

Is the BLM practicing unsafe CX?

More than 6,000 drilling permits issued under questionable provision

No, categorical exclusions are not symptoms of a venereal disease. Rather, CXs, as they're known, are provisions of the Energy Policy Act of 2005, designed to streamline permitting for relatively harmless, small-scale oil and gas activities — a single new gas well on an existing well-pad, say. But soon after the law passed, the Bureau of Land Management, which administers most oil and gas development in the West, began to use CXs *a lot* — giving rise to worries that large-scale drilling was moving forward in a scattershot fashion without thorough environmental review. Now, the results of an investigation by the Government Accountability Office suggest that

those fears were justified. About 6,100 permits to drill — 28 percent of the total handled by the BLM — were issued with CXs from 2006 through 2008. Partly due to poor oversight and partly because of the law's confusing language, the GAO found that the CXs were applied inconsistently, and violations were common. Although most violations were technicalities, the GAO wrote, others "may have thwarted (the National Environmental Policy Act's) twin aims of ensuring that BLM and the public are fully informed of the environmental consequences of BLM's actions.

At the West's biggest gas fields, BLM officials handed out CXs like candy on Halloween. From 2006 through 2008, the Pinedale, Wyo., office, which oversees the massive Jonah Field, used about 1,500, the Farmington, N.M., office in the gas-rich San Juan Basin used nearly 1,400, and the Vernal, Utah, office used more than 1,100. The Price/Moab, Utah, office, which issued this particular CX, used 122. That the agency was able to use CXs so frequently likely stems in part from its interpretation of the law, environmental groups say. Under federal regulations that predate the Energy Act, a categorical exclusion can be used to approve an activity without environmental review unless "extraordinary circumstances" exist — impacts to a cultural site, for example, or the potential for significant cumulative environmental effects. But because the oil and gas CXs were spelled out in a law, the BLM told its staff they need not screen for "extraordinary circumstances" when permitting projects — though they must still comply with the Endangered Species Act and other laws. Widespread use of the new measures sped up permitting and increased efficiency. And while that may have allowed BLM staff more field time to enforce environmental rules (the 200 extra oil and gas staffers hired under the 2005 Energy Act probably helped, too), it also gave them time to process ever more drilling permits.

The CX3 — one of the five varieties of categorical exclusion laid out in the law — allows officials to permit an oil or gas well if it can be squeezed into a development that has gone through environmental review in the past five years. CX3s have been especially popular, accounting for more than 60 percent of all CXs issued from 2006 through 2008, and have helped officials avoid redundant environmental analysis. Yet according to the GAO, these CXs may also have allowed officials to bypass analyzing the impacts of specific projects altogether, especially if they were issued under a resource management plan. The Farmington, N.M., office, for example, processed the majority of their drilling permits during the three-year period with CX3s under the umbrella of the area's 2003 resource management plan and environmental impact statement — which cover about 1.4 million acres of federal land. Such studies offer only broad guidance, however, and usually require additional analysis of specific projects as they're proposed. CXs allowed Farmington to punt on that analysis (and the attendant public input) entirely, says Mike Chiropoulos of Western Resource Advocates. Farmington minerals manager Dave Mankiewicz counters that the office's staffers always consult a GIS database of the area's wildlife habitat and cultural resources, inspect each proposed well site in person and impose necessary mitigation measures and changes. But there's no public involvement in onsite inspections, and looking at each well by itself misses the overall impacts of a bunch going into one area, Chiropoulos says: "(It's like) tossing one cookie at a time into the oven, and not even on a pan."

Energy Policy Act of 2005 Section 390 CX Review and Documentation Form

UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT
PRICE FIELD OFFICE

**CATEGORICAL EXCLUSION REVIEW AND APPROVAL
For Activities Associated with Oil and Gas Development
Under Section 390 of the Energy Policy Act of 2005**

Project Name: Bill Barrett Corporation 1 Well Drilling Program
NEPA Number: UT-070-08-023
Lead Preparer: Don Stephens
Project or Serial Number (if applicable): UTU-73670

Project Description:
Bill Barrett Corporation (BBC) proposes to drill a directional well, Prickly Pear Unit Federal 16X-21D-12-15, by expanding an existing well pad in the Prickly Pear Unit. This directional well would be drilled from a well pad which currently has four gas wells; the Prickly Pear Unit Federal 1-28-12-15, 9-28D-12-15, 5-27D-12-15 & 8-28D-12-15 that that were consecutively spudded on April 3 and April 4, 2007.

The location of this project is approximately 30 miles east of Price, Utah. The legal description of the surface location is as follows:

Project Location:
Well: Prickly Pear Unit Federal 16X-21D-12-15
SH-Lease UTU-73670/ BH- Lease UTU-73670
NWNE Section 28-T12S-R15E

Plan Conformance:
The Bureau of Land Management (BLM) has ensured that BBC's proposal is designed in conformance with all Bureau standards and incorporates appropriate best management practices, required and designed mitigation measures determined to reduce the effects on the environment.

The mitigation measures were developed as part of the 2004 West Tavaputs Drilling Program Environmental Assessment (EA). See attached surface use conditions of approval (COAs).

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GAO Assistant Director Jeff Malcolm notes that all of these CXs could snowball. Yet another variety — the CX2 — can be used to permit a new well in a location that has been drilled in the past five years, including one already drilled under a CX. And unlike CX3s, a CX2 doesn't explicitly require that those wells fit into a development scenario that's gone through recent environmental review. That looks like a loophole from some angles. For example, it appears that the Price BLM office has used the measure to approve dozens more wells on Utah's West Tavaputs Plateau than

the agency had analyzed in recent environmental studies for the area. The road to these wells goes through Utah's Nine Mile Canyon — home to fragile rock art that's already been damaged by oil and gas-related dust pollution. In August of 2008, the Nine Mile Canyon Coalition, the Southern Utah Wilderness Alliance and The Wilderness Society sued the BLM over 30 of the wells Price permitted with CX2s (including the one shown here), arguing the agency had ignored several "extraordinary circumstances" related to the rock art, and was illegally circumventing NEPA.

Informal consultation pursuant to Section 7 of the Endangered Species Act occurred with the U.S. Fish and Wildlife Services (USFWS) during the 2004 West Tavaputs Drilling Program EA (UT-070-2004-28), and subsequent Finding of No Significant Impact (FONSI) and Decision Record, signed July 29, 2004. It was determined that BBC's proposal "may affect," but is not likely to "adversely affect" the Bald eagle and Mexican spotted owl. This determination remains valid.

Consultation was also completed pursuant to Section 106 of the National Historic Preservation Act with the Utah State Historic Preservation Office (SHPO) for the Prickly Pear Unit Federal 1-28-12-15. A letter was sent to SHPO on September 25, 2006 requesting concurrence in a determination of "no historic properties affected." No comments were received from SHPO. Application for Permit to Drill for the proposed location was posted on March 10, 2008 in the Moab Field Office Public Room.

Compliance with the Energy Policy Act of 2005:

BBC's proposal has been determined to meet the statutory requirement for exclusion from NEPA documentation in accordance with Section 390 Categorical Exclusion 2 of the National Energy Policy Act of 2005 based on the following criteria:

(b)(2) Drilling an oil or gas well at a location or well pad site at which drilling has occurred previously within five (5) years prior to the date of spudding the well.

- Prickly Pear Unit Federal 1-28-12-15, 9-28D-12-15, 5-27D-12-15 & 8-28D-12-15 that were consecutively spudded on April 3 and April 4, 2007.

Decision and Rationale on Action

I have decided to authorize BBC to implement its proposal to drill one natural gas well on one location with associated access road and gas pipeline right of way for the reasons presented below. In addition, it is my determination that no further environmental analysis is required.

- As demonstrated above, this project meets all criteria under Categorical Exclusions 2 of Section 390 of the National Energy Policy Act of 2005.
- Authorization of this project would be in conformance with the Price River Management Framework Plan (MFP) as supplemented on August 13, 1984.
- This project is close to designated critical habitat for the Bald eagle and Mexican spotted owl. Consultation was completed with the USFWS on December 11, 2006.
- Consultation with SHPO, per Section 106 of the National Historic Preservation Act, also provides for BLM to authorize this action in such a way as to avoid adverse impacts to cultural resources.

The sheer quantity of CXs used is of particular concern to Larry Svoboda, NEPA program director for the EPA's Rocky Mountain region, because it suggests that the BLM has permitted a lot of wells without analyzing their potential cumulative impact on air quality. Oil and gas development kicks up dust and releases a stew of nitrous oxides and volatile organic compounds that contribute to the formation of ozone, a nasty gas that can cause respiratory ailments. Ozone levels have already reached or passed federal health standards in gas-boom areas like Pinedale and the San Juan Basin (where there are also two giant coal power plants) in recent years. Wildlife advocates are equally alarmed by CXs. In 2007, the Western Governors' Association passed a resolution calling for Congress to nix the use of CX3s to permit oil and gas projects in wildlife migration corridors and crucial habitat, where the effects of development may never have been closely examined.

Only Congress can amend or repeal the CX provisions as they're laid out in the 2005 Energy Act. But the Obama administration already appears to be reining in the drilling rush of the Bush years. In accordance with GAO's recommendations, the BLM plans to issue clearer instructions on when and how CXs should be used — including whether "extraordinary circumstances" need to be considered — in 2010. In late October, the agency reached a settlement with the Nine Mile groups that could also affect its CX policies, though the agreement had not been released as of press time. The agency also recently released its own report on 77 controversial oil and gas leases that went up for bid in December of 2008, including some bordering national parks and in wilderness-quality lands. The report recommended that the BLM head up oil- and gas-related air quality planning efforts and revise leasing and development protocols to allow more interagency collaboration and on-the-ground review of proposals. The signs of comprehensive reform are "encouraging," says former Pinedale BLM biologist Steve Belinda, who now works for the Theodore Roosevelt Conservation Partnership. "CXs are only a symptom of a larger problem. Dealing with them (alone) would be like treating a runny nose when someone has the flu."