Category 2 Candidate species for consideration as a threatened or endangered species. In 1996 the USFWS changed the listing status of “Federal Candidate” species. Species formerly designated as Category 2 and 3 were no longer considered Federal Candidate Species. The USFWS subsequently reclassified Former Category 2 species as Federal “Species of Concern.” In 1996, BLM New Mexico listed the Arizona black-tailed prairie dog as BLM sensitive for incorporation in the statewide Resource Management Plan Amendment/EIS for New Mexico Standards for Public Land Health and Guidelines for Livestock Grazing Management. In order to maintain current status and to ensure the application of positive conservation measures, the black-tailed prairie dog continues to be designated as a BLM sensitive species.”
2-16	2.3.2.1	Right	Under Cultural Resources, the following sentence has been added as the fourth sentence in this paragraph: “As part of the 10-percent sample, BLM would utilize current information obtained by Fort Bliss regarding cultural sites; in particular, BLM would obtain information on those sites that have received concurrence from the State Historic Preservation Officer.”
Chapter 3.0 – Affected Environment			
3-18	3.8.1	Right	Second paragraph, following the third sentence, the following has been added: “According to New Mexico Water Quality Control Commission Regulation 6.2.3101 NMAC, ground waters with a Total Dissolved Solids concentration of 10,000 mg/L or less are protected. If there is a discharge that threatens such ground water, then abatement may be required.”
3-29	3.11.3	Left	It is noted that desert cottontails and black-tailed jackrabbits are not small game but unprotected game, according to the New Mexico Department of Game and Fish. The information on these two species is more appropriately considered as part of 3.11.4.3, Mammals, and has been removed from Section 3.11.3 and included in Section 3.11.4.3.
3-29	3.11.3	Left	It is noted that the wild turkey is not considered small game according to the New Mexico Department of Game and Fish. At times the wild turkey has been considered Big Game, but was dropped from that category in 2005. The information on this species is more appropriately considered as part of

Page	Section	Column/ Table	Addenda or Correction
			3.11.4.2, Birds, and has been removed from Section 3.11.3 and included in Section 3.11.4.2.
3-31	3.12.1	Right	Second paragraph under Section 3.12.1 has been moved to its correct location, as the first paragraph under Section 3.12.2.
3-32		Tables 3-6 and 3-7	Titles of the tables have been revised to read: "...Species that Occur or Could Occur on McGregor Range [emphasis added to indicate location of change]".
3-32	3.12.2	Table 3-6	An asterisk has been added to grama grass cactus, with the corresponding footnote: "This is the only special status plant species known to occur on McGregor Range."
3-32	3.12.2	Table 3-7	The Latin name for the Arizona black-tailed prairie dog has been corrected to <i>Cynomys ludovicianus arizonensis</i> (rather than <i>Cynomys</i>).
3-32	3.12.2	Table 3-7	The gray-banded kingsnake (<i>Lampropeltis alterna</i>) has been included as a special status wildlife species with potential to occur on McGregor Range.
3-38	3.14.4.1	Right	End of paragraph, the following has been added: "Prescribed burns are also subject to NMED regulation 20.2.65 NMAC – Smoke Management, which includes requirements for the use of prescribed fires."
3-39	3.15	Right	End of first paragraph, the following has been added: "Any discharge of hazardous materials, even those stored in de minimis quantities, is regulated by the State of Mexico Water Quality Control Commission Regulation 20.6.2.1203.A NMAC, which indicates that discharge in any quantity that may with reasonable probability injure or be detrimental to human health, animal or plant life, or property, or unreasonably interfere with the public welfare or the use of the property, requires notifications and corrective actions."
3-39	3.15	Right	End of third paragraph, the following has been added: "The authority for corrective action on the IRP sites, also known as solid waste management units (SWMUs), is provided for under the RCRA permit issued to Fort Bliss."
3-40	3.15	3-9	Table 3-9 has been revised to include further information on which sites have received a "no further action" determination. The table also now reflects which SWMUs planned for closure may require further remediation (revised table included at the end of this chapter).

Chapter 4.0 – Environmental Consequences

4-2	4.1.2	Left	The first sentence has been revised to read, "over the life of the planning period which, for the purposes of RFFA analysis, is defined as 15 to 20 years. " [Emphasis added to indicate location of change]
4-8	4.2.3.3	Right	The second sentence, 10 th line of the paragraph, has been revised to read: "likely to remain closed to mineral entry for the foreseeable future. " [Emphasis added to indicate location of change.]

Page	Section	Column/ Table	Addenda or Correction
4-21	4.2.7.5.1	Left	The sentence beginning on the 12 th line of the paragraph has been revised to read: “The evaluation of existing HMPs could result in changes to habitat management; however, any changes would occur in accordance with applicable laws, regulations, and current BLM policy. ” [Emphasis added to note location of change.] This revision is to clarify that any future alterations in management would still provide some level of resource protection.
4-22	4.2.8.4	Right	The first full sentence at the top of the right column has been revised to read: “ One sensitive plant species and 17 sensitive wildlife species are known to occur on McGregor Range, as listed in Tables 3-6 and 3-7.” [Emphasis added to note location of change, wildlife total had been incorrectly noted as 13.]
4-22	4.2.8.5.1	Right	The second sentence of the paragraph has been deleted to clarify that special status species would still receive protection in accordance with the Endangered Species Act and other applicable laws. The sentence had read, “The lack of surveys and potential identification of new special status species, as well as the lack of specific directives, could lead to long-term adverse impacts on special status species.”
4-22	4.2.8.5.1	Right	End of the last sentence of the paragraph, add: “and loggerhead shrike, by maintaining the healthy conditions of the rangelands. ” [Emphasis added to note location of change.]”
4-23	4.2.8.5.2	Left	A paragraph has been added as the third paragraph of this section stating: “In July 2005, the United States Fish and Wildlife Service concurred with the Biological Assessment for the RMPA/EIS dated January 2005. The Biological Assessment had concluded that the implementation of the preferred alternative for the RMPA may affect, is not likely to adversely affect the black-footed ferret, northern aplomado falcon, Todsen’s pennyroyal, Kuenzler’s hedgehog cactus, Sacramento prickly poppy, and the bald eagle. The Biological Assessment is available for review from the Las Cruces District Office.”
4-23	4.2.8.5.3	Left	The second sentence in this paragraph has been deleted to clarify that, even with the elimination of the ACEC, there would be resource protection on McGregor Range due to implementation of the New Mexico Standards and Guidelines and other laws and policy. The sentence had read: “The elimination of the ACEC would end habitat protections that benefit aplomado falcon and other special status species, including western burrowing owl, loggerhead shrike, and Baird’s sparrow.”
4-45	4.3.1.3	Right	The second sentence has been revised to read: “The 2004 Fire and Fuels Management Plan Amendment established statewide objectives, delineated fire management units and fire management categories, identified broad vegetation treatments, identified general restrictions on fire management practices, and determined the criteria for changing fire management units” [Emphasis added to identify location of change.] The final sentence of this paragraph has been removed; it had read: “The Proposed RMPA/EA was released in ...signed on July 2, 2004.”

Appendix F – Best Management Practices

F-1	-	Right	Under the heading “BLM Best Management Practices, the word “may” has been deleted from the first sentence, indicating BMPs will apply to any BLM-permitted projects on McGregor Range.
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Page	Section	Column/ Table	Addenda or Correction
F-2	-	Left	The second sentence on the page has been revised to read: “ Mandatory management practices specific to wildlife and vegetation resources include the following.” [Emphasis added to identify location of change.]
F-2	-	Left	The last two sentences in the first bullet of this column have been revised to read: “All active raptor nests will be avoided by the required distances described under the Range Improvement and Right-of-Way Project Location section. An “active raptor nest” is defined as any raptor or corvid nest being occupied during the current nesting season.” [Emphasis added to identify location of change.]
F-2	-	Left	The last bullet on this page has been reworded to read: “All BLM-permitted projects will be located at least 0.25 mile from occupied special status species habitat (including but not limited to, black-tailed prairie dog colonies), unless impacts are adequately mitigated.”

TABLE 3-9 (Revised)
STATUS AND LOCATION OF IRP AND WASTE STORAGE SITES ON MCGREGOR RANGE

Site	Location	Status¹
Closed rubble pit/sanitary landfill	McGregor Range Camp	RCRA investigation conducted in 2002; no leachate developing, no hazardous waste. Site has received a no further action determination and can be closed.
Former fire-fighting training Area	McGregor Range Camp	RCRA investigation completed in 1999. No further action petition submitted to NMED in 2000 and approved.
Former storage area for drums of waste	McGregor Range Camp	RCRA investigation completed in 1999. No further action petition submitted to NMED in 2000 and approved.
Borrow pit excavation site	West of McGregor Range Camp	One orphaned drum found and removed; 24,000 cubic yards of soil removed—no more drums/contamination found. RCRA investigation completed in 1999. No further action petition submitted to NMED in 2000.
Closed open detonation area	McGregor Range Camp	Follow-up RCRA facility investigation conducted in 2002 to confirm 1997 results (no releases above screening levels). Site can be closed.
90-day storage site	McGregor Range Camp	Active. Used as accumulation point for wastes generated during large military training. Site within fenced compound.
McGregor oxidation pond	McGregor Range Camp	Active oxidation pond. Previous investigation confirms no human health risk. A follow-on investigation in 2003 will investigate if there is an ecological risk. Site fenced and signed.
Meyer oxidation pond	Meyer Range	Active oxidation pond. RCRA investigation completed in 1999. No further action petition submitted to NMED in 2000. Site fenced and signed.

SOURCE: Electronic mail communication from Directorate of Environment, Fort Bliss, to BLM, February 12, 2003.

¹Those sites for which a petition for a no further action determination has been submitted may still require further investigation or remediation.

LIST OF ABBREVIATIONS AND ACRONYMS

ACEC	area of critical environmental concern	MOU	Memorandum of Understanding
BLM	Bureau of Land Management	MSA	Management Situation Analysis
BTPD	black-tailed prairie dogs	NEPA	National Environmental Policy Act
CFR	Code of Federal Regulations	NMAC	New Mexico Administrative Code
EIS	Environmental Impact Statement	NMED	New Mexico Environment Department
FLPMA	Federal Land Policy and Management Act	PL	Public Law
HMP	Habitat Management Plan	RCRA	Resource Conservation and Recovery Act
ICRMP	Integrated Cultural Resource Management Plan	RMP	Resource Management Plan
IRP	Installation Restoration Program	RMPA	Resource Management Plan Amendment
LEIS	Legislative Environmental Impact Statement	SWMU	solid waste management unit
		USFWS	U.S. Fish and Wildlife Service
		UXO	unexploded ordnance