

No Rest for the Weary:

Why Seasonal Oil & Gas Closures Aren't Protecting Wildlife in New Mexico



The break-neck pace of drilling public lands for oil and gas has led the U.S. Bureau of Land Management in New Mexico to brush aside wildlife closures and timing limitations approximately one thousand times since 2000, all to ensure the rigs keep working.

The result is no rest for the weary.



A Forest Guardians Report by
Nicole J. Rosmarino, Ph.D.
December 2007

When elk and mule deer migrate south to New Mexico for the winter, they face an explosion of new well drilling, pipeline and road construction, and other high-impact activities during months when seasonal closures are supposed to protect the animals from disturbance. Area pronghorn, already much-reduced from historic herd sizes, face similar scenarios in key areas. Altogether, seasonal closures have been breached at least 441 times, to the detriment of these native ungulates.

Lesser prairie-chickens, so imperiled that they are a formal candidate for Endangered Species Act protection, were supposed to benefit from limits on disturbance during critical spring breeding months. Those timing limitations were brushed aside at least 516 times in order to accommodate more oil and gas production.

Executive Summary

Timing closures are widely adopted by the U.S. Bureau of Land Management (BLM) to reduce the impacts of oil and gas drilling impacts on wildlife species. These closures include limits on the time of day and time of year when various high-impact activities, such as new well drilling, pipeline and road construction, are allowed. BLM's tendency to brush these promises aside for the convenience of industry is explicitly admitted by the agency itself: "...we have been very liberal in granting exceptions."¹

In this report, we show how the BLM is allowing oil and gas companies to routinely breach seasonal closures in New Mexico, with little to no regard to the animals those closures were designed to protect, which include lesser prairie-chickens, mule deer, elk, and pronghorn. The violations of closures are occurring throughout closure periods, are usually granted in under a week, and often include the justification that drill rigs need to keep working. Altogether, exceptions have been allowed approximately 1,000 times since 2000 by the BLM in New Mexico. In the hundreds of times the Farmington Field Office has granted exceptions, there has been no process to advise the public of the broken promises of wildlife protection. Nearly half of the Farmington exceptions were granted in three areas: the Rosa, Middle Mesa, and Rattlesnake Canyon areas.

While the BLM should be held to its promise to provide seasonal protections to wildlife from new well drilling and other highly impacting operations, seasonal closures are not enough. According to the BLM itself, in many of the specially designated areas in which it is granting exceptions, there has already been extensive habitat fragmentation due to the proliferation of wells, roads, pipelines, compressors, and other petroleum extraction infrastructure across the landscape. The BLM needs to grant wildlife a reprieve from major disturbance during the winter and spring closures by fulfilling the promises it has already made. The agency also needs to take a second look at the rubberstamping of new oil and gas projects without regard to the damage done to the environment and New Mexico's wildlife.

Why Seasonal Closures are Needed

The two field offices of the BLM in New Mexico that have adopted seasonal closures and then allowed those closures to be systematically violated are the Farmington and Carlsbad Field Offices. These field offices are respectively located in the northwest corner of the state, overlying the San Juan Basin, and the southeast corner, overlying the Permian Basin. Both basins are already intensively drilled for oil and gas, with thousands of additional wells on the horizon. They are ground zero for oil and gas extraction in New Mexico, and the state's wildlife is paying the price.

¹BLM email to ConocoPhillips dated March 6, 2006.



Figure 1. BLM Field Office Map for New Mexico. Source: NM BLM 2007.

Lesser Prairie-Chickens in Carlsbad

In 1997, Carlsbad adopted a Resource Management Plan Amendment (RMPA) authorizing oil and gas extraction under standard terms and conditions across 95% of the field office (comprising 2.2 million surface acres of public land and approximately 1.9 million acres of federal mineral estate). The RMPA included a timing stipulation on 460,700 acres, aimed at protecting Lesser Prairie-Chickens from disturbance during their spring mating season.² The timing limitation reads:



Figure 2. Male lesser prairie-chickens in ritual mating dance. Photo © Jess Alford.

Drilling for oil and gas, and 3-D geophysical exploration operations will not be allowed in Lesser Prairie Chicken Habitat during the period of March 15 through June 15, each year. During the period, other activities that produce noise or

²Carlsbad RMP Amendment Record of Decision (1997), at Table A1-1.

involve human activity, such as the maintenance of oil and gas facilities, geophysical exploration other than 3-D operations and pipeline, road and well pad construction, will not be allowed except between 3:00 a.m. and 9:00 a.m. The 3:00 a.m. and 9:00 a.m. restriction will not apply to normal, around-the-clock operations, such as venting, flaring, or pumping, which do not require a human presence during the period. Additionally, no new drilling will be allowed within up to 200 meters of leks known at the time of permitting. Normal vehicle use on existing roads will not be restricted. Exhaust noise from pump Jack engines must be muffled or otherwise controlled so as not to exceed 75 db measures at 30 feet from the source of the noise. Exceptions to these requirements will be considered for areas of no or low prairie chicken booming activity, or unoccupied habitat, including leks, as determined at the time of permitting, or in emergency situations.³

Since the RMPA was adopted in 1997, this timing limitation has been waived more than 500 times, and most of the waivers involved drilling new wells. Since the settlement of a lawsuit with Forest Guardians and other groups in April 2006, the number of waivers to timing stipulations has sharply dropped. The settlement requires that prairie-chicken surveys and a public process occur prior to any waivers being granted.⁴

The importance of surveys was illustrated in a 2004 survey of lesser prairie-chickens conducted by the BLM. Had a compressor not shut off during the course of a spring survey, lesser prairie-chickens would never have been detected at one well.⁵ Without prairie-chicken surveys or detection, BLM used to routinely waive timing limitations, to the detriment of a species that is rapidly vanishing from the state.

Once abundant throughout their range in eastern New Mexico, the lesser prairie-chicken has been extirpated from 56% of its former range



Figure 3. Aerial view of oil and gas infrastructure in the western Permian Basin of New Mexico. Image provided by SkyTruth (www.skytruth.org).

³*Id.* at AP1-4.

⁴*Forest Guardians et al. v. Theiss et al.*, Civil No. 05-0276. Additional plaintiffs were the New Mexico Wildlife Federation and the Chihuahuan Desert Conservation Alliance.

⁵Allen, Ty. 2004. 2004 Lesser Prairie Chicken Survey Report and Recommendations. Report by Ty Allen, BLM Biological Technician, to Noe Gonzalez, BLM Carlsbad Area Field Manager. Dated July 29, 2004.

in the state and persists only as sparse and scattered populations in another 28% of that range. The core of the remaining populations occupies only 16% of its former range.⁶ The lesser prairie-chicken has been a candidate for Endangered Species Act listing since 1998 and faces threats and population declines throughout its range in the southern Great Plains.⁷

Native Ungulates in Farmington

In 2003, Farmington adopted a Resource Management Plan (FFO RMP), which authorizes 9,942 additional wells. The RMP prescribes seasonal timing limitations on 483,807 acres.⁸ The timing limitations primarily apply in specially designated areas (SDAs) that are supposed to protect key wildlife habitat.

The RMP provides an overview of area mule deer and elk herds and discusses the critical nature of the habitat managed by FFO and the need for timing limitations:

Mule deer and elk are found most often on FFO land north of US 550, and are much less common south of the highway due to the lack of suitable habitat (BLM 1988). Deer and elk population density on FFO land varies by location and time of year. In most years, a large influx of migratory mule deer and a lesser number of elk takes place during the winter. Most of these animals are found on FFO land near the Colorado/New Mexico state line and adjacent to National Forest and Jicarilla Apache reservation lands. Much of this habitat on FFO land is considered critical winter range. *TLs [timing limitations] currently in place in the Laguna Seca Mesa SMA and other winter habitat provide some protection against disruptions in their habitat when fawning or calving is occurring.* Resident deer density is much lower than winter population levels as determined from browse studies and helicopter surveys conducted each year...⁹

Similarly, the RMP discusses the declining status of area antelope and the likely factors behind that decline, including habitat destruction and human disturbance:

Several small populations of pronghorn antelope (*Antilocapra americana*) reside in the area north and east of US 550 near Angel Peak and Ensenada Mesa. There are also remnants of a once thriving population of antelope in the Twin Mounds area. *The numbers of these animals have been declining over the past 10 years. Studies are currently in progress to determine the*

⁶Bailey, J.A. and S. Williams III. 2000. Status of the Lesser Prairie-Chicken in New Mexico, 1999. The Prairie Naturalist 32(3): 157-168; Bailey, J.A. 2002. Status of the Lesser Prairie-Chicken in southeast New Mexico and southeast Chaves County, 2001. Unpublished report, at 5, Santa Fe, NM.

⁷Forest Guardians. 2004. Lesser Prairie-Chicken: the Sky Really is Falling. November 2004 Report. See also U.S. Fish and Wildlife Service. 2005. Species assessment and listing priority assignment form for Lesser prairie-chicken. Dated October 2005.

⁸FFO RMP at pp. 5, 2-6 (Table 5), and Map 2-11.

⁹FFO RMP Final Environmental Impact Statement (FEIS) at p. 3-41. Emphasis added.

cause of this decline. Preliminary indications are that the cause may be attributable to factors such as habitat quality and predation (Hanson 2001). It has been documented that antelope disperse widely over Ensenada Mesa when fawning. Traffic and other human activities can cause does to leave their fawns, leaving them vulnerable to predators. When human disruptions are limited in the habitat during the first 10 days to 2 weeks of a fawn's life, it can remain under cover until it is strong enough to travel with the herd, greatly improving its chances for survival (Hanson 2002). About 100 antelope were released on AFO land in and near the planning area a few years ago but most of these have disappeared, leaving only an occasional pronghorn antelope to be seen (Silva 2001).¹⁰

The RMP further states that the wildlife management areas are supposed to be managed to increase native ungulate herds:

HMPs [Habitat Management Plans] have been developed for some of the wildlife management areas such as Rattlesnake Canyon and Crow Mesa. These areas are managed for big game and other wildlife on FFO land (BLM 1997, 1999b). These areas are characterized by deep canyons, piñon-juniper woodlands with stringers of ponderosa pine, and areas dominated by big sagebrush. *The objectives of these HMPs are to increase the year-round resident mule deer and elk populations, contribute to the stabilization of the watersheds, and improve the existing biological diversity.* Actions planned for the HMP areas include improving the quantity and quality of forage, water, and protective cover for deer and elk, and increasing ground cover to reduce soil erosion (BLM 1997, 1999b). The condition of wildlife habitats are [sic] affected by the multiple uses of the land, including mineral extraction, livestock grazing, recreation activities, and fire management.¹¹

As this report demonstrates, the BLM is not managing to increase year-round mule deer, elk, or pronghorn populations. Rather, the agency is brushing away the promises it made in the RMP to protect these native animals, all for the benefit of the oil and gas industry.

Timing limitations are a promised mitigation in more than a dozen special areas within the FFO RMP,¹² but exceptions to seasonal closures are being granted in the following areas:

¹⁰*Id.* at pp. 3-41 to 3-42. Emphasis added.

¹¹*Id.* at p. 3-42. Emphasis added.

¹²FFO RMP at pp. A-1 to A-6.

Carracas Mesa Recreation Area. There is a timing stipulation from November 1 – March 31 across the entire SDA, and from April 1 – July 15 in designated elk calving habitat. This SDA comprises 8,616 acres, of which 3,201 acres contain federal minerals. BLM describes this area as special in the FFO because of its “relatively undisturbed natural environment.” Elk using this area in the winter number approximately 150-300

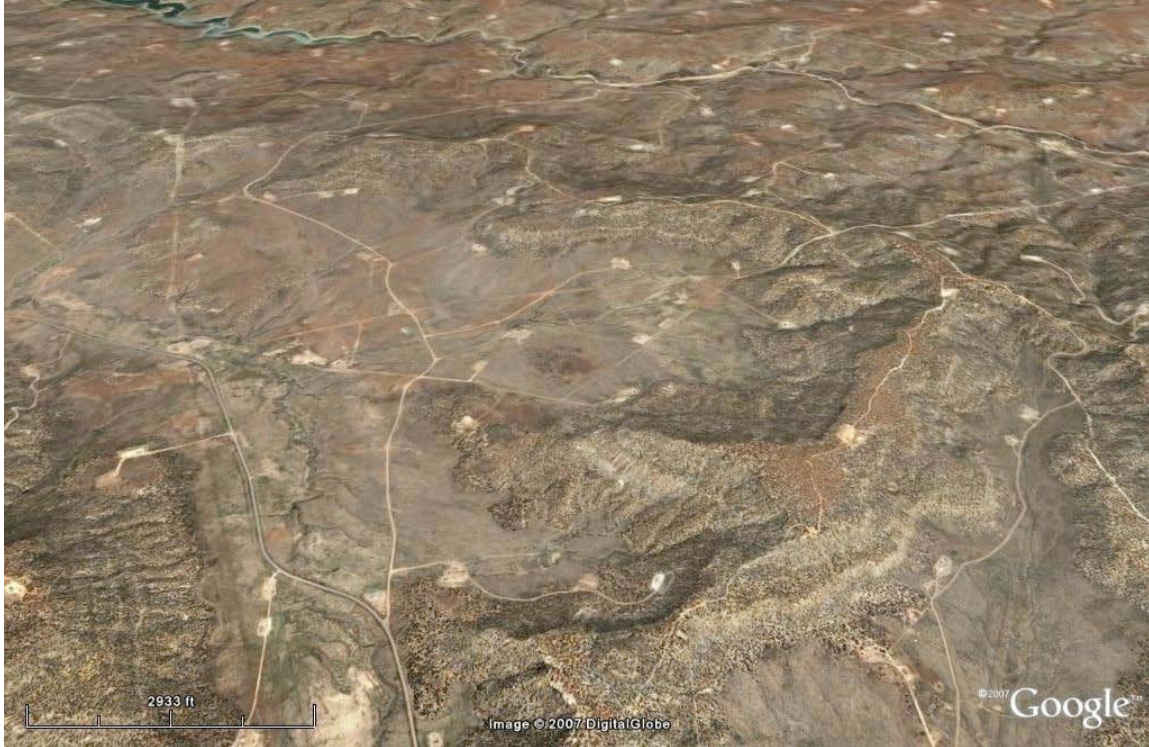


Figure 4. Oblique view of gas field infrastructure in Farmington Field Office of the San Juan Basin. Image provided by SkyTruth (www.skytruth.org).

animals, and wintering deer average 400-800 animals. BLM describes the Carracas SDA as having “extremely high” deer densities during the winter and considers it “very important to a relatively large number of deer and a lesser number of elk during a critical time of their life cycle.”¹³ The goal for this area is “This site should be managed to protect and enhance wildlife, with a secondary emphasis on recreation.” Seasonal restrictions are provided as a management prescription in the RMP.¹⁴

FFO has allowed the closure in Carracas Mesa, considered a high priority SDA, to be breached at least seven times since the September 2003 RMP, including multiple times in the elk calving area. In reviewing Energen requests to drill or complete two wells during a one-month exception from mid-June to mid-July 2007, the BLM described threats facing the Carracas elk population:

The Carracas Mesa elk calving area, primarily the top of Quintana Mesa and Eul Canyon, provide a relatively undisturbed habitat for cow elk to

¹³BLM letter to Williams dated March 20, 2006.

¹⁴FFO RMP FEIS at p. N-104.

give birth during the spring. In recent years elk numbers within this area have declined due mainly to hunting pressure.

BLM also recognized the severe habitat fragmentation in the area of the request due to oil and gas development. The agency further noted that deer densities were “very high” at the time. It granted the request anyway.¹⁵ In March 2006, the BLM described high deer densities in the Carracas SDA, of 19.8-93.8 deer per square mile. The agency also described the habitat as in poor condition throughout much of the SDA and “barely capable of meeting the forage demands of the migratory deer...” Nonetheless, it allowed Williams to commence wellpad and road construction for three new wells during the closure.¹⁶

Cereza Canyon Wildlife Area. There is a timing limitation stipulation for this area from December 1 – March 31 to protect big game winter range. This SDA comprises 45,266 acres, of which 27,868 acres contain federal minerals.¹⁷ The BLM describes this area as providing significant elk and mule deer habitat, particularly in the winter. Habitat improvements and protection during key stressful times, such as winter, are flagged by the agency as beneficial to these species. The goal for this area is to “Manage to protect wildlife habitat.” Seasonal restrictions are provided as the first management prescription in the RMP.¹⁸

FFO has allowed the seasonal closure to be breached in the Cereza Canyon SDA at least six times since the September 2003 RMP. Burlington asked for approval to build seven well pads and roads in the Cereza SDA in January 2006 and was given approval by the BLM three days after its request to build six of the seven. The exception provided was from January 16 – February 24, for a total of 39 days in the middle of the winter.¹⁹

Crow Mesa Wildlife Area. There is a timing limitation stipulation for this area from December 1 – March 31 to protect big game winter range. This SDA comprises 38,252 acres, of which 34,264 acres contain federal minerals.²⁰ Crow Mesa is described by BLM as containing resident mule deer and elk populations that are stable or slightly increasing, with the potential for further increase if more habitat improvement and protection can be provided. The goal for this area is to “Manage the Crow Mesa Wildlife Area with a focus on protecting big game and their habitat.” Seasonal restrictions are provided as the first management prescription in the RMP.²¹

...the agency is brushing away the promises it made in the RMP to protect these native animals, all for the benefit of the oil and gas industry.

¹⁵BLM letter to Energen Resources dated May 4, 2007.

¹⁶BLM letter to Williams dated March 20, 2006.

¹⁷FFO RMP at pp. A-2, B-2 and 2-6 (Table 5).

¹⁸FFO RMP FEIS at p. N-151.

¹⁹BLM letter to Burlington dated January 13, 2006.

²⁰FFO RMP at pp. B-2 and 2-6 (Table 5), and RMP FEIS at p. N-153.

²¹FFO RMP FEIS at p. N-153.

FFO has allowed the seasonal closure to be breached in the Crow Mesa SDA at least twice since the September 2003 RMP. This was despite the BLM's recognition that Crow Mesa is a high priority SDA, "[d]eer and elk make considerable use of this area," and there is "fragmentation of a fairly pervasive nature due to the roads, wells and pipeline infrastructure."²²

East La Plata Wildlife Area. There is a timing limitation stipulation for this area from December 1 – March 31 to protect big game winter range. This SDA comprises 7,159 acres, of which 5,814 acres contain federal minerals.²³ BLM describes the area as historically receiving heavy winter deer use, but now supporting only 60-100 deer, with the browse in poor condition. The goal for this area is to "Manage the area to protect and preserve big game habitat." Seasonal restrictions are provided as the first management prescription in the RMP.²⁴ FFO has allowed the seasonal closure to be breached in the East La Plata SDA at least once since the September 2003 RMP.

Encinada Mesa-Carrizo Canyon Area of Critical Environmental Concern. This SDA comprises 3,490 acres, of which 3,158 acres contain federal minerals.²⁵ It has a seasonal closure from December 1 – March 31.²⁶ The BLM describes the area as follows:

Carrizo Canyon provides yearlong habitat for mule deer and elk. Their numbers are relatively low given the size of the area which is likely due to the amount of habitat fragmentation. Both deer and elk numbers in this area will increase during harsh winters as animals migrate from the higher elevation Jicarilla Ranger District and the Jicarilla Apache reservation to escape the deeper snow.²⁷

FFO has allowed the seasonal closure to be breached at least five times since the September 2003 RMP.

Ensenada Mesa Wildlife Area. There is a timing limitation stipulation for this area from May 1 – July 15 to protect antelope fawning range. This SDA comprises 51,280 acres, of which 45,767 acres contain federal minerals.²⁸ BLM describes the area as providing critical habitat for the FFO's largest pronghorn herd (approximately 60 animals), with year-long and seasonal deer and elk use. The agency states that these animals should benefit from improved habitat conditions. The goal for this area is to "Manage the Ensenada Mesa to protect and preserve wildlife and their habitat." Seasonal restrictions are provided as the first management prescription in the RMP.²⁹

²²BLM letter to Huntington Energy dated March 8, 2006.

²³FFO RMP at pp. B-2 and 2-6 (Table 5), and RMP FEIS at p. N-155.

²⁴FFO RMP FEIS at p. N-155.

²⁵FFO RMP at p. A-2, and RMP FEIS at p. N-35.

²⁶BLM letter to ConocoPhillips dated November 30, 2006.

²⁷*Id.*

²⁸FFO RMP at pp. B-4 and 2-6 (Table 5), and RMP FEIS at p. N-157.

²⁹FFO RMP FEIS at p. N-157.

FFO has allowed this limitation to be breached at least three times since the September 2003 RMP despite recognizing that the pronghorn population is small and has struggled for years.³⁰ As the BLM describes,

...the Ensenada Mesa SDA provides important habitat for a small population of pronghorn antelope. During the fawning period, females disperse widely over the mesa seeking areas of relative solitude in which to give birth.³¹

But that small pronghorn population is not being given a chance, and does are certainly not enjoying any solitude. BLM estimated that as of November 2003, there were a staggering 14.2 wells per square mile in Ensenada Mesa SDA and a road density of 3.3 miles per square mile. A well density of 14.2 wells per square mile means that a well is encountered, on average, every 45 acres.³²

Laguna Seca Mesa. There is a timing limitation stipulation for this area from December 1 – June 15. This SDA comprises 9,211 acres, of which 8,124 acres contain federal minerals. The BLM describes this area as containing deer, elk, Mexican spotted owl, and other wildlife habitat. The agency states that these species would benefit from protection and habitat improvement. The goal for this area is to “Manage the Laguna Seca site to protect and preserve local wildlife and their habitat.” Seasonal restrictions are provided as the first management prescription in the RMP.³³

FFO has allowed the seasonal closure to be breached on Laguna Seca Mesa at least four times since the September 2003 RMP. The BLM describes this SDA as “more heavily and uniformly populated by deer, elk, turkeys and black bear” than other SDAs.³⁴ Despite these wildlife values, the agency allowed a month-long breach of the closure from December 1 – 31, 2005.³⁵

Middle Mesa Wildlife Area. There is a timing limitation stipulation for this area from December 1 – March 31 to protect big game winter range. This SDA comprises 46,052 acres, of which 40,317 acres contain federal minerals.³⁶ The BLM describes the area as containing critical deer winter range and notes that deer and elk use patterns suggest that these species may benefit from the area designated as critical winter habitat. Estimates of resident ungulates are 100-150 deer and less than 50 elk.³⁷ The goal for this area is to “Manage the Middle Mesa Wildlife Area to preserve and protect wildlife and their habitat.” Seasonal restrictions are provided as the first management prescription in the RMP.³⁸

³⁰BLM email to A-Plus Well Service dated April 29, 2005.

³¹BLM letter to Enterprise Products dated May 1, 2007.

³²*Id.*

³³FFO RMP FEIS at p. N-161.

³⁴BLM letter to Williams dated November 29, 2005.

³⁵*Id.*

³⁶FFO RMP at pp. B-2 and 2-6 (Table 5), and RMP FEIS at p. N-163.

³⁷BLM letter to ConocoPhillips dated November 30, 2006.

³⁸FFO RMP FEIS at p. N-163.

This SDA is among the most abused when it comes to BLM granting exceptions to seasonal closures. The agency has approved exceptions at least 45 times since the September 2003 RMP. In one instance, BLM approved exceptions from December 11, 2006 – February 28, 2007 in the Middle Mesa SDA, a breach of two and a half months.³⁹ Many of these were approved en masse on the same day or one day after company requests and are being approved throughout the winter.⁴⁰

Rattlesnake Canyon. There is a timing limitation stipulation for this area from December 1 – March 31 to protect big game winter range. This SDA comprises 110,160 acres, of which 98,276 acres contain federal minerals.⁴¹ The BLM describes this area as historically containing many more deer than at present, but states that the goal is to increase these population numbers and those of other wildlife, if it is properly managed. There are approximately 60-70 turkeys in this SDA, 225 deer, and 40-50 elk.⁴² The goal is to “Manage Rattlesnake Canyon to support increases in potential wildlife.” Seasonal restrictions are provided as the first management prescription in the RMP.⁴³

This SDA is the most abused in terms of numbers of exceptions. The BLM has allowed the seasonal closure to be breached in the Rattlesnake SDA at least 97 times since the September 2003 RMP. The agency is clearly working against its stated goal of increasing the wildlife populations in this SDA. In response to a plea by Koch

The BLM has allowed the seasonal closure to be breached in the Rattlesnake SDA at least 97 times since the September 2003 RMP.

Exploration for five exceptions “[d]ue to the unexpected availability of a drilling rig coming free in Mid April,” the BLM allowed the company to build roads, wellpads, and cavitate wells from March 19-31, 2007.⁴⁴ In another case, an exception was granted to BP America for seismic exploration extending over 19,000 acres within this SDA, from December 1-31, 2005, despite the BLM’s recognition that “[t]he pervasive nature of the human

activity associated with the seismic activity suggests the disturbance and resulting stress to wildlife during this winter period could be detrimental.”⁴⁵

Rosa Mesa Wildlife Area. There is a timing limitation stipulation for this area from December 1 – March 31 to protect big game winter range. This SDA comprises 69,762 acres, of which 61,406 acres contain federal minerals. There is also a timing limitation stipulation for 2,500 acres within the Rosa SDA to protect elk calving areas. That seasonal closure is from December 1 – July 15.⁴⁶ BLM describes 1,500 deer using

³⁹BLM letter to Williams dated December 10, 2006.

⁴⁰E.g., BLM letter to Williams dated March 16, 2007 and BLM letter to ConocoPhillips dated November 30, 2006.

⁴¹FFO RMP at pp. B-2 and 2-6 (Table 5), and RMP FEIS at p. N-165.

⁴²BLM letter to ConocoPhillips dated November 30, 2006.

⁴³FFO RMP FEIS at p. N-165.

⁴⁴Koch letter to BLM dated March 2, 2007 and BLM letter to Koch dated March 9, 2007.

⁴⁵BLM letters to BP America dated November 4, 2005 and December 1, 2005.

⁴⁶FFO RMP at pp. B-2 and 2-6 (Table 5), and FEIS at p. N-167.

this area, with their distribution influenced by winter severity and human disturbance. The agency notes that in severe winters, the deer herds migrate south of the protected area and additional protected area is therefore needed. The goal for Rosa Mesa is to “Manage the site to protect and preserve wildlife habitat.” Seasonal restrictions are provided as the first management prescription in the RMP.⁴⁷

This SDA is among the most abused in terms of numbers of exceptions. FFO has allowed the seasonal closure to be violated in the Rosa at least 63 times since the September 2003 RMP, despite its designation as a high priority SDA. The BLM describes the Rosa SDA as “an area of extreme importance to a relatively large number of deer during a critical time of their life cycle,”⁴⁸ yet it has allowed the seasonal closure to be breached here every year since the RMP, throughout the crucial winter months. The Rosa is faring poorly: BLM describes the habitat as “in poor condition and barely capable of meeting the forage demands of the migratory deer.”⁴⁹

Thomas Canyon Recreation Area. There is a timing limitation for this SDA from November 1 – April 15. The area comprises 15,644 acres, of which 12,775 acres contain federal minerals. BLM describes the area as containing habitat for large herds of wintering mule deer. The agency also states in the RMP, “Natural values within the area are considered important and somewhat rare in an otherwise developed region.” The goal is to “Manage the area for the optimal combination of recreational opportunities and wildlife protection.” Seasonal restrictions are provided as the second management prescription in the RMP.⁵⁰

FFO has allowed the seasonal closure to be breached in Thomas Canyon at least twice since the September 2003 RMP, despite the agency’s designation of it as a high priority SDA and its description that “the Thomas Canyon SDA provides critical deer winter range for migratory deer.”⁵¹

While the BLM designated the above areas as SDAs worthy of special safeguards, its behavior of granting exceptions freely has rendered this status meaningless, to the detriment of the natural values these SDAs were established to protect. The FFO promised in the RMP to “assist operators in designing plans of development to minimize impacts to oil and gas operations while still meeting wildlife goals.”⁵² Given the widespread exceptions being granted, there is little evidence the agency has followed through on this pledge.

For all of the above timing limitations, the FFO RMP includes the following proviso:

If circumstances or relative resource values change or if it can be

⁴⁷FFO RMP FEIS at p. N-167.

⁴⁸E.g., BLM letter to ConocoPhillips dated January 12, 2006.

⁴⁹*Id.*

⁵⁰FFO RMP FEIS at p. N-124.

⁵¹BLM letter to Pogo Producing dated March 29, 2007.

⁵²FFO RMP at p. 5.

demonstrated that oil and gas operations can be conducted without causing unacceptable impacts, this stipulation may be waived, excepted, or modified by the BLM Authorized Officer, if such action is consistent with the provisions of the Farmington Resource Management Plan, or if not consistent, through a land use plan amendment and associated National Environmental Policy Act analysis document. If the BLM Authorized Officer determines that the waiver, exception, or modification involves an issue of major public concern, the waiver, exception, or modification shall be subject to a 30-day public review period.⁵³

Because seasonal closures are now breached as a matter of course, the issue is increasingly controversial and impacting. It therefore merits review under the National Environmental Policy Act (NEPA) and other applicable federal laws.

Numerous Violations of Seasonal Closures

Carlsbad

While Carlsbad continues to grant exceptions to timing stipulations for lesser prairie-chickens, the number of exceptions granted has sharply declined after a lawsuit brought against the BLM in March 2005 by Forest Guardians, the New Mexico Wildlife Federation, and the Chihuahuan Desert Conservation Alliance. The lawsuit settled in April 2006.⁵⁴ Altogether, Carlsbad has granted 516 exceptions to the lesser prairie-chicken timing stipulation since it was adopted in 1997 (Table 1).

Table 1. BLM Carlsbad Field Office Approvals of Wildlife Timing Exceptions.
Source: BLM CFO.

Year	No. of Approvals
2000	88
2001	237
2002	92
2003	59
2004	26
2005	3
2006	3
2007	8
Totals	516

In Table 1, it may appear that waiver approvals declined from 2001 to 2002, but prairie-chicken protection actually reached an all-time low as a result of guidelines issued by the Carlsbad Field Office on March 11, 2002, wherein certain areas were designated “blanket” exception areas. In these areas, companies no longer had to request individual exceptions but could operate at will, with the condition that if active leks were found, a

⁵³FFO RMP at p. B-2.

⁵⁴*Forest Guardians et al. v. Theiss et al.*, Civil No. 05-0276.

contingency plan that could include shutdown of the well could go into effect. This policy was ultimately suspended.

Exceptions to lesser prairie-chicken restrictions are sometimes requested due to the scarcity of drill rigs. For instance, Chesapeake needed an exception because it “had delays finding a rig.”⁵⁵ Another company explained the need for its request for an exception to the prairie-chicken timing limitation as follows: “...because of the highly active drilling environment we are currently experiencing in Southeastern New Mexico and the Permian Basin, Pogo has been unable to secure the trucks, cranes and other equipment necessary...”⁵⁶ CFO BLM maintains that, in all recent exceptions granted, mechanical failures are the primary issue.⁵⁷ Regardless, the lesser prairie-chicken is not only being denied full implementation of mitigations promised in the RMPA, it suffers the double insult that mitigations are eroded due to the breakneck pace of drilling in the Permian Basin, which is ushering the bird toward extinction.

Because waivers to lesser prairie-chicken timing stipulations have sharply declined in recent years, the focus in this report is on the reckless wildlife exception practices presently occurring in the Farmington Field Office.

Farmington

In Farmington, the high rate of approvals for exceptions – 88.9% – demonstrates that the BLM’s default position is to grant exceptions (Table 2). Requests are granted throughout the closure period, in high priority wildlife areas, and despite the recognition that such exceptions will disturb area wildlife, which are in serious trouble. Altogether, at least 477 exceptions have been sought to seasonal closures and 425 have been granted (Table 2). This is a significant underestimate, as in some instances, a company request involving multiple actions or sites may be counted as only a single request. In other instances, BLM inexplicably omitted some requests from its database. In addition to the 425 exceptions reported in BLM databases, Forest Guardians documented an additional 16 exceptions. *FFO has therefore granted approximately 441 exceptions, or more than 110 exceptions per year since the RMP was signed in 2003. Combined with Carlsbad’s exceptions, the BLM has waived wildlife timing restrictions 957 times since 2000.*

Table 2. BLM Farmington Field Office Approvals of Wildlife Timing Exceptions.
Source: BLM FFO 2007.*

Year	No. of Requests	No. of Approvals	Approval Rate
2003/2004	104	103**	99.0%
2004/2005	187	152	81.3%
2005/2006	123	116	95.0%
2006/2007	64	54	84.4%
Totals	478	425	88.9%

⁵⁵Email from Chesapeake Energy to BLM dated March 15, 2007.

⁵⁶Letter from Pogo Producing Company to BLM dated March 13, 2007.

⁵⁷Pers. comm., Steve Bird, CFO BLM. November 29, 2007.

*Note: the number of exceptions sought by each company and the total numbers of exceptions sought were taken from tables compiled by the BLM FFO. However, **the figures in this table are significantly underestimated**, as BLM omitted some requests from their tables. In addition, some entries for exceptions represented more than one action but may be counted as only a single request.

**Note: this includes 6 partially granted exceptions.

Most of the seasonal closures in FFO run from December 1 – March 31. Exceptions are granted throughout the seasonal closures. While the BLM often justifies granting an exception on the basis that it will occur at the front end of the closure,⁵⁸ the agency also justifies granting exceptions at the back end of the closure,⁵⁹ and has granted exceptions during every month in between (Table 3).

Table 3. Monthly Overview of Exceptions Granted. Source: BLM FFO 2007.

Year/Month	December	January	February	March
2003-2004	✓	✓	✓	✓
2004-2005	✓	✓	✓	✓
2005-2006	✓	✓	✓	✓
2006-2007	✓	✓	✓	✓

Continual disturbance throughout the closure is seen vividly in the series of exceptions granted within the Rattlesnake Canyon SDA in the winter of 2005/2006. In November 2005, BLM granted an exception within Rattlesnake Canyon SDA from December 1-23 to Koch to install surface equipment on four wells in part because “the proposed work will occur on the ‘front end’ of the closure period before the most severe part of the winter arrives.”⁶⁰ Additional exceptions were granted in the same SDA that same winter to Energen to drill a new well from December 22 – January 31,⁶¹ to the City of Farmington to construct a power line from January 3-31,⁶² to People’s Energy to clean and cavitate a well from February 2 – March 6,⁶³ and again to Koch to enlarge or construct pads and build roads for three wells from March 20-31,⁶⁴ bringing to an end a seasonal closure with no meaning. As discussed above, the Rattlesnake SDA is important for deer, elk, and turkey, but these wildlife are given no winter reprieve from escalating gas production. While the goal in this SDA is to increase wildlife populations, the Rattlesnake has suffered more exception than any other area – at least 97 – and this goal is therefore being undermined.

⁵⁸For example, BLM letters to Williams dated November 29, 2006 and November 30, 2006, BLM letter to Burlington December 5, 2005, BLM letters to Williams dated November 29, 2005 and December 2, 2005, BLM letter to People’s Energy dated December 2, 2005, and BLM letter to the City of Farmington dated December 6, 2005.

⁵⁹Exceptions during March are commonplace. For example, BLM letter to Huntington dated March 8, 2006 (exception from March 6-17 granted in letter, verbal approval by BLM later granted through March 23); BLM letter to ConocoPhillips dated March 8, 2006, which states “the timing of your request comes near the end of the seasonal closure period” and provides an exception to construct roads and wellpads for four wells from March 13-24.

⁶⁰BLM letter to Koch dated November 14, 2005.

⁶¹BLM letter to Energen dated December 22, 2005.

⁶²BLM letter to City of Farmington dated January 3, 2006.

⁶³BLM letter to People’s Energy dated February 2, 2006.

⁶⁴BLM letter to Koch dated March 14, 2006.

Exceptions vary in length from a few days during the closures to multiple months. For instance, BLM granted an exception in 2005 to Williams from December 1 – February 9 for cavitation of four wells in the Rosa SDA.⁶⁵ In 2006, Burlington was allowed an exception from January 16 – February 24 to construct wellpads and roads for six of seven wells in the Cereza Canyon SDA, despite the BLM’s recognition of serious habitat problems, severely high well densities, and resultant stress on native ungulates in this area:

The area of the requested exception is being heavily developed for its natural gas reserves. Consequently, the habitat fragmentation that has resulted from imposing this type of infrastructure on the landscape is high. In November of 2003 the number of gas wells located within the Cereza Canyon SDA was 571 or approximately 12.4 wells per square mile of land. Road densities at his time were calculated at approximately 3.7 miles of road per square mile. Since this time there has been considerably more development. Clearly, this magnitude of fragmentation impacts the ability of big game such as deer and elk to readily escape the possible stressful effects of human activity.⁶⁶

A well density of 12.4 per square mile means a well is encountered on average every 52 acres. This level of development is even more concerning when considering the BLM’s management goal for this area: “to protect wildlife habitat,” and its characterization of Cereza Canyon as providing significant elk and mule deer habitat, particularly in the winter, a particularly stressful time for these animals.⁶⁷

A well density of 12.4 per square mile means a well is encountered on average every 52 acres.

The disturbance that occurs during what are supposed to be quiet winter months in the field is sometimes acknowledged in passing by BLM. For instance, on December 7, 2004, a week into the winter closure, BLM wrote to McElvain Oil and Gas that “there is considerable human disturbance” in the Rattlesnake Canyon SDA. BLM nonetheless approved the company’s request to continue that disturbance until December 30. The company’s reason for the request: the all-important rig schedule.⁶⁸ Indeed, wildlife exemptions for mule deer and elk are often requested on the basis that when a company has a drill rig, it has to keep it working. The rig schedule has become a paramount driver in oil and gas operations on BLM lands, overriding the needs of the land or wildlife.

Requests for multiple exceptions at once occur quite frequently. On October 21, 2004 Williams requested exceptions to drill 14 wells with 24-hour rigs on the Middle Mesa and Rosa SDAs. Rather than requiring Williams to finish drilling in the more than five weeks

⁶⁵BLM letter to Williams dated November 16, 2005. This was the second letter to Williams on the same day, as discussed later in the report.

⁶⁶BLM letter to Burlington dated January 12, 2006.

⁶⁷FFO RMP FEIS at p. N-151.

⁶⁸Email correspondence between BLM and McElvain Oil and Gas Properties, dated December 6-7, 2004.

before the December closure began, BLM granted approval for the Middle Mesa wells to be drilled and told the company that the Rosa wells could be assessed in late November.⁶⁹

On December 2, 2005, BLM granted ConocoPhillips an exception through December 15 for at least 24 activities occurring in the Rosa, Middle Mesa, Rattlesnake Canyon, and Laguna Seca SDAs. This was despite recognition that key browse species were “severely degraded,” mule deer numbers were very high: numbering at least 800-1,000 animals, habitat fragmentation was severe, and a late season (December 3-7) elk hunt with 300 hunters would add more stress. While BLM noted that, “The stress to elk and deer in the area may be significant from having to contend with the industry activity and hunters,” their concern was not great enough to turn the company down.⁷⁰ The mule deer and elk were thus denied any buffer from the severe, intersecting threats they faced that winter.

With no incentive to plan better, ConocoPhillips again requested many exceptions the following winter. On November 30, 2006, BLM granted ConocoPhillips exceptions for at least 23 activities occurring in the Rosa, Carrizo Canyon, Rattlesnake Canyon, and Middle Mesa SDAs. BLM approved the exceptions despite recognizing significant troubles for the wintering deer, given that habitat on the Rosa was “in poor condition and barely capable of meeting the forage demands of the migratory deer.”⁷¹ BLM also noted a high level of fragmentation, at least 6.3-12.4 wells per square mile and 2.0-3.7 miles of road per square mile, across all of these areas and stated,

Clearly, this magnitude of fragmentation does not lend itself to enabling large mammals such as deer and elk to readily escape the possible stressful effects of widespread human activity which already routinely occurs in the Rosa SDA.⁷²

Nevertheless, BLM used its rubberstamp, taking only three days to approve this sweeping set of exceptions.⁷³

Exceptions are also being granted across large acreages. For example, in November 2005, BLM approved a two-week breach from December 1-15 to BP for a seismic exploration project in Rattlesnake Canyon SDA impacting 19,000 acres.⁷⁴ This was despite recognizing that: “The pervasive nature of the human activity associated with the seismic activity suggests the disturbance and resulting stress to wildlife during this winter period could be detrimental.” In addition, BLM wrote in its analysis that,

In November of 2003 the number of gas wells located within the Rattlesnake Canyon SDA was 1,079 or approximately 6.3 wells per square mile of land. Road densities at his time were calculated at approximately

⁶⁹BLM letter to Williams dated November 1, 2004.

⁷⁰BLM letter to ConocoPhillips dated December 2, 2005.

⁷¹BLM letter to ConocoPhillips dated November 30, 2006.

⁷²*Id.* Estimates of well and road densities were from November 2003 and were therefore likely to have been greater by November 2006.

⁷³*Id.* ConocoPhillips’ requests were dated November 27, 2006.

⁷⁴The company had requested a six-week exception, but the BLM provided only partial approval.

2.3 miles of road per square mile. Since this time there has been considerably more development. Clearly, this magnitude of fragmentation does not lend itself to enabling large mammals such as deer and elk to readily escape the possible stressful effects of widespread activity such as seismic exploration.⁷⁵

The BLM took only three days to approve this exemption despite its extensive impacts and despite the closure being a month away.⁷⁶

While the BLM sometimes denies companies' requests for exception, a denial is rare, as seen from the overall exception approval rate of approximately 89% (Table 2). In November 2005, the agency showed just unwilling it is to stand up for the area's wildlife in the face of industry requests that mitigations be swept aside. On November 16, while BLM initially denied a request for an exception requested by Williams to cavitate four wells in the Rosa SDA, the agency reversed itself on the very same day.⁷⁷ The original BLM letter to Williams stated that the Rosa SDA "provides critical deer winter range for large numbers of migratory deer" and described high deer densities, noted the long length of the request (from December 1 – February 9), acknowledged the poor habitat conditions, and therefore denied the request, stating:

...from a cumulative perspective it does not seem prudent to authorize additional human activity in an area that is heavily used by wintering deer. Given these circumstances it is my decision to deny your request for an exception to the seasonal restriction in the Rosa Mesa SDA.⁷⁸

When Forest Guardians asked for any additional correspondence explaining why the exceptions were later approved (that same day), the BLM stated that the exception requests were approved because Williams offered to implement "a number of mitigating measures."⁷⁹ The only additional mitigations provided after the original denial of the request were limitations on the amount of truck traffic allowed, a requirement that travel occur during weekdays, and restrictions on travel when conditions were muddy.⁸⁰

Companies Requesting Exceptions

Those companies requesting the most exemptions are Burlington and ConocoPhillips. ConocoPhillips acquired Burlington in 2006.⁸¹ Other companies requesting dozens of exceptions are Devon Energy Production Company and Williams (Table 4).

⁷⁵BLM letter to BP dated November 4, 2005.

⁷⁶*Id.*

⁷⁷BLM letter to Williams dated November 16, 2005 and a second BLM letter the same day.

⁷⁸*Id.* See original BLM letter to Williams.

⁷⁹BLM letter to Forest Guardians dated October 5, 2007.

⁸⁰BLM revised letter to Williams dated November 16, 2005.

⁸¹"Burlington Resources Stockholders Approve Merger with ConocoPhillips," ConocoPhillips Press Release dated March 30, 2006.

Table 4. Companies Requesting Exceptions. Source: BLM FFO 2007.*

Company	2006/2007 Requests	2005/2006 Requests	2004/2005 Requests	2003/2004 Requests	Total Requests
BP	1	6	4	10	21
Burlington	0	12	54	39	105
ConocoPhillips	26	42	28	35	131
City of Farmington	0	11	0	0	11
Devon Energy Prod. Co. LP	0	15	54	11	80
Duke Energy Field Services	0	0	7	1	8
El Paso Field Services	0	0	0	1	1
Energen	6	1	0	0	7
Enterprise Products	1	0	0	0	1
Huntington Energy	0	2	0	0	2
Jemez Electric	0	1	0	0	1
Koch	5	7	0	0	12
McElvain Oil & Gas Props. Inc.	0	1	5	0	6
People's Energy	4	4	0	0	8
Pogo Producing	2	0	0	0	2
Western Minerals	0	0	2	0	2
Williams	20	19	33	7	79
XTO Energy	0	1	0	0	1
Totals	65	122	187	104	478

*Note: the number of exceptions sought by each company and the total numbers of exceptions sought were taken from tables compiled by the BLM FFO. However, **the figures reported here are significantly underestimated**, as BLM omitted some requests from their tables. In addition, some entries for exceptions represented more than one action but may be counted as only a single request.

As discussed above, while the BLM promised in the RMP that it would work with companies to ensure better planning,⁸² the agency's willingness to approve exceptions rewards irresponsible company behavior. The ones paying the price are the San Juan Basin's wildlife.

Seasonal Closures Are Waived Through a Private Process

In Farmington, the BLM often grants exceptions to wildlife closures within a day of an oil and gas company's request. The exception guidance states that the intent is to grant exceptions within 1-3 days of receipt.⁸³ The requests take the form of an email, letter, or

⁸²FFO RMP at p. 5.

⁸³Bureau of Land Management. 2003. Procedures for requesting an exception to seasonal drilling restrictions. Farmington Field Office document dated November 2003. See unnumbered p. 5.

phone call, and approval is provided by the BLM in the same fashion. In some cases, approval is nearly instantaneous. The exceptions are granted through an entirely private process.

The exceptions to seasonal closures in the Farmington Field Office are based on a November 2003 guidance document that was issued several months after the RMP was approved.⁸⁴ While the RMP stated that exception criteria would be produced “in collaboration with industry, the New Mexico Department of Game and Fish and other interested parties,”⁸⁵ the guidance and subsequent applications of it have never been subject to NEPA review or public comment. In the meanwhile, the BLM is systematically renegeing on a key mitigation promise made to the public in the RMP: that area wildlife would have a winter and spring reprieve from most major disturbances.

The process leading to the November 2003 exception guidelines involved a committee hand-picked by BLM. The BLM stated that, “the process to develop the criteria hinged upon the collective efforts of a committee representing all perceived stakeholders that was assembled somewhat informally by the BLM.”⁸⁶ It appears that only one meeting was held to develop this guidance, on the afternoon of October 29, 2003. It was attended by eleven individuals, the majority of which were affiliated with industry or government agencies. No notices were released by the BLM alerting the public about this meeting.⁸⁷

But the minutes of the meeting revealed a serious problem: most of the SDAs overlaid “focused areas of well development” during the next 3-5 years, according to industry representatives. These representatives also indicated that SDAs would impact the majority of oil and gas companies operating in the area, but some companies would be affected more than others. For example, 90% of ConocoPhillips’ development over the next 3 years was planned within SDAs with wildlife seasonal closures.⁸⁸ Indeed, as demonstrated above, ConocoPhillips has received more exceptions to seasonal closures than any other company in the FFO since the RMP was adopted (Table 4). Despite the intense activity foreseen in key wildlife habitats and the consequent need for seasonal closures, the BLM and its hand-picked committee effectively lifted the closures before they ever began.

With its obliging responses to company requests, the BLM has become a vehicle to ensure maximum profit margins for the oil and gas industry.

As noted above, the pressure for exceptions often comes down to the rig schedule. With its obliging responses to company requests, the BLM has become a vehicle to ensure maximum profit margins for the oil and gas industry. Stated a representative of BP: “We will suffer significant economic and operational consequences if BP should be required to halt operations. At this time of record natural gas prices and limited rig availability, *any*

⁸⁴*Id.*

⁸⁵FFO RMP at p. 5.

⁸⁶BLM email to Forest Guardians dated November 26, 2007.

⁸⁷*Id.*

⁸⁸*Id.*

cessation in activity has serious impacts on cash flow and hinders our efforts to keep quality rigs working for BP.”⁸⁹ Similarly, a representative of Devon Energy Corporation stated, “Should Devon be required to halt operations [due to the closure], we will suffer significant economic and operational consequences. At this time of record natural gas prices and limited rig availability, *any cessation in activity* has serious impacts on cash flow and hinders our efforts to keep quality rigs working for Devon.”⁹⁰ Another example comes from an XTO employee, who stated, “I am requesting an early start because XTO has a drilling rig suited for drilling this type of well under contract at this time. We are scheduled to lose this rig on or near April 1st, 2006.”⁹¹

Burlington took it one step further, asking in a November 9, 2004 letter for an exception for *all of its rigs* until December 15, 2004. The company asserted that,

Burlington has made an honest effort to plan its drilling rigs around the wintering/non-wintering guidelines outlined in the BLM’s RMP. Since the 1st of September we have had to drill nine non-wintering wells, since the APD approvals for our wintering wells came much slower than we anticipated.

You can see the dilemma this situation has put us in. We are trying to maintain activity for five drilling rigs and when coal wells are spud every four days and MV/DK [Mesaverde/Dakota formations] wells every 10 days we need to receive approx. 5-6 APDs a week to keep up. Since these nine non-wintering wells have already been spud during this time period there is a good possibility that we are looking at running out of non-wintering wells to spud before April 1st...

We appreciate the fact that we have received seven APD approvals for wintering wells in the last week. There are also three wells that we don’t have approval for yet, but have been promised by the Surface group that they will be coming within the week...

Using these 10 wells with the other wintering wells we have, we are still short...

Saying all of this, we are requesting an exception for all of our rigs until December 15th...

Also since we had to use nine of our non-wintering wells to keep the rig busy this fall, we may have to request wintering exceptions on the backside of the closure period, if weather permits. This will only be if we

⁸⁹BP letter to BLM dated November 3, 2004. Emphasis added.

⁹⁰Devon letter to BLM dated November 1, 2004. Emphasis added. Note the identical language used in the Devon and BP letters.

⁹¹XTO letter to BLM dated March 2, 2006.

don't have enough non-wintering wells to keep the rigs busy and all we have permitted are wintering wells.⁹²

As if it was BLM's job to keep Burlington's rigs busy, within a week, the agency granted exceptions for 15 of 19 Burlington wells through December 15, 2005. Burlington requested an additional exception on 18 of these wells and two pipelines on December 13, which BLM granted within three days, allowing Burlington until December 24 to complete its new wells and pipelines.⁹³

Not satisfied, the following spring, Burlington requested an exception to drill one of three wells during the last week of March, stating: "We are having a hard time keeping our cavitation rigs busy."⁹⁴ BLM granted verbal approval the same day and responded via email within twenty-four hours, approving the drilling of all three wells for the two weeks remaining in the closure period (through March 31).⁹⁵

This collusion between BLM and industry not only results in shutting the public out when promised mitigations are being renegeed upon, it also prevents agency accountability. For instance, exceptions were granted to Williams for cavitation of seven wells in December 2003 but BLM lost the notes from the meeting where approval was given.⁹⁶ Similarly, in November 2004, Devon requested exceptions for 42 actions but BLM lost the company's original request.⁹⁷ Without adequate documentation of the disturbance being allowed to occur during seasonal closures, the agency will not be able to fully assess the harm caused to wildlife that are supposed to be benefiting from those closures.

Seasonal Closures Are Not Enough

The many requests for exemptions from seasonal closures raise the question of whether it is possible to follow wildlife-friendly oil and gas drilling schedules. There will always be inclement weather and equipment failures and, as long as the swift pace of drilling continues, there will continue to be a scarcity of drill rigs. In addition, seasonal closures fail to protect wildlife habitat from destruction due to oil and gas drilling, whether that activity occurs inside or outside of the closure periods. Given the threats facing the lesser prairie-chicken, mule deer, elk, pronghorn and other wildlife in the Permian and San Juan basins, BLM should prohibit further oil and gas development in key areas.

Seasonal closures fail to address the harm to wildlife habitat caused by oil and gas drilling. Oil and gas extraction has degraded lesser prairie-chicken and native ungulate habitat in New Mexico. The lesser prairie-chicken has been nearly extirpated from Carlsbad and has suffered significant declines in other areas across its five-state range

⁹²Burlington letter to BLM dated November 9, 2004.

⁹³BLM letter to Burlington dated December 16, 2004.

⁹⁴Burlington email to BLM dated March 16, 2005.

⁹⁵BLM email to Burlington dated March 17, 2005.

⁹⁶BLM letter to Forest Guardians dated October 5, 2007.

⁹⁷*Id.*

due to oil and gas development. A 2004 report by BLM staff in Carlsbad Field Office found adverse impacts from wellpads and roads to LPCs and stated that,

Once petroleum development is allowed in an area, these forces will tend to interact to increase number of wells, density of roads, and number of power lines to a point at which populations of lesser prairie-chickens cannot survive.

The results of this study support the idea that petroleum development, especially at high levels, is not compatible with healthy populations of lesser prairie-chickens. Exploration for oil and building of roads should be greatly limited or not allowed in areas that contain healthy populations of lesser prairie-chickens. Areas of suitable habitat should be closely monitored for breeding populations, and no new areas should be opened to petroleum development without first being surveyed extensively for lesser prairie-chickens.⁹⁸

Similarly, the BLM acknowledges the harm to native ungulates caused by severe habitat degradation from oil and gas extraction in the FFO. In many of its reviews of exception requests in the Rosa SDA, the agency wrote,

Seasonal closures fail to address the harm to wildlife habitat caused by oil and gas drilling.

Overall, the key browse species (true mountain mahogany, Wyoming big sagebrush and antelope bitterbrush) throughout much of this area would rate as being in poor condition. In addition, there are significant areas where the pinyon pine and to a lesser degree Utah juniper have been high-lined by deer that have resorted to eating these trees as starvation foods due to the absence of more desirable forage. Both of these tree species contain significant amounts of secondary metabolites (terpenes) that can cause abortion when ingested in sufficient quantity.⁹⁹

Poor habitat quality on the Rosa is described by BLM across multiple years: 2004,¹⁰⁰ 2005,¹⁰¹ 2006,¹⁰² and 2007.¹⁰³ In 2003, BLM described these conditions on the Rosa and Middle Mesa SDAs:

The browse species in the requested work area are severely degraded. Much of the sagebrush, antelope bitterbrush, and true mountain mahogany is dead or severely hedged, thus providing little forage to wintering animals. Pinyon pine and Utah juniper in this area are often “high-lined”

⁹⁸“Investigation into the decline of populations of the lesser prairie-chicken (*Tympanuchus pallidicinctus*) on lands administered by the Bureau of Land Management, Carlsbad Field Office, New Mexico” at pp. 103-104. Dated June 30, 2004.

⁹⁹BLM letter to Devon dated December 22, 2005.

¹⁰⁰BLM letter to Bill Moss dated November 24, 2004.

¹⁰¹BLM letter to Devon dated December 22, 2005.

¹⁰²BLM letter to ConocoPhillips dated December 20, 2006.

¹⁰³BLM letter to Williams dated February 9, 2007.

by wintering deer. This type of use is indicative of poor habitat conditions and inadequate desirable forage.

Wintering deer attempting to avoid the human activity associated with the requested exception will find few places where they can feel secure.¹⁰⁴

The BLM has also described bleak conditions in the Carracas SDA:

...the winter range in the area of the proposed work are [sic] generally poor. Much of the desirable browse (I.e., true mountain mahogany, antelope bitterbrush and Wyoming big sagebrush) is dead, severely hedged or in general exhibits poor vigor...the degree of habitat fragmentation from prior natural gas development is extensive. This fragmented environment can be more stressful and energetically demanding to mule deer depending upon the level of human activity.¹⁰⁵

In a letter to Duke Energy in response to the company's request for a pipeline to be excepted, BLM described Rattlesnake Canyon in December 2004 as follows:

...the area of the proposed actions is highly fragmented. Well density averages about 11-12 per square mile and road density is about 1.8 to 3.0 miles per square mile. In essence, the area can be termed as highly fragmented.

Nonetheless, BLM granted Duke a partial exception.¹⁰⁶ At approximately the same time, in a letter to Devon, BLM describes both Rattlesnake Canyon and Middle Mesa SDAs:

...the area in question has an extensive infrastructure of roads and pipelines leading to numerous gas wells. This has left the landscape highly fragmented.

Casual field observations indicate that the animals are concentrated in pockets of quality habitat.¹⁰⁷

Native ungulates in the Farmington Field Office are increasingly refugees in a hostile landscape, clinging to the few areas with sufficient cover and browse to sustain them during harsh winter months. But neither the habitat loss nor the disturbance is abating, with the result that these refugees can find no refuge.

Native ungulates in the Farmington Field Office are increasingly refugees in a hostile landscape...

¹⁰⁴BLM letter to Williams Field Services (2003).

¹⁰⁵BLM email to Williams dated November 2, 2005.

¹⁰⁶BLM letter to Duke Energy dated December 20, 2004.

¹⁰⁷BLM letter to Devon dated December 22, 2004.

It is clear from BLM's response to a Burlington request to conduct "emergency" work on two wells that the company's needs come before those of wildlife and that times are tough for ungulates on the Rosa SDA. In a January 2005 letter, BLM allowed an exception for Burlington on San Juan 30-6 Unit #410, but denied the same request on #405. The wells are within five miles of each other and habitat conditions are generally the same. The denial for #405 describes adverse conditions to mule deer that the agency ignored with respect to #410:

...the potential for human induced stress to these animals is potentially high.

In general 2-3 inches of snow is present on the ground over much of the wooded area. This condition and its effects on wildlife is exacerbated by the excessive road/well network in the area which causes deer and elk to seek refuge (to avoid human interaction) during the daytime in wooded areas where there is deeper snow and the air temperature is colder than the more open sage dominated areas. During the nighttime when the deer and elk move more freely (under the cover of darkness) outside of the wooded areas and into the sage parks the temperature has dropped and thus any opportunity to take advantage of the warmer thermal environment (during the daytime) in the sage parks is lost. This scenario repeated on a daily long-term basis causes physiological stress to deer and elk in that there is an increased caloric demand just to stay warm.

...the area surrounding the #405 is highly fragmented. Well densities average about 8 per square mile with road lengths about 2.0 to 2.25 miles per square mile.¹⁰⁸

Taking all of the above examples into account, BLM has recognized habitat problems across many of the SDAs for years, but continues to approve new wells at a breakneck pace. New gas wells are being approved nearly every day in the FFO. Over 90% of new wells being approved in Farmington are "categorically excluded" from NEPA analysis, which means they undergo no public comment or only a cursory environmental review. Many of these categorically excluded new wells are in seasonal closure areas.¹⁰⁹

Conclusions & Recommendations

The BLM is destroying New Mexico's wildlife by failing to implement promises it made to the public to reduce impacts to wildlife from oil and gas drilling. A suite of wildlife species is being impacted: lesser prairie-chickens, mule deer, elk, and pronghorn. Other wildlife who would benefit from decreased human activity during seasonal closures include mountain lions, turkeys, and black bears.

¹⁰⁸BLM letter to Burlington dated January 26, 2005.

¹⁰⁹These calculations were based on review of FFO BLM's weekly logs of oil and gas permitting. Only Applications for Permits to Drill were analyzed. Other activities, including rights-of-way, well pads, and roads were not included.

BLM is also renegeing on its promises through backroom communication with industry: in the 441 times that the Farmington Field Office has granted exceptions to seasonal closures, it has never notified the public. Nearly half of the Farmington exceptions were granted in three areas: the Rosa, Middle Mesa, and Rattlesnake Canyon areas. Altogether the BLM in New Mexico has betrayed the public approximately 1,000 times since 2000 by brushing aside important timing mitigations for wildlife that were promised in public planning processes.

Many of the areas at issue have already been badly damaged by oil and gas drilling, and wildlife therefore deserve every chance at surviving the bleak habitat conditions they face. They are not being given this chance. Rather, the BLM has almost always granted exceptions when companies request them. While the Carlsbad Field Office exceptions have dwindled significantly, Farmington is still issuing dozens of exceptions every year. Farmington is also increasing the likelihood that companies will request exceptions by approving new wells nearly every day and is again short-circuiting the public by avoiding a NEPA process on those wells more than 9 out of 10 times.

Based on this report, we recommend that BLM:

- Cease approving any exceptions to wildlife seasonal closures given harm to the wildlife those closures are designed to protect;
- Cease the use of categorical exclusions for new wells and other oil and gas infrastructure, especially in closure areas;
- Withdraw all suitable lesser prairie-chicken habitat in the CFO from additional oil and gas development given this species' imperilment;
- Prohibit additional surface disturbance on key SDAs, such as the Rosa Mesa, Middle Mesa, Rattlesnake Canyon, Carracas Mesa, Cereza Canyon, Thomas Canyon, and Ensenada Mesa SDAs from oil and gas development;
- Consider similar closures on additional FFO SDAs, where needed; and
- Create comprehensive energy development plans that reduce impacts from new wells, roads, and pipelines through wellpad twinning and other approaches.

We also recommend that Governor Bill Richardson, the New Mexico Department of Game and Fish, and the New Mexico State Game Commission use all of their authority to compel the BLM to adopt the above reforms.