

Director's Protest Resolution Report

**Farmington Field Office
Visual Resource Management
RMP Amendment**

June 18, 2014



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Reader's Guide

How do I read the Report?

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

Report Snapshot

Issue Topics and Responses
NEPA

Topic heading

Submission number

Issue Number: PP-CA-ESD-08-0020-10
Protest issue number

Organization: The Forest Initiative
Protesting organization

Protester: John Smith
Protester's name

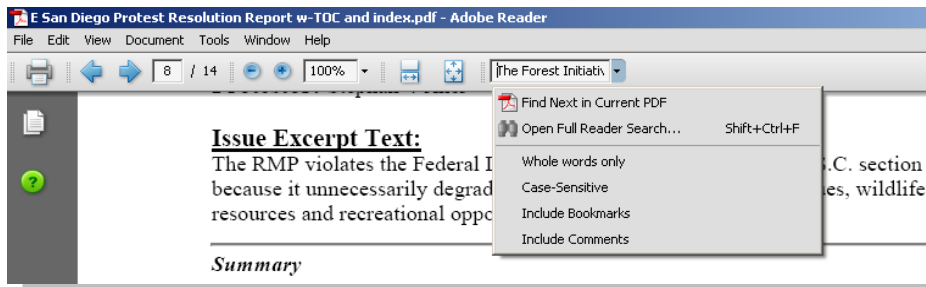
Issue Excerpt Text:
Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.
Direct quote taken from the submission

Summary
General statement summarizing the issue excerpts (optional).
There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

Response
BLM's response to the summary statement or issue excerpt if there is no summary.
Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a

How do I find my Protest Issues and Responses?

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



List of Commonly Used Acronyms

ACEC	Area of Critical Environmental Concern	FO	Field Office (BLM)
BLM	Bureau of Land Management	KOP	Key Observation Points
CEQ	Council on Environmental Quality	MOU	Memorandum of Understanding
CFR	Code of Federal Regulations	NEPA	National Environmental Policy Act of 1969
DEA/DRMPA	Draft Environmental Assessment Statement /Draft Resource Management Plan Amendment	NHPA	National Historic Preservation Act of 1966, as amended
DOI	Department of the Interior	NTSA	National Trails System Act
DR	Decision Record	NOA	Notice of Availability
EA	Environmental Assessment	NOI	Notice of Intent
EIS	Environmental Impact Statement	NRHP	National Register of Historic Places
FEA	Final Environmental Assessment	RMP	Resource Management Plan
FEA/PRMPA	Final Environmental Assessment Statement /Proposed Resource Management Plan Amendment	RMPA	Resource Management Plan Amendment
FLPMA	Federal Land Policy and Management Act of 1976	ROD	Record of Decision
		ROW	Right-of-Way
		SO	State Office (BLM)
		USC	United States Code
		VRM	Visual Resource Management

Protesting Party Index

Protester	Organization	Submission Number	Determination
Mike Eisenfeld, Jeremy Nichols, Anson Wright	San Juan Citizens Alliance, WildEarth Guardians, Chaco Alliance	PP-NM-FFO-VRM-RMPA-14-02	Denied – issues and comments
Mark Henderson	Old Spanish Trail Association	PP-NM-FFO-VRM-RMPA-14-01	Denied – issues and comments

Issue Topics and Responses

Visual Resource Management

Issue Number: PP-NM-FFO_VRM_RMPA-14-01-3

Organization: Old Spanish Trail Association

Protestor: Mark Henderson

Issue Excerpt Text: The Draft Farmington Field Office Visual Resource Management Resource Management Plan Amendment DOI-BLM-NM-F010-2013-0047-EA issued in April, 2013 . . . (as downloaded on January 14, 2014) proposed no VRM classification of the Old Spanish National Historic Trail (a component of the National Landscape Conservation System co-administered by the Bureau of Land Management and the National Park Service) in the Bureau of Land Management Farmington Field Office jurisdiction.

Issue Number: PP-NM_FFO_VRM_RMPA-14-02-19

Organization: San Juan Citizens Alliance, WildEarth Guardians

Protestor: Mike Eisenfeld, Jeremy Nichols, Anson Wright

Issue Excerpt Text: Although the BLM now claims (April 24 meeting at Chaco Culture NHP) to have conducted Key Observation Point analysis associated with areas including and surrounding Chaco Culture NHP, inventory methodologies and results have not been adequately shared with us or other interested parties nor has a Viewshed Analysis and/or results been

completed. Any decisions concerning VRM designations on BLM lands in proximity to Chaco Culture NHP should be deferred until the Viewshed Analysis is complete and results have been presented to the public by the BLM and NPS.

Issue Number: PP-NM-FFO-VRM_RMPA-14-02-22

Organization: San Juan Citizens Alliance, WildEarth Guardians

Protestor: Mike Eisenfeld, Jeremy Nichols, Anson Wright

Issue Excerpt Text: In fact, Tables 8-10 on page 42 of the VRM RMPA/EA discloses that BLM has considered scenic quality ratings, sensitivity quality rating and VRI Classes for lands in the Planning Area for both BLM and Non-BLM managed lands. Despite noting that somehow these Non-BLM managed lands exclude tribal lands and Chaco Culture NHP, the reader is left with confusion over what BLM's legal authority is here concerning VRM. We assert that BLM has no authority to inventory or classify any lands not under their jurisdiction and this is exactly why Cooperating Agencies should have been properly engaged in BLM's NEPA exercise.

Summary: The BLM FFO failed to propose Visual Resource Management (VRM) classes for portions of the Farmington Field Office (FFO), namely the Old Spanish National Historic Trail (OSNHT). The BLM FFO failed to disclose visual resource analysis methods with interested members of the public and erroneously considered visual resources for non-BLM managed lands.

Response: VRM Classifications for the Old Spanish National Historic Trail

The DRMPA/DEA did not consider the resource or issues surrounding the OSNHT. However, the BLM FFO considered a VRM management alternative for and impacts to the OSNHT based on comments on the DRMPA/DEA. Specifically:

- Alternative B proposes to manage as VRM Class II the portions of the congressionally-designated trail where it intersects with the ephemeral wash riparian area (PRMPA/FEA, pg. 14).
- The affected environment of the OSNHT is described on page 39 of the PRMPA/FEA.
- Section 4.7 of the PRMPA/FEA evaluates the possible impacts to the OSNHT of development that might take place consistent with each of the four alternatives, as well as the no action alternative (PRMPA/FEA, pgs. 87-90). The summary of impacts explains that Alternative B has management prescriptions that best correspond to the resources specific to the OSNHT and would provide for the best retention of the existing character of the landscape.

What could have been more clearly articulated in the PRMPA/FEA is the relationship between the ephemeral wash riparian area and the likely high potential route segments of the OSNHT. Details regarding this relationship and the rationale for the proposed VRM allocation in Alternative B and the proposed plan amendment will be clarified in the Record of Decision. The approved RMPA will also include a clear map of the approved VRM allocations for the ephemeral wash riparian area as it coincides with the congressionally-designated portions of the OSNHT.

Visual Resource Analysis Methods

This point of protest was raised in comments to the DRMPA/DEA. The response to comments addresses this issue and follows:

Viewshed analysis was completed in the summer of 2011. This information was displayed during a presentation of the VRM RMPA/EA during a consultation meeting with the Chaco Alliance on February 26, 2013. The viewshed analysis was also displayed during the Chaco Alliance on April 24, 2103. Sections 4.3 and 4.5 contain discussion of the viewshed analysis as it relates to impacts to Chaco Culture NHP (PRMPA/EA, pg. 104).

Based on the information above, the BLM complied with the public engagement and disclosure obligations required by 43CFR1610.2(a).

Visual Resources for Non-BLM Managed Lands

This issue also arose in comments on the DRMPA/EA as follows:

The BLM is not responsible for nor does it have the authority to conduct inventories on lands that it does not administer. For display and analysis purposes, the BLM may make assumptions/projections that non-BLM managed lands have the same VRI Class as nearby BLM-managed lands. The BLM did not make such projections onto lands managed by the NPS as they are responsible for inventorying the lands under their jurisdiction (PRMPA/FEA pg. 104).

The PRMPA/FEA alternative maps clearly demonstrate VRM classifications for BLM-managed lands only.

Areas of Critical Environmental Concern

Issue Number: PP-NM-
FFO_VRM_RMPA-14-02-30

Organization: San Juan Citizens Alliance,
WildEarth Guardians

Protestor: Mike Eisenfeld, Jeremy Nichols,
Anson Wright

Issue Excerpt Text: In addition, BLM has
failed to respond to a September 2013

Petition from CA, WEG, SJCA, the Society
for American Archaeology, and the New
Mexico Archeological Council to designate
the "Greater Chaco Landscape" as an Area
of Critical Environmental Concern (ACEC)
and withdraw all Federal minerals located
within the ACEC boundary from leasing.

Summary: The BLM failed to consider Areas of Critical Environmental Concern in the RMP
process.

Response: The ACEC proposal for the "Greater Chaco Landscape" was not presented earlier in
the RMP Amendment process in question. Further, designation of ACECs is beyond the scope of
this targeted plan amendment, whose purpose and need states:

*The purpose of the action is to designate VRM Classes and management for BLM-
managed lands in the FFO. The need for the action is to respond to direction in the 2003
Farmington Resource Management Plan (RMP) that directed the designation of new
VRM Classes following a visual resource inventory (VRI). A VRI was completed for the
BLM-managed lands in 2009 (PRMPA/FEA, pg. 1).*

Timing of Protest

Issue Number: PP-NM-
FFO_VRM_RMPA-14-02-18

Organization: San Juan Citizens Alliance,
WildEarth Guardians

Protestor: Mike Eisenfeld, Jeremy Nichols,
Anson Wright

Issue Excerpt Text: On page 109 of the
December 2013 VRM RMPA/EA, in
response to the commented request for an
Environmental Impact Statement for the
project, BLM responds, "The deferral of
decisions regarding lands surrounding
Chaco Culture NHP has been considered

and will be discussed in the Decision
Record." Yet, there is no publicly released
Decision Record on the RMP/EA.

Issue Number: PP-NM-
FFO_VRM_RMPA-14-02-2

Organization: San Juan Citizens Alliance,
WildEarth Guardians

Protestor: Mike Eisenfeld, Jeremy Nichols,
Anson Wright

Issue Excerpt Text: SJCA, WEG and CA
have diligently participated in the VRM
RMPA process and have adhered to the

guidelines of the VRM Timeline pdf document on BLM FFO's website . . . (Attached as Exhibit 1). According to this VRM Timeline document, the Project time line describes preparation of a Final RMPA|EA in June, 2013, signing of the Decision Record (DR) Distribute Final EA|ROD|Reader Letter: Post EA on Farmington Field Office Website: www.blm.gov/nm in July, 2013, followed by a Protest Period and Governors Consistency Review in August/September 2013. While this schedule has obviously slipped, the VRM Timeline prepared by BLM clearly describes a protest period 30-60 days after the DRIOD and any project specific Finding of No Significant Impact (FONSI) that BLM may choose to prepare.

Issue Number: PP-NM-FFO_VRM_RMPA-14-02-3

Organization: San Juan Citizens Alliance, WildEarth Guardians

Protestor: Mike Eisenfeld, Jeremy Nichols, Anson Wright

Issue Excerpt Text: The information provided in the VRM Timeline pdf is contradicted by [website link], which states that, "The Proposed RMPA|EA and FONSI are open for a 30-day protest period beginning December 17, 2013." In addition, the following statement is made by BLM: "Upon resolution of all land use plan protests, the BLM will issue a Decision Record (DR). The DR will be available to all parties at [website link]. SJCA, WEG and CA contend that BLM has provided insufficient information to our organizations and to the public concerning procedural requirements of the RMPA|EA. We do not believe that the generic FONSI posted to

BLM's website or the deferral of the DRIOD allow us to legally protest anything at this point.

Issue Number: PP-NM-FFO_VRM_RMPA-14-02-5

Organization: San Juan Citizens Alliance, WildEarth Guardians

Protestor: Mike Eisenfeld, Jeremy Nichols, Anson Wright

Issue Excerpt Text: In any case, BLM's VRM Timeline pdf posted on BLM FFO's website concisely described a Protest Period 30-60 days after BLM's Decision Record (DR) Distribute Final EA|ROD|Reader Letter: Post EA. BLM must adhere to this procedural requirement and drop the contention that a Protest Period is occurring through January 16, 2014. Please repost the correct procedural information, with a project specific Decision Record (Record of Decision) with a clear description of the Proposed Action (rather than the nebulous description provided by BLM that, "BLM is proposing to move forward with a decision that would combine elements of Alternatives A and B." (located on BLM FFO website [website link]. Until our organizations see the approved DRIOD for the project, we don't have any details concerning allocations/evaluation of Alternatives. SJCA, WEG, and CA reserve the right to protest the VRM RMPA|EA after the DR|ROD. Until BLM makes a legal decision concerning VRM that initiates a protest period and exhausts their responsibility to craft a legally proficient NEPA document, BLM is wasting resources and time.

Summary: The BLM provided contradictory information about the precise point in the Land Use Plan amendment process at which protests may occur. Some BLM documentation refers to

a protest period occurring before the Record of Decision (ROD) is issued and some BLM documentation refers to a protest period occurring after the ROD is issued.

Response: In the development of a plan, plan revision, or plan amendment, the point at which the protest occurs is before the Record of Decision is signed. While it is true that the timeline document that was linked from the project website incorrectly characterized the point at which the protest process occurs, this error was corrected. The Dear Reader letter outlining the Proposed Plan Amendment, and accompanying the release of the PRMPA/FEA provides the correct information. This information accurately reflects the protest process established in the BLM planning regulations at 43 CFR Part 1610.5-1, and therefore the correct timeline for this plan. The ability of members of the public to protest the proposed plan amendment has not been compromised.

NEPA: Range of Alternatives

Issue Number: PP-NM-
FFO_VRM_RMPA-14-01-17

Organization: Old Spanish Trail
Association

Protestor: Mark Henderson

designation of OSNHT corridor as VRM Class I. An alternative should be proposed that designates the entire OSNHT on federal surface and mineral estate (federal protection segments) as VRM Class I.

Issue Excerpt Text: The range of alternatives presented do not include any

Summary: The BLM does not designate the entire Old Spanish National Historic Trail (OSNHT) corridor as VRM Class 1 in the range of alternatives.

Response: The proposal of designating the OSNHT as VRM Class I did not arise earlier in the planning process. Comments on the DRMPA/DEA, however, suggested the OSNHT is a valid issue for analysis in the RMPA. The BLM responded to the comments regarding the OSNHT by developing an alternative that assigns specific VRM classes to portions of the trail and by analyzing impacts to the trail and associated values.

Alternatives Development

In developing proposed VRM Classes for the OSNHT, the PRMP/FEA states “the comprehensive management plan for the [OSNHT] is still being developed” (PRMPA/FEA, pg. 40). As such, high potential segments of the trail and a corresponding trail management corridor have yet to be determined. In the interim, the PRMPA/FEA analysis used the boundary of the ephemeral wash riparian area where it overlaps with the Congressionally-designated trail as a proxy for the high potential segments of the trail. In the PRMPA/FEA, these areas would be managed as VRM Class II. The BLM assumed that the portions of the congressionally-designated trail that do not coincide with the ephemeral wash would likely not be determined to be high potential sites. As such, this portion of the trail would be managed as VRM Class III.

VRM Class I for the ephemeral wash riparian area was not considered based on other allocations and valid existing rights in the area.

The assumptions surrounding the ephemeral wash riparian area are part of the planning record but were not clearly articulated in the PRMP/FEA document. The Record of Decision will clarify the rationale used to determine the proposed plan amendment as it pertains to managing the visual resources within the OSNHT. Also, the Approved RMPA will include more detailed maps and descriptions of the specific relationship between the ephemeral wash riparian area, the congressionally-designated OSNHT, and the VRM classes.

NEPA: Environmental Analysis, Significance & Administrative Procedures Act

Issue Number: PP-NM-
FFO_VRM_RMPA-14-01-9

Organization: Old Spanish Trail
Association

Protestor: Mark Henderson

Issue Excerpt Text: The "Proposed Finding of No Significant Impact (FONSI December 2013)" is based on the statement that: "3. The proposed activities would not significantly affect any unique characteristics (40 CFR 150B.27(b)(3)) of the geographic area such as prime and unique farmlands, caves, wild and scenic rivers, designated wilderness areas, wilderness study areas, or areas of critical concern." This is an important omission of the language of the regulation 40 CFR 150B.27(b)(3) which states: "(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands [italics added], prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas" [website link] as downloaded 14 Jan 14).

Issue Number: PP-NM-
FFO_VRM_RMPA-14-02-13

Organization: San Juan Citizens Alliance,
WildEarth Guardians

Protestor: Mike Eisenfeld, Jeremy Nichols,
Anson Wright

Issue Excerpt Text: In the December 2013 RMP|EA, there is no concise identification/explanation or evaluation of the environmental consequences of the combination of Alternatives A and B. BLM is attempting to move forward on a decision that hasn't been adequately described and/or evaluated and is devoid of a supporting DR/ROD. The BLM stating that Alternative A would serve as the "majority of the allocations" is vague, arbitrary and capricious and does not comply with the evaluation necessary to determine significance.

Issue Number: PP-NM-
FFO_VRM_RMPA-14-02-32

Organization: San Juan Citizens Alliance,
WildEarth Guardians

Protestor: Mike Eisenfeld, Jeremy Nichols,
Anson Wright

Issue Excerpt Text: The BLM's responsibility in preparation of an EA for the VRM|RMPA is to concisely prove that activities, ... described in the proposed action will not adversely affect or cause the destruction of scientific, cultural, or historic resources, including those listed in or eligible for listing in the National Register of Historic Places (40 CFR) 1508.27 (b)(8)) The Draft VRM RMPA, as currently crafted,

cannot legally defend the concept that scientific, cultural and/or historic places of

significance would not be adversely affected by the proposed action.

Summary: The BLM does not adequately consider specific context and intensity requirements outlined in 40 CFR 1508.27(b)(3) and 40 CFR 1508.27 (b)(8) when concluding that no significant impacts would result from adoption of the Proposed VRM classifications.

The RMPA/EA does not sufficiently analyze the environmental impacts of the combination of Alternatives A and B and any decision reached on the basis of the proposed FONSI and PRMPA/FEA would be arbitrary and capricious.

Response:

Context & Intensity

The proposed FONSI does include an incorrect recitation of 40 CFR 1508.27(b)(3):

The proposed activities would not significantly affect any unique characteristics (40 CFR 1508.27(b)(3)) of the geographic area such as prime and unique farmlands, caves, wild and scenic rivers, designated wilderness areas, wilderness study areas, or areas of critical concern (Proposed FONSI, pg. 1).

While the reference to “historic or cultural resources, park lands” is inadvertently omitted here, these resources have, in fact, been taken into account, as the BLM officer expresses in the recitation of 40 CFR 1508.27(b)(8), also in the proposed FONSI:

I have determined that the activities described in the proposed action will not adversely affect or cause loss or destruction of scientific, cultural, or historical resources, including those listed in or eligible for listing in the National Register of Historic Places (40 CFR 1508.27(b)(8)) (Proposed FONSI, pg. 2).

Further, this section explains this determination of no significance by stating that,

Only 5% of Cultural ACECs would be managed to partially retain their existing visual character under a VRM III designation. No Cultural ACECs would be managed as VRM IV, which would allow for major modification of the existing character of the landscape (EA at 31) (Proposed FONSI, pg. 2).

The PRMPA/FEA discloses impacts on scientific, cultural, and historic resources in Cultural Resources, Section 4.3 (pgs. 68-75). The PRMPA/FEA explains that cultural ACECs are used as the impact indicator for cultural resources in the analysis and Table 51 demonstrates the impacts to cultural resources by alternative (pgs. 68-69). This information was used to inform the Proposed FONSI.

The discussion in the Proposed FONSI could have more clearly articulated the manner of specific context and intensity of impacts to the other cultural and scientifically resources analyzed in this document (namely the Chaco Culture National Historic Park and the other World Heritage Sites). As apparent in the PRMPA/FEA, however the FFO demonstrates that adoption of the proposed VRM classifications (pg. 75) would result in very little adverse impacts to World Heritage Sites, as they would be managed as VRM Class 1. The FFO has updated the

FONSI, which will be reflected in the Record of Decision for the approved plan amendment, as it pertains to Chaco Culture NHP.

Claims of Arbitrary and Capricious Decision-Making

Alternatives A and B were fully developed and analyzed in the DRMPA/DEA. The additional discrete areas developed in Alternative B for the PRMPA/FEA were proposed for to include more protective designation for key visual resources in the planning area. The proposals and analyses are both readily discernible and informed the finding that they are not likely to result in significant adverse impacts to the quality of the human environment. The combination of elements from Alternatives in the NEPA process allows refinement of agency decision-making within a transparent analytical process.

NEPA: Cooperating Agencies

Issue Number: PP-NM-
FFO_VRM_RMPA-14-02-20

Organization: San Juan Citizens Alliance,
WildEarth Guardians

Protestor: Mike Eisenfeld, Jeremy Nichols,
Anson Wright

Issue Excerpt Text: Regulations emphasize agency cooperation early in the NEPA process. 40 CFR § 1501.6. Several agencies have jurisdiction by law on significant components of the actions to be analyzed in BLM's NEPA document for the VRM RMPA. Conservation Groups believe that National Park Service (NPS), New Mexico

SHPO and numerous tribal entities should have been considered as Cooperating Agencies for the EA. Instead, BLM limited involvement under the ill defined interested parties/consultation with BLM control of concept that letters explaining preparation of a NEPA document are sufficient to fulfill lead agency responsibilities under NEPA. In particular, the NPS has important scenic and visual management criteria that may have been marginalized by the BLM's approach in crafting the VRM RMPA/EA.

Summary: The RMPA/EA does not adequately disclose pertinent information or data from cooperating agencies or parties as required by NEPA or the NHPA.

Response: CEQ regulations (40 CFR 1501.6) require the BLM to “provide for and describe both lead and cooperating agency status, and emphasize agency cooperation early in the NEPA process” (BLM NEPA Handbook H-1790-1, pg. 111). However, as explained in Section 12.1 of the BLM National Environmental Policy Act Handbook, while cooperating agency status may be applied to an EA, it is most commonly applied to preparation of an Environmental Impact Statement (BLM Handbook H-1790-1, pg. 111). The NEPA analysis associated with the FFO VRM RMP Amendment is an EA, and therefore cooperating agency status was not applied as a formal matter.

As explained in the RMPA/EA, during the scoping process, the FFO was in discussions with

interested parties and invited interested individuals; organizations; affected federal, state, and local agencies; and affected Native American Tribes (FFO Visual RMPA/EA, pg. 2). Similarly, throughout the planning process, the BLM FFO worked in cooperation with NPS personnel regarding the specific issues associated with Chaco Canyon NHP and the OSNHT.

Sections 5.1 and 5.2 lists the tribal governments and departments, as well as additional interested organizations, businesses, and government entities the BLM FFO contacted about the FFO Visual RMP Amendment (FFO Visual RMPA/EA, pgs. 91-93).

NEPA: Significant New Information

Issue Number: PP-NM-
FFO_VRM_RMPA-14-01-8

Organization: San Juan Citizens Alliance,
WildEarth Guardians

Protestor: Mike Eisenfeld, Jeremy Nichols,
Anson Wright

Issue Excerpt Text: The fact that the Proposed FONSI (December 2014) includes consideration of the OSNHT for the first time means that this substantial change has

not been subject to public review, reflects that a significant controversy exists and that another version of the EA should be developed with consultation with interested parties under the National Historic Preservation Act and the National Trail System Act. The waste in public resources so far in avoiding this consultation should be of concern to executive and Congressional overseers.

Summary: Between the Draft and the Proposed RMPA, the BLM FFO added VRM allocations for portions of the OSNHT. The proposed VRM classifications and related impacts analysis represents new information for which the public has not had the opportunity to review and comment.

Response: Though management allocations for the OSNHT were not itemized specifically in the DRMPA/DEA, management allocations were prescribed for portions of the field office that intersect with the congressionally-designated trail. Each of the action alternatives prescribed a varying level of VRM classification, including Management Classes II, III, and IV. Based on comments on the DRMPA/DEA, the BLM FFO added an alternative that applied Management Class II for the likely high potential segments of the OSNHT, where congressionally-designated trail coincides with the ephemeral wash riparian area (as discussed earlier in this report). The addition of VRM Class II for the ephemeral wash riparian area represents less than 1% of the planning area.

The BLM FFO did not address resource impacts to the OSNHT in the DRMPA/DEIS, stating:

A portion of the Old Spanish Trail NHT designated corridor passes through the FFO. The specific route of the trail remains largely speculative and trail ruts or other defining features have not been located within the FFO. Without knowing the location of the trail,

it is not possible to analyze the impacts of VRM Class designation (DRMPA/DEA, pg. 2).

Again, based on comments on the DRMPA/DEA, the BLM FFO analyzed impacts of VRM allocations on the OSNHT (see description of the affected environment on pg. 39 and environmental consequences on pg. 89 of the PRMPA/FEA).

Though new alternatives and analysis were presented between the draft and final with respect to the OSNHT, supplemental analysis as described in 40 CFR 1502.9 is not required, as these requirements pertain specifically to Environmental Impact Statements. The public was afforded sufficient opportunity (as required by BLM National Environmental Policy Act Handbook, BLM H-1790-1) to provide input into the Environmental Assessment associated with the subject Proposed Plan Amendment.

National Historic Preservation Act

Issue Number: PP-NM-
FFO_VRM_RMPA-14-01-6
Organization: Old Spanish Trail
Association

Protestor: Mark Henderson

Issue Excerpt Text: In the interim, between April 2013 in publication of the "Draft EA" [sic. read preliminary) and December 2013 in publication of the "Proposed FONSI," Farmington Field Office made no effort to include "volunteers," "volunteer organizations" or trail experts in consultation on effects of VRM designation on the OSNHT in the meaning of either the NTSA (16 USC 1250) or the National Historic Preservation Act (NHPA).

Issue Number: PP-NM-
FFO_VRM_RMPA-14-01-7
Organization: Old Spanish Trail
Association

Protestor: Mark Henderson

Issue Excerpt Text: Though the December "Proposed FONSI" does include designation of an ill defined portion of the OSNHT as "Class II," this was done without any further consideration of volunteer expertise under

the NTSA or the consultation provisions under Section 106 of the NHPA.

Issue Number: PP-NM-
FFO_VRM_RMPA-14-02-17

Organization: San Juan Citizens Alliance,
WildEarth Guardians

Protestor: Mike Eisenfeld, Jeremy Nichols,
Anson Wright

Issue Excerpt Text: Despite numerous documented communications between BLM and the State Historic Preservation Office (see page 109 of the December 2013 VRM RMPAIEA where comment is "Please note that although the State Historic Preservation Office (SHPO) is listed as an interested party, this office does not have record of being notified by the Farmington FO of this draft EA") and well documented responses from the Hopi Tribe and granted consulting parties (including SJCA and CA) of deficiencies of BLM's planning approach, BLM has limited potential Cooperating Agency and Consulting party involvement to craft an EA that falls short on meaningful public participation and other agency/consulting party expertise/engagement.

Summary: The BLM FFO failed to effectively consult with cooperating agencies, consulting parties, volunteers and volunteer organizations on this effort, in violation of the NTSA (16 USC 1250), the National Historic Preservation Act (NHPA), and NEPA.

Response: Please refer to the response in the “NTSA” Section of this report for a discussion of consultation with volunteers and volunteer organizations in relation to the National Trails System Act.

As explained in Section 12.1 of the BLM National Environmental Policy Act Handbook, while cooperating agency status may be applied to an EA, it is most commonly applied to preparation of an Environmental Impact Statement (H-1790-1, pg. 111). The NEPA analysis associated with the FFO VRM RMP Amendment is an EA and therefore cooperating agency status was not applied.

Sections 5.1 and 5.2 of the Proposed FFO VRM RMPA/EA discuss the BLM FFO’s consultation and coordination efforts for the project. Pursuant to Section III of the Protocol Agreement between New Mexico Bureau of Land Management and New Mexico State Historic Preservation Office, the New Mexico State Historic Preservation Office was invited in June 2011 to participate by helping provide comments and identify issues. Additional historic preservation Section 106 consultation with the NPS, New Mexico State Historic Preservation Office, Native American tribes, and various NGOs (San Juan Citizens Alliance, Chaco Alliance, National Trust for Historic Preservation) regarding the VRM amendment has occurred throughout the development of the FFO VRM RMPA/EA. (FFO VRM PRMPA/EA, pg. 92).

National Trails System Act

Issue Number: PP-NM-
FFO_VRM_RMPA-14-01-13
Organization: Old Spanish Trail
Association
Protestor: Mark Henderson

Issue Excerpt Text: The BLM Farmington proposed treatment of the OSNHT is to segment it into "high potential route segments" and route segments that are not "high potential" as the major management factor. This is a false basis on which to make management distinctions under the NTSA which designates all federally owned trail segments as "Federal protection components" (16 USC 1242).

Issue Number: PP-NM-
FFO_VRM_RMPA-14-01-14
Organization: Old Spanish Trail
Association
Protestor: Mark Henderson

Issue Excerpt Text: The Proposed FONSI then proceeds to further limit protection responsibility to a single high potential route segment as Class II: "Ephemeral Wash Riparian Area (100 yr) where it coincides with portions of the high-potential segment of the Old Spanish Trail National Historic Trail (NHT)=" (Attachment 1 of Proposed Action Letter [website link]) is flawed in

several ways: 1) "High potential route segments" have a specific legal meaning in the National Trail System Act; 2) The Comprehensive Management Plan (CMP) will define "high potential route segments" for the Old Spanish National Historic Trail (including on consultation with volunteers and trails groups); 3) The draft CMP has not been released for review, not to mention for decision record, but is still under development (Proposed EA Dec 2013 page 40), therefore; 4) no management strategy at this point can be based on established high potential route segments. 5) the presumption that even if high potential segments had been defined these segments would ipso facto be a basis for different VRM classification and management segregation of the OSNHT is not a necessary consequence of designation of high potential segments

Issue Number: PP-NM-
FFO_VRM_RMPA-14-01-6
Organization: Old Spanish Trail
Association
Protestor: Mark Henderson

Issue Excerpt Text: In the interim, between April 2013 in publication of the "Draft EA" [sic. read preliminary) and December 2013 in publication of the "Proposed FONSI," Farmington Field Office made no effort to include "volunteers," "volunteer organizations" or trail experts in consultation on effects of VRM designation on the OSNHT in the meaning of either the NTSA (16 USC 1250) or the National Historic Preservation Act (NHPA).

Issue Number: PP-NM-
FFO_VRM_RMPA-14-01-7
Organization: Old Spanish Trail
Association
Protestor: Mark Henderson

Issue Excerpt Text: Though the December "Proposed FONSI" does include designation of an ill defined portion of the OSNHT as "Class II," this was done without any further consideration of volunteer expertise under the NTSA or the consultation provisions under Section 106 of the NHPA.

Issue Number: PP-NM-
FFO_VRM_RMPA-14-02-28
Organization: San Juan Citizens Alliance,
WildEarth Guardians
Protestor: Mike Eisenfeld, Jeremy Nichols,
Anson Wright

Issue Excerpt Text: BLM must comply with the National Trails Systems Act of 1968, an act of Congress, to protect the entire Old Spanish Trail. On page 40 of the EA, it is disclosed that, "The Comprehensive Management Plan for the trail is still being developed by NPS and BLM and is currently unavailable." BLM can't possibly have evaluated VRM pertinent to the OSNHT when it hasn't, until recently acknowledged its existence in areas such as the Glade Run Recreation Area and Largo Canyon, nor has the Comprehensive Management Plan been completed in collaboration with NPS. Further demonstration of BLM failures with VRM is the fact that BLM never included the OSNHT in the 2003 BLMIFFO RMPIEIS so there is nothing to amend. Basically, the OSNHT was never included in the BLM/FFO's primary planning document. Before any VRM analysis can be done by BLM pertaining to the OSNHT, BLM must elevate OSNHT as a resource managed in the Planning Area with full evaluation of how impacts could affect the entire linear features of the trail. Then, and only then, could there be legally defensible undertaking of VRM designation in areas where the OSNHT exists

Summary: The BLM FFO violated NTSA requirements that all federally owned trail segments be designated as "Federal protection components" (16 USC 1242). The analysis in section 4.7 of the "Proposed EA" is flawed because "high potential route segments" for the OSNHT have as yet not been defined and the OSNHT Comprehensive Management Plan has not been completed. Regardless, the designation of high potential segments is not ipso facto basis for different VRM classification and management segregation of the OSNHT. The BLM FFO failed to effectively consult with volunteers and volunteer organizations on effects of VRM designation on OSNHT, in violation of the NTSA (16 USC 1250) and the National Historic Preservation Act (NHPA). Since the BLM FFO did not include the OSNHT in the primary planning document (2003), before any VRM analysis can be done by BLM pertaining to the OSNHT, BLM must elevate OSNHT as a resource managed in the Planning Area with full evaluation of how impacts could affect the entire linear features of the trail.

Response: The FFO VRM Plan amendment process is being carried out in accordance with Sections 201 and 202 of the Federal Land Policy and Management Act of 1976, as amended, as well as in compliance with the National Environmental Policy Act. This land use planning effort has not been designed to implement the National Trails System Act and therefore need not meet the requirements of that Act. Designation of National Historic Trail routes lies outside the scope of this planning effort, as established by the purpose and need for this proposed planning action. The purpose and need for this targeted plan amendment effort is to designate VRM classes for the BLM-managed lands in the FFO (FFO Visual RMPA/EA, pg. 1). Compliance activities associated with implementing the requirements of the NTSA with respect to identifying segments of the OSNHT have begun, and are taking place as part of a separate trail management planning process being conducted cooperatively by the BLM and NPS FO VRM PRMPA/EA, pgs. 39-40).

BLM policy, with respect to land use planning, NEPA and NHPA compliance, and its guidance concerning implementation of the NTSA (where relevant, see BLM Manual 6280) emphasizes public involvement in agency analysis and decision-making. Both NEPA and the BLM's planning regulations and guidance include provisions addressing public involvement in both of these processes. Participation by volunteers and volunteer organizations was achieved for this planning effort in fulfillment of the public participation requirements of the land use planning process, found at 43 CFR Part 1600, and described in BLM Manual 1601. For example, the Old Spanish Trail Association (OSTA) was added to the interested parties list and notified of the availability of the draft FFO VRM RMPA/EA.

Based on comments received from the OSTA and others, the BLM FFO included the OSNHT in the list of issues analyzed in the Proposed FFO VRM RMPA. The BLM FFO took further action and also outlined a more-protective alternative specifically for the portions of the OSNHT that are likely to be high potential segments (those that coincide with the ephemeral wash riparian area).

The analysis of the OSNHT is included in Sections 3.1 and 4.7 of the Proposed VRM

RMPA/EA. Please note that the PRMP/FEA includes two sections labeled 3.1. The reference in question is on page 39, National Historic Trails. The Proposed VRM RMPA/EA explains that while the Comprehensive Management Plan for the trail is still being developed by NPS and BLM and is currently unavailable, inventory efforts to date have identified sections with specific characteristics that may eventually be designated high potential route segments (PRMPA/FEA, pgs. 39-40). The Comprehensive Management Plan for the OSNHT is still under development; these decisions have not yet been made. The FFO Proposed VRM RMPA/EA was incorrect to refer to these route segments as “high potential route segments.” The OSNHT Comprehensive Management Plan is the planning vehicle through which “high potential route segments” will be designated. Therefore, the approved plan for the FFO VRM RMPA/EA will replace such incorrect references to “high potential route segments” with the phrase “possible high potential route segments.” The BLM FFO was able to consider the inventory information that has been gathered so far regarding the trail, however, in order to illustrate the issues associated with designation of the OSNHT and its eventual management. As described in the Dear Reader letter, the Proposed Plan includes provisions designed to preserve the existing visual resources in the vicinity of the OSNHT, to the extent that is possible as to BLM-managed lands.

It is important to clarify that the NTSA does not designate all federally owned trail segments as Federal Protection Components. Rather, under the NTSA, “Designation of [National Historic] trails or routes shall be continuous, but the established or developed trail, and the acquisition thereof, need not be continuous onsite...Only those selected land and water based components of a historic trail which are on federally owned lands and [emphasis added] which meet the national historic trail criteria established in this Act are included as Federal protection components of a national historic trail.” (16 USC 1242(a)(3)). Similarly, trail management needs must be considered in the context of other management priorities. NTSA Section 7 on Administration and Development, states that “Development and management of each segment of the National Trails System shall be designed to harmonize with and complement any established multiple-use plans for the specific area in order to insure continued maximum benefits from the land.” (16 USC 1246(a)(2)).