



**United States Department of the Interior**  
**BUREAU OF LAND MANAGEMENT**

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**JUL 12 2019**

In Reply refer to:  
CALA 088009  
SDR No. LLCA 921-18-01  
3100 (920) P

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

**DECISION**

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SDR No. LLCA 921-18-01

**AFFIRMED IN PART**  
**REMANDED IN PART**

On April 18, 2018, Los Padres ForestWatch and the Center for Biological Diversity (Parties) submitted via email to the California State Office of the Bureau of Land Management (BLM) a request for a State Director Review (SDR) asking that the State Director reverse and remand the decision of the BLM's Bakersfield Field Office (BFO) approving an oil and gas Application for Permit to Drill (APD) a well and install an accompanying pipeline in the Russell Ranch Oil field in San Luis Obispo County, California based on Environmental Assessment DOI-BLM-CAC060-2012-0040-EA. The SDR included a request for a stay pending the State Director's final administrative decision, and a request for an extension of time to submit additional supporting information. The request was timely filed per regulations at 43 CFR 3165.3(b). The Parties requested a meeting to make an oral presentation.

On May 4, 2018, the BLM informed the Parties that their request for a SDR was timely submitted and their requests for an extension of time to present additional supporting information, for a stay pending the State Director's final administrative decision regarding the SDR, and for an oral presentation were granted. The oral presentation was held on June 11, 2018, in the California State Office, and additional information was presented at that time.

In a letter dated June 10, 2019, the Parties submitted additional information supporting their position that BLM be required to further analyze climate impacts from drilling and development of the Schlaudeman Well. This information was submitted untimely regarding this SDR request. The information has been forwarded to the BFO and will be considered in appropriate climate change analyses going forward.

## **BACKGROUND INFORMATION**

E&B Natural Resources Management Corp (E&B) has submitted one APD that proposes the drilling of one new well: Schlaudeman #354-23 on federal mineral lease CALA088009 on BLM managed lands located within the existing Russell Ranch Oil Field within the Carrizo Plain National Monument (CPNM). E&B proposes the use of an existing access road and an existing well pad location for the drilling of the new well. This project is proposed on a federal mineral lease that was established in 1948 and has been held by production since 1949. Records indicate the well pad was constructed prior to 1950. A total of five wells have been drilled on this lease from five separate locations and include one shut-in well and four abandoned wells.

The Carrizo Plain National Monument was created by Presidential Proclamation on January 17, 2001.<sup>1</sup> The Proclamation established the monument for the purpose of protecting the biological, paleontological, historic, and prehistoric resources on approximately 247,000 acres. The Proclamation also states that the establishment of the CPNM is subject to valid existing rights.

The CPNM is closed to new federal leasing (CPNM RMP Vol 1, pg. 3-103); however, exploration and development activities may still occur on existing federal leases within the CPNM. This includes seismic exploration, road building, drilling new wells and re-working old wells, laying pipelines, and other activities.

As of January 17, 2001, there were 19 federal oil and gas leases within the Monument. Since then, ten of the leases that were not in producing status have expired or terminated because their primary term expired without production being established, or else production ceased. The remaining nine leases are in producing status, either based on actual production or due to allocated production if they were in a producing unit. Of the nine leases that are still in producing status, seven are currently held by production within the CPNM and two are held by production from other portions of leases outside the CPNM (CPNM RMP Vol 1, pg.3-103.) Current production is near the southwest boundary, all within the boundaries of the Russell Ranch Unit. The term of all producing leases within the Russell Ranch Unit will continue so long as there is production in paying quantities from the Unit, per regulations at 43 CFR 3107.3-1.

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<sup>1</sup> [https://clintonwhitehouse5.archives.gov/library/hot\\_releases/January\\_17\\_2001\\_13.html](https://clintonwhitehouse5.archives.gov/library/hot_releases/January_17_2001_13.html)

The following addresses the Parties' request for reversal and remand of the BFO's decision.

### **The Parties' Allegations:**

The Parties identify four main points, as quoted below, on which they feel the State Director should reverse and remand the Bakersfield Field Office's Decision Record (DR) and Finding of No Significant Impact (FONSI) approving the APD. The four main points identified by the Parties are (footnotes are not included):

1. The DR fails to ensure protection of the objects for which the national monument was designated in violation of the Antiquities Act, the Federal Land Policy and Management Act (FLPMA), and the National Landscape Conservation System ("NLCS") Act. The DR does not directly address these laws and requirements and therefore BLM has not shown that the decision is consistent with these statutory duties and directives.
2. The DR states the decision is consistent with the 2010 CPNM RMP. However, the record shows that it is not consistent with the RMP objectives and actions for species including the endangered California condor, air quality, existing leases and others.
3. In authorizing the new well, BLM failed to analyze, assess, and disclose a number of potentially significant impacts, in violation of the National Environmental Policy Act ("NEPA"), 42 USC section 4431, *et seq.* BLM's EA fails to clearly and fully disclose the impacts of oil and gas extraction (including GHG emissions) on air quality in the context of climate change and fails to adequately address surface disturbance that would result from the new well and pipeline. The EA briefly mentions activities that have potential to impact rare plants, wildlife species and habitats but fails to fully disclose the extent of those impacts or fully consider alternatives and mitigation measures. The new well and pipeline will also impact visual and aesthetic resources of the monument because the well and over-ground pipeline would be visible from the Caliente Mountain Wilderness Study Area (WSA) and nearby trails, and from Highway 166. ... These impacts to visual and aesthetic resources which are part of this important national landscape were not adequately considered in the NEPA review.
4. In addition BLM failed to comply with the ESA. The EA shows that the project taken as a whole "may effect" listed wildlife species including California condor, San Joaquin kit fox, blunt-nosed leopard lizard, and giant kangaroo rat as well as listed plants Kern mallow and Lemmon's jewel flower, triggering BLM's duty to consult with Fish and Wildlife Service regarding these effects. *See* 50 CFR § 402.14(a). However, without providing up to date survey information or analysis, BLM largely dismisses the potential impacts to listed species. The EA acknowledges some impacts may occur but then dismisses them in reliance on the adoption of mitigation measures (Design Features/Conditions of Approval) to reduce impacts to these species. For example, with respect to listed and rare plants the EA states:

BLM cannot discount the possibility that Kern Mallow, Hoover's wooly-star, and Lemmon's jewel flower are present within the vicinity of the project area. However, since the well development would occur mainly on areas of existing disturbance no impacts to these species are expected. There may be a negligible amount of temporary disturbance due to the installation of a new pipeline, if it becomes necessary to replace the existing line, but this should not impact native vegetation including listed species due to implementation of the project Design Features/Conditions of Approval (underlining in original).

## DISCUSSION

### BLM Responses to the Parties' Allegations:

#### **Point #1: BLM Failed to Consider Protection of Monument Objects as Required by the Antiquities Act, FLPMA, and NLCS Act.**

The Parties argue that BLM fails to protect the objectives for which the National Monument was designated in violation of The Antiquities Act, the National Lands Conservation System Act (NLCS), and FLPMA. The Parties fail to specifically identify their concerns with the NLCS Act or FLPMA.

While not specifically identified, FLPMA, the Antiquities Act, and NLCS laws are part of the "other relevant federal and state laws and regulations" that are applicable to this project.

EA pg. 1: "This environmental assessment (EA) has been prepared in compliance with the National Environmental Policy Act (NEPA) and other relevant federal and state laws and regulations."

The EA<sup>2</sup> is consistent with these statutory requirements and laws.

The CPNM Proclamation protects the Monument's objectives from impacts by:

- withdrawing the Monument's lands from all forms of entry, location, selection, sale, or leasing, or other disposition under the public land laws relating to mineral and geothermal leasing;
- prohibiting off road recreational motorized and mechanized vehicle use; and
- addressing road closures/travel restrictions in the CPMN RMP.

The 2010 CPNM RMP provides overall guidance for CPNM management and land uses, which fulfills the requirements contained in the Monument Proclamation and is consistent with FLPMA

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<sup>2</sup> <https://eplanning.blm.gov/epl-front-office/eplanning/projectSummary.do?methodName=renderDefaultProjectSummary&projectId=103223>

and other laws, rules, and regulations as required. The CPNM RMP provides management recommendations to guide the multiple use management of all resources to implement the requirements of the Monument Proclamation and other relevant laws and policies. The Proclamation also states “The establishment of this monument is subject to valid existing rights.” A valid existing right is a legal interest that attaches to a land or mineral estate until that interest expires, terminates, or is relinquished. An oil and gas lease is a valid existing right.

The CPNM RMP states:

“The Monument Proclamation withdraws the Monument from future leasing. However, existing leases are considered to be valid existing rights and must be managed under the terms and conditions of those leases. Also, much of the Monument is underlain by private mineral estate. BLM can place protective stipulations on use of public lands to access these private mineral rights, but does not have the authority to prohibit access.” (CPNM RMP pg. 1-5)

The decision ensures protection of the objectives for which the national monument was designated through the use of the Design Features and Conditions of Approval (DF/COAs) because they are part of the Proposed Action.

EA pg. 9: “The following Design Features and Conditions of Approval are part of the proposed action.”

The DF/COAs address all the points identified in the Proclamation that are also located in the project area. Biological resources (wildlife/T&E species) and cultural resources are specifically identified in the DF/COAs. The DF/COAs for biological resources provide for (1) sensitive species training for all construction personnel by a qualified biologist prior to project implementation; (2) a biological monitor to be present during construction activities; (3) implementation of a maximum speed limit of 15 mph on the access road and well pad location.

The DF/COAs for cultural resources provide that the BLM FO and Field Manager would be notified in the event of an inadvertent discovery of cultural resources during project implementation and that all work at the cite would cease until written approval is given by the BLM.

The Construction, Management of Noxious Weeds, Final Reclamation, and Habitat Restoration DF/COAs address the following points identified in the Proclamation:

- protection of habitat (no new disturbances in habitat, habitat restoration, use of seed mixes to match adjacent plant communities, identification of objectives for outcome of restoration);
- protection of soils (surface rehabilitation measures would be applied when needed, surface disturbance would be minimized, hand clearing emphasized, surface rehabilitation measures would be applied when needed to protect soil surface, soil-disturbing activities avoided during periods of run-off or when soils are wet and muddy, surface/subsurface disturbance would be conducted with the least impact to sensitive resources, all areas of surface disturbance would be restored to pre-project conditions and

stabilized to reduce potential for erosion, production pipelines would be placed within the roadway or alignment of existing pipelines to minimize disturbance);

- visual resources management (VRM) and landscape (VRM/paint to blend with the natural colors of the landscape, rehabilitation and habitat restoration, utilities low to the ground or buried, re-contouring of disturbed lands, reclaimed landscape with characteristics that approximate the visual quality of the adjacent area); and
- air quality (dust abatement)

Through the use of the DF/COAs, the BLM has “considered protection of the landscape values and resources in addition to its duties to protect the objects” of the proclamation.

In addition to the use of the DF/COAs, a Class III cultural resource inventory was completed, tribal consultation was undertaken, and VRM issues were considered.

- A Class III cultural resources inventory was completed for the proposed project area (well pad and road). No cultural resources were located during the inventory. Should an inadvertent discovery of cultural resources occur during project implementation, the BLM would be immediately notified by personnel responsible for the project. All work at the site of discovery, and in any other locations where damage to the resources could occur, would cease until written approval to restart work is obtained from the BLM.
- Tribal Consultation: A letter describing the proposed project area and a map were sent to the local Native American community with traditional ties to the proposed project area and to the chairman and other participants in the Carrizo Plain Native American Advisory committee. Only one response from the Santa Ynez Band of Chumash Indians, who expressed no concerns, was received. No other recipients of the letters indicated that any places of traditional cultural or religious importance would be affected by the proposed project.
- Although the proposed project is located in an area with moderate to high sensitivity for paleontological resources, paleontological resources would not be impacted as the proposed project is occurring on a previously constructed well pad and within areas of existing disturbance.
- The Russell Ranch oil field is classified in the CPNM RMP as VRM Class II. The objective for Class II is to retain the existing character of the landscape, meaning the level of change should be low and those management activities that can be seen should not attract the attention of the casual observer.
  - The proposed project area is in a previously disturbed landscape typical of oil fields, with multiple routes and industrial development.
  - The location of the existing well pad is within a steep walled canyon.
  - The key observation point is from Highway 166, over one mile away. The project area would only be visible for a short period of time at a nearly 90 degree angle from Highway 166 as travelers pass by at highway speeds (55+ MPH).
  - Other roads in the area are privately owned and not publicly accessible.
  - The Parties submitted a view shed map showing areas where there is direct line of sight to the well pad with view distances ranging from approximately ¼ mile to 11 miles, with most of the view shed sight distances greater than 2 miles.
- Our analysis concludes:
  - The drilling activities of the well would not draw attention to the casual observer due to similar activities in the existing Russel Ranch oil field.

- The proposed well would be minimally visible, if at all visible, from the Caliente Mountain Wilderness Study Area due to sight distances of 1 ¼ to 4 ½ miles, unless the observer was focused on the location. The Caliente Mountain WSA report makes no mention of buffers around the areas studied for wilderness designation, reflecting BLM policy that lands surrounding designated wilderness study areas should not be managed as buffer areas.<sup>3</sup>
- The project area would not catch the eye of a casual observer in the context of the existing character of the wellsite landscape. Thus the objectives of VRM Class II management are achieved.
- The EA indicates that the portion of the project on the existing well pad and existing access road will have no impacts to listed species or habitat because it is already in a disturbed/impacted condition. The EA indicates that if a replacement pipeline is needed that potential impacts to listed wildlife and plants is possible through the disturbance of habitat, but due to the timing and kind of that work, it would have minimal short-term or long-term impacts on listed species. The information supporting the level of impact is minimal.
- The EA does not sufficiently address each project component (e.g. maintenance of the road, the temporary piped water, and the possible installation of a replacement pipeline) with regard to the potential effects to wildlife, plants, and their habitat. This additional information should be included in the EA. The conclusion of the EA should be reanalyzed within the context of the additional information.

The BLM analysis in its EA, and the conclusions in its DR related to the Parties' Point #1 are affirmed in part and remanded in part. We find that Monument objects are considered and protected as required by relevant federal statutes and that valid existing rights are recognized. We conclude that through the use of BPs and DF/COAs landscape and resource values are protected except as noted below.

With regard to listed species, the EA is remanded and the Bakersfield Field Office is directed to expand the effects analysis for wildlife and plants and to initiate consultation with USFWS as required for all listed species. The DR is stayed and the EA/FONSI remanded for consideration of these effects and issuance of an amended decision.

**Point #2: The Decision Record is Inconsistent with the RMP Objectives and Actions to Protect Monument Objects in Violation of FPLMA and Also Failed to Address Significant New Information.**

The objective of the RMP is to provide direction for Monument management and land use by taking actions that protect the objects and other requirements identified in the Monument Proclamation and ensuring consistency with FLPMA and other applicable laws, rules, and regulations.

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<sup>3</sup> Caliente Mountain Wilderness Study Area, CA-010-042, undated report

The Decision Record authorizes the proposed action, which includes the DF/COAs which address protection of the objects of the Monument Proclamation. The DR states the selected alternative (the proposed action) will not cause unnecessary or undue degradation.

The EA is in conformance with the objectives and management actions in the 2010 CPNM RMP and Record of Decision and it is described below how conformance is reached. The BLM DR authorizing the APD acknowledges an existing lease, which is a valid existing right, as recognized in the 2001 Proclamation creating the Monument.

### *California Condor*

The California condor is addressed in the Affected Environment and Environmental Impacts sections of the EA. The Parties state that the BLM failed to include/reference the most up-to-date information/data on the California condor, which shows increasing presence in the area.

With their April 18, 2018, request for SDR, LPFW submitted a 2018 map of condor activity near Russel Ranch that includes satellite telemetry data provided by USFWS for the period 2015 through 2017.<sup>4</sup> The map illustrates widespread condor tracking in the region. The closest tracking point to the well site is approximately ¾ mile and the most distant over approximately 1.5 miles.

The DR authorizes the Schlaudeman #354-23 well to meet the goal identified in the 2010 CRMP RMP Record of Decision (ROD):

Goal MNL-1(P): Manage the exploration, development, and the abandonment of oil and gas on existing federal leases in a manner that protects the objects of the Monument Proclamation.” (pg. 11-72)

We find that the 2012 EA does not sufficiently address condor information described above. Based on this finding, we direct the Bakersfield Field Office to expand and widen the analysis of California condors by including the most recent condor activity and determining how the well location and infrastructure may affect the condor. The BLM analysis in its EA, and the conclusions in its DR related to the Parties’ Point #2 are affirmed in part and remanded in part with regard to the new condor information. The DR is stayed and the EA/FONSI remanded for consideration of these effects and issuance of an amended decision.

### **Point #3: The BLM Failed to Comply with National Environmental Policy Act (NEPA)**

The Parties state that the BLM failed to comply with NEPA by:

1. failing to adequately address potential impacts to threatened and endangered species, as required by NEPA;
2. failing to adequately consider impacts to air quality and climate change in the EA;
3. relying on the FONSI and an inappropriate EA and asserting that an EIS is needed to fully address impacts of the proposed project.

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<sup>4</sup> Los Padres ForestWatch, 2018, Map of Condor Activity near Russell Ranch

The EA states that the proposed action falls within the Caliente Mountain South Area of the CPNM RMP and that the plan has been reviewed as required by 43 CFR 1610.5. BLM finds that the proposed action conforms to the land use plan, goals, objectives, and management actions by specifically addressing objectives and actions that protect Monument resources while recognizing valid existing rights, including timely processing permits, managing existing leases with additional requirements, applying SOPs/BMPs for all proposed projects, managing existing oil producing acreage to maintain ecological processes and assuring prompt lease restoration upon final abandonment of the last well, designing roads and facilities to impact and fragment the least acreage practicable, and ensuring BMPs are followed (EA pg. 2). Moreover, the CPNM RMP Final Environmental Impact Statement (FEIS) analyzed oil and gas development under all alternatives. Those impacts to resources and values of the CPNM by oil and gas development are considered below.

The RMP describes the following impacts from oil and gas development in the Russell Ranch Oil Field regarding:

Surface Disturbance as a result of oil and gas development:

- In the Russell Ranch oil field, there would be 6.5 acres of new oil and gas development disturbance, consisting of 3.5 acres disturbed from new well pads and 3 acres from new roads. Geophysical exploration activities would impact 25 acres through cross-country travel and shot hole drilling. (CPNM RMP Vol 1, pg. 4-9, and 4-21). It is proposed that an existing buried oil production flow line would be utilized with the proposed well if the flow line passes hydrostatic testing. If it does not pass then a replacement above-ground flow line would be constructed along the same route as the existing flow line. BLM standard operating procedures (SOP) would minimize project impacts and avoid wildlife habitat features as previously described. (CPNM RMP Vol 1, pg. 4-9)
- *Wildlife and T&E species*
  - BLM SOPs would minimize project impacts and avoid wildlife habitat features as described above. (CPNM RMP Vol 1, pg. 4-21)
  - Giant kangaroo rats are not abundant in this area, and impacts would be avoided (and thus negligible) by implementing buffer zone requirements. This disturbance of 6.5 acres would not impact or would have negligible impacts to giant kangaroo rats with implementation of avoidance criteria. (CPNM RMP Vol 1, pgs. 4-25 and 4-37,)
  - San Joaquin kit foxes are not common in this area, and impacts would be avoided (and thus negligible) by implementing den avoidance measures. This disturbance of 6.5 acres would not impact or would have negligible impacts to San Joaquin kit fox and giant kangaroo rats with implementation of avoidance criteria. (CPNM RMP Vol 1 pgs. 4-41, and 4-49)
  - The disturbance of 6.5 acres in the Russell Ranch oilfield would not impact or would have negligible impacts to blunt-nosed leopard lizards since this area is outside the current range of the species. (CPNM RMP Vol 1, pgs. 4-53 and 4-64)
  - The disturbance of 6.5 acres in the Russell Ranch oilfield would not impact San Joaquin antelope squirrels since this activity is outside of their occupied range. (CPNM RMP Vol 1, pgs. 4-68 and 4-78)

- Condors are not known to make significant use (currently or historically) of the oilfield areas within the Monument (Chris Barr, USFWS, personal communication, 15 May 2009). Occasionally, a young bird released from Bittercreek National Wildlife Refuge may get pushed down the canyon and end up at the oilfields along the Cuyama Valley (Chris Barr, USFWS, personal communication, 15 May 2009). Risks to condors associated with oilfields include contamination by or ingestion of harmful liquids (such as oil or antifreeze), collisions with power lines and poles, electrocution, and ingestion of trash. Activity and noise associated with oil and gas drilling can disrupt nesting behavior, but there are no known nests in the vicinity. Condors can become habituated to human activity which exacerbates the risks and impacts listed above. These risks and impacts most often occur in oilfields near nesting locations, such as in the Hopper Mountain area. (CPNM RMP Vol 1, pg. 4-86)
- The nearest California condor roosting location is the Bittercreek National Wildlife Refuge, approximately 20 miles from the Monument oilfields. GPS and satellite data include nine records for two individual condors within the CPNM in 2008. The 2008 GPS and satellite data indicate roosting locations in the eastern portion of the Monument, approximately 12 miles from the existing oilfields in Morales Canyon. Since there are no historic or likely condor nesting locations near the Monument oilfields, since the nearest roosting location is the Bittercreek National Wildlife Refuge, and since condors only occasionally fly over the Monument, impacts to condors from minerals actions under all Alternatives are expected to be minor. (CPNM RMP Vol 1, pg. 4-86)
- Mountain Plovers do not avoid areas with human disturbance or activity such as farm fields being cultivated or areas near ongoing oil and gas operations. There are no Mountain Plovers in the Russell Ranch Unit area. (CPNM RMP Vol 1, pg. 4-99)
- The 30 acres of developed habitat on the valley floor and the 6.5 acres of development in the Russell Ranch oil field represent a very minor amount of available elk habitat in the Monument. These activities are not expected to affect efforts to reach or maintain population objectives. (CPNM RMP Vol 1, pg. 4-130)
- *Paleontological/Geological Values*
  - For the oil and gas resource program on the CPNM Valley floor and in the Russell Ranch area, the drilling of exploratory wells and construction of ancillary facilities such as spur roads, tank batteries, and development wells are anticipated to have negligible to no impacts on the integrity of important paleontological/geological features since in most cases these resources would be avoided. Seismic operations would have no impact on the integrity of important paleontological/geological features. (CPNM RMP Vol 1, pg. 4-230)
- *Cultural Resource Values*
  - The management of cultural resources on the CPNM during oil and gas activities will be conducted through implementation of Section 106 of the National Historic Preservation Act (NHPA)<sup>5</sup> compliance procedures, guided by the BLM California

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<sup>5</sup> <https://www.nps.gov/history/local-law/nhpa1966.htm>

State Protocol.<sup>6</sup> At the project level, inventory, identification, eligibility assessments and affects will be performed, along with appropriate Native American consultation. Mitigation of any adverse effects to eligible cultural properties is coordinated through consultation with the State Historic Preservation Office (SHPO). With oil and gas activities, as with any action which may impact cultural sites, site preservation through avoidance is always the preferred alternative. The nature of most oil and gas actions allows for project redesign in the case of any cultural sites found within the project area. The BFO, which manages the CPNM, commonly conducts cultural resource compliance projects for oil and gas actions and, through this avoidance policy, rarely proceeds to the mitigation process. This results in a high degree of preservation for cultural sites. (CPNM RMP Vol 1, pg. 4-236)

- The installation of in-field development wells, exploratory wells and ancillary facilities such as spur roads and tank batteries would disturb an anticipated 6.5 acres of land in the Russell Ranch Unit area which would be processed in a manner to avoid impacts to cultural and traditional cultural properties through implementation of the BLM/SHPO State Protocol and compliance with Section 106 of NHPA. (CPNM RMP Vol 1, pgs. 4-237 and 4-252)

- *Visual Resources*

- Impacts from continued development of the Russell Ranch unit would be minor. This area is away from the main public use areas in the Monument and receives minimal visitation. (CPNM RMP Vol 1, pg. 4-294)
- Impacts would be the same as the No Action Alternative except that BLM would work with existing leaseholders to mitigate existing visual impacts from structures and other developments, and to accelerate abandonment / restoration of idle wells. This would result in minor improvements to visual resources, as most of the existing wells are not in major use areas of the Monument. (CPNM RMP Vol 1, pg. 4-260)

- *Soils*

- The impacts to soils within the Monument would be minor on flat to gentle sloping topography. The overall impacts to soils from mineral development may be minor to moderate on the steep slopes of the existing Russell Ranch oilfield. These impacts would be localized to project sites, and would be due to construction activities and associated upgrading or construction of roads; these activities may remove, mix, add, and compact soils within the project footprint. However, well pad placement, best management practices (BMPs) and SOPs are included in BLM authorizations to avoid sensitive resources, minimize the amount of surface disturbance, promote the use of previously disturbed sites, reduce erosion, conserve topsoil, and enhance restoration success. Impacts to soils from spills/contamination are expected to be very localized. Any contaminated soils will be removed/mitigated as required by California Department of Oil and Gas Oil Spill Contingency Plans and by BLM. (CPNM RMP Vol 1, pg. 4-208)

The EA describes the following impacts from oil and gas development in the Russell Ranch Oil Field regarding:

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<sup>6</sup> <https://www.blm.gov/sites/blm.gov/files/CA%20Protocol.pdf>

### *Soils*

- Proposed action: No significant impacts to soil resources are expected because soil disturbance would be negligible. E&B proposes to utilize an existing, nearby buried oil production flow line for the proposed well, assuming the flow line passes hydrostatic testing. If the flow line does not pass testing, E&B proposes to construct a new aboveground flow line along the same route as the existing flow line. The intensity of both onsite and offsite effects of soil disturbance would be minimized by adherence to the DF/COAs.
- Alternative 3: In an effort to address visual resource management issues within the Monument, and in the event the existing subsurface oil production flow line does not pass hydrostatic testing, then Alternative 3 is available. Soils would be directly disturbed along the existing unpaved access road route from trenching activities during below grade replacement pipeline installation.

### *Water Quality*

- Impacts to groundwater are not expected during drilling because a cement barrier would be placed between the groundwater aquifer and the well bore extending into the production zone. Also the proposed action does not include drilling a water supply well and thus does not propose direct use of groundwater in the Cuyama Valley.

### *Biological Resources*

- An above ground pipeline does have the potential to fragment habitat, though temporal and spatial effects would be expected to be minimal.
- BLM cannot discount the possibility that Kern mallow, Hoover's woolly-star, and Lemmon's jewel flower are present within the vicinity of the project area. However, since the well development would occur mainly on areas of existing disturbance, no significant impacts to these species are expected.
- There may be negligible amounts of temporary disturbance due to the installation of a new pipeline, if it becomes necessary to replace the existing line, but this should not impact native vegetation including listed species due to implementation of the project DF/COAs.
- Well installation on the existing pad would result in no significant impacts to wildlife species.
- No federally listed species are expected to be impacted by these activities in a meaningful way. Mitigation measures put in place by the PDF/COAs would avoid impacts to giant kangaroo rat, blunt-nosed leopard lizard, San Joaquin kit fox, and the California condor.
- Alternative 3: Potential long term effects to species would be reduced under this alternative since a buried flow line would be less likely to fragment habitat and affect biological resources.

### *Grazing Management*

- These disturbances are expected to be minor and not cause any substantial impacts to livestock grazing operations or opportunities.

The RMP analysis states that impacts to T&E Species, cultural resources, soils, and visual resources by oil and gas development in the Russell Ranch oilfield will all be minor. The impact analysis in the EA comes to the same conclusion.

The EA analyzes both Air Quality and Climate Change (EA, pgs. 23-25). The EA finds:  
*Air Quality* (pg. 23)

- Construction and operations would not result in criteria pollutant emissions above *de minimus* levels and thus BLM is not required to conduct a conformity determination.
- The emissions inventory verifies that the drilling, rework, and abandonment of Schlaudeman #354-23 would be clearly below both federal and California significance thresholds for ambient air quality standards.
- Emissions associated with routine travel to and from the well site area are not calculated as they are clearly below *de minimus* thresholds and conform to the California Air Resources Board's State Implementation Plan (SIP).<sup>7</sup>
- By implementing project design features and measures to minimize fugitive dust, project impacts would be reduced to insignificant levels.  
(pg. 23)

#### *Climate Change*

- The EA inadequately considers the climate consequences of the Schlaudeman well in terms of analyzing and quantifying the project's GHG emissions.

The DR's determination of a Finding of No Significant Impacts and preparation of the EA are appropriate. Based on the impact analysis (impacts are minor, negligible, or insignificant) the Finding of No Significant Impacts was the appropriate documentation tool to use, as summarized below.

#### Finding of No Significant Impact

- (1) The implementation of the proposed action will not have significant environmental impacts beyond those already addressed in the CPNM RMP, approved in April 2010; (2) the proposed action and alternatives are in conformance with the RMP; and (3) the proposed action and alternatives do not constitute a major federal action having a significant effect on the human environment. Therefore, an environmental impact statement is not necessary and will not be prepared.
- None of these impacts would be significant at the local scale or cumulatively because of the small scale of the project and design features.
- The proposed project does not affect individual resources of the CPNM or the proclamation of the CPNM. Additionally, management of the Russell Ranch oilfield is specifically outlined in the CPNM RMP which was signed April, 2010.
- The project area has been surveyed and analyzed for biological, historical, and cultural resources. The project would not significantly affect biological, historical, or cultural resources.
- No significant cumulative effects have been identified during analysis of the proposed action.

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<sup>7</sup><https://www.arb.ca.gov/planning/sip/sip.htm>

- The proposed action is not expected to have significant impacts to listed species (California condor, San Joaquin kit fox, giant kangaroo rat, and blunt-nosed leopard lizard), or critical habitat. There is no designated critical habitat in the project area.

The purpose of a NEPA document is to disclose impacts. Because the impact analysis of the proposed action did not identify any significant impacts, an EA was the appropriate level of NEPA analysis.

The BLM analysis in its EA, its FONSI, and the conclusions in its DR related to the Parties' Point #3 are affirmed in part and remanded in part. We find that impacts to historical and cultural resources, paleontological/geological resources, visual resources, soils, water quality, air quality and grazing as addressed in the RMP are adequately addressed and do not pose significant impact such that an EIS is warranted. The EA, FONSI, and DR are affirmed with regard to these resources and land uses.

With regard to listed species, the Bakersfield Field Office is directed to expand the effects analysis for wildlife and plants and to initiate consultation with USFWS as required for all listed species incorporating all components of the proposed action. With regard to climate impacts the Bakersfield Field Office is directed to reexamine and quantify the direct and indirect GHG emissions of the new well and revise as necessary the cumulative impacts analysis. They are also directed to discuss these emissions within the context of climate change.

The DR is stayed and the EA/FONSI remanded for consideration of these effects and issuance of an amended decision.

#### **Point #4: BLM Violated Section 7 of the ESA by Failing to Consult with FWS on the Impacts of the Proposed Project on Threatened and Endangered Species**

The Parties state that BLM failed to consult with FWS on the impact of this specific project thus, violating Section 7 of the ESA. The Management Action from the CPNM ROD states:

- *Action BIO-2(S)*: When necessary, oil and gas related actions will require individual Section 7 consultations. Programmatic consultation will not be used for oil and gas related actions. (CPNM ROD, pg. Att-2-1)

The impact analysis on pg. 27 of the EA addresses potential impacts for T&E Species. The EA states:

- Well installation on the existing pad would result in no significant impacts to wildlife species, and BLM has made a "No Effect" determination for listed species. Since no burrows were sighted on the pad itself, burrowing animals would not be impacted.
- Activities including vehicle traffic, transportation of equipment, and other human activities on and around the pad may result in the disturbance, collapse or destruction of burrows in the berm surrounding the pad. Some species may be inadvertently killed by vehicles travelling to and from the site. Noise from well installation is likely to cause a temporary disturbance to wildlife in the general area. Any night-time activities may temporarily disrupt natural

activities for nocturnal species utilizing the surrounding area and may disrupt birds from sleeping causing disorientation and possible predation.

- If a new flowline is required, existing burrows in the path of the line may also be disturbed or collapsed during installation, inadvertently crushing or entombing individuals.
- No federally listed species are expected to be impacted by these activities. Mitigation measures put in place by the Project Design Features/Conditions of Approval would avoid impacts to giant kangaroo rat, blunt-nosed leopard lizard, San Joaquin kit fox and California condor.
- San Joaquin antelope squirrel (California threatened species) is known to occur in the general vicinity of the proposed well pad site, and several were observed on the access road to the pad location. Any burrows suspected of harboring antelope squirrels found in the path of the new flowline would be flagged for avoidance. Other BMP's such as 15 mph speed limits and checking underneath vehicles prior to driving would greatly reduce potential impacts to antelope squirrel.
- Loggerhead shrike is also known to occur at the project site. If nesting behavior is detected, timing of the project would be planned to occur outside the nesting period (January through July), to the extent practical. If not practical, other measures would be taken to avoid impacting the nest and nesting activities as much as possible.
- Other sections of the document include the potential for effects related to other portions of the project. (e.g. EA, pg. 26). The installation of the new well, by itself, would not destroy existing habitat. If a new pipeline needs to be installed, a small amount of temporary ground disturbance would be expected. The disturbance footprint would be limited to areas traversed by workers installing the pipeline and the pipeline itself. Nearby vegetation may also be impacted by the dust generated by the well and pipeline installation and by the increased use of the access road by company vehicles.

The EA does not clearly make a no effect or not likely to adversely affect determination for all species and all components of the project. The EA is remanded and the Bakersfield Field Office is directed to reach a determination of effect under the ESA for all listed species that includes all aspects of the project and to initiate consultation with USFWS, as appropriate. The DR is stayed and the EA/FONSI remanded for consideration of these effects and issuance of an amended decision.

## NOTE ON REFERENCES AND EXHIBITS

Plaintiffs' April 18, 2018, Request for State Director Review listed a number of exhibits to support their arguments. Of the 21 exhibits listed, 3 referenced articles discussing GHG emissions and climate warming. Exhibit 11 (*Williams, A. Park et al*)<sup>8</sup> discusses what the effects of temperature and potential evapotranspiration have been during the recent drought in California and their potential for increasing the overall likelihood of extreme California droughts. Exhibit

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<sup>8</sup> Williams, A. Park, et al., 2015, Contributions of Anthropogenic Warming to California Drought during 2012-2014, *Geophys. Res. Letter.*, 42, 6819-6828, doi:10.1002/2015GL064924.

12 (*Pagán, Briannja R. et al*)<sup>9</sup> focuses on water supply in southern California under a climate trajectory with a high rate of production of GHG emissions. Exhibit 13 (*Mulvaney, Dustin et al*)<sup>10</sup> estimates the term of availability of oil, gas, and coal for energy production based on existing federal leases, highlighting discrepancies between U.S. Government goals for GHG reduction and levels reached from oil, gas, and coal production from federal supplies. In the EA, we acknowledge that oil extraction operations may lead to fuels that may be a source of GHG emissions. We also acknowledge that this may occur from operations and fuels originating on federal lands. The articles cited here do not address a single-well scenario and there is therefore no specific nexus between the arguments made in the exhibits cited and the single oil well planned for the present Project.

The remaining 18 Exhibits do not provide direct information on GHG emissions and global warming but rather provide information on species data, copies of environmental documents, forms, comment letters, etc. The consideration of this information is reflected in the discussions contained in this decision letter.

Plaintiffs submitted a second, separate letter dated April 17, 2018, which included a second, separate CD listing references and exhibits concerning additional material for consideration in this matter. Of the 33 references and exhibits cited in this April 17 letter eight are considered directly germane to the Kern County/Bakersfield area and the Schlaudeman Well EA and DR.

Exhibits 24 and 25 document oil spill reports and photos. The potential for these types of events was considered and is addressed in the general response covering mitigation and removal of contaminated soils as required by the BLM and the State of California.

The third, fourth, and fifth exhibits, Lease Production Figures and Serial Register Pages describing the Russel Ranch Unit and Lease CALA 088009, provide useful background information but do not address specific circumstances on-the-ground and this Decision does not specifically respond to these references.

The sixth and seventh exhibits, Exhibits 22 and 23, are a letter from BLM to E&B Resources outlining idle well management requirements and E&B's response to BLM, respectively. As previously discussed, Lease CALA 088009 is a lease in good standing within an approved unit and it is held by production in the unit. The lease constitutes a valid existing right. BLM has no cause to terminate this lease per regulations at 43 CFR 3107.3-1.

The eighth exhibit, Exhibit 26, is a view-shed map portraying the proposed wellsite, the Monument, the Caliente Mountain Wilderness Study Area, several nearby trails, and Highway 166. Landscape and visual resource analyses of the project area are addressed on page 16 of the EA and in this Decision.

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<sup>9</sup> Pagán, Brianna R. et al., 2016, Extreme Hydrological Changes in the Southwestern US Drive Reductions in Water Supply to Southern California by Mid-Century, *Environ. Res. Lett.* 11, 8, 094026, doi:10.1088/1748-9326/11/9/094026.

<sup>10</sup> Dustin Mulvaney, Alexander Gershenson, Ben Toscher, 2016, Over-Leased: How Production Horizons of Already Leased Federal Fossil Fuels Outlast Global Carbon Budgets, EcoShift Consulting.

We have reviewed the remaining 25 references and exhibits provided and have the following observation. Many of the references discuss greenhouse gas emissions, climate warming, and air quality impacts on a global scale and are not focused on the San Luis Obispo and Kern County environments. For example, *Rogelj's* 2015 article on energy system transformations for limiting warming to 1.5°C acknowledges that climate impacts are not distributed evenly over the globe and local capacities to deal with the impacts can differ significantly among regions.<sup>11</sup>

Also, efforts to predict warming impacts involve probabilistic analyses that have the potential to produce uncertain results when considered globally. For example *Meinshausen et al* in 2009 describe greenhouse emission targets for limiting global warming to 2°C and acknowledge that greenhouse gas emissions corresponding to a specified maximum warming are poorly known due to uncertainties in the carbon cycle and climate response.<sup>12</sup> They then develop a probabilistic analysis to quantify greenhouse gas emissions budgets in the 2000-2050 time period to determine the probability of global warming exceeding 2°C.

## SUMMARY DECISION

The Bakersfield Field Office's Decision Record is stayed and the Environmental Assessment and Finding of No Significant Impact approving the Application for Permit to Drill the Schlaudeman #354-23 Well and installing an associated pipeline if needed as described in the EA's Proposed Action are hereby remanded for the reasons expressed in the two paragraphs below. While we affirm that the Field Office did consider protection of Monument objects as required by relevant statutes and did comply with the NLCSA, FLPMA and NEPA, and that the decision is consistent with RMP objectives and actions to protect Monument objects, we stay the decision and remand the EA and FONSI.

We find that the Bakersfield FO has not provided sufficient evidence to show compliance with Section 7 of the ESA regarding impacts to threatened and endangered species from all alternatives and for all components of the proposed project. We direct Bakersfield to initiate consultation with USFWS, as appropriate, for all listed species. We stay the DR and remand the EA and FONSI to further address information in the EA regarding wildlife and plants.

We find that the Bakersfield FO has not adequately and completely considered the project's component GHG emissions associated with the well and the effects on climate.

## APPEAL RIGHTS

This Decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR 4.400 and Form 1842-1 (Enclosure 1). If

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<sup>11</sup> Rogelj, Joeri et al, 2015, *Nature Climate Change*, Vol. 5, p. 519-528.

<sup>12</sup> Meinshausen, Malte et al, 2009, Green-house gas emission targets for limiting global warming to 2°C, *Nature, Letters*, vol. 458, p. 1158-1163.

an appeal is taken, a Notice of Appeal must be filed in this office at the aforementioned address within 30 days from receipt of this Decision. A copy of the Notice of Appeal and of any statement of reasons, written arguments, or briefs must also be served on the Office of the Solicitor at the address shown on Form 1842-1. It is also requested that a copy of any statement of reasons, written arguments, or briefs be sent to this office. The appellant has the burden of showing that the Decision appealed from is in error.

If you wish to file a petition for a stay of this Decision, pursuant to 43 CFR 3165.4(c) (Enclosure 2), the petition must accompany your Notice of Appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

#### Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a Petition for a Stay of a Decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of irreparable harm to the appellant or resources if the stay is not granted, and
4. Whether the public interest favors granting the stay.

Sincerely,



James V. Scrivner  
Deputy State Director  
Division of Energy and Minerals

#### 2 Enclosures

Form 1842-1 (2p)  
eCFR43CFR3165.4 (3p)

cc: (w/o encl.)

CenCal District Office  
Gabe Garcia, Bakersfield Field Office  
WO-310