Taos Plateau Implementation Compliance Brief

Rio Grande del Norte National Monument Cones Fire Project | DOI BLM NM F020 2025 0001 EA

Purpose. This short record is offered for rapid legal and agency review. It does not assert that a violation has been proven. It identifies specific, unresolved questions about whether a planned aerial tebuthiuron application can proceed consistently with the applicable product label and current site conditions, and requests a pause until those questions are answered with documents and field evidence.

Requested action. Ask BLM to ground or postpone the flight while it releases the exact formulation and current EPA label, the operational plan, weather and soil criteria, water-protection measures, applicator qualifications, calibration records, and a written determination explaining how the proposed application complies with the label under present conditions.

Why this requires attention now

The project is reported to involve an aerial application of tebuthiuron in the Rio Grande del Norte National Monument treatment area north of Cerro Chiflo and east of Cerro de Olla, also identified as Pot Mountain, for approximately three days during the first two weeks of November 2026.

BLM's April 4, 2019 approved-formulations list includes Spike 20P, EPA Registration No. 62719-121, among several tebuthiuron products. That list is not a substitute for the current product label or a project-specific application plan.

Residents have reported unusually wet, saturated conditions and active water movement. Tina Trout, born and raised in New Mexico, reports that her mother and grandmother were also born and raised here, with a settler great-grandfather preceding them, and that this family memory does not include comparable rainfall and soil saturation. This is contextual evidence; it should be paired with dated rainfall, soil, hydrologic, and photographic records.

The public has repeatedly placed BLM on notice of the concern, including community outreach, a petition reported to exceed 1,000 signatures, a peaceful office action, written requests, and a New Mexico Department of Agriculture pesticide-compliance complaint.

Immediate legal frame

Label compliance is an implementation obligation. FIFRA section 12(a)(2)(G) makes it unlawful to use a registered pesticide in a manner inconsistent with its labeling. EPA explains that pesticide labels are central to safe use and that noncompliant use can lead to enforcement. The operative question is product-specific: what does the current label for the actual formulation require or prohibit, and can BLM document compliance?

Current conditions can matter under NEPA. BLM guidance provides that new circumstances or information may trigger supplemental analysis when they are significant, relevant to environmental concerns, and bear on the proposed action and its effects. The present request is for a documented agency evaluation before implementation, not a claim that a supplement is automatically required.

Federal-agency accountability differs from private enforcement. EPA states that it historically has not assessed civil penalties against federal agencies under FIFRA, and instead typically uses federal-

facility compliance agreements. State pesticide regulators may investigate use complaints. These routes do not prevent judicial review under other statutes where the facts support it.

Claim and evidence matrix

Question	What is presently documented	What is missing or must be verified	Practical request
Exact pesticide and label	BLM 2019 list identifies several tebuthiuron formulations, including Spike 20P, EPA Reg. No. 62719-121.	The actual product name, EPA registration number, lot information, full current label, and any supplemental labeling or 2(ee) bulletin relied upon.	Release the exact label package and identify every binding direction, warning, and limitation.
Method and calibration	The project is described publicly as aerial herbicide application.	Aircraft type, application rate, swath, GPS controls, calibration, pellet containment plan, contractor/applicator credentials, and field supervisor.	Release the operational plan and calibration/quality-control records before flight.
Water and saturated soils	Residents report exceptional rain, soil saturation, and water movement.	Dated precipitation data, soil moisture/saturation evidence, drainage map, nearby water features, forecast, and application-day stop-work criteria.	Issue a written condition assessment and explain how each applicable label protection will be met.
Non-target resources	Community concerns include pinyon/juniper and pinyon jay habitat.	Current species/habitat survey information, buffer design, monitoring plan, and response protocol for off-target effects.	Release location-specific protections and supporting biological review.
Notice and reasoned response	BLM received public requests and questions before the expected treatment window.	A written response addressing label language, current conditions, and whether new information changes implementation.	Pause pending a written, record-supported determination.

What a lawyer can use immediately

- A dated declaration from Tina Trout describing family roots, observed conditions, locations, and why the present saturation is extraordinary, limited to what she personally knows.
- Dated, geolocated photographs and short videos showing saturated ground, flowing water, drainage pathways, and nearby sensitive resources. Preserve originals and metadata.
- The exact EPA-approved label and any supplemental product directions for the formulation BLM intends to use, plus the contractor's work plan and application map.
- Every agency communication, including the initial request, BLM replies, the NMDA complaint, receipt confirmation, and a concise timeline of public notice.
- A one-page map locating the proposed treatment area, drainages, residences or use areas where relevant, and pinyon/juniper habitat concerns.
- A narrowly framed request for emergency review: pause the application until BLM demonstrates present-condition compliance and explains its NEPA determination.

Relevant precedent and enforcement context

These authorities show possible pathways, not a prediction of outcome. They should be evaluated against the Taos record by counsel.

Authority	Why it matters	Limit
FIFRA section 12(a)(2)(G), 7 USC 136j	Makes label-inconsistent use of a registered pesticide unlawful.	Requires proof of the actual product, binding label language, and the planned or completed use.
EPA aerial-applicator enforcement example	EPA upheld a penalty against an aerial applicator for spraying contrary to a product label.	Private aerial enforcement does not establish the facts or remedy for a BLM operation.
Save Our Ecosystems v Clark, 747 F2d 1240 (9th Cir. 1984)	The Ninth Circuit affirmed NEPA deficiencies involving BLM and Forest Service herbicide spraying and required the programs halted until compliance.	Different record, era, geography, and environmental analysis; useful only as a procedural precedent.
BLM NEPA Handbook H 1790 1	Explains when significant new circumstances or information relevant to environmental concerns can require supplementation.	Significance is fact-specific; changed conditions must be documented.

Requested document production

- The formulation name and EPA registration number BLM will apply, with the complete current label and all supplemental labeling.
- The site-specific aerial application plan, including rate, method, calibration, boundaries, buffers, start/stop conditions, and forecast protocol.
- A map of treatment units, drainages, water features, non-target vegetation safeguards, and any sensitive habitat protections.
- The applicator and contractor qualifications, pesticide-use authorizations, and supervision plan.
- The agency’s written response to the public’s label-compliance and current-conditions concerns, including its decision whether supplemental NEPA review is required.

Source record

Primary or official sources used for the legal framework. This brief does not rely on secondary summaries for its legal claims.

BLM Approved Herbicide Formulations April 4 2019: https://www.blm.gov/sites/default/files/documents/files/BLM%20Approved%20Herbicide%20Formulations%20-%20April%204%2C%202019.pdf

FIFRA statutory text section 12: https://www.epa.gov/sites/production/files/documents/fifra.pdf

EPA pesticide label assistance: https://www.epa.gov/pesticide-labels/ways-obtain-assistance-pesticide-labeling-issues

EPA FIFRA inspection manual: https://www.epa.gov/sites/default/files/2014-01/documents/fifframanual.pdf

EPA federal facilities and FIFRA: https://www.epa.gov/enforcement/federal-insecticide-fungicide-and-rodenticide-act-fifra-and-federal-facilities

BLM NEPA Handbook H 1790 1: https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_Handbook_h1790-1.pdf

EPA aerial applicator enforcement example: https://www.epa.gov/archive/epapages/newsroom_archive/newsreleases/7f7e8f1fb24e5d8b852571e8006d3d3c.html

Save Our Ecosystems v Clark: https://law.justia.com/cases/federal/appellate-courts/F2/747/1240/344881/

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