

## **BLM's Response to Governor Richardson's Consistency Review**

### **II-A. The BLM's PRMPA/FEIS is consistent with Executive Policy and NAFTA-Sponsored Plan for Chihuahuan Desert Ecoregion Conservation (Page 6)**

The PRMPA/FEIS is consistent with the Federal Land Policy and Management Act (FLPMA) (PRMPA/FEIS, pages 1-7 to 1-8). The NAFTA sponsored plan for Chihuahuan Desert Ecoregion Conservation (CDEC), is not law or Federal policy nor does it supersede FLPMA. The CDEC is a well prepared document that assesses the current condition of Chihuahuan desert ecosystems and addresses conservation measures that should be taken throughout the ecosystem but it does not address the Bureau's responsibilities under FLPMA.

The biological assessment prepared for the PRMPA/FEIS stated that "aplomado habitat within Sierra and Otero Counties is currently considered unoccupied **potential** habitat..." This designation as potential should not be interpreted as suitable (BA Consultation # 2-22-99-I-109A). Since 1917 there have been five sightings (one unconfirmed) of individual birds in Otero County. One of these sightings was near Alamogordo, two were on McGregor Range and two were on Otero Mesa off of McGregor Range (one of which was unconfirmed). No nesting has been documented nor have potential breeding pairs been observed in this area. However, because the BLM is concerned about protecting potential Aplomado Falcon habitat for the future, the PRMPA/FEIS identified 27,696 acres of what was considered the best potential falcon habitat as withheld from leasing within Otero Mesa (PRMPA/FEIS, page 2-29).

### **II-B. & C. The BLM's PRMPA/FEIS is consistent with the New Mexico's Wildlife Conservation Act, NMSA 1978, sections 17-2-37 through 17-2-46 (Page 12) and with the New Mexico Game Management Plans/Agreements. (Page 13)**

While the BLM believes the PRMPA/FEIS is consistent with State plans and policies, we are proposing to close an additional 35,790 acres that you recommended be closed to leasing and development as described in the Supplement to the FEIS. We would be closing the best un-fragmented portions of the Chihuahuan Desert grassland. The PRMPA/FEIS was developed within the multiple use and sustained yield concept as directed by FLPMA and the related Biological Assessment for T&E species addresses issues associated with biota and habitats found throughout the planning area. The Governor's consistency report states that the BLM completely ignored the policy of protecting large areas to avoid fragmentation. Of particular concern are the Otero Mesa grasslands. The PRMPA/FEIS identifies strict limits on surface disturbance in grassland areas. The PRMPA/EIS limits surface disturbance to 5 percent of the leasehold on the Otero Mesa grassland as well as the Nutt grassland (PRMPA/FEIS, pages 2-28 to 2-29).

In addition, an important aspect regarding habitat fragmentation is the recently leased parcels of State and private lands that are not under any control of the BLM. These areas

would not be managed under the PRMPA/FEIS and do not have the strict disturbance standards required on Federal oil and gas leases.

The RMPA anticipates very little disturbance over the life of the plan. The projected disturbance is not likely to affect the State's efforts to reestablish and maintain native species. BLM's best management practices identified in the PRMPA/FEIS require re-vegetation with native species. On the few well pads that have been abandoned in Sierra and Otero Counties over the last 50+ years, there is evidence that over time, natural restoration can and will occur. Although abandoned sites have shown that they can reclaim themselves, BLM will not wait for natural restoration, and the Proposed Plan clearly requires that reclamation occur quickly. BLM will not release the operators from their reclamation requirement until native vegetation has been successfully established on abandoned well pads and roads. A reclamation plan describes the process to be used to restore the surface to a stable and functioning condition, as well as describes the native plant seeds that will be used in the reseeded (PRMPA/FEIS, pages B-1 to B-11).

Although BLM recognizes that rehabilitation will be difficult in the Chihuahuan Desert, the PRMPA states "Reclamation will not be considered successful until ground cover with desired species is showing signs of stable establishment. Establishment would be indicated by the existence of healthy, mature annuals and perennials in the correct density and composition, as compared to the seed mixture established by the Authorized Officer" (PRMPA/FEIS, page B-11).

The Governor's consistency review also identifies inconsistency with the New Mexico Department of Game and Fish (NMDGF) August 2003 Plan for the Recovery of Desert Bighorn Sheep. The NMDGF plan does not mention the Cornudas or Brokeoff Mountains specifically as historical or unoccupied habitat. This plan does not include these two mountains as potential for meta-population objectives. The Caballo Mountains and Guadalupe Mountains are both mentioned as unoccupied historic sheep habitat. For several reasons, neither is proposed for transplants at this time. The Caballo Mountains have issues related to very strong previous public opposition. The Guadalupe Mountains have domestic and Barbary sheep that preclude reintroduction of native bighorn sheep.

#### **II-D. The BLM's PRMPA/FEIS is consistent with the Noxious Weed Management Act, NMSA 1978, Section 76-7D-1 et.seq. (Page 15)**

The BLM's PRMPA/FEIS is consistent with the Noxious Weed Management Act, NMSA 1978, Section 76-7D-1 et seq. The example of the San Juan Basin and Permian Basin relates to areas that were developed (pre 1970's) before the Noxious Weed Management Act. Both the BLM and Oil & Gas operators in the San Juan Basin and Permian Basin are very active in the prevention and control of Noxious Weeds in those areas. BLM will require the operators to develop provisions to prevent the introduction of Noxious Weeds into developed sites and also control any infestations that happened to occur, recognizing that prevention efforts may not be fool proof. We agree with the Governors statement that the companies must be held responsible for introduction of

invasive species into areas that they have disturbed or used. The goal is to not have any invasive species introduced into these sites.

Below are some of the excerpts from the plan.

PRMPA, Page B-9, Noxious Weed Control

-The operator must include provisions for noxious weed prevention and treatment in their Applications for Permit to Drill (APDs). At every onsite review for each well location APD, the BLM conducts an inventory to assess the risk of noxious weeds. The assessment is captured for the site specific National Environmental Policy Act (NEPA) analysis, and appropriate conditions of approval are defined. These may include removal of weed sources that could be picked up and transported by passing vehicles; limit seed transport into relatively weed-free areas, and/or retain shade to suppress weeds.

PRMPA, Page B-10 to B-11, Abandonment and Reclamation

- A reclamation plan will be part of the APDs. Additional reclamation measures may be required based on the conditions existing at the time of abandonment, and included as part of the conditions of approval of the Notice of Intent to Abandon. Only after suitable reclamation is completed, with stability of the disturbed areas, will the Authorized Officer release the liability obligations of the operator. The operator's bond may not be released prior to satisfactory reclamation as determined by the BLM. This determination often takes into account local practices, and input from BLM resource specialists.
- All fill material sources will be free of noxious weeds.
- All seed and plant mulch materials will be free of noxious weed seeds.

PRMPA, Page 2-9.

- All NEPA documents must include an analysis of the potential for weed spread and establishment as an environmental consequence of actions. Measures and stipulations to minimize or avoid the spread of weeds must be provided. Executive Order (E.O.) 13112 states, in part, that no Federal agency shall authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk or harm will be taken in conjunction with the actions. In meeting BLM's management responsibilities under E.O. 13112, BLM is now requiring that all NEPA documents address the environmental effects of activities funded, authorized, or carried out by the BLM that would potentially result in the introduction of a non-native invasive plant or animal species (Instruction Memorandum No. 99-178). Invasive, non-native species of plants (especially weeds) are a critical element that BLM is required to consider thoroughly in all environmental assessments (EAs) and EISs. BLM's core mission is to maintain or improve the health of the land. One of the greatest negative impacts on the maintenance of healthy vegetative communities and to the restoration of

less than healthy communities is the rapid spread of invasive, non-native weeds that has occurred from demands placed on public lands from all users across the west. These invasive weeds are very aggressive and have the ability to out-compete native plant communities. Severe, extensive and often permanent degradation frequently results.

While it is very important to control existing infestations, the most effective and economical weed management technique is to prevent weed spread. Weeds can easily be spread by a wide variety of activities BLM conducts or authorizes, and the broad spectrum of public land users. Furthermore, weeds frequently thrive when land is disturbed. Therefore, there are great opportunities to reduce the spread of weeds by addressing potential weed spread and/or land disturbance in the NEPA process.

#### **II-E. The BLM's PRMPA/FEIS is consistent with the State Water Plan (Page 16)**

The RMPA is consistent with the State Water Plan. Although the State Water Plan came out after the PRMPA/FEIS was finalized, BLM has not identified any inconsistencies between the two plans. The BLM has incorporated all the comments and recommendations that were provided to us by the New Mexico Environment Department, during this planning effort.

The Proposed Plan recognizes the importance of the limited water resource and identifies only a very limited amount of water would be used as a result of exploration and development activities. The impacts to the region's water quantity and quality, regarding both ground and surface water, are clearly identified in the FEIS, where BLM has analyzed all known impacts and quantifies them where possible. (PRMPA/FEIS, pages 4-13 to 4-22).

In addition, BLM has clearly recognized that all operators will be subject to relevant NM State permitting and authority, relating to water quality and quantity (PRMPA/FEIS, pages 1-9 to 1-11, and 2-5 to 2-7). Standard procedure for Standard Lease Terms and Conditions (SLTC) well completion includes the requirement to properly cement casing to protect ground water quality. Whether it's SLTC, No Surface Occupancy (NSO) or Controlled Surface Use (CSU), BLM will still obtain protection of surface water and shallow ground water resources by requiring lined reserve pits.

#### **II-F. The BLM's PRMPA/FEIS is consistent with the Water Quality Control Commission (WQCC) Regulations (Page 21)**

The PRMPA is consistent with Water Quality Control Commission (WQCC) Regulations and clearly states that the appropriate time to address this is at the site specific project stage, such as an Application for Permit to Drill (APD). Each APD is examined by a team of environmental specialists (including a water resource specialist) during the EA process. An EA is prepared for each of the applications. The EA evaluates the existing environment and determines potential impacts of the proposal to all resources, including surface water and groundwater. Conditions of Approval, Best Management Practices, and mitigation measures are attached in order to minimize potential impacts to surface

natural resources, including surface waters. In addition, petroleum engineers and geologists review the proposal for development of a “down hole” drilling program for each permitted well that provide for aquifer protection. The minimum standards for proper down hole mud program, casing and cementing design, and well control requirements, have been developed as a national standard for Federal mineral activities since the Onshore Oil and Gas Order #2 was implemented in 1988. Appropriate additional measures, if necessary to protect and isolate formations, can only be developed based on the site-specific data for each well location. The plans for plugging and abandonment must be approved prior to completion of the drilling operation. Guidelines are also developed for final reclamation and rehabilitation of the surface (PRMPA/FEIS, pages B-1 to B-11). It is important to keep in mind that all operators will also be subject to relevant State permits and rules related to water quality.

#### **II-G. The BLM’s PRMPA/FEIS is consistent with Rules Proposed Pursuant to the Oil Conservation Division’s Authority Under the Oil and Gas Act (Page 21)**

The PRMPA is consistent with rules in place by the Oil Conservations Division (OCD) Authority under the Oil and Gas Act and we will work with OCD as new State rules are finalized to make sure we adhere to them. At the time of the printing of the PRMPA the State rules were not final. Also, the BLM’s PRMPA/FEIS was prepared prior to the issuance of the Executive Order concerning the use of pits at Otero Mesa.

The BLM recognizes the State of New Mexico/Oil Conservation Division’s authority on the disposition of non-domestic wastes, in this case water produced from oil and gas operations (PRMPA/FEIS, pages 4-13 to 4-16). It is Bureau policy to adhere to the most stringent policy, as appropriate, for the use of pits or disposal of produced water in order to protect both surface and subsurface water as well as other resources.

Regarding Pit Rules, BLM is required to follow the minimum national standards for disposal of produced water defined by Onshore Oil and Gas Order #7. At the APD permitting stage the Authorized Officer reviews the industry application and either approves or modifies the requirements according to the analysis of site specific data. The analysis provides guidance for the appropriate mitigating measures and Conditions of Approval, which may include normally lining pits to employing portable steel pits. The analysis must be comprehensive enough to assess unintended consequences, such as additional truck traffic, increased drilling times, and sites for disposal of cuttings if steel pits are mandated. The operator’s APD will reflect the State’s new pit rules and guidelines, including securing the necessary permit approval when they are assigned the American Petroleum Institute (API) well number.

Regarding Injection Rules, operators are required to notify the Authorized Officer of their intent to dispose of any produced water. During the life of a field, wells may be converted to injection after depleting the nearby reservoir by drainage. Candidate wells undergo a rigorous review by both the State with primacy, for the Underground Injection Control (UIC) permit, and the BLM Authorized Officer. The Authorized Officer must ensure that the accepted UIC permit contains the necessary supporting documentation to

satisfy all applicable BLM statutory responsibilities (including but not limited to drilling safety, down hole integrity, and protection of mineral and surface resources) (PRMPA/FEIS, pages 4-16 to 4-17).

**II-H. The BLM's PRMPA/FEIS is consistent with the New Mexico Cultural Properties Act, National Historic Preservation Act, American Indian Religious Freedom Act, the Archaeological Resources Protection Act, and BLM's own Best Management Practices. (Pages 22-28)**

We believe we are consistent with the New Mexico Cultural Properties Act, National Historic Preservation Act, American Indian Religious Freedom Act, the Archaeological Resources Protection Act, and BLM's own Best Management Practices, but will be contacting the five additional tribes as a part of the Supplement to the FEIS comment period. The Las Cruces Field Office (LCFO) contacted the five Native American tribes that have historical ties to the area of concern and that have provided input in the past regarding proposed actions within the Las Cruces Field Office's area of jurisdiction. Not all tribes listed on the Advisory Council on Historic Preservation's website have expressed a desire to be consulted regarding the PRMPA and FEIS for Otero Mesa or have a past history of expressing any desire to be consulted regarding BLM undertakings in the area of the Las Cruces Field Office. The BLM sought to consult with those tribes that have historically expressed an interest in consulting regarding planned undertakings in this region (PRMPA/FEIS, pages 5-1 to 5-2).

In May of 1999, letters were sent to Ft. Sill Apache, Mescalero Apache, San Carlos Apache, Ysleta del Sur, and White Mountain Apache. These letters describe the most likely scenario for development and offer the tribes the opportunity to raise issues pertaining to resources and places with special traditional cultural significance. It provided an opportunity for tribes to raise such cultural resource issues as AIRFA, traditional cultural properties (TCPs), and sacred sites.

No response was received from either the Ft. Sill or White Mountain Apache and BLM interpreted the lack of response to mean the two tribes had no issue with the RMPA in Sierra and Otero County. The response from the other 3 tribes was primarily to continue to be informed of the planning effort.

The Advisory Council of Historic Places (ACHP) list of tribes by county, indicates there are five additional tribes with whom we should have consulted. The list of tribes with whom we consult has been based more on the document entitled Cultural Affiliations: Prehistoric Cultural Affiliations of Southwestern Indian Tribes (USDA-Forest Service, April 1996).

The Forest Service document states that the tribes who lived in Otero and Sierra Counties have no claimed cultural affiliations. Using this document and other references as our guide, the BLM has chosen to consult with only the tribes we know or believe inhabited the area. Those tribes are the Mescalero Apache, San Carlos Apache, White Mountain Apache, Fort Sill Apache, and the Ysleta del Sur.

In the near future, BLM will be sending consultation letters and making personal contacts with the following tribes: Comanche Indian Tribe, Isleta Pueblo, Kiowa Tribe, Hopi Tribe, and Navajo Nation. These are the five tribes found on the ACHP list with whom BLM has yet to make contact.

In 2002, a mediator visited both the Ysleta del Sur and the Mescalero Apache tribes. Based on the mediator's visits, the BLM contacted both tribes. After Ysleta del Sur responded, the BLM conducted several face-to-face meetings with their attorney, a hired ethnographer, and their War Chief. The proposal was explained and feedback sought regarding possible impacts to the tribe or tribal interests. However, input from Ysleta del Sur was limited to the tribe providing a historical report to the BLM. No specific feedback was ever provided from the tribe regarding impacts of the proposed action.

The Mescalero Apache never responded to BLM telephone and written contacts that requested feedback on the proposal. Numerous telephone messages to the Mescalero went unanswered. They were specifically asked to attend a public meeting held in Ruidoso, close to their tribal headquarters, where possible development scenarios were discussed. However, the tribe did not respond; nor did they attend this public meeting.

While most of the consultation with the tribes occurred from 1999 to 2002, it should be pointed out that New Mexico BLM recently issued Instruction Memorandum (IM) No. 2004-035 on 3/1/04. This IM discusses strategies to improve and combine the Bureau's obligations to consult with tribes regarding traditional cultural properties under the National Historic Preservation Act and sacred sites under E.O. 13007. The Governor recommends that the BLM develop procedures for reasonable notification and recommends integrating these two processes. That is exactly what the IM does. Once new tracts are considered for leasing on Otero Mesa, the procedures contained in the IM (which was drafted with input from the New Mexico State Historic Preservation Officer) will be followed. It is not true, as asserted by your letter, that identification and consultation will occur only after the BLM sells a lease. The IM clearly establishes opportunities for tribes to share information about TCPs or sacred sites before a lease is sold. The BLM can drop parcels from sale or attach appropriate stipulations to protect TCPs or sacred sites; steps when this can be done prior to the actual lease sale are identified in the IM.

36 CFR 800.4(b)(2) provides that "(w)here the alternatives under consideration consist of ...large land areas,... the agency official may use a phased process to conduct identification and evaluation efforts." The IM established numerous steps in the consultation process for input from tribes. Identification of TCPs, sacred sites, and historic properties can and will be accomplished at the appropriate stage of project implementation.

BLM is reminded that our compliance with the Archaeological Resources Protection Act (ARPA) and the Native American Graves Protection and Repatriation Act (NAGPRA) would both benefit from early consultation. ARPA does not actually require

“consultation.” It requires “notification” of tribes if, in the opinion of the federal land manager, issuance of an excavation permit may result in harm to or destruction of any religious or cultural site. Such notification is site specific and relates to a particular plan of testing or excavation at a particular site. We know of no way to carry out such notifications ahead of time before impacts to specific, known archeological resources are determined.

While it is true that NAGPRA notifications and consultations required under Section 3(c) and (d) could be facilitated by agreements executed ahead of time regarding analyses and treatment of NAGPRA cultural items during excavations, such plans are not required. It has been the Las Cruces Field Office experience that chances of encountering cultural items covered by NAGPRA are very low; therefore, the BLM would prefer to notify tribes on a case by case basis when excavations are proposed, at which point, the BLM will combine its ARPA and NAGPRA notification responsibilities.

The BLM will require that Otero Mesa be developed by units (PRMPA/FEIS, page 2-27). These larger geographical areas cross lease boundaries and their use will minimize duplicative facilities and ground disturbance. Unitization also provides an opportunity for the BLM to encourage operators to conduct large-scale cultural resource inventories rather than an inventory of each individual undertaking.

The BLM recognizes the advantages of block surveys and is working on a program that may eventually be instituted. The program will enable these recommendations to be funded. It should be pointed out that the reason so many tracts of land were re-surveyed and the same sites were re-recorded in the Loco Hills area was that it is an area of active sand dunes where ground visibility is constantly shifting. For this reason, areas that had been surveyed adequately five or six years prior might need to be re-examined due to the fact that an entirely different ground surface was visible in the project area. Because Otero Mesa is not comprised of similar active sand dunes, a similar level of resurvey will not occur, even in the absence of block surveys. The BLM agrees that regional research designs are critically important in more effective planning for oil and gas development. It is for this reason that the BLM has provided substantial funding to the NM SHPO to develop such a research design for southeast New Mexico. After six years, this SHPO led effort is still not complete and the BLM will have to complete the design with additional BLM contract dollars this fiscal year.

The BLM agrees that identification of historic trails in their larger cultural landscapes is desirable. The documentation of historic trails has been and will continue to be a high priority.

**II-I. The BLM’s Changes in the PRMPA/FEIS Alternative A (Modified) are Not Beyond the DEIS’ Scope and Analysis and are consistent with the National Environmental Policy Act and BLM Regulations Providing for State Review and Comment. (Page 28)**



The BLM has followed existing law, policy, and guidance in the development of the PRMPA/FEIS, for involving the public as well as State, Federal and local governments, in the development of the PRMPA/FEIS. This is done pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, Council on Environmental Quality (CEQ) regulations (40CFR 1500-1508), and the Federal Land Policy and Management Act (FLPMA) of 1976 (PRMPA/FEIS, pages 5-1 to 5-7). Because of your comments expressed in your letter, as well as other public concern, BLM has prepared a Supplement to the FEIS for the Proposed RMPA for Federal Fluid Mineral Leasing and Development in Sierra and Otero Counties. A 30-day period is being provided to allow the public an opportunity to comment on the Supplement to the FEIS and the analysis of Alternative A Modified as presented in the Proposed RMPA and FEIS.

In October 1998, a Notice of Intent (NOI) was published in the Federal Register and a Scoping Notice was mailed to approximately 700 separate individuals, interested organizations, tribes, and agencies. The purpose was to inform interested parties of BLM's intent to amend the White Sands Resource Management Plan regarding decisions for Federal fluid minerals leasing and development in Sierra and Otero County. This notification clearly identified the planning criteria that BLM would use to guide the development of the Resource Management Plan Amendment (RMPA)/Environmental Impact Statement (EIS); the anticipated issues and management concerns to be addressed and to solicit input and involvement from all interested parties in process.

Scoping meetings were held in November 1998 and both oral and written comments were received. Based on this input, the BLM developed the Draft RMPA/EIS which was mailed to the public for review and comment in October 2000. After the Draft EIS was issued, a very lengthy public review and discussion process ensued which included over 7 months of formal public comment period, 6 public hearings, and an additional 2 ½ years of discussions with individuals, groups, and local, State, and Federal agencies. The BLM developed responses to those comments provided, and based on those comments formulated the Proposed RMPA/Final EIS. In the PRMPA/FEIS, BLM proposed to modify the Alternative A from the Draft RMPA/EIS.

Due to the comments on the draft that were specific to the grassland stipulation, the BLM determined that there was a need to re-evaluate the NSO stipulation for the Otero Mesa and Nutt Grassland areas, and consider a different approach that would similarly meet our resource objectives. Our objective was to protect the unique grassland area while still allowing oil and gas development to proceed in a manner that was environmentally responsible. The BLM determined the grassland areas would be protected utilizing a 5 percent maximum surface disturbance stipulation. This stipulation complied with BLM guidance and case law to seek the least restrictive stipulation necessary to protect important resources such as grassland areas. During the review and analysis of the APD, including on-site visit at the well locations, we further evaluate additional measures to provide appropriate protection for the specific location. We discussed this in a number of meetings with environmental groups, oil and gas companies, local ranchers, Sierra and Otero County representatives, NM State Agencies, and representatives of the congressional delegation. This new stipulation was described and discussed at numerous

NM Resource Advisory Council meetings, which included a representative of the Lt. Governor's Office. The State of New Mexico was included at all required points in the process as well as having essential input into the discussions of proposed modifications to the Alternative A.

#### **II-J. The BLM PRMPA/FEIS consistency review process is consistent with the Governor's policy on Government-to-Government Relations with Tribes. (Page 29)**

Not all tribes listed on the Advisory Council on Historic Preservation's website have expressed a desire to be consulted regarding the PRMPA and FEIS for Otero Mesa or have a past history of expressing any desire to be contacted regarding BLM activities in the area of the Las Cruces Field Office. The BLM sought to contact those tribes that have historically expressed an interest in consulting, regarding planned activities in this region (PRMPA/FEIS, pages 5-1 to 5-2).

This point has been further addressed in more detail, in II-I. above. Also by regulation, while a state is allowed a consistency review, there is no regulation mandating that tribes receive the same review.

#### **II-K. Alternative Energy Policy (Page 29)**

The BLM believes the PRMPA is consistent with the Governor's Alternative Agency Policy, which identifies that 95 percent of NM's energy needs will come from traditional sources, which this project will help provide. The PRMPA is only intended to address which Federal lands should be made available for leasing and identifies the necessary resource management that should apply to those leases. This PRMPA does not encourage or discourage the development of alternative energy in New Mexico.

New Mexico's Alternative Energy Policy calls for a 5 percent contribution from alternative energy sources. Presumably, the other 95 percent will come from traditional sources such as oil and gas. The limited development of Otero Mesa for oil and gas is consistent with the State's Policy in that it will provide a source for oil and gas in an environmentally responsible manner.

### **Governor's Proposed Alternative**

#### **III. A. Grassland /Habitat Protections (Page 32)**

BLM has carefully considered a wide range of alternatives in the DEIS and FEIS. BLM has received extensive public comment on both documents and has given full review to the points raised. The alternative titled "Governor Richardson's Proposed Alternative" identifies protection measures for the areas resource values including: the Chihuahuan Desert ecoregion, significant ground water resources and cultural and historical resources such as the Butterfield Trail. The proposed alternative includes areas that are closed to oil and gas leasing, areas that prohibit surface occupancy by oil and gas production

operations, areas that are open to oil and gas drilling with stipulations and areas that are open for oil and gas drilling under standard lease terms and conditions.

The proposals identified in the Governor's Alternative have been considered in either the DEIS or the FEIS where BLM identified extensive environmental protection measures for the planning area's natural resource values.

Specific Responses to the Governor's Alternative

### **III A. Grassland Habitat Protections**

#### **1. Closed To Leasing**

BLM considered a range of alternatives in the DEIS. Under all alternatives certain lands are closed to leasing and the amount of land nondiscretionarily closed to leasing remains constant under each alternative. The amount of land discretionarily closed to leasing increases from less than 1 percent (17,600 acres) under the no action alternative to 14 percent under Alternative B.

In the FEIS BLM proposes discretionarily closing 43,000 acres and the Supplement to the FEIS proposes an additional 35,790 acres in three core grassland areas to leasing. Closure of the core grassland areas was recommended in the Governor's Consistency Review and BLM is now incorporating this proposed closure into the PRMPA.

The Governor proposes additional "closed to leasing" areas primarily in the Brokeoff/Akalai Lakes region of Southern Otero County. BLM considered an alternative of "No New Leasing for Fluid Minerals Development" in the DEIS. The alternative was eliminated from further analysis because closing the planning area to new mineral leasing would eliminate mineral development and production in areas where conflict does not exist, thereby placing unreasonable restrictions on such activities. For this reason a broad scale "No Leasing" alternative was considered but eliminated from detailed analysis.

#### **2. No Surface Occupancy**

In the Draft EIS (pages 2-25 and A-VI-14), BLM indicated that within the two Desert Grassland Habitat areas, leases would be stipulated with No Surface Occupancy, except within 150 meters of existing roads. The stated objective was to protect portions of the remaining desert grassland community by minimizing habitat fragmentation.

The stipulation in the Draft RMPA would have limited new disturbances to 300-meter zones along existing roads and trails. This would have required exploration to be conducted primarily by directional drilling. Comments received from many, including a recognized subject matter expert from the New Mexico Bureau of Mines and Mineral Resources (NMBMMR) were very critical of applying this kind of stipulation for these large grassland areas. Specifically the Principal Senior Petroleum Geologist at the NMBMMR stated,

*In frontier exploration areas such as Sierra and Otero Counties, exploration and initial development must be accomplished through the drilling of vertical and not horizontal wells. The reason for this is quite clear. There are numerous potential pay zones in the lower, middle, and upper Paleozoic sections throughout the RMPA area. A horizontal well cannot adequately evaluate and test any potential pay zone except for the single zone it is intended for...* (Proposed RMPA, Vol. II, page G-I-45).

Due to these comments on the Draft that were specific to the grassland stipulation, the BLM determined there was a need to re-evaluate the No Surface Occupancy stipulation, and consider a different approach that would similarly meet the resource objectives. The objective was to protect the unique grassland area while still allowing oil and gas development to proceed in a manner that was environmentally responsible. BLM analysis indicates the grassland areas could be adequately protected utilizing a 5 percent maximum surface disturbance stipulation (Final EIS, page 4-31). This stipulation complied with BLM guidance (H-1624-1) to seek the least restrictive stipulation necessary to protect important resources such as grassland areas. In addition, the New Mexico Resource Advisory Council suggested BLM consider including a requirement for unitization as a part of the 5 percent stipulation. Based on further evaluation of that suggestion, the 5 percent and unitization stipulation for the Otero Mesa and Nutt grasslands was incorporated into the Proposed RMPA/Final EIS.

A unique feature of the unitization requirement is that it requires greater planning and coordination of development activities on the part of the oil and gas industry. As already discussed, this would result in less surface disturbance because BLM would be working with one unit operator rather than numerous lease holders, and therefore, avoid the disturbance that comes from the duplication of wells, pipelines, roads, etc.

In addition to the combined 5 percent and unitization stipulation, the Supplement to the Proposed Resource Management Plan Amendment/ Final EIS proposes closing 28,000 acres in the Otero Mesa and 8,000 acres in the Nutt grassland to leasing. These areas were identified because they contain the best potential Aplomado Falcon habitat within the two grassland areas. These areas were identified as a result of Section 7 Consultation efforts with the U.S. Fish and Wildlife Service.

### 3. Open to Leasing with Stipulations

As a part of the Governor's Alternative is a list of 12 stipulations that the Governor proposes to apply to all areas leased with surface occupancy. These stipulations are addressed individually below. In general, it is BLM policy that the use of stipulations should be considered appropriate only when they are both necessary and justifiable. BLM considers a stipulation justified if there are resources, values, or users present that (1) cannot coexist with fluid minerals operations, or (2) cannot be adequately managed or accommodated on other lands for the duration of the operation, or (3) would provide greater benefits to the public than those of fluid minerals operations.

Some of these proposed stipulations are not appropriate as a stipulation (1, 2, 5, 11, and 12). Others (3, 6, 7, 8, 9, and 10), are either something that we have identified in the Best Management Practices or would be more appropriately applied as Conditions of Approval, at the site specific stage.

Stipulations are not necessary when the BLM has the authority, under standard lease terms and BLM regulations, to require the measure at the permitting stage. BLM will require these measures as conditions of approval when review of a site-specific proposal indicates that they are needed and that they would be the most effective means of mitigating unacceptable environmental effects.

**Stipulation 1. All drilling operations must be timed to avoid windy seasons and complete before wet seasons and avoid calving/fawning seasons.**

This stipulation suggests a timing limit for disturbance would be applied to the entire planning area to a short window of time to avoid an extensive windy season, normal monsoon seasons and other unspecified times that encompass livestock calving seasons and late winter through spring seasons for deer and antelope fawning/kidding. Although this is not appropriate as a stipulation, when site-specific conditions do warrant it, BLM can apply timing restrictions to operations that mitigate resource concerns.

**Stipulation 2. Drilling shall be limited to one surface location per 1440 acres.**

Depending on where the single well pad is located with respect to the well proration units, this stipulation would require that each location have six to ten wells, directionally drilled to distances ranging from 660 feet to 3,800 feet. It seems that the author of this proposed stipulation derived the acreage limit by using a prescription that calls for only one location every other Section. In other words, the well pads would be no closer than two miles apart. Because directional drilling is not a viable solution for Otero Mesa to begin with, (due to the shallow nature of the potential reservoir and down-hole caving) this stipulation would not be viable, and therefore it is not appropriate as a stipulation.

**Stipulation 3. Existing roads shall be used to the maximum extent possible.**

The BLM encourages this and can continue to do so, without making it a stipulation. In addition, most companies also desire to do this, as it reduces the amount of new road construction needed, and therefore the costs associated with development are reduced. Furthermore, the BLM's Proposed Plan has identified this as a part of the Best Management Practices (FEIS, Page B-5). Therefore BLM does not find this to be an appropriate stipulation.

**Stipulation 4. Federal Exploratory Units must be formed prior to commencement of operations.**

This stipulation is exactly what BLM has analyzed and proposed for the Chihuahuan desert grasslands, in the RMPA, as a way of minimizing surface disturbances in those

areas. These units will foster orderly development with minimal taxing of the resources. Although it is an appropriate stipulation for Otero Mesa, BLM does not believe that the same level of mitigation is appropriate elsewhere.

**Stipulation 5. Compression facilities shall be consolidated to the maximum extent feasible. All compressors and pump motors shall be electric in order to reduce noise. Power lines shall be installed in underground conduits.**

Although the first part of the stipulation is not specific, BLM believes that Industry will “consolidate facilities” wherever possible because it makes economic sense. Restricting prime movers to electricity and requiring buried power supply lines, where economically possible, is feasible, but the requirement to do so would be the result of BLM’s analysis of a site-specific proposal, and therefore it is not appropriate as a stipulation.

**Stipulation 6. Re-vegetation with native plant species or restoration of drilling pads shall commence as soon as practicable...**

This proposal was included in the Proposed Plan and there are a number of Best Management Practices that address this proposed stipulation, and where necessary other parts would be appropriately incorporated into conditions of approval at the application for permit to drill stage. BLM incorporates reclamation requirements at the condition of approval stage as well, and therefore this would not be an appropriate stipulation.

**Stipulation 7. All equipment shall be cleaned prior to moving in order to prevent the spread of noxious weeds ...**

BLM has routinely required the cleaning of equipment prior to entry into areas proposed for disturbance. This is a requirement that BLM applies as a condition of approval and will continue to do so. Although this same level of protection is not afforded on State lands or on other public land user traffic (hunters, bird watchers, solitude-seekers), the practice is effective for oil and gas construction activities. As this mitigation is more appropriately applied as a condition of approval, it is not appropriate as a stipulation.

**Stipulation 8. Produced water injection wells and related facilities....**

The BLM recognizes the State of New Mexico has a critical role in the permitting of injection wells. Although BLM has approval authority for the disposal of water, the NM Oil Conservation Division has jurisdiction over the use of injection wells for that disposal. Due to this shared responsibility, BLM always coordinates the Conditions of Approval with the appropriate State of New Mexico agencies. This is dealt with at the proposal stage, at the point a company requests such means of disposal. It is therefore not an appropriate stipulation.

**Stipulation 9. Due to the uncertainty of the location of fresh water formations...cement shall be circulated....**

BLM has made the protection of fresh water formations a high priority in the approval process for drilling proposals. At the Application for Permit to Drill stage, a BLM petroleum geologist makes the determination of what fresh water protection measures are required. These determinations are normally based on information shared between BLM and several state agencies, including the State Engineer's Office and Oil Conservation Division. As this is handled on a case by case basis, and cementing requirements are based on the geology and aquifer encountered by the proposed well, therefore this would not be an appropriate stipulation.

**Stipulation 10. Closed drilling systems shall be used for all wells. Reserve pits and disposal pits shall be prohibited.**

Where necessary, BLM does apply this as a Condition of Approval, however, it is often used when possible impacts can not be otherwise mitigated, such as adjusting the well pad location or facility configuration. Therefore, this is not an appropriate stipulation.

**Stipulation 11. No water wells shall be drilled in connection with oil and gas drilling activities.**

The BLM cannot prohibit the drilling of water wells on non-Federal land; however, BLM may stipulate against the use of water derived from local water wells. For example, BLM could require that water used for lease development purposes must come from sources outside Otero Mesa. Onshore Order No. 1 requires that the source of water be identified. The intent of the onshore order is that BLM will judge whether the water source is environmentally acceptable, and if it is not, BLM would require another source. Therefore, since BLM cannot issue a stipulation which we cannot enforce (NM is approving authority for water wells), and because BLM can otherwise apply mitigations to approve water sources used for drilling, this would not be an appropriate stipulation.

**Stipulation 12. Satellite monitoring (SCADA) systems shall be used for all producing wells in order to minimize inspection and maintenance traffic.**

Although it is well within BLM's authority and jurisdiction to require the operator to develop remote monitoring programs, BLM would still insist on a blend of on-the-ground inspection presence as well. Where appropriate, this mix of inspection activity would be developed and would be applied as needed on a case by case basis. Therefore, a stipulation would not be necessary.

### **III. B. Protection from Introduction of Noxious Weeds**

BLM has reviewed this portion of the Governor's Proposed Alternative and did not find any specific measures that could be incorporated into BLM's land use planning decisions; however, BLM is very interested in further discussions about proposals to establish vehicle wash stations that can be used by industry throughout New Mexico. Regarding a bond for weed control for the life of the well pads plus 15 years, BLM has determined that current bonding requirements are adequate.

### **III. C & D. Water Resource Protection and Cultural Resource Protection**

BLM has reviewed this portion of the Governor's Proposed Alternative and did not find any specific measures that could be incorporated into BLM's land use planning decisions. BLM would continue to coordinate with NM agencies to address water resource protection as appropriate, and with tribes regarding tribal resource issues.

### **VI. The New Mexico Governor's Alternative is not suitable**

The Governor's alternative is not suitable because directional drilling is not appropriate for exploration in the Chihuahuan Desert area as it would preclude development of the Federal fluid minerals. The points made in Section VI are addressed in Section III of our response.

### **V. Conclusion**

Following analysis of your review, we are issuing a Supplement to the FEIS which will propose to discretionarily close to fluid mineral leasing approximately 35,790 acres in the Nutt and Otero Mesa desert grasslands for protection of potential Aplomado Falcon habitat. The PRMPA described these areas as being withheld from leasing for 5 years and then subject to reevaluation for possible future leasing. The Supplement to the FEIS sets forth analysis from the December 2003 FEIS in order to again display the impacts of the proposed closure described above.

The Supplement to the FEIS also provides clarifying information explaining the protective measures found in the proposed action alternative (Alternative A Modified) identified in the PRMPA. It is my hope that the information will provide the public with a clearer understanding of the protective measures.

### **VI. Recommendation**

The BLM will allow a 30 day public comment period on the closure of 35,790 acres as well as for the clarifying information in the Supplement to the FEIS. The BLM will continue the suspension of new leasing in the planning area until the planning process is complete.