Director's Protest Resolution Report

Alabama and Mississippi Resource Management Plan

December 5, 2008

BLM

Contents

Reader's Guide

How do I read the Report?

The Director's Protest Resolution Report is divided up into sections, each with a topic heading, excerpts from individual protest letters, a summary statement (as necessary), and the BLM's response to the summary statement.

Report Snapshot

Issue Topics and Responses

NEPA — Topic heading

Submission number

Protest issue number

Issue Number: PP-CA-ESD-08-0020-10

Organization: The Forest Initiative — Protesting organization

Protester: John Smith — Protester's name

Direct quote taken from the submission

Issue Excerpt Text:

Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.

Summary — General statement summarizing the issue excerpts (optional).

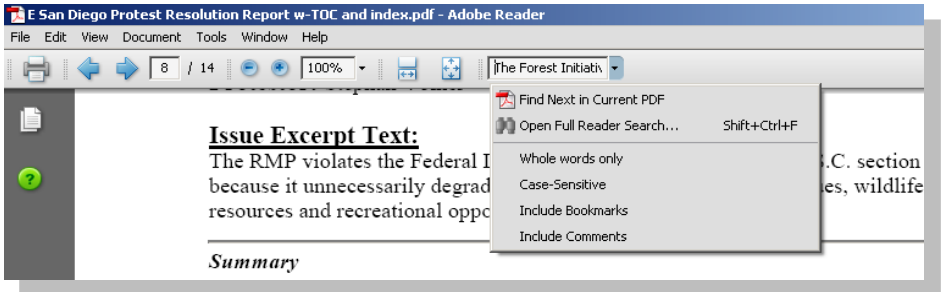
There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

Response — BLM's response to the summary statement or issue excerpt if there is no summary.

Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a site-specific NEPA

How do I find my Protest Issues and Responses?

1. Find your submission number on the protesting party index which is organized alphabetically by protester's last name.
2. In Adobe Reader search the report for your name, organization or submission number (do not include the protest issue number). Key word or topic searches may also be useful.



List of Commonly Used Acronyms

ACEC	Area of Critical Environmental Concern
APD	Application for Permit to Drill
BA	Biological Assessment
BLM	Bureau of Land Management
BMP	Best Management Practice
BO	Biological Opinion
CAA	Clean Air Act
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
COA	Condition of Approval
CSU	Controlled Surface Use
CWA	Clean Water Act
DM	Departmental Manual (Department of the Interior)
DOI	Department of the Interior
EA	Environmental Assessment
EIS	Environmental Impact Statement
EO	Executive Order
EPA	Environmental Protection Agency
ESA	Endangered Species Act
FEIS	Final Environmental Impact Statement
FLPMA	Federal Land Policy and Management Act of 1976
FO	Field Office (BLM)
FWS	U.S. Fish and Wildlife Service
GIS	Geographic Information Systems
IB	Information Bulletin
IM	Instruction Memorandum
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act of 1969
NHPA	National Historic Preservation Act of 1966, as amended
NOA	Notice of Availability
NOI	Notice of Intent
NRHP	National Register of Historic Places
NSO	No Surface Occupancy
OHV	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
RFDS	Reasonably Foreseeable Development Scenario
RMP	Resource Management Plan
ROD	Record of Decision
ROW	Right-of-Way
SHPO	State Historic Preservation Officer
SO	State Office
T&E	Threatened and Endangered
USC	United States Code
USGS	U.S. Geological Survey
VRM	Visual Resource Management
WA	Wilderness Area
WSA	Wilderness Study Area
WSR	Wild and Scenic River(s)

Protesting Party Index

Protester	Organization	Submission Number	Determination
Mr. Heinz J. Mueller	U.S. Environmental Protection Agency	PP-ALA/MISS-08-0001	Denied – Issues Comments

Issue Topics and Responses

NEPA

Impact Analysis-Waste-Water Disposal

Issue Number: PP-ALA/MISS-08-0001-4
Organization: United States Environmental Protection Agency
Protester: Heinz Mueller

Issue Excerpt Text:
EPA also notes that the final EIS lacks a discussion of the direct and indirect effects of brine-waste injection into ground waters for alternatives numbered 2, 3, and 4 in the Alabama discussion and for all of the alternatives in the Mississippi discussion. The direct and indirect effects are only discussed for the "no action" alternative for Alabama.

Issue Number: PP-ALA/MISS-08-0001-5
Organization: United States Environmental Protection Agency
Protester: Heinz Mueller

Issue Excerpt Text:
Additionally EPA notes in the final EIS, the continued absence of a robust discussion relating to waste-water disposal given that the preferred method of produced water disposal is to re-inject it into a permeable formation.

Issue Number: PP-ALA/MISS-08-0001-7
Organization: United States Environmental Protection Agency
Protester: Heinz Mueller

Issue Excerpt Text:
However, there is no discussion of how the proposed RMP will affect the ground-water resources of these two states and their populations relying upon ground water. There is no discussion of the geologic formations where the wastes will be injected and their proximity to potential drinking-water sources. Nor is there a discussion of the potential impacts to a federally-designated sole source aquifer, the Southern Hills Regional Sole Source Aquifer System, which lies in the southwestern portion of Mississippi

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Issue Number: PP-ALA/MISS-08-0001-9
Organization: United States Environmental Protection Agency
Protester: Heinz Mueller

Issue Excerpt Text:
In closing, EPA continues to have environmental concerns with the proposed RMP and finds the EIS insufficiently addresses the impacts of oil and gas brine waste injection into aquifers beneath federal and in adjacent non-federal lands, particularly in regards to the federally designated sole source aquifer

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Summary

The Alabama-Mississippi Proposed Resource Management Plan (PRMP) and Final Environmental Impact Statement (FEIS) insufficiently address the impacts of oil and gas brine waste injection into aquifers beneath Federal and in adjacent non-Federal lands, particularly in regards to the federally designated sole source aquifers. There is no discussion of the geologic formations where the wastes will be injected and their proximity to potential drinking-water sources.

Response

The scope and nature of the specific proposed action determines the level of NEPA analysis that is performed. Because RMPs set forth management direction that guides future, site-specific projects and do not, themselves, authorize any such site-specific projects, the NEPA analysis at the plan-level is necessarily broad and often qualitative. This plan-level NEPA analysis provides an analytical foundation for subsequent project-specific NEPA documents.

The Alabama-Mississippi PRMP/FEIS complies with NEPA in analyzing and disclosing the

potential, indirect environmental impacts that occur when the Proposed Plan and other alternatives are implemented in the future. These impacts are disclosed in Chapter 4 of the PRMP/FEIS (Section 4.1, p. 4-1 to 4-3). As required by 40 CFR § 1502.16, a discussion is provided of "[t]he environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented…"

The protester expresses specific concerns relating to the BLM's impact analysis of oil and gas brine injection into aquifers beneath Federal and adjacent non-Federal lands. The discussion of direct and indirect effects in the PRMP/FEIS addresses the impacts from mineral management actions on water resources in broad and qualitative terms as appropriate for this level of analysis. Potential impacts from mineral management actions on water resources in Alabama under Alternative 1, including the potential for groundwater contamination, are discussed in Section 4.2.1 (p. 4-7 to 4-8). For all subsequent Alabama alternatives, the anticipated level of oil and gas development and associated impacts on water resources are expected to be the same as Alternative 1 (Section 4.2.2, p. 4-26; Section 4.2.3, p. 4-38; Section 4.2.4, p. 4-49). Potential impacts from mineral management actions on water resources in Mississippi under Alternative 1, including the potential for groundwater contamination are discussed in Section 4.3.1 (p. 4-61). For all subsequent Mississippi alternatives, the anticipated level of oil and gas development and associated impacts on water resources are expected to be the same as Alternative 1 (Section 4.3.2, p. 4-77; Section 4.3.3, p. 4-88; Section 4.3.4, p. 4-97).

As discussed in Section 1.6 (p. 1-10) of the Alabama-Mississippi PRMP/FEIS, the BLM will conduct subsequent NEPA analyses for any future site-specific projects and implementation-level actions that will occur, such as oil and gas development (Section 2.3.18, p. 2-20). These site-specific analyses will tier to the RMP analysis but will be able to expand the environmental analysis because more specific information should be known at the project level, including factors such as geologic formations and proximity to sole source aquifers. In addition, as required by NEPA, the public will be offered the opportunity to participate in the NEPA process for these specific implementation actions.

Although specific implementation actions are not proposed in the PRMP/FEIS, measures are in place to protect water resources. Prior to reinjecting produced water from a Federal or non-Federal operation, an operator must obtain a permit as required by Onshore Oil and Gas Order No. 7. For additional information, please refer to the response for "Cumulative Impact Analysis-Waste-Water Disposal." In addition, as described in Appendix D of the PRMP/FEIS (p. D-8 to D-9), oil and gas operators must utilize the Best Management Practices to protect aquatic habitats and groundwater resources for the disposal of produced water.

Cumulative Impact Analysis-Waste-Water Disposal

Issue Number: PP-ALA/MISS-08-0001-11
Organization: United States Environmental Protection Agency
Protester: Heinz Mueller

Issue Excerpt Text:
EPA also notes that in both the Alabama and Mississippi cumulative impacts discussions, in

Chapter 4, the final EIS incorporates EPA's comment that brine waste reinjection into aquifers beneath Federal and non-federal lands over the next 20 years could be significant because by the year 2027, the number of new wells on non-federal lands is estimated to be 4,020 in Alabama and 12,010 in Mississippi. Then dismisses EPA's concern with a generalized statement: "the minimal number of 20 additional wells would have no long term cumulative impacts from waste brine reinjection. Thus cumulative impacts would not be anticipated." However, the EIS does not provide any environmental information to substantiate this statement.

Summary

The Final EIS does not provide any environmental information to substantiate the claim that the minimal number of additional wells would have no long-term cumulative impacts from waste brine reinjection.

Response

The PRMP/FEIS cumulative impact discussion specific to water resources is found in Section 4.4.1 for Alabama (p. 4-110) and Section 4.4.2 for Mississippi (p. 4-119). The PRMP/FEIS recognizes that over the next 20 years, aquifers below Federal and non-Federal land could be impacted due to oil and gas wells that use brine waste reinjection. The PRMP/FEIS's Reasonably Foreseeable Development Scenario projected a small number of new wells in the planning area. The BLM estimates that, within the defined area in the next 20 years, only 20 wells will be developed in Alabama and only 10 will be developed in Mississippi. The potential environmental impacts to water resources from minerals management actions are discussed in Section 4.2.1 (p. 4-7 to 4-8) and Section 4.3.1 (p. 4-61) of the PRMP/FEIS. As indicated in the PRMP/FEIS, incremental effect of the minimal number of wells projected would not be significant when considered along with the impacts to water resources that have been and may be caused by future actions outside the planning area. In addition to the minor number of additional wells associated with the Proposed Plan, conservation measures and BMPs are outlined in the PRMP/FEIS to reduce potential impacts to groundwater from reinjection (Appendix d, p. D-8 to D-9).

Prior to reinjecting produced water from a Federal or non-Federal operation, the operator must obtain a permit as required by Onshore Oil and Gas Order No. 7. The EPA has delegated to the states primacy over the permitting of underground injection wells (Appendix D, p. D-8). In Alabama, the Alabama state Oil and Gas Board regulates the injection of produced water. In Mississippi, the Mississippi Department of Environmental Quality and the Mississippi Oil and Gas Board regulate the injection of produced water. In each state, these underground injection regulations address all phases of development including siting, constructing, operating, monitoring, and closing of injection wells (Section 4.4.1, p. 4-110 and 4-119). The purpose of these regulations is to prevent contamination of surface and underground drinking water sources and reduce cumulative impacts to these resources.

Oil and gas development, including operations that may utilize waste brine reinjection, are implementation level actions that will require site-specific analysis under NEPA. That analysis will consider direct, indirect, and cumulative effects associated with each proposal. The scope and nature of the specific proposed action determines what level of analysis must be done to comply with the requirements of NEPA. As noted above, RMPs are used to evaluate broad policies and plans that provide an analytical foundation for subsequent project-specific NEPA documents. The cumulative impact analysis in the Alabama-Mississippi PRMP/FEIS considers the present effects of past actions, to the extent that they are relevant, and the present and

reasonably foreseeable, not highly speculative, Federal and non-Federal actions, taking into account the relationship between the proposed action and these reasonably foreseeable actions. Because this is an RMP, the cumulative effects analysis in Section 4.4 of the PRMP/FEIS (p. 4-105 to 4-126) differs from the analysis that would be presented in an environmental document analyzing the authorization of a specific activity or permit. The BLM has complied fully with the requirements of 40 CFR § 1508.7 and prepared a cumulative impact analysis to the extent appropriate for the RMP stage.