

ANALYSIS OF THE OTERO MESA RECORD OF DECISION (ROD) AND RESOURCE MANAGEMENT PLAN (RMP) AMENDMENT

A lack of true commitment to protecting the region's natural resources

Shortcomings of the plan include:

The plan opens 95% of the planning area to oil and gas leasing

- 69% of lands (1,406,625 acres) remain open to leasing without any conditions on surface use or other protective stipulations
- 24% of lands (484,135 acres) are open to leasing with conditional surface use limitations
- 2% of lands (40,256 acres) with no surface occupancy stipulations
- Only 5% of lands (119,939 acres) are closed to leasing.

Despite local opposition and a wealth of new information, the above figures are essentially unchanged from the last version.

The plan does not prevent surface water or groundwater contamination

The plan includes no new protective measures and no commitment to conducting further investigation of the existing water or even the available references on the aquifers that were not considered previously (such as earlier efforts to map some of the fractures).

The plan does not make any actual commitment to conducting new NEPA analysis or halting further disturbance once the 1,589-acre surface disturbance threshold for the plan has been reached

The plan discusses the potential need to conduct further analysis of environmental impacts if surface disturbance from oil and gas development exceeds anticipated levels, and BLM retains the right to delay or deny further activities during such analysis, but there is no language that formally commits the agency to taking these actions.

The plan still does not justify how the 5% surface disturbance threshold on leases in the Chihuahuan desert grasslands will actually result in protection

The BLM provides no information about how this limitation will prevent habitat fragmentation – no studies or analysis have been done. Although the ROD discusses the development of an automated tracking system to enforce the 5%, the BLM has not yet developed or used such a system. BLM has not even discussed on-the-ground inspection or enforcement.

“Reclamation” standards for grasslands have been weakened

These standards (which determine when acreage no longer “counts” toward the 5% surface disturbance) are based on BLM prescription and assessment.

- Standard in final plan: “successful” reclamation is “when healthy, mature perennials are established with a composition and density that closely approximates the surrounding vegetation as prescribed by the BLM, and the reclamation area is free of noxious weeds.”
- Standard in previous version of plan: successful reclamation 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.”

So, the presence of annuals in the grassland vegetation – an important element of effective restoration-- is no longer required. Further, because these standards will be part of a reclamation plan to be developed between BLM and the operator, they are subject to negotiation and difficult to monitor and enforce.

The plan includes no commitments to enforcing Best Management Practices (BMPs) for oil and gas development

Although some BMPs are identified, none are required. Other BMPs are identified as possible but only after further analysis of other less restrictive alternatives.

BLM's summary rejection of the Governor's appeal compromises potential protections of these lands

- BLM claims the plan is not inconsistent with New Mexico's Noxious Weed Management Act and while the Governor's comments on the lack of efficacy of BLM measures are "noted," the plan does not take further action to improve them
- BLM agrees that it is important to implement BMPs to protect water resources – but does not do so in the ROD/RMP
- BLM acknowledges that New Mexico's Water Quality Control Commission Regulations do prohibit impairing water quality but declines to implement any further protection, claiming that the Governor did not identify any exceedances or specific risks of exceedances due to RMP
- BLM says the issue of Cultural Resources Consultation is not to be raised by Governor, but by tribes

BLM claims to conduct a "discretionary review" of the Governor's recommended management approach but focuses only on the possible economic benefits to State from oil & gas development and the risks of preventing "the nation and New Mexico from realizing the benefits of domestic energy production." BLM does not acknowledge that its assessment is that development potential is low or moderate, so overall economic benefits are unsure while risks associated with development are significant – including to well-documented and extremely valuable water resources.

Potential strengths of the plan:

Provides more concrete application of Reasonable Foreseeable Development (RFD) as possible limitation on further development

If the level of development appears likely to exceed that which was analyzed as the basis for the plan amendment, then BLM may be required to conduct further environmental analysis. The RFD limits are maximum of 141 wells or 1,589 acres of surface disturbance. However, there is no firm commitment in the ROD and the proposed automated tracking system for surface disturbance has not yet been developed.

Increases black-tailed prairie dog protection

Now mandates 0.25 mile buffer between known colonies and surface disturbance and specifically recognizes that habitat in the planning area is limited; previously provided for potential relocation of surface-disturbing activities in a range of 0.125 mile to 0.25 mile.

Deferral of leasing for bighorn sheep reintroduction

Leasing would be deferred in small area in Sierra County while the State works on potential reintroduction. However:

- would temporarily protect only about 1,200 acres in comparison to 199,020 acres that were protected under the Draft RMPA/EIS.
- although Director Clarke's letter to Gov. Richardson states that there will be a 5-year deferral, there is no time period in the plan for enforcement purposes
- BLM State Director will evaluate New Mexico Department of Game & Fish's progress and remove protection whenever BLM unilaterally decides "unlikely that reintroduction would occur"

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