

Ochoa Mine Project Record of Decision

Carlsbad Field Office, New Mexico

April 2014

BLM/NM/PL-14-02-3500



BLM Mission Statement

The Bureau of Land Management is responsible for stewardship of our public lands. The BLM is committed to manage, protect and improve these lands in a manner to serve the needs of the American people. Management is based upon the principles of multiple use and sustained yield of our nation's resources within a framework of environmental responsibility and scientific technology. These resources include recreation, rangelands, timber, minerals, watershed, fish and wildlife habitat, wilderness, air and scenic quality, as well as scientific and cultural values.

Acronyms and Abbreviations

ADR	appropriate dispute resolution
AO	Authorized Officer
APLIC	Avian Power Line Interaction Committee
BA	Biological Assessment
BLM	Bureau of Land Management
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980
CFR	Code of Federal Regulations
EIS	Environmental Impact Statement
FLPMA	Federal Land Policy and Management Act of 1976
ICP	Intercontinental Potash Corporation (USA)
IPA	Isolated Population Area
MLA	Mineral Leasing Act of 1920, as amended
MOU	Memorandum of Understanding
MPO	Mine Plan of Operations
MSHA	Mine Safety and Health Administration
NAGPRA	Native American Grave Protection and Repatriation Act of 1990
NEPA	National Environmental Policy Act
NMDGF	New Mexico Department of Game and Fish
NMED	New Mexico Environment Department
NOA	Notice of Availability
NRHP	National Register of Historic Places
RMP	Resource Management Plan
ROD	Record of Decision
ROW	right-of-way
SHPO	State Historic Preservation Officer
SOP	sulfate of potash
SOPM	sulfate of potash magnesia
USC	United States Code
USFWS	U.S. Fish and Wildlife Service

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1.0 Introduction

Intercontinental Potash Corporation (USA) (ICP) holds 28 Bureau of Land Management (BLM) prospecting permits (61,983 acres) and 18 New Mexico State Trust Land potash mining leases (27,804 acres) in Lea and Eddy counties. These permits and leases allow ICP to prospect and explore for potassium minerals in Lea and Eddy counties. ICP submitted a proposal to construct, operate, maintain, and decommission a new mine to extract polyhalite.

The project area, as proposed by ICP, encompasses the proposed 50-year mine area, the shaft and ramp at the mine opening, processing facilities, water pipeline and well field, and railroad loading area with access roads and rail siding for a total of 31,134 acres. The surface land ownership consists of approximately 22 percent public lands managed by the BLM, 53 percent managed by the State of New Mexico, and 25 percent privately owned. Approximately 55 percent of the minerals within the proposed mine area is owned by the federal government. In compliance with the requirements of the federal National Environmental Policy Act of 1969 (NEPA), an environmental impact statement (EIS) was prepared to analyze the potential environmental impacts of the proposed project to inform the agency prior to making a decision. The decision to be made is whether to approve ICP's Ochoa Mine Plan of Operations (MPO) and requested rights-of-way (ROWs).

The proposed project involves developing a new mine to extract polyhalite approximately 1,500 feet underground in the Rustler Formation. Once mined, the polyhalite will be transported to the surface by a conveyor belt system in the ramp, crushed, calcined, leached, crystallized, and granulated to produce saleable products. During processing, the liquid waste stream will be dehydrated in a series of evaporation ponds before moving the solids to the dry stack tailings stockpile or collected and sold as marketable byproducts. The final product would be moved by truck to a load-out facility near Jal, New Mexico, where it will be loaded on trains and shipped. There will be approximately 2,400 acres of new surface disturbance and a maximum of 4,000 gallons per minute of groundwater will be pumped from the Capitan Reef Aquifer. The proposed project will operate for 50 years.

The BLM published the Draft EIS (BLM/NM/PL-13-05-1610) on August 9, 2013, and the Final EIS (BLM/NM/PL-14-02-3500) on February 28, 2014. The Final EIS is the full analysis document that includes the revisions to the Draft EIS, appendices, and public comments on the Draft EIS with BLM responses.

2.0 Decision

Based on the analysis in the Ochoa Mine Project EIS, I have decided to approve the Preferred Alternative as it is described in Section 2.4.6 of the Final EIS and the MPO, to the extent that the proposal involves or affects public land or minerals as provided for by the 43 Code of Federal Regulations (CFR) 3590 regulations. This decision involves approval of the MPO and granting ROW requests. Following is a summary of the components of the Preferred Alternative:

- Develop an underground mine to extract polyhalite over a 50-year period. The mine will be accessed by a shaft and a ramp (decline).
- Construct and operate office and processing facilities including the polyhalite processing plant, dry stack tailings pile, and evaporation ponds on BLM land.
- Solid byproducts of processing may be sold offsite, stacked in the tailings stockpile, or placed underground as mine backfill.
- The dry stack tailings stockpile will be constructed in phases and reclaimed as the mining and processing progresses, beginning after one year of full project operations. ICP will test different

reclamation practices on the dry stack tailings stockpile to determine the best methods for reclamation success prior to implementation. Final reclamation plans will be approved by the BLM.

- Full development of up to eight brackish water wells in the Capitan Reef Aquifer and a new 11-mile water pipeline to serve the processing plant and mine operations.
- Construction of a gas pipeline to serve the processing facilities.
- Construction and stabilization of roads to access and manage operation of the mine and processing facilities, wells within the well field, and loadout facility.
- Construction and operation of a railroad loadout facility near Jal, New Mexico, for shipment of the finished marketable potash product.
- At the completion of the project, all project surface components and all disturbed areas will be reclaimed and infrastructure would be decommissioned and returned to as close to the original condition as possible.
- ICP will ensure that co-development of fluid and solid mineral extraction will employ the following practices.
 - Establish 200-foot barrier pillars around all producing and plugged and abandoned oil and gas wells.
 - Implement gassy mine standards under Category IV of the Mine Safety and Health Administration (MSHA), 30 CFR Part 57.22003.
 - Develop Memoranda of Understanding (MOUs) with each oil and gas lessee and owners within the potential mine subsidence area to detail mutual coordination and management specific to each company and location of facilities.
 - Establish benchmarks for measuring successful co-development in consultation the BLM.
 - Prepare 5-year development plans for the mine and oil and gas development within the mine area and potential subsidence area.
 - Share the plans among companies to facilitate sequencing potash mine extraction and oil and gas development. Sequencing could be accomplished through time or in spatial extent.
 - Establish post-mining drilling islands to use for oil and gas wells.
- Overall co-development of fluid and solid mineral extraction will be managed by the BLM using the following practices.
 - Host meetings with all stakeholders in the vicinity of the mine to review the co-development process and discuss resource concerns. These coordination meetings will be held at least annually.
 - Encourage the development of MOUs between ICP and other stakeholders that may be affected by the mine and processing facilities. This may include companies that own and maintain infrastructure such as pipelines and roads, as well as landowners and state agencies with wells, roads, and structures within the potential subsidence area.
 - The BLM will facilitate an appropriate dispute resolution (ADR) process based on BLM guidance, Collaborative Stakeholder Engagement and Appropriate Dispute Resolution Guide (BLM 2009). This ADR process will be used to resolve disputes between ICP and other co-development partners established through MOUs if the issues cannot be resolved using the voluntary cooperative efforts implemented by ICP. In practical terms, disputes will be resolved at the BLM Carlsbad Field Office. If necessary, the field office may seek help, support, and resources from the BLM District Office and State Office, as appropriate.

- ICP will submit reports on co-development efforts and activities to the BLM at least semi-annually.

2.1 What Is Not Included In The Decision

This decision does not approve or issue preference right leases to ICP. As stated in Section 1.4.2 of the Ochoa Mine Project Final EIS, the BLM can only grant a preference right lease after the applicant demonstrates the existence of a valuable deposit. A valuable deposit is defined in 43 CFR 3501.5 as “an occurrence of minerals of such character that a person of ordinary prudence would be justified in the further expenditure of his or her labor and means, with a reasonable prospect of success in developing a profitable mine.” This evaluation is made subsequent to the NEPA process and will be based on a determination that the mining operation will be profitable after implementing the terms and conditions, including the required mitigation and reclamation measures, identified in the agency decision document, which is this Record of Decision (ROD).

The decision also will not:

- Change the BLM’s responsibility to comply with applicable laws, rules, and regulations.
- Change the BLM’s obligation to conform to current or future national policy and law.
- Change valid existing rights.

2.2 Applicant-committed Environmental Protection Measures

ICP will adhere to all lease conditions, in addition to all relevant federal and state laws, regulations, policies, and permit requirements. ICP committed to implementing the following measures, as appropriate depending on site-specific conditions, to protect the human environment. All proposed monitoring plans and requirements will be implemented as described in the current monitoring plans published concurrently with the Final EIS and the MPO or as approved by the BLM.

- Included in the subsidence monitoring plan will be a requirement to notify all landowners, lessees, and operators of infrastructure (roads, pipelines, structures) that are within an area where subsidence is documented.
- Develop and implement a water monitoring plan in consultation with the BLM and implement before mining operations begin.
- Develop and implement erosion, sediment, and storm water management plans to meet BLM and other regulatory requirements.
- Implement gassy mine standards under Category IV of the MSHA, 30 CFR Part 57.22003.
- Install anti-perch equipment and other raptor protection on new power lines.
- Stabilize project access roads and well pads with a minimum of 6 inches of caliche.
- Ponds
 - Line all ponds with geosynthetic liners approved by the BLM. To protect the geosynthetic liners, a hardened salt layer no less than 15 inches thick will be left over the geosynthetic liners at all times during the operation of the ponds. This protective layer will be removed during reclamation and disposed of in a manner approved by the BLM.
 - Design and construct all ponds with sufficient freeboard to accommodate a 24-hour 100-year storm event.
- Develop and implement a Wildfire Management Plan to outline ICP’s responsibilities for local and regional firefighting management.

- Implement reclamation and revegetation of disturbed areas using site-specific plans approved by the BLM following project completion.
- The waste rock stockpiles near the shaft facilities will be used to backfill the shaft and ramp at the mine opening. All salt-contaminated material will be sorted and disposed of in the dry stack tailings stockpile.
- All mine shafts and ramp (decline) will be permanently sealed according to the rules, regulations, and laws in place at the time of abandonment.
- Water supply and monitoring wells will be properly plugged and abandoned consistent with New Mexico State Engineer requirements in NMAC 19.27.4.

2.3 Required Environmental Protection Measures

Compliance with all applicable national and state BLM policies, regulations, and guidelines, as well as other current and future federal laws and regulations, is required. In compliance with federal regulations, the BLM will set a reclamation bond for the project sufficient to ensure that reclamation is completed at the end of the project lifespan. Compliance with all state agency permits issued to ICP, such as the permits for water discharge, air quality, and protection of cultural resources, also is required.

The project will comply with all applicable Carlsbad Field Office measures and guidance designed to minimize adverse impacts to natural and cultural resources from mineral development activities. Some of these measures may be implemented as lease stipulations. Mitigation measures specific to the Ochoa Mine Project, to be implemented in addition to the Applicant-committed Environmental Protection Measures and permit requirements, are listed below.

2.3.1 Geology

2.3.1.1 Subsidence

- Establish 200-foot barrier pillars around all producing and plugged and abandoned oil and gas wells unless further mining is approved by the authorized officer (AO). The extraction rate of mining will be reduced around all producing or abandoned wells so that mine-related subsidence will not damage the wells. The minimum area of reduced extraction is defined by a circle around the well bore with a radius equal to the depth from the surface to polyhalite seam being mined. This radius may be adjusted as new information is received as a result of the subsidence monitoring.
- The Capitan Aquifer water production wells will be integrity-tested at regular intervals, as approved by the BLM, through an independent third-party to ensure that unsaturated fluids do not migrate from the wells and cause dissolution and subsidence.
- The specific testing procedures and time intervals could be changed by the BLM. Oversight and record keeping would be the responsibility of the BLM.

2.3.1.2 Oil and Gas Production in Mine Area

- Determine the condition of abandoned wells by locating each well, installing gauges to detect pressure due to gas or fluid in the well, running casing integrity logs in the well, and running cement bond logs in the well.
- If an abandoned well does not have an intact casing, it may need to have the plugs drilled out and the cement plugs reset according to regulatory agency instructions.

2.3.2 Paleontological Resources

- Construction personnel will be instructed about the types of fossils that could be encountered and the steps to be taken if they uncover potentially significant fossils during construction of the project. Instruction will emphasize the non-renewable nature of paleontological resources and that collection or excavation of fossil materials from federal land without benefit of a federal permit is illegal.
- If fossils are found, the BLM is to be contacted immediately to allow qualified BLM staff to determine whether the fossils are scientifically significant and to provide a qualified paleontologist to assess and document the find.
- If fossils are collected, they will be curated at a facility approved by the BLM.

2.3.3 Water Resources

2.3.3.1 Surface Water

- Water sprayed for dust suppression, including blending with tackifiers, should be treated to minimize the potential for increased salinity that may flow into downstream drainages and waterbodies. ICP must seek BLM review and approval the chemicals and water quality to be used for road dust suppression.
- Earthen berms and drainage swales will be constructed to divert surface water runoff away from the dry stack tailings stockpile.
- Monitor, record, and report surface (meteoric) water quantities on a quarterly basis to the BLM as described in the Water Resources Monitoring Plan.
- An annual inspection of the locations where the water pipeline crosses drainages will be carried out by ICP and reported to the appropriate regulatory agency (state and the BLM).
- The water pipeline shall be constructed with automatic shutoffs to minimize adverse effects from leaks.

2.3.3.2 Groundwater

- Monitoring of the drawdown in the Capitan Aquifer will be performed by an independent third-party and reported to the BLM and ICP using available wells that are accessible for quarterly monitoring of the Capitan Aquifer. The existing monitoring wells near the Pecos River will be utilized to get a factual evaluation of drawdown that may affect the river and project-related pumping occurs. ICP also will compare this to the water level data to the Groundwater Model for the Capitan Aquifer prepared for the Ochoa Mine Project EIS and report the results to the BLM.
- To ensure accurate shallow groundwater quality information and minimize the potential for adverse impacts to the shallow aquifer, the monitoring wells will be established in the vicinity of the processing plant site and near the subsidence area of the mine as specified in the Water Resources Monitoring Plan. At least three wells should be located upgradient and three wells downgradient of the evaporation ponds and the dry stack tailings stockpile for a total of at least six wells in the processing plant site.
- Precise locations of the Capitan Aquifer water wells will be selected in consultation with the BLM and other federal and state agencies as appropriate. Should the discharge reduction at the Pecos River caused by project-related Capitan Aquifer pumping be unacceptable to the New Mexico State Engineer, mitigation will be required, including a reduction in pumping by ICP or the acquisition of water rights to be used by ICP to augment river flows to pre-mining flow conditions.

2.3.4 Soils

- During construction, topsoil and usable subsoil will be removed and stockpiled for use in reclamation. Topsoil will be segregated and revegetated to minimize wind and water erosion. Stabilization methods will be approved by the BLM.
- During reclamation, compacted areas (typically any area that received repeated vehicle traffic) should be subsoiled or ripped to the depth of compaction in order to prepare the seedbed, encourage surface water infiltration, and help to minimize accelerated runoff and erosion.
- ICP will develop seed mixtures in consultation with the BLM for soils with low reclamation potential that include species that are tolerant to saline, sodic, or strongly alkaline soils.

2.3.5 Air Quality

- Develop a dust control plan in consultation with the BLM prior to the start of construction activities and implement, monitor, and report to the BLM throughout construction or maintenance operations. The dust control plan will include mitigation measures to be implemented if monitoring (through visual observation or other means) determines that blowing dust from the tailings stockpile, ponds, or other bare ground during construction or operations becomes excessive.
- The BLM encourages the use of equipment that meets U.S. Environmental Protection Agency's Highway Diesel and Nonroad Diesel Rules for project construction and maintenance operations.

2.3.6 Vegetation

- A noxious weed management plan will be developed that includes pre-construction surveys, training of construction and operation personnel, washing of vehicles and equipment before entering and leaving the project area during construction, management of herbicide spraying, and monitoring.
- The dry stack tailings stockpile will be reclaimed as the mining and processing progresses, beginning after one year of full project operations. ICP will test different reclamation practices on the dry stack tailings stockpile to determine the best methods for reclamation success prior to implementation.
- Monitoring of revegetation success will occur for at least 5 years after mine closure. If revegetation is not established and successful based on BLM standards, the disturbed areas will be revegetated with the BLM approved seed mix to ensure ground cover and protection from soil erosion. Additional mitigation measures may be required for reclamation success including soil amendments, noxious and invasive weed management, and fencing to prevent livestock and wildlife grazing until vegetation is established.

2.3.7 Wildlife

- Eight-foot-high fencing that follows fencing guidelines developed by the New Mexico Department of Game and Fish (New Mexico Department of Game and Fish [NMDGF] 2003) will be installed around the evaporation ponds at the base of the earthen berms to minimize access by terrestrial wildlife species. Chain-link fences intended to exclude large and medium size wildlife will be wrapped with a finer mesh material around the bottom to exclude smaller animals. Fences may need to be modified to reduce collisions if they are determined to be a hazard to lesser prairie-chickens.
- Perimeter and internal fencing intended solely to mark boundaries and discourage trespass will be constructed as directed by the NMDGF fencing guidelines (NMDGF 2003) to minimize potential injury to pronghorn and mule deer attempting to cross the fence.

- Posts associated with fencing or other project facilities will have solid tops to prevent entrance by wildlife species.
- Develop and implement an avian monitoring and mitigation plan designed to anticipate and prevent use of the ponds by waterfowl and any resulting risk of mortality. If bird hazing is determined to be necessary, based on monitoring, the bird hazing techniques listed below should be considered. If bird deterrents are installed, they must be monitored to evaluate their effectiveness and to allow for changes to measures through adaptive management should some measures prove unsuccessful.
 - Mesh-net canopy over each pond to prevent access by birds.
 - Routine patrolling and firing shell crackers or other pyrotechnic devices.
 - Install commercially available bird hazing devices employing noise or radar.
 - Install wire lines over ponds with reflective tape or ribbon.
- To minimize impacts to breeding migratory birds, clear vegetation in areas identified for disturbance outside of the typical nesting season (April - August).
- If restriction areas for lesser prairie-chickens are established in the project area in the future, surface construction activities from March 1 and June 15 in established restriction areas will be avoided between the hours of 3:00 a.m. and 9:00 a.m. Noise will be limited to no more than 75 decibels measured at 30 feet from the source within an established restriction area.
- Follow trenching guidelines developed by NMDGF to minimize mortality to reptiles and small mammals during buried pipeline and utility installation.
- Conduct surveys for burrowing owls following the NMDGF (2007) protocol prior to construction activities occurring from March to October within suitable habitat.
- Power lines will be constructed according to Avian Power Line Interaction Committee (APLIC) (2006) standards both onsite and offsite.
- Prior to construction of plant facilities, access roads, mine shaft, and the water pipeline, surveys will be conducted to identify current wildlife water sources and systems, in coordination with the BLM. If damage or limitations of access to waters cannot be avoided during construction and management of the project, new access to water will be developed at locations approved by the BLM on federal land and by the surface manager on other lands.
- At the end of the project, remove all caliche or gravel from access roads and revegetate.
- The Ochoa Mine processing plant facilities site is located within the lesser prairie-chicken Isolated Population Area (IPA). The IPA was established in the 2008 Special Status Species Resource Management Plan (RMP) Amendment. The Biological Assessment (BA) for the project referenced the goal from the RMP Amendment to reclaim 2 previously disturbed acres for every 1 acre of new surface disturbance created by the project in an IPA. In line with the mitigation measures presented in the BA, a minimum ratio of 1 acre of project-related disturbance in the IPA to 2 acres of previously disturbed surface in an existing offsite priority area will be implemented by ICP using the following measures.
 - Seeding and disking of fence lines and/or designated areas within the Bilbrey, San Simon, and Paduca Habitat Evaluation Areas for lesser prairie-chicken habitat enhancement.
 - Two miles of caliche road reclamation and seeding within the San Simon Habitat Evaluation Area.
 - Construction of three wildlife waterers for the promotion of wildlife immigration/ emigration between the Bilbrey, San Simon, and Paduca Habitat Evaluation Areas.

2.3.8 Rangelands and Livestock Grazing

- Speed limit signs will be erected to warn vehicle operators of construction and project-related traffic.
- The west fence at the plant facilities site, along Sections 26 and 35, will be connected to the fenceline for the weaning trap associated with the Red Tank II grazing allotment.
- The range improvements located in the Red Tank II grazing allotment in Section 2, Township 24 South, Range 33 East, will be relocated to a location outside of the plant facilities area approved by the BLM.
- Prior to construction of plant facilities, access roads, mine shaft, and the water pipeline, surveys will be conducted to identify active range improvements, including livestock and wildlife water sources and systems, in coordination with the BLM and the livestock operators. If damage or limitations of access to water cannot be avoided during construction and management of the project, new access to water will be provided at a location approved by the BLM on federal land and by the surface manager on other lands.

2.3.9 Visual Resources

- New buildings will be constructed to blend with the environment using colors that comply with BLM standards for minimizing visual impacts.

2.3.10 Cultural Resources

- Data recovery of LA 108617, LA 172154, and LA 172155 sites must comply with the approved data recovery and treatment plan.
- Project construction shall not begin until the completion of the field work, analysis of the cultural material, and an acceptable final report is received and approved by the BLM, New Mexico State Historic Preservation Division, and the New Mexico Cultural Property Review Committee concerning archaeological sites LA 108617, LA 172154, and LA 172155.
- To protect National Register of Historic Places (NRHP)-eligible and unevaluated or undetermined sites located adjacent to project construction, sites will be flagged, fenced, or otherwise identified prior to the start of construction.
- BLM-approved archaeologist(s) will monitor project construction in areas with the potential for buried cultural remains and where recorded NRHP-eligible sites or sites with undetermined eligibility are to be avoided. The BLM will determine which areas require a monitor. Project construction shall not begin prior to arrival of the monitor.
- The contracted archaeologist monitor shall notify the BLM Carlsbad Field Office archaeologist when and where they will be monitoring prior to construction.
- Where unplanned buried cultural sites or newly discovered sites are encountered, all construction work shall cease in the immediate area. the BLM Carlsbad Field Office archaeologist shall be notified immediately by the contract archaeologist and a field meeting shall be arranged to evaluate the significance of the cultural material.
- If an unplanned buried cultural site or newly discovered site is determined to be eligible or requires additional scientific investigations, a treatment plan shall be drafted by the BLM archaeologist.
- BLM Carlsbad Field Office archaeologist will notify the New Mexico State Historic Preservation Officer (SHPO) by e-mail or a phone call about new discoveries within 2 working days of discovery.
- A comprehensive archaeology monitoring report is required within 30 days of the completion of the project construction.

- An addendum report concerning any new site discoveries shall be submitted to the BLM. The BLM will forward the report to the SHPO for comments.

2.3.11 Health and Safety

- A project-specific emergency response plan will be prepared for the new plant facilities, the Jal loadout, and underground mining operations.

2.3.12 Other Measures To Be Implemented

- General Requirements
 - Damage Indemnity: ICP shall agree and stipulate that the federal government, the Department of the Interior, and the BLM and its representatives shall not be responsible for damage or injury to persons and property which may occur during the permitted use period or as a result of such use.
 - Oil and Gas Production: Operations shall not be conducted which in the opinion of the AO would constitute a hazard to oil and gas production or that would unreasonably interfere with the orderly development and production under any oil and gas lease issued for the same lands.
 - Pollution Removal: If, during any phase of the construction or operation of the lease, any pollutant or hazardous material should be discharged by the operator or his representative impacting federal lands, the control and total removal, disposal, and cleanup of such pollutant or hazardous material, wherever found, shall be the responsibility of ICP, regardless of fault. Upon failure of ICP to control, dispose of, or cleanup such discharge on or affecting federal lands, or to repair all damages resulting therefrom, on the federal lands, the AO may take such measures as he deems necessary to control the cleanup, the discharge, and restore the area, including where appropriate, wildlife habitats, at the full expense of ICP. Such action by the AO shall not relieve the lessee of any responsibility as provided herein.
 - Wood and Plant Removal: Removal of fuel wood and live plants from public lands other than the authorized areas for construction are not permitted unless approved by the AO.
 - Mineral Removal: Removal of mineral materials such as sand, gravel, caliche, or building stone is not allowed unless authorized by a current sales contract. No new caliche pits or other material pits on federal lands shall be allowed without the approval of the AO. Mineral materials are removed from federal lands is by permit only. A permit shall be purchased prior to mineral material removal.
 - New Construction: ICP shall obtain prior written approval from the BLM of any construction not authorized in a previously approved plan. Notification to the BLM of the activity shall be in the form of a written mining plan modification. Before each stage of construction begins, detailed plans of each specific project shall be submitted to the BLM for review at least 2 weeks prior to the desired start date. If any portion of a specific activity has not been analyzed in the EIS, it must be submitted as a mine plan modification and then must undergo analysis conforming with the NEPA so that resource impacts can be mitigated before being approved by the AO.
 - BLM reserves the right to require ICP to apply adaptive management as construction and operations proceed and monitor results for the life of the mine.
 - Fences: If a fence is crossed during lease operations, to prevent slacking of fence wire, the lessee will brace and tie-off each existing fence to be crossed before cutting. During construction, the opening shall be protected to prevent the escape of livestock. Fences which have been cut during construction will be restored by the lessee to a condition which is equal to or better than the original. Cattle guards and adjacent gates which are of a

suitable width also will be installed in any fence where a road created during construction is to be regularly traveled.

- Surface Owner Notification: Prior to any construction, ICP shall notify the grazing allottee or the surface owner, in the case of private ownership, of the activity. Abandonment stipulations will coincide with surface owner agreement.
 - Trash: No landfills for the disposal of any waste shall be allowed. All trash shall be hauled to an approved sanitary landfill or dump site. Any other methods of disposal shall first be approved by the AO.
 - Concrete: No excess or waste concrete shall be dumped on Federal lands. If concrete is accidentally spilled, it will be removed and disposed of properly.
 - Toxic Substances Control Act Compliance: ICP shall comply with all applicable federal laws and regulations existing or hereafter enacted or promulgated. In any event, ICP shall comply with the Toxic Substances Control Act of 1976 as amended, 15 United States Code (USC) 2601 et seq. (1982) with regards to any toxic substances that are used, generated by or stored on the ROW or on facilities authorized under this ROW grant. (See 40 CFR Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Section 102b. A copy of any report required or requested by any federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the AO concurrent with the filing of the reports to the involved federal agency or state government.
 - Hazardous Waste Indemnity: ICP agrees to indemnify the United States against any liability arising from the release of any hazardous substance or hazardous waste (as these terms are defined in the CERCLA, 42 USC 9601, et seq. or the Resource Conservation and Recovery Act, 42 USC 6901, et seq.) on the ROW (unless the release or threatened release is wholly unrelated to the ICP's activity on the ROW), or resulting from ICP's activity on the ROW. This agreement applies without regard to whether a release is caused by ICP, its agent, or unrelated third-parties.
- Roads
 - Blading: Clearing and blading of roads will be held to a minimum unless approved by the AO.
 - Road Width and Grade: The maximum grade of all roads at any point will be no more than 10 percent. Minimum road construction techniques are recommended.
 - Surface Disturbance Width: The maximum width of surface disturbance resulting from road construction will be 30 feet. Minimum road techniques are recommended.
 - Crowning and Ditching: Crowning with materials onsite and ditching on one side of the road on the uphill side will be required. If conditions dictate, ditching may be required for both sides of the road; if local conditions permit, a flat-bladed road may be considered. The crown shall have a grade of approximately 2 percent (i.e., 1-inch crown on a 12-foot-wide road).
 - Drainage: Drainage control shall be ensured over the entire road through the use of ditches, out-sloping, in-sloping, natural rolling topography, lead-off (turnout) ditches, culverts, and/or drainage dips.

- A closed-loop fluid control system shall be used to contain drill fluids and cuttings. A bermed synthetic liner will be required beneath the system to prevent leaks from seeping into the underlying soils. Adequate berming, sufficient to contain significant spills, will be placed about the system with the liner extending beyond the crest of the berm and anchored in place. In addition, a berm shall be constructed on the downslope portion of the pad as secondary spill containment. If, at any time, the site is to be left unattended before removing closed-loop system and underlying liner, a T-post fence will be placed around the outside perimeter of the berm, completely enclosing the bermed liner.
- Upon completion testing at each site, the entire depth of each core hole will be cemented via a tremie pipe. No free-dropping of cement from the surface down the core hole is permitted.
- All geologic information shall be supplied to the BLM Carlsbad Field Office. The required information includes:
 - Geologic log of the hole.
 - Mineralogic description of the cored section.
 - All assays, in detail, obtained during the evaluation of the core. Assays should include the thickness of the sample and the weight% of the ions: K, Na, Ca, Mg, Cl, SO₄, and insoluble minerals. The company's determination of thickness and weight percent of minerals present in each of the samples assayed.
 - If geophysical logs are run, a copy of each log shall be submitted. The log can be either paper or digital, but a copy of each is preferred.
 - Upon abandonment, a low profile abandoned well marker will be installed to prevent raptor perching.
- Revegetation and Interim Reclamation
 - Reseeding: If after one growing season the vegetation has not taken hold, reseeding will be required as in the steps below.
 - Seeding Techniques: Seeds shall be drilled to a proper depth to ensure good coverage and germination. The seed mixture shall be evenly and uniformly planted over the disturbed area. If drilling is not possible, seeds shall be broadcast and the area raked or dragged to cover the seed.
 - Seed Mixture: A certified “weed free” seed mixture will be used for reclamation. The seed mixture to be used will be developed based on site-specific conditions with the approval of the AO.
 - Soil Preparation: A granular 16-12-12 (N-P-K) fertilizer or better will be required at the rate of 200 pounds per acre. Fertilizer requirements may be modified prior to reclamation upon approval of the AO.
 - Water shall be applied directly after planting, irrigated a minimum of 3 inches into the soil in order to provide adequate amounts of moisture, and to help embed the seeds. Seeding prior to the fall rainy season is preferable.
 - Notice: Upon completion of interim reclamation, the operator shall submit a Subsequent Report of Reclamation (Form 3160-5).
- Buried Pipelines
 - Damage Liability: ICP shall be liable for damage or injury to the U.S. to the extent provided by 43 CFR Sec. 2883.1-4. ICP shall be held to a standard of strict liability for damage or injury to the United States resulting from pipe rupture, fire, or spills caused or substantially aggravated by any of the following within the ROW or permit area:

- Activities of the holder including, but not limited to, construction, operation, maintenance, and termination of the facility.
- Activities of other parties including, but not limited to land clearing, earth-disturbing and earth-moving work, blasting, and vandalism and sabotage.
- Acts of God.
- The maximum limitation for such strict liability damages shall not exceed one million dollars (\$1,000,000) for any one event, and any liability in excess of such amount shall be determined by the ordinary rules of negligence of the jurisdiction in which the damage or injury occurred. This section shall not impose strict liability for damage or injury resulting primarily from an act of war or from the negligent acts or omissions of the U.S.
- Right-Of-Way: All construction and maintenance activity will be confined to the authorized ROW. ICP shall not use the pipeline route as a road for purposes other than routine maintenance as determined necessary by the AO in consultation with ICP. ICP will take whatever steps are necessary to ensure that the pipeline route is not used as a roadway. All construction and maintenance activity will be confined to the authorized ROW.
- Signage: The pipeline will be identified by signs at the point of origin and completion of the ROW and at all road crossings. At a minimum, signs will state the holder's name, BLM serial number, and the product being transported. All signs and information thereon will be posted in a permanent, conspicuous manner, and will be maintained in a legible condition for the life of the pipeline.
- Cover: The pipeline will be buried with a minimum cover of 24 inches between the top of the pipe and ground level.
- Blading: Blading of all vegetation will be allowed. Blading is defined as the complete removal of brush and ground vegetation. Clearing of brush species will be allowed. Clearing is defined as the removal of brush while leaving ground vegetation (grasses, weeds, etc.) intact. Clearing is best accomplished by holding the blade 4 to 6 inches above the ground surface. In areas where blading and/or clearing is allowed, the maximum width of these operations will not exceed 35 feet.
- Power Lines
 - Blading of Powerline ROWs: There will be no clearing or blading of the ROW unless otherwise agreed to in writing by the AO.
 - Power Line Signage: The BLM serial number assigned to this authorization shall be posted in a permanent, conspicuous manner where the power line crosses roads and at all serviced facilities. Numbers will be at least two inches high and will be affixed to the pole nearest the road crossing and at the facilities served.
 - Abandonment: Upon cancellation, relinquishment, or expiration of this grant, the holder shall comply with those abandonment procedures as prescribed by the AO.
 - Removal of Surface Structures: All surface structures (poles, lines, transformers, etc.) shall be removed within 180 days of abandonment, relinquishment, or termination of use of the serviced facility or facilities or within 180 days of abandonment, relinquishment, cancellation, or expiration of this grant, whichever comes first. This will not apply where the power line extends service to an active, adjoining facility or facilities.
 - Buried Power Lines: The construction of this project would consist of digging a trench to a depth of at least 38 inches, then installing the power line and covering with backfill dirt. After completing construction of the buried power line, the line shall be marked with underground power line warning signs at least every 0.25 mile.

2.4 Required Monitoring

Several monitoring plans are required to be finalized and implemented (before construction begins) as part of the conditions of approval for the project. The information obtained from monitoring will be used to determine what mitigation measures will be implemented at specific locations and times as part of an adaptive management approach. This section lists the required monitoring plans and outlines the purpose and contents of each. While draft monitoring plans for water resources and subsidence were developed concurrent with the EIS, these plans will be refined and finalized before mining operations take place. All monitoring plans will be approved by the BLM within 1 year of approval of the ROD. Monitoring plans will be revised and approved by the BLM every 5 years based on lessons learned, data needs, and adaptive management.

- **Water Resources Monitoring Plan**—refine in consultation with the BLM; implement before mining operations begin and throughout the life of the mining and processing operations. The purpose is to monitor groundwater levels and quality and surface water to identify potential project-related impacts and implement mitigation measures rapidly to manage any adverse impacts that may be detected. It will include, but not be limited to, the following:
 - Evaluation of existing hydrogeology and identification of shallow and aquifers that underlie or may be affected by the Ochoa Mine and associated facilities
 - Evaluation of groundwater quality characteristics
 - Locations and design of monitoring wells
 - Monitoring procedures and frequency
 - Analytical procedures and quality assurance
 - Reporting requirements
- **Subsidence Monitoring Plan**—refine in consultation with the BLM, establish before mining operations begin, and implement throughout the life of the mining and processing operations. The purpose is to establish baseline elevations at surface monuments within 1,500 feet of the mine area and within 1 mile around the shaft, identify changes in ground surface using regular assessments of monitoring results, and report monitoring results regularly to the BLM. Other aspects of this plan include the following.
 - Identify the locations of sensitive areas and equipment that may be susceptible to subsidence.
 - Because polyhalite has only recently been mined underground in a few locations worldwide, there is limited information on potential subsidence to use for predictions. Therefore, after 5 years of mining, ICP will evaluate the geotechnical and monitoring data to determine whether the subsidence monitoring plan should be revised.
 - ICP will initiate subsidence mitigation if Ochoa Mine-induced subsidence is shown to affect the structural integrity of pipelines, structures, water or oil and gas wells, or other infrastructure.
 - Should subsidence be identified, ICP will develop site-specific mitigation measures in consultation with the surface owner, lessee, or owner of the infrastructure.
- **Avian Monitoring Plan**—develop and implement an avian monitoring plan designed to evaluate the use of the evaporation ponds by waterfowl and identify mitigation measures needed to minimize the risk of mortality to migratory birds.
- **Dust Monitoring Plan**—develop in consultation with the BLM prior to the start of construction activities and implement throughout construction and maintenance operations. Monitoring through visual observation or other means will determine whether blowing dust from the tailings stockpile, ponds, or other bare ground during construction or operations becomes excessive.

- **Noxious Weed Management Plan**—will incorporate monitoring of noxious weeds and implementation of weed management including pre-construction surveys, education of construction and operation personnel, washing of vehicles and equipment before entering and leaving the project area during construction, and management of herbicide spraying.
- **Revegetation and Reclamation Monitoring**—monitor stabilization and revegetation practices to ensure establishment of vegetation to reclamation success after completion of construction and at the end of the project, beginning in the second year of mining operations.

3.0 Alternatives to the Selected Alternative

3.1 Alternatives Analyzed in Detail

3.1.1 No Action Alternative

The No Action Alternative would deny the approval of the proposed project and would not approve the MPO or grant the requested ROWs. Current land and resource uses in the project area would continue to be managed under the 1988 Carlsbad RMP and applicable amendments. Following are the circumstances in compliance with 43 CFR 3507.19 that could lead to the selection of the No Action Alternative.

- If it is determined that the polyhalite cannot be economically recovered under the lease terms required by the BLM, then the existence of a valuable deposit would not be demonstrated and no preference right leases would be issued.
- If it can be demonstrated that the lease is not in the public interest, then the preference right leases would not be issued and other leases may be offered in exchange.

3.1.2 Alternative A—Proposed Action

The proponent's Proposed Action included approval of ICP's MPO and granting new ROWs to enable the mining and processing of polyhalite to produce the fertilizer sulfate of potash (SOP) and sulfate of potash magnesia, components of agricultural fertilizer. The life of the mine is 50 years.

The primary components and activities associated with the Proposed Action are listed below.

- Development of an underground mine to be accessed by a shaft and a ramp.
- Construction and operation of office and processing facilities including the polyhalite processing plant, dry stack tailings pile, and evaporation ponds on BLM land.
- Power supplied to the processing and mine facilities would be provided through a new 230-kV transmission line from an Xcel Energy station offsite. Transmission line poles would be spaced approximately 300 feet apart and in accordance with the standards outlined in "Suggested Practices for Avian Protection on Power Lines" (APLIC 2006). ICP would build a substation on the Ochoa plant site to distribute power to the mine and processing plant facilities.
- Full development of brackish water wells in the Capitan Reef Aquifer and a new pipeline to serve the processing plant and mine operations.
- Construction and operation of a railroad loadout facility near Jal, New Mexico, for shipment of the finished marketable potash products.
- At the completion of the project, all project components and all disturbed areas would be reclaimed and infrastructure would be decommissioned.

3.1.3 Alternative B

Under Alternative B, there would be no change to the mining methods and operations, processing methods and buildings, and management of co-development described under the Proposed Action. The goal of this alternative is to reduce the volume or height to minimize the visual impacts of the tailings stockpile while allowing the BLM to approve the MPO and grant ROW requests.

3.1.4 Alternative C

Alternative C would not change the mining methods and operations and processing methods and buildings described under the Proposed Action. The goal of this alternative is to establish standards and guidance for managing concurrent development of minerals while allowing the BLM to approve the MPO and grant ROW requests. The guidance would be implemented to make management decisions fairly and consistently regarding the development of both potash and fluid minerals.

3.1.5 Alternative D

An alternative location for the processing facilities was proposed during public scoping. There would be no change in the proposed mining methods and operations but the location of the evaporation ponds and tailings stockpile would be located to the east of the site described under the Proposed Action (Alternative A). The proposed location would require the use of state and private land as well as public land.

3.1.6 Preferred Alternative

The Preferred Alternative consists of a mixture of what the BLM considers the conclusions of the analysis utilizing the best features of Alternatives A, B, and C, as well as some new aspects incorporated in response to public comments and internal BLM concerns. The Preferred Alternative incorporates the same proposed mine area, mining methods, facilities in the shaft area, processing methods and water demands, well field and water pipeline, and loadout facilities as the Proposed Action. Compared to the Proposed Action, the Preferred Alternative includes a smaller tailings stockpile, additional monitoring and reclamation requirements, more formalized coordination with stakeholders, and a dispute resolution process. The justification for selecting the Preferred Alternative is summarized in Section 4.4.

3.1.7 Environmentally Preferable Alternative

The environmentally preferable alternative is the No Action Alternative because it would create the least impact to natural and cultural resources. However, the BLM believes that the Preferred Alternative should be selected because it complies with the BLM's principles of multiple use and provides benefits to the local economy. The management considerations described in Section 4.0 outweigh the limited effects primarily on water resources and wildlife habitat, considering the mitigation and monitoring measures that will be implemented.

3.2 Alternatives Considered but Eliminated from Detailed Analysis

The BLM considered four other alternatives but eliminated them from detailed analysis as discussed in Section 2.3 of the Final EIS. The alternatives and the primary reasons for elimination are summarized below.

Convert mine to storage facility for hazardous or radioactive waste—does not meet federal law and BLM policy because it is outside the authority and policy of the BLM to allow hazardous or radioactive waste to be stored on public lands.

Construct rail line to Jal to replace trucking—does not meet the BLM's NEPA policy and guidelines because the evaluation of an alternative transportation system by the BLM would be speculative in the absence of a specific route proposal from ICP.

Alternative processing site location and more evaporation ponds instead of crystallizers—does not meet the purpose and need of allowing technically viable potash development. Due to the requirements of pond harvesting for production of SOP, the evaporation pond sizes would cover a total of over 6,800 acres and higher water demands (approximately 9,000 gallons per minute). To implement this processing scenario, the ponds would require approximately 4 million cubic yards of concrete. Given the high demand for concrete from other mineral development and construction projects in the region, it would not be feasible to obtain the required volume of concrete within the timeframe necessary for constructing the project if it could be obtained at all. Due to the unavailability of the resources necessary to construct this option and the high water demands, this alternative was eliminated from detailed analysis.

Lower Water Demand for Crystallizer—does not meet the purpose and need of allowing technically viable potash development. During testing performed by ICP, it was determined that it is not possible to make large enough crystals of langbeinite using this crystallizer, causing a problem for the solid-liquid separation step and resulting in poor SOP production. This option was determined to be technically infeasible as initially proposed.

4.0 Management Considerations

4.1 Compliance with Laws and Regulations

The project is in compliance with all federal laws, regulations, and plans for which the BLM has jurisdiction, including but not limited to the Mineral Leasing Act of 1920, as amended (MLA), Federal Land Policy and Management Act of 1976 (FLPMA), the 1988 RMP, and the 1997 and 2008 RMP revisions. It is a condition of approval that the proponent is in compliance with all federal, state, and local laws, and has received all applicable permits and permissions.

4.2 Does the Project Meet the Purpose and Need?

The BLM has carefully reviewed the proposed project to ensure that it meets the purpose and need statement described in Chapter 1, Section 1.2, of the Ochoa Mine Project Final EIS.

4.2.1 Multiple Use

The BLM is responsible for the balanced management of the public lands and resources and their various values in a fashion that will best serve the needs of the American people. Management is based upon the principles of multiple use and sustained yield; combinations of uses that take into account the long-term needs of future generations for renewable and nonrenewable resources (BLM 1997). (Final EIS, page 1-4)

The project meets the BLM's requirement for balanced management of public lands, resources, and values. The project allows for the development of minerals while protecting other resource values including air quality, water quality, wildlife, and cultural resources. The project will not unduly interfere with other uses of the land including oil and gas development, ranching, and recreation. At the end of the project lifespan, the entire footprint and all project infrastructures will be reclaimed and returned to a natural state. A bond will be required to cover the cost of complying with all permit and lease terms, including royalty and reclamation requirements.

4.2.2 Mineral Recovery

The BLM has the responsibility for the orderly and economic development of leasable minerals, including potash, as specified under 30 United States Code (USC) § 21a, the Mineral Leasing Act of 1920 (MLA), as amended, and the Federal Land Policy and

Management Act (FLPMA) of 1976 (P.L. 94-579, 43 USC 35). The BLM has the duty to allow and encourage exploration for and development of leasable minerals subject to reasonable restrictions, provide for economically viable development of the potash resources, and to allow the proponent to exercise its right to develop mineral resources. (Final EIS, page 1-4)

The Preferred Alternative allows for the recovery of leasable potash that otherwise would not be recovered if the proposed project were denied. When implemented, the Preferred Alternative will allow the leaseholder to develop its lease to the maximum extent while requiring mitigation measures and conditions of approval sufficient to protect the environment. The selected alternative also provides voluntary and required coordination and communication with all mineral resource developers and infrastructure providers to allow for successful co-development.

4.2.3 Technical Viability

The purpose of the action is to provide access for technically viable development of the federal potash resources, as required by federal law and BLM policy. (Final EIS, page 1-4)

After careful review of the project, I have determined that the Preferred Alternative is technically viable.

4.3 Preference Right Leases

The federal government has a two-tiered system for leasing of solid leasable minerals, except coal, and asphalt. In regions where the existence and feasibility of extracting mineral deposits is known, leases are issued on a competitive basis. Where the existence and feasibility of extracting mineral deposits is unknown, an applicant can obtain a prospecting permit to explore for federal minerals. If the exploration discovers a valuable deposit, an application can be submitted for a preference right lease, which allows the discoverer of the deposit to obtain the lease without competition.

Once a prospecting permit has been issued and a preference right lease application has been submitted by the discoverer, the federal government is obligated to process the application and issue the lease if a valuable deposit has been found. (Final EIS, Section 1.4.2, page 1-5)

The final step before the federal government grants a preference right lease, subsequent to any decisions made under NEPA, requires the applicant to demonstrate that the mine will be profitable after implementing the terms and conditions issued as part of the lease. These terms and conditions include the required mitigation and reclamation measures identified in this ROD. The BLM is currently evaluating the MPO, required mitigation measures, and the economic data provided by ICP to determine whether the proposed polyhalite supply meets the definition of a “valuable deposit” (43 CFR 3501.5).

The MLA requires that preference right leases for potassium meet the “chiefly valuable requirement” in addition to the valuable deposit requirement. Chiefly valuable refers to a valuable deposit where there is either no significant conflict between mining leasable minerals and non-mineral uses or the economic value of extraction exceeds the economic value of other conflicting uses for the lands in question. In other words, the land must be more valuable for development of one of these leasable minerals than the value for other non-mineral activities. This final step in the process that is necessary prior to issuing preference right leases is underway. As noted in Section 2.1 of this ROD, my decision does not approve issuance of preference right leases.

4.4 Justification for Selecting the Preferred Alternative

The Preferred Alternative was developed after comments were received on the Draft EIS. The alternative is a combination of three of the four original action alternatives evaluated, developed after the BLM project management team applied a systematic approach to identify and rank the best features of each alternative involving the interdisciplinary team of specialists. In making my decision to approve the Preferred Alternative, I have carefully considered the following factors.

- The Preferred Alternative meets the purpose and need while minimizing potential conflicts with other land uses and mineral development.
- The Preferred Alternative is the alternative that best fulfills the agency's statutory mission and responsibilities, considering economic, environmental, technical, and other factors.
- The Decision conforms to the Carlsbad RMP's objective for minerals, as well as the FLPMA and the MLA.
- Implementation of this Decision will not cause unnecessary or undue degradation of the public lands and is consistent with other legal requirements.
- The potential visual impacts of the tailings stockpile will be minimized through early and frequent reclamation and the sale of marketable byproducts.
- The Decision will help maintain revenue for local and state government and will provide additional employment for the local economy.
- Monitoring and mitigation measures have been incorporated into the MPO to support adaptive management and minimize environmental impacts as the project progresses.

5.0 Public Involvement, Consultation, and Coordination

The Notice of Intent to prepare an EIS for the Ochoa Mine Project was published in the Federal Register on January 4, 2012. Consultation and coordination with various federal, state, and local agencies, organizations, and individuals has been accomplished through formal and informal means of communication, including meetings, interviews, email exchanges, telephone calls, and other verbal exchanges.

The BLM invited 33 federal and state agencies, counties, and municipalities to become cooperating agencies in letters sent to each organization on January 20, 2012. Seven responses were received, of which five informally accepted the invitation to be a cooperating agency and two agencies declined. Four organizations signed formal memoranda of understanding to establish cooperating agency status with the BLM Carlsbad Field Office for the Ochoa Mine Project EIS: U.S. Department of Energy Carlsbad Field Office, New Mexico Environment Department (NMED), City of Eunice, and City of Jal.

A total of four project Bulletins were sent at key project milestones to interested stakeholders including private landowners, public land users, industry representatives and mineral lessees, as well as federal, state, and local agencies and governments. A project website was developed and available for public access starting on January 3, 2012.

During public scoping, the BLM received a total of 21 comment submittals (e.g., letter, comment form, verbal comments) containing 125 individual comments during the 30-day public scoping period. In addition to the three public scoping meetings held on January 23 and 24, 2012, in Carlsbad, Jal, and Hobbs, New Mexico, some interviews of selected state and local government representatives were conducted to collect information particular to issues related to socioeconomics.

In advance of publication of the Draft EIS, the BLM gave presentations on the Ochoa Project to inform the NMED and the NM Energy, Minerals, and Natural Resources Department on the development, analysis, and findings of the EIS.

The Draft EIS was announced in a Notice of Availability (NOA) in the Federal Register on August 9, 2013. Nine hard copies and 32 compact discs of the Draft EIS were mailed to recipients in advance of the NOA, with the BLM distributing other hard copies and compact discs upon request. Public meetings were held on August 27 and 28, 2013, in Carlsbad, Jal, and Hobbs, New Mexico. Display advertisements and public service announcements were used to inform the public of the meetings, in addition to the Bulletin. A total of 63 members of the public attended one of the meetings.

During the 45-day public comment period from August 9 through September 23, 2013, the BLM received 29 comment letters on the Draft EIS from commenters ranging from private individuals living in the region; county, municipal, and state elected officials; economic development organizations; state and federal agencies; mining companies; and oil and gas companies and service providers. After all 490 comments were categorized, the BLM prepared responses to each comment.

On November 16, 2011, the BLM sent project information and a request for identification of any tribal concerns or TCPs to seven tribes or pueblos: Mescalero Apache Tribe, Apache Tribe of Oklahoma, Comanche Nation, Pueblo of Isleta, Kiowa Tribe of Oklahoma, Ysleta del Sur Pueblo, and the Hopi Tribe. Responses were received from all but the Mescalero Apache Tribe and the Kiowa Tribe.

Between July 16 and August 2, 2012, the BLM Carlsbad Field Manager, Associate Field Manager, and Lead Archaeologist met with representatives of each tribe or pueblo to discuss the Ochoa Mine Project, as well as other BLM projects and initiatives. The concerns expressed by each tribe or pueblo involved following the Native American Grave Protection and Repatriation Act of 1990 (NAGPRA) and complying with the immediate notification of any human remains and associated funerary items inadvertently discovered. They did not identify any specific areas of concern within the Ochoa Mine project area; however, the Mescalero and Comanche Tribes indicated that they could not respond because they had not been to the specific area.

On September 26, 2013, the BLM sent a treatment plan for three eligible archaeological sites that would be affected by proposed construction to the seven tribes or pueblos for review and consultation. The only response received by the BLM was from the Hopi Tribe (October 29, 2013), in which they stated that they would like to be notified if data recovery results in the discovery of human remains, pursuant to NAGPRA. The Hopi Tribe also requested that they be sent a copy of the draft treatment report for review and comment.

During the cultural resources consultation, the BLM lead archaeologist consulted with the archaeologist from the NM State Land Office, and Dr. Bob Estes of the NM Historic Preservation Division, Department of Cultural Affairs to determine the eligibility of recorded archaeological sites on state and private land in the project area. On September 26, 2013, Dr. Estes was asked to review and comment on the treatment plan for three recorded archaeological sites that are eligible for the NRHP and would be adversely affected by proposed construction if the proposed project is approved.

A BA to evaluate potential effects on the lesser prairie-chicken was prepared and submitted to the U.S. Fish and Wildlife Service (USFWS) on December 6, 2013. The BLM determined that the proposed project may affect, but is not likely to adversely affect the lesser prairie-chicken, primarily due to the limited occurrence of this species and the lack of known lek sites within the project area. The USFWS reviewed the BA and concurred with the BLM's findings in a letter dated December 16, 2013.

During preparation of the groundwater model used to evaluate potential impacts resulting from pumping, hydrologists from the New Mexico Office of the State Engineer performed an independent evaluation of the model and concurred with the model results.

6.0 Appeals

A party that is adversely affected may file an appeal in accordance with the procedures in 43 CFR Part 4.1.10. An appeal shall be filed not later than 30 days after the date the Record of Decision is issued.



George MacDonell, Carlsbad Field Manager

4/10/14
Date

7.0 References

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New Mexico Department of Game and Fish (NMDGF). 2007. Guidelines and Recommendations for Burrowing Owl Surveys and Mitigation. Santa Fe, New Mexico. July.

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