

*Director's Protest Resolution Report*

**Kanab**  
**Resource Management Plan**

October 28, 2008



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## Reader's Guide

### *How do I read the Report?*

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

### **Report Snapshot**

**Issue Topics and Responses**

NEPA — Topic heading

Submission number

Protest issue number

**Issue Number:** PP-CA-ESD-08-0020-10

**Organization:** The Forest Initiative — Protesting organization

**Protestor:** John Smith — Protester's name

**Issue Excerpt Text:** — Direct quote taken from the submission

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.

**Summary** — General statement summarizing the issue excerpts (optional).

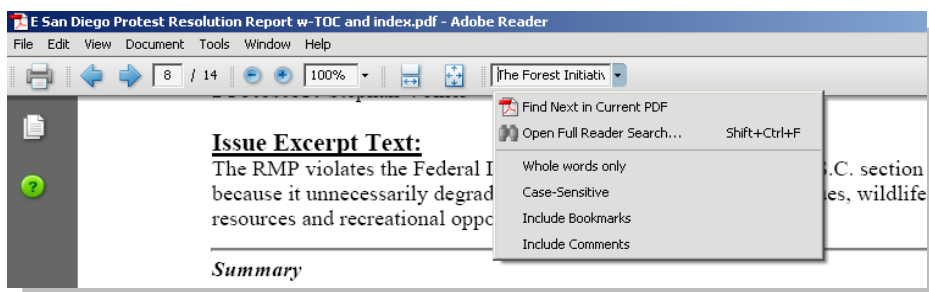
There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

**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 site-specific NEPA

### *How do I find my Protest Issues and Responses?*

1. Find your submission number on the protesting party index which is organized alphabetically by protestor'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	FWS	U.S. Fish and Wildlife Service
APD	Application for Permit to Drill	GIS	Geographic Information Systems
ARMP	Approved Resource Management Plan	IB	Information Bulletin
BA	Biological Assessment	IM	Instruction Memorandum
BLM	Bureau of Land Management	MOU	Memorandum of Understanding
BMP	Best Management Practice	NEPA	National Environmental Policy Act of 1969
BO	Biological Opinion	NHPA	National Historic Preservation Act of 1966, as amended
CAA	Clean Air Act	NOA	Notice of Availability
CEQ	Council on Environmental Quality	NOI	Notice of Intent
CFR	Code of Federal Regulations	NRHP	National Register of Historic Places
COA	Condition of Approval	NSO	No Surface Occupancy
CSU	Controlled Surface Use	OHV	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
CWA	Clean Water Act	PRMP	Proposed Resource Management Plan
DEIS	Draft Environmental Impact Statement	RFDS	Reasonably Foreseeable Development Scenario
DM	Departmental Manual (Department of the Interior)	RMP	Resource Management Plan
DOI	Department of the Interior	ROD	Record of Decision
DRMP	Draft Resource Management Plan	ROW	Right-of-Way
EA	Environmental Assessment	SHPO	State Historic Preservation Officer
EIS	Environmental Impact Statement	SO	State Office
EO	Executive Order	T&E	Threatened and Endangered
EPA	Environmental Protection Agency	USC	United States Code
ESA	Endangered Species Act	VRM	Visual Resource Management
FEIS	Final Environmental Impact Statement	WA	Wilderness Area
FLPMA	Federal Land Policy and Management Act of 1976	WSA	Wilderness Study Area
FO	Field Office (BLM)	WSR	Wild and Scenic River(s)

## *Protesting Party Index*

<b>Protester</b>	<b>Organization</b>	<b>Submission Number</b>	<b>Determination</b>
	Alton Coal Development LLC	PP-UT-KANAB-08-0006	Denied-Issues Comments
	Center for Native Ecosystems	PP-UT-KANAB-08-0009	Granted in Part
	Grand Canyon Trust	PP-UT-KANAB-08-0009	Dismissed-No Standing
	Public Employees for Environmental Responsibility	PP-UT-KANAB-08-0009	Granted in Part
	Sierra Club, Utah Chapter	PP-UT-KANAB-08-0009	Granted in Part
	Southern Utah Wilderness Alliance	PP-UT-KANAB-08-0009	Granted in Part
	The Wilderness Society	PP-UT-KANAB-08-0009	Granted in Part
	Wild Earth Guardians	PP-UT-KANAB-08-0009	Granted in Part
Carter, John	Western Watersheds Project	PP-UT-KANAB-08-0004	Denied-Issues Comments
Chaney, Sky	Land Use Volunteers of Kane County	PP-UT-KANAB-08-0003	Denied-Issues Comments
Coley, Phyllis	Individual	PP-UT-KANAB-08-0001	Dismissed-Incomplete
Defreese, Amy	Utah Rivers Council	PP-UT-KANAB-08-0011	Denied-Issues Comments
Habbeshaw, Mark	Kane County Commission	PP-UT-KANAB-08-0012	Denied-Issues Comments
Hill, Gale and Thomas	Individuals	PP-UT-KANAB-08-0008	Granted in Part
Kursar, Thomas	Individual	PP-UT-KANAB-08-0002	Dismissed-Only Comments
Schelz, Charles	ECOS Ecological Services	PP-UT-KANAB-08-0005	Denied-Issues Comments
Segundo, Ona	Kaibab Band of Paiute Indians	PP-UT-KANAB-08-0014	Denied-Issues Comments
Shakespear, Bryant	Garkane Energy	PP-UT-KANAB-08-0007	Granted in Part
Spangler, Jerry	Colorado Plateau Archaeological Alliance	PP-UT-KANAB-08-0010	Denied-Issues Comments

Wallen, Bob	Individual	PP-UT-KANAB-08-0015	Dismissed-Only Comments
Welp, Laura	Individual	PP-UT-KANAB-08-0013	Denied-Issues Comments



## Issue Topics and Responses

### NEPA

#### *Close Examination of Baseline Data and Modeling*

**Issue Number:** PP-UT-KANAB-08-0004-14  
**Organization:** Western Watersheds Project, Inc  
**Protester:** John Carter

**Issue Excerpt Text:**

BLM has not presented baseline inventories and evaluations that provide evidence that OHVs do, or do not, damage ecosystems and specific ecosystem components such as soils, microbiotic crusts, fish and wildlife, and native vegetation-the RMP/FEIS presents no such information. This violates NEPA's requirement that environmental analyses provide a full and fair discussion of the alternatives considered and their potential environmental consequences

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**Issue Number:** PP-UT-KANAB-08-0004-22  
**Organization:** Western Watersheds Project, Inc  
**Protester:** John Carter

**Issue Excerpt Text:**

If the agency cannot provide baseline inventory and analytical information to support leaving the majority of the lands in the Decision Area open to OHV use, then the BLM has not adequately supported its alternatives or the decisions made in the RMP.

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**Issue Number:** PP-UT-KANAB-08-0004-53  
**Organization:** Western Watersheds Project, Inc  
**Protester:** John Carter

**Issue Excerpt Text:**

The RMP provides no inventory or baseline information on microbiotic crusts within the planning area, and barely acknowledges that crusts are present.

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**Issue Number:** PP-UT-KANAB-08-0004-54  
**Organization:** Western Watersheds Project, Inc  
**Protester:** John Carter

**Issue Excerpt Text:**

The RMP/PRMP/EIS/FEIS fails to present any baseline or other inventory data on weeds and, in particular, the most significant vectors spreading weeds: livestock grazing and OHVs.

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**Issue Number:** PP-UT-KANAB-08-0004-58  
**Organization:** Western Watersheds Project, Inc  
**Protester:** John Carter

**Issue Excerpt Text:**

The RMP/PRMP/EIS/FEIS also fails to present any baseline or other inventory data on the effects of OHV use within the planning area.

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**Issue Number:** PP-UT-KANAB-08-0004-65  
**Organization:** Western Watersheds Project, Inc  
**Protester:** John Carter

**Issue Excerpt Text:**

The RMP/PRMP/DEIS/FEIS maintains the status quo by continuing with the same authorized use level and grazed areas with only de minimus changes between alternatives (RMP Table 3-24). By failing to adequately assess on-the-ground conditions and the impacts of current livestock grazing in the resource management planning process, the BLM has maintained the status quo by default. As a result, the PRMP/FEIS does not constitute a reasoned and informed decision in the public interest, with respect to whether the land within the planning area can continue to endure livestock grazing.

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**Issue Number:** PP-UT-KANAB-08-0004-9  
**Organization:** Western Watersheds Project, Inc  
**Protester:** John Carter

**Issue Excerpt Text:**

Yet, BLM has not presented baseline inventories and evaluations of the impacts that livestock grazing has had, and continues to have, on ecosystems and specific ecosystem components such as soils, microbiotic crusts, fish and wildlife, and native vegetation. This violates NEPA's requirement that environmental analyses provide a full and fair discussion of the alternatives considered and their potential direct, indirect and cumulative environmental consequences.

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**Issue Number:** PP-UT-KANAB-08-0009a-159  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

In the PRMP, BLM is relying on flawed data that inaccurately portrays the amount of recreational ORV use in violation of NEPA's requirement that decisions be based upon accurate, high quality data and analysis. This compromises BLM's ability to conduct a thorough

analysis of direct, indirect, and cumulative environmental impacts from its recreation management decisions. The recreation analysis in the PRMP focuses disproportionately on ORV use. Non-motorized use is described, but severely underemphasized in terms of importance. By leaving over 95% of total land area available to ORV use, BLM has ignored its own multiple-use mandate intended to benefit all stakeholders. Based upon BLM's own statistics, the number of non-motorized users exceeds the number of motorized recreational users. PRMP, Table 3-26. From these same statistics, the number of visitor days logged for non-motorized use also exceeds visitor days logged for motorized use. Id. The percentage of non-motorized users compared to total users in Table 3-26 increases if flaws from the statistics are amended. For example, the number of motorized-recreational users was derived from the number of ATV permits in the area. It can be assumed that not every ATV permit holder uses his/her machine on public lands. In addition, the BLM makes no distinction between ATVs and registered passenger vehicles being used. This lack of categorical separation further overestimates the number of ORV users. BLM has also not performed an adequate socio-economic analysis with respect to recreational uses. Different types of recreation have been examined to derive estimates of the economic value derived from a single user day. According to Kaval and Loomis (2003), the average value of a day of non-motorized recreation is worth more than twice the value derived from a day of motorized use. So, even if it is assumed that motorized and non-motorized recreational use is roughly equal, the economic value derived from traditional forms of recreation exceeds that of motorized-recreational users.

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**Issue Number:** PP-UT-KANAB-08-0009a-37  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

This omission is a significant oversight given that federal departments and agencies including the Department of Interior, the Environmental Protection Agency, and U.S. Geologic Survey have all published stories and/or provided public statements and even congressional testimony acknowledging the impacts of climate change on public lands resources. All of this information was readily accessible by BLM. Together with the failure to incorporate the newer studies cited above, this oversight amounts to a failure to take the necessary "hard look" at the challenge of resource management and an important aspect of that challenge.

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**Issue Number:** PP-UT-KANAB-08-0009a-39  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

Clearly, information about the impacts of climate change and the need to make adjustments in land use plans to address climate change were circulating in the Department of Interior and available to BLM at the same time it was developing the Kanab PRMP. Failure to incorporate this information in the PRMP amounts to a failure to take a hard look at a crucial aspect of the land use plan.

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**Issue Number:** PP-UT-KANAB-08-0009a-62  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

V. Water Quality. The Kanab PRMP fails to analyze and model the impacts of the activities that it permits on water quality in the planning area. Both FLPMA and NEPA require that BLM prepare such analysis. BLM must analyze and model pollutant concentrations in order to understand if the RMP complies with federal and state water quality standards, as required by FLPMA.

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**Issue Number:** PP-UT-KANAB-08-0009a-63  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

Likewise, without conducting water quality analyses and modeling, BLM will not understand the effects of the pollutants generated from activities authorized by the RMP, and will thereby violate NEPA and its requirement that BLM understand the environmental impacts of the activities it is permitting.

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**Issue Number:** PP-UT-KANAB-08-0013-13  
**Protester:** Laura Welp

**Issue Excerpt Text:**

Why the State Director's decision is wrong: The RMP does not address the best available data showing a potential conflict between motorized damage to plants and reduction in reproductive output. The BLM's response to this is that they are, in fact, using the best available data. This is not true. Stem counts, which the BLM is relying on, are not a sufficient measure of this species' health.

### ***Summary***

The BLM has failed to take the "hard look" required by the NEPA because it did not use adequate baseline data for its analysis or necessary inventories, and studies were not conducted for the following:

- soils and microbiotic crusts
- off-highway vehicle (OHV) and grazing impacts to fish, wildlife, soils, and native vegetation
- OHV use vs. non-motorized use (visitor-days and economic estimates)
- grazing utilization
- climate change
- water quality modeling

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### ***Response***

The prerequisite level of information necessary to make a reasoned choice among the alternatives in an EIS is based on the scope and nature of the proposed decision. The baseline data provided in chapter 3 and various appendixes in the Proposed RMP/FEIS is sufficient to support, at the general land use planning level of analysis, the environmental impact analysis resulting from management actions presented in the PRMP/FEIS and augmented through the appendixes.

A land use planning level decision is broad in scope and, therefore, does not require an exhaustive gathering and monitoring of baseline data. Although BLM realizes that more data could always be gathered, the baseline data provides the necessary basis to make informed land use plan-level decisions. Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions. The BLM will conduct subsequent project-specific NEPA analyses for projects proposed for implementation under the land use plan, which may include but are not limited to oil and gas field development, allotment management plans, and public land use authorizations. These subsequent NEPA analyses will tier to the land use planning analysis and evaluate project impacts at the site-specific level (see 40 CFR § 1502.20 and 1508.28). As part of the NEPA process, the public will be presented with the opportunity to participate in the environmental analysis process for these actions.

Before beginning the land use plan revision process and throughout the planning effort, the BLM considered the availability of data from all sources, adequacy of existing data, data gaps, and the type of data necessary to support informed management decisions at the land use plan-level. The data needed to support broad-scale analysis of the 2.8 million acre planning area is substantially different than the data needed to support site-specific analysis of projects proposed for implementation under the land use plan. Much of the data in the Draft RMP/Draft EIS and PRMP/FEIS is presented in map form and is sufficient to support the gross scale analyses required for land use planning.

The BLM used the most recent and best information available that was relevant to a land use planning scale of analysis. During preparation of the RMP/EIS, the BLM consulted with and used data from other agencies and sources, including but not limited to the U.S. Geological Survey, Utah Department of Wildlife Resources, Utah State Geologic Survey, State of Utah Oil

and Gas Commission, U.S. Fish and Wildlife Service, Natural Resource Conservation Service, Native American Tribes, and the Utah Department of Environmental Quality. The BLM consulted on the analysis and the incorporation of available data into the PRMP/FEIS with its cooperating agencies and other agencies with jurisdiction or expertise. Considerations included but were not limited to: big game herd numbers and trends; migratory routes and uses; crucial habitat areas (i.e., wintering, calving), locations, and sensitivities; greater sage-grouse breeding, nesting, and brood-rearing and wintering areas; threatened and endangered species and their habitat; oil and gas development potential; livestock grazing use; uses on State lands; and heritage resource values including traditional Native American concerns.

As a result of these actions, the Field Office gathered the necessary data essential to make a reasoned choice among the alternatives analyzed in detail in the RMP/EIS. The BLM analyzed the available data that led to an adequate disclosure of the potential environmental consequences of the PRMP alternative and other alternatives (refer to chapter 4, pp. 4-1 through 167.) As a result, the BLM has taken a “hard look,” as required by the NEPA, at the environmental consequence of the alternatives to enable the decisionmaker to make an informed decision.

With regard to specific points raised by protesters:

**Soils and macrobiotic crusts:** Soil surveys and ecologic site descriptions are provided by Natural Resources Conservation Service (NRCS). The BLM's standard is to use NRCS data, recognizing this agency's special expertise and responsibility. As NRCS develops and updates the surveys and site descriptions, the BLM will use that information. In accordance with the BLM's planning handbook, the Kanab RMP identified specific soils that may need special protection and displayed them on map 24. Baseline information on soils, including biological soil crusts, is presented in section 3.2.3. These ecological site descriptions generally do not contain specific information about the quantities of cryptobiotic crusts that are expected to be on the site. While there has not been a systematic inventory of soil crusts within the decision area, the BLM has data that confirms that small areas of more dense soil crusts do exist, especially in areas with less dense vegetative cover. The BLM does fully acknowledge the important role macrobiotic crusts serve within a range or forested landscape. The BLM's interdisciplinary team of specialists, using their professional judgment, determined that the amount of biological crusts present in functional and healthy ecological sites are adequate to support ecological processes in conjunction with the vascular plants present. The Draft RMP/EIS management alternatives address the functioning and ecological condition of an area rather than attempting to manage for biological crusts alone. The alternatives in the EIS are designed to maintain or improve rangeland health. Functioning rangelands in healthy condition tend to maintain biological soil crusts at an appropriate level and distribution. The impacts to biological soil crusts at the landscape levels are addressed in Chapter 4, commensurate to the level of decisionmaking in the PRMP/FEIS. Site-specific impacts to biological soil crusts would be covered in implementation level NEPA analysis (e.g., term permit renewals, special recreation permits, realty actions, and tenure adjustments).

**OHV impacts to fish, wildlife, and native vegetation:** The impacts and impact producing factors of OHV use on natural resources are adequately analyzed in chapter 4 of the RMP/EIS. Chapter 3 of the RMP/EIS presents the baseline (the current situation under the No Action alternative) for

analysis in chapter 4 and describes the ongoing and baseline issues surrounding cross-country travel currently permitted by the Field Office's existing land use plans. Cross-country travel is currently allowed in many areas within the Field Office. The impacts associated with cross-country OHV use are described in chapter 4 under the No Action Alternative. The Proposed Plan limits travel to designated, existing routes, closes a portion of the Field Office lands to travel, and opens approximately 1,000 acres to cross-country travel. The routes that are already in use are considered part of the baseline, and therefore, it is not reasonable to consider the impacts to vegetation from existing linear disturbances, such as routes. However, the impacts from the current situation are considered in the cumulative analysis. A sufficient analysis that includes discussion of potential impacts from OHV travel is provided in section 4.2.6 of the PRMP/FEIS. This analysis is also adequate to determine how the Proposed Plan affects outcomes for wildlife identified in the Utah Division of Wildlife Resources Comprehensive Wildlife Conservation Strategy (2005).

Grazing utilization and impacts of grazing on other resources: Livestock grazing decisions at the planning level are broad allocations. The discussions of impacts to other resources, including the current impacts described in the analysis of the No Action Alternative, are sufficient to support these types of decisions. According to BLM policy as described in the FEIS, chapter 2, pages 2-31 and 2-32, and pages 2-62, decisions regarding authorized livestock use, levels, and the terms and conditions under which they are managed are implementation decisions (H-1610-1, appendix C, page 15). The BLM assesses the condition of rangeland health, conducts monitoring and inventories, and evaluates this data on a periodic basis, normally on an allotment and/or watershed basis. After NEPA analysis, changes to livestock management deemed necessary to meet or progress toward meeting management objectives and to conform to Utah's *Guidelines for Rangeland Management* are implemented through a formal decisionmaking process in accordance with 43 CFR § 4160. These decisions determine the appropriate levels of use by livestock at the allotment scale, in conformance with the RMP, to meet resource objectives and maintain or enhance land health. In light of this process for making subsequent site-specific grazing decisions, the baseline information disclosed in the FEIS is sufficient to support the administrative record for this RMP and the broad-scale decisions concerning grazing that are made at the planning level.

Visitor days and economic estimates of OHV use compared with non-motorized use: The BLM considers the data presented in chapter 3 as the best available to provide estimates of use sufficient to determine impacts at this level of analysis. As required at 40 CFR §1502.22, these data are clearly identified as estimates in the PRMP/FEIS on page 3-86. The BLM acknowledges that some data is lacking, as many areas lack direct visitation monitoring methodologies. The BLM relies on many data sources, such as the Utah Department of Wildlife Resources, to estimate use levels for activities such as hunting and fishing.

The BLM responded to the issue of assessing non-market values relating to recreation in its response to DRMP/DEIS on pages 114 and 115 of the PRMP's Public Comment and Response report, as sorted by category. In preparing a resource management plan, the BLM is not required to analyze implementation costs and project the level of field office funding likely to be available. The BLM recognizes that recreation is a driving force of the planning area economy. The BLM further recognizes that activities which cause environmental degradation can impose

costs on those users who prefer more pristine settings. Such effects were stated qualitatively. Quantitative analysis of such non-market values and associated impacts is considerably more speculative than the analysis of “hard” benefits, such as those that would result from development and extractive activities. For these reasons, disclosure of anticipated non-market costs is appropriately stated in qualitative terms.

Climate change: The protest letter asserts that a climate change supplemental draft is necessary because the BLM failed to take a “hard look” at climate issues related to the planning area and potential activities. A supplemental EIS is appropriate where new information will cause the proposed action to have a *significant* impact on the environment in a manner not previously evaluated and considered. Though there is new information regarding climate change, the existing analysis remains valid in light of this new information as the new information does not substantially change the analysis of the proposed action and does not change any of the final decisions. Therefore, preparing a supplemental EIS on this issue would serve no purpose in informing the decisionmaker about the impacts of BLM activities on global climate change. In the future and as more information becomes available relative to climate change, the BLM will periodically re-evaluate the land management status for that given area and adjust management accordingly.

Climate change analyses are comprised of several factors, including greenhouse gases (GHGs), land use management practices, and the albedo effect. The tools necessary to quantify climatic impacts of those factors are presently unavailable. As a consequence, impact assessment of specific effects of anthropogenic activities cannot be determined at this time. In addition, specific levels of significance have not yet been established. As noted in the response to comments on the DRMP/DEIS, the EPA has not developed a regulatory protocol or emission standards regarding global climate change. As soon as these protocols and standards are available, the BLM will analyze potential effects on global warming in the NEPA documentation prepared for site-specific projects. Reference to this procedure, was added to chapter 4 of the PRMP/FEIS. The BLM will conduct subsequent NEPA analyses, including site-specific project and implementation action levels, including oil and gas field development, allotment management plans, and public land use authorizations.

In compliance with the NEPA process, the public will have the opportunity to participate in the environmental analysis process for these actions. As the emergence of more recent studies on climate change become available, the existing analysis presented in the PRMP/FEIS for the Proposed Plan will be evaluated to determine its validity in light of new climate change information and details about subsequent proposed actions in the planning area.

Water quality modeling: The impact analysis used the best available information and methodology to determine the impacts to water quality associated with the proposed alternatives in the RMP/EIS. Actual monitoring data was used in preparation of chapters 3 and 4 rather than modeling data. Monitoring data more accurately represents the on-the-ground conditions, and provides a better basis for predicting future impacts based on the types of activities being proposed. When and where necessary, modeling may be appropriate for site-specific analysis at the project level. The State of Utah’s Department of Environmental Quality - Division of Water Quality has primacy over water quality. The BLM works cooperatively with the State to collect data and to manage water quality in compliance with the Clean Water Act requirements.

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## *Analytical Discussion of Impacts*

**Issue Number:** PP-UT-KANAB-08-0004-27  
**Organization:** Western Watersheds Project, Inc  
**Protester:** John Carter

**Issue Excerpt Text:**

2. Failure to Adequately Discuss Impacts and Best Available Information The RMP/PRMP/DEIS/FEIS fails to provide an adequate discussion of impacts to various resources, including a failure to incorporate important new information into the analysis. WWP highlighted this issue in their comments on the Draft EIS with respect to microbiotic crusts, livestock grazing, off-road vehicle use, fire frequency, invasive species and other issues. Dozens of scientific papers and government reports were cited. The RMP ignored this information and the PRMP continues to provide no explanation for the complete omission of timely, relevant scientific research on topics critical to the management of the public lands, or for that matter, research that has documented the impacts of livestock grazing and OHVs to forests, riparian areas, and wildlife that was published decades ago and remains accurate today.

**Issue Number:** PP-UT-KANAB-08-0009a-166  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

BLM is violating NEPA by not evaluating all reasonable direct, indirect, and cumulative environmental impacts from its designation of SRMAs. The agency underestimates the impacts of OR V use and does not conduct a sufficient analysis of the specific lands included within the designated SRMAs, even though this information is readily available. First, BLM does not take the "hard look" at the environmental implications of their SRMA designations as required by NEP A. Some basic consequences were acknowledged; the likelihood of soil compaction leading to surface runoff and cite-specific reduction of forage material for livestock were among the most highlighted. However, even these impacts were evaluated only superficially. There is no site-specific analysis of these impacts and the extent to which they would occur and adversely affect other recreational users, wildlife, or the quality of the habitat itself.

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### ***Summary***

The BLM has failed to provide an adequate analysis of the impacts related to the following resources/uses:

- microbiotic crusts
- livestock grazing
- OHV use
- fire frequency
- invasive species

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### ***Response***

The RMP/EIS fully assesses and discloses the environmental consequences of the Proposed Plan and alternatives in chapter 4. As required by 40 CFR § 1502.16, a discussion of “the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man’s environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented” was provided.

The RMP/EIS presented the decisionmaker with sufficiently detailed information to aid in determining whether to proceed with the Proposed Plan or make a reasoned choice among the other alternatives in a manner such that the public would have an understanding of the environmental consequences associated with alternatives. Land use plan-level analyses are

typically broad and qualitative rather than quantitative or focused on site-specific actions, and therefore, a more quantified or detailed and specific analysis would be required only if the scope of the decision was a discrete or specific action.

The BLM will conduct subsequent NEPA analyses, including site-specific project and implementation-level actions, for oil and gas field development, realty actions, allotment management plans, and public land use authorizations, or other ground-disturbing activities proposed. These activity plan-level analyses will tier to the RMP analysis and expand the environmental analysis when more specific information is known. In addition and as required by NEPA, the public will be offered the opportunity to participate in the NEPA process for these specific actions.

The adequacy of the BLM's impacts analyses of livestock grazing and OHV impacts on other resources, including soil resources, are discussed above. Specifically, the Western Watershed Project questions the BLM's impact analysis of livestock grazing within the planning area, citing perceived failures to incorporate scientific information into the description of fire frequency and invasive species within the planning area (in particular, section 3.2.5 of the PRMP/FEIS). The studies cited by the protesting party, however, relate less to the existing condition of these resources than to the historic cause for the existing condition of the resource. The BLM has adequately disclosed and analyzed the impacts from livestock grazing as a result of current management (refer to the DRMP/DEIS analysis of the No Action alternative). As stated previously, the BLM has provided a land use planning-level analysis based on continued management of public lands according to the Standards for Rangeland Health.

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### *Statement of Incomplete or Unavailable Information*

**Issue Number:** PP-UT-KANAB-08-0009a-42

**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

Additionally, NEPA contains specific requirements governing the treatment of uncertain conditions and imposes an obligation to state that existing evidence is inconclusive and to summarize the conclusions of that evidence. With respect to incomplete or unavailable information, 42 C.F.R. § 1502.22 provides in full: When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking. (a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement. (b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement: 1. A statement that such information is incomplete or unavailable; 2. a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; 3. a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human Environment; and 4. the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason. Given these regulations, BLM cannot rely on the so-called "uncertainties" relating to the impacts of climate change on the area to end the analysis



with a simple acknowledgement of the phenomenon and a reference to unquantified emissions from a few sources. BLM must do more, even where information is uncertain (and in this case, SUW A emphasizes that the information, with the detailed studies cited above, is not particularly uncertain).

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### **Summary**

The BLM has failed to fulfill the requirements of the Council on Environmental Quality (CEQ) regulations with respect to incomplete or unavailable information pertaining to climate change. Specifically, BLM has not

- disclosed the incomplete or unavailable information or its relevance;
  - made diligent efforts to acquire this information through studies; and/or
  - estimated the impacts in the absence of the information.
- 

### **Response**

The purpose of the CEQ regulations at 40 CR 1502.22 is to advance decisionmaking even in the absence of complete information regarding environmental effects associated with the proposed action. Chapter 3 of PRMP/FEIS (pp.3-10 to 3-11) discloses that several activities occur within the planning area that may generate emissions of climate changing pollutants. In chapter 4 (p. 4-8), the PRMP/FEIS discloses that the lack of scientific tools designed to predict climate change on regional or local scales limits the ability to quantify potential future impacts. It continues to disclose that the BLM does not have an established mechanism to accurately predict the effect of resource management-level decisions from this planning effort on global climate change, but that the potential impacts to air quality due to climate change are likely to be varied. Any additional speculation about specific emissions effects, etc. would require many assumptions that are premature or highly speculative and call into question the ability to make an informed decision.

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## **Response to Public Comments**

**Issue Number:** PP-UT-KANAB-08-0003-12  
**Organization:** Land Use Volunteers of Kane County  
**Protester:** Sky Chaney

### **Issue Excerpt Text:**

Statement of Why the State Director's Decision is Believed to be Wrong: The Final RMP designates OHV travel in the above mentioned areas that need to be protected from further damage, and other reasons and issues outlined in the attached public comment letter that were not considered or addressed adequately in the Final RMP.

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**Issue Number:** PP-UT-KANAB-08-0003-18  
**Organization:** Land Use Volunteers of Kane County  
**Protester:** Sky Chaney

### **Issue Excerpt Text:**

Statement of Why the State Director's Decision is Believed to be Wrong: The Final RMP designates motorized areas and routes on land that needs to be protected from further damage, and other reasons and issues outlined in the attached public comment letter that

were not considered or addressed adequately in the Final RMP.

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**Issue Number:** PP-UT-KANAB-08-0004-76  
**Organization:** Western Watersheds Project, Inc  
**Protester:** John Carter

### **Issue Excerpt Text:**

WWP provided extensive information on grazing systems, utilization rates, the need for rest and other criteria for livestock grazing in its comments on the Draft RMP/EIS. These are fully incorporated into this protest. BLM ignored this information, and has ignored the role of livestock and range management on the environment.

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**Issue Number:** PP-UT-KANAB-08-0009a-102  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

### **Issue Excerpt Text:**

CPAA raised these issues in its comments on the DRMP. BLM did not respond to these concerns,

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**Issue Number:** PP-UT-KANAB-08-0009a-107  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

CPAA raised these issues in its comments on the DRMP; BLM did not respond to these concerns,

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**Issue Number:** PP-UT-KANAB-08-0009a-115  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

CPAA recommended in its comments on the DRMP that the PRMP clearly acknowledge all of the effects of undertakings on historic properties, specifically including the cumulative adverse effects, and that it include a clear strategy with measurable benchmarks to avoid, minimize, or mitigate those cumulative effects through the Section 106 review process. BLM's response is that the "over-arching assumption" in the PRMP is that "public land users would comply with the decisions and allocations contained in the alternatives." PRMP Response to Comments at 16, sorted by category. BLM's response to this comment is unresponsive, and does not address the PRMP's failure to acknowledge and assess the cumulative effects of the designation of a network of ORV routes throughout the Field Office area, and does not address the cumulative impacts to cultural resources of BLM's other management decisions.

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**Issue Number:** PP-UT-KANAB-08-0009a-124  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

BLM omitted CPAA's comment in the Comment section of the PRMP, and thus, did not respond to CPAA's comments and concerns.

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**Issue Number:** PP-UT-KANAB-08-0009a-252  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

BLM's general response to SUWA's concern about how ORV areas and trails were designated, if and how the minimization criteria were applied, details about the resources analysis of each area and trail, assessment of the impacts from the ORV area and trail designations, is that the impacts are discussed in Chapter 4 of the DRMP, see, e.g., PRMP Comments at 117, and/or that "the process used to designate routes is explained in Appendix K [sic]." See, e.g., PRMP Comments at 117-30, sorted by commentor. Neither Chapter 4 nor

Appendix 7 (referred to as Appendix K by BLM) provides responses to SUWA's questions and concerns.

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**Issue Number:** PP-UT-KANAB-08-0009a-88  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

In our comments on the Draft RMP, we provided specific substantive recommendations for how BLM should analyze the impacts of fragmentation in its NEPA analysis, including citations to many scientific resources on the topic. BLM's reply to each of these recommendations is the same one-sentence, boilerplate response: "Based on reasonably foreseeable level of development for oil and gas, as well as for other potential land uses and proposed alternatives, the level of analysis for fragmentation contained the Draft RMP/EIS in sections 4.2.5 and 4.2.6 is sufficient to describe the anticipated impacts. This is simply non-responsive to the comments we provided the BLM. The sections of the PRMP referenced above (4.2.5 and 4.2.5) both define fragmentation and briefly discuss fragmentation impacts from oil and gas exploration and development. However, despite the accepted and readily available scientific study and methods, the PRMP contains no sufficiently detailed analysis of the impacts from fragmentation from any other surface disturbing uses, such as ORV use. This impairs the consideration of impacts of the various alternatives and prevents an informed comparison. This also shows how BLM has failed to respond to our comment that the "analysis [of habitat fragmentation] should include the impacts of ORVs and motorized routes, as well as roads." See SUWA's Comments on the Draft RMP at 101. BLM must remedy these NEPA violations before the issuance of the Record of Decision for the PRMP.

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**Issue Number:** PP-UT-KANAB-08-0009b-42  
**Organization:** Southern Utah Wilderness Alliance

**Issue Excerpt Text:**

Requests were made to BLM during the scoping phase of the Kanab RMP revision process to assess the hidden costs associated with oil and gas development. This request was ignored and repeated in comments on the Draft RMP EIS. See SUWA DRMP Comments at 87-89. Again, the request has gone unanswered.

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**Issue Number:** PP-UT-KANAB-08-0009b-48  
**Organization:** Southern Utah Wilderness Alliance

**Issue Excerpt Text:**

BLM has failed to comply with NEPA's mandate to disclose opposing views, make a careful review of differing professional interpretations and analysis, and

then provide substantive and meaningful responses to such views. BLM was provided with detailed recommendations, based on scientific opinion that contradicts the basis for the agencies' findings and management approach in both the Draft and Proposed RMPs. The PRMP does not discuss this independent information or justify its decision not to alter its conclusions based on these scientific opinions.

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**Issue Number:** PP-UT-KANAB-08-0009b-5  
**Organization:** Southern Utah Wilderness Alliance

**Issue Excerpt Text:**

The PRMP likewise fails to explain how ACEC values such as scenic and special status species values will be protected from ORV damage. See id. at 4-113 to -114. SUWA raised these concerns in its comments on the DRMP but BLM did not address them in its response to comments. See SUWA DRMP Comments at 52; Response to Comments at 106-08.

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**Issue Number:** PP-UT-Kanab-08-0010-10  
**Organization:** Colorado Plateau Archaeological Alliance  
**Protester:** Jerry Spangler

**Issue Excerpt Text:**

CPAA raised these issues (above) [pertaining to whether the cultural inventory was statistically valid] in its comments on the DRMP. BLM did not respond to these concerns, and did not modify the PRMP to remedy the problems.

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**Issue Number:** PP-UT-Kanab-08-0010-12  
**Organization:** Colorado Plateau Archaeological Alliance  
**Protester:** Jerry Spangler

**Issue Excerpt Text:**

Ideally, the protection of cultural sites where landscape association contributes to eligibility should be a function of the individual nature and significance of that landscape, not a function of arbitrary boundaries (e.g., 0.25 miles) or "visual horizons" that may or may not be relevant to cultural significance. CPAA raised these issues in its comments on the DRMP. BLM did not respond to these concerns, and did not modify the PRMP to remedy the problems.

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**Issue Number:** PP-UT-Kanab-08-0010-17  
**Organization:** Colorado Plateau Archaeological Alliance  
**Protester:** Jerry Spangler

**Issue Excerpt Text:**

We recommended in our comments on the DRMP that

the RMP clearly acknowledge all of the effects of undertakings on historic properties, specifically including the indirect adverse effects, and that it include a clear strategy with measurable benchmarks to avoid, minimize or mitigate those indirect effects through the Section 106 review process. The BLM's response to our comment is unresponsive. The agency merely states that the "over-arching assumption" in the PRMP is that "public land users would comply with the decisions and allocations contained in the alternatives." Response to comments at 16, sorted by category. This does not address the PRMP's failure to acknowledge the effects of mitigation and other indirect effects.

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**Issue Number:** PP-UT-Kanab-08-0010-20  
**Organization:** Colorado Plateau Archaeological Alliance  
**Protester:** Jerry Spangler

**Issue Excerpt Text:**

We recommended in our comments on the DRMP that the RMP clearly acknowledge all of the effects of undertakings on historic properties, specifically including the cumulative adverse effects, and that it include a clear strategy with measurable benchmarks to avoid, minimize or mitigate those cumulative effects through the Section 106 review process. The BLM's response is that the "over-arching assumption" in the PRMP is that "public land users would comply with the decisions and allocations contained in the alternatives." Response to comments at 16, sorted by category. The BLM's response to our comment is unresponsive, and does not address the PRMP's failure to acknowledge and assess the cumulative effects of the designation of a network of ORV routes throughout the FO area, and does not address the cumulative impacts to cultural resources of the BLM's other management decisions.

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**Issue Number:** PP-UT-Kanab-08-0010-28  
**Organization:** Colorado Plateau Archaeological Alliance  
**Protester:** Jerry Spangler

**Issue Excerpt Text:**

BLM did not respond to CPAA's concerns regarding the APE.

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**Issue Number:** PP-UT-Kanab-08-0010-33  
**Organization:** Colorado Plateau Archaeological Alliance  
**Protester:** Jerry Spangler

**Issue Excerpt Text:**

The PRMP failed to make any management decision changes (from the DRMP) to reduce the impacts on cultural resources from ORV designations, such as

reducing the number of miles of route available for OHV use in culturally sensitive areas. BLM omitted CPAA's comment in the Comment section of the PRMP, and thus, did not respond to CPAA's concern.

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**Issue Number:** PP-UT-KANAB-08-0013-5

**Protester:** Laura Welp

**Issue Excerpt Text:**

Why the State Director's decision is wrong: The Moquith Mtn, Dunes RMZ: Chapter 4, Section 4.3.3,

page 4-97; Section 4.2.2, page 4-15; Section 4.2.3., page 4-20; Appendix 4, page A4-2 through A4-3. The BLM did not adequately address the concerns I spoke of in my comments on the draft. This RMZ, a play area for OHVs, is located in the center of a population of a listed Threatened plant species, Welsh's milkweed, (and a proposed ACEC protecting this plant) and could impact it significantly. The research the BLM is relying on to support its contention that OHV mechanical damage is compatible with this plant is seriously flawed (see discussion under Special Status Species below).

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***Summary***

The BLM failed to adequately respond to comments on the DEIS. These comments related to:

- OHVs, motorized areas, and routes, especially the impacts to visual resources and special-status species, how Area of Critical Environmental Concern (ACEC) relevant and important (R&I) values will be protected from OHV use, and impacts to Threatened and Endangered (T&E) plant species in the Moquith Mountain RMZ;
- information on grazing systems and utilization;
- cultural resources, specifically potential for damage from OHV use through vandalism, statistical validity of the cultural inventory, landscape contribution to National Register of Historic Places (NRHP) eligibility, discussion of indirect and cumulative impacts to cultural resources, and the area of potential effect;
- habitat fragmentation;
- the hidden costs of oil and gas development; and
- various citations to opposing scientific viewpoints.

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***Response***

The BLM complied with the NEPA regulations at 40 CFR § 1503.4 by performing a detailed comment analysis which assessed and considered all substantive comments received on the DRMP/DEIS. In particular, all 8,571 letters received were complied, reviewed, and analyzed to determine whether the comments submitted were substantive. The systematic process used by the Kanab Interdisciplinary (ID) Team for identification of substantive comments is described section 5.6.7. The resulting coding and comment database assisted the ID Team in determining, if the substantive comment raised warranted adding or modifying the analyses by making factual corrections or explaining why the comment did not warrant any action. Many of the comments were especially voluminous, providing extensive information on issues such as the role of livestock and range management on the environment, cultural resources, and historic properties, OHV and motorized areas and routes, habitat fragmentation, and oil and gas development. The salient points or issues raised by the commenter were summarized and substantive and responses were provided, including the basis or rationale for the methodology or assumptions used. As explain in NEPA's Forty Most Asked Questions, it is acceptable to summarize especially voluminous comments. Opinions, judgments, preferences, or views, although read and considered, were determined to be non-substantive comments and, therefore, did not warrant a response as required by CEQ regulations.

The BLM responded to comments related to OHV use primarily at pages 83-104 (Recreation), 132-161 (Transportation, Travel Management), 173-178 (Wilderness Study Areas (WSA)) of the

responses to comments (sorted by issue), as well as many other places user individual resource issues. Land Use Volunteers of Kane County's comments regarding specific areas were responded to on pages 96, 109-110, and 175. Southern Utah Wilderness Alliance's (SUWA) comments regarding the route designation process and impacts of OHV use were responded to on pages 100 and 158. SUWA's comments on OHV impacts to ACEC values are found on pages 6-8. The BLM responded to Laura Welp's comments on the Moquith Mountain RMZ on page 3. The BLM responded to comments related to livestock grazing on pages 27-30 of the responses to comments (sorted by issue). Specifically, Western Watersheds Project's (WWP) comments were responded to on page 30. The BLM carefully considered all information provided by WWP.

The BLM responded to comments related to cultural resources on pages 15-20 of the responses to comments (as sorted by issue, available on the BLM Kanab Field Office website). Specifically, Colorado Plateau Archaeological Alliance's (CPAA) comments related to damage to cultural resources were responded to on pages 16-17. The comment regarding the validity of the statistical sample was responded to on page 54. Comments related to indirect and cumulative impacts were responded to on pages 16-17. SUWA's comments relating to the CPAA's concerns regarding Areas of Potential Effect (APE) and the protection of cultural sites where landscape association contributes to eligibility were not responded to because they were not considered to be substantive comments on the DRMP/DEIS (protests regarding APE's are included in the "Cultural Resources" section of this report).

SUWA's protest that the BLM failed to respond to CPAA's request for the reduction of the number of miles of routes available for OHV use in culturally sensitive areas was considered a statement of preference rather than a substantive comment.

In summary, the BLM has complied with all regulation and policy related to Section 106 policy in the preparation of this plan. Law enforcement issues are beyond the scope of the plan. The BLM responded to comments related to habitat fragmentation on pages 121-132 (Special Status Species) and 178-181 (Wildlife and Fish) of the responses to comments (sorted by issue.) Specifically, the BLM responded to SUWA's comments on pages 179-180. SUWA's scoping comments on the "hidden costs" associated with oil and gas development are addressed later in this report.

The BLM carefully considered all information submitted by SUWA during the RMP process. The BLM is confident that all relevant information was considered; and that impacts were analyzed and disclosed at a level of detail appropriate to a landscape-level document.

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### *Limited Range of Alternatives*

**Issue Number:** PP-UT-KANAB-08-0004-3  
**Organization:** Western Watersheds Project, Inc  
**Protester:** John Carter

**Issue Excerpt Text:**

There was no consideration of alternatives such as No Grazing, Significantly Reduced Grazing or closing sensitive areas such as wilderness, wilderness quality

lands, riparian areas, ACECs or areas with highly erodible soils to livestock. This all-or-nothing approach with respect to livestock grazing violates the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4361, requirement that federal agencies analyze a reasonable range of alternatives.

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**Issue Number:** PP-UT-KANAB-08-0004-6  
**Organization:** Western Watersheds Project, Inc  
**Protester:** John Carter

**Issue Excerpt Text:**

In addition to little or no differentiation in stocking rates, there is no difference in the amount of acres of public lands the BLM considered leaving open, or suitable, for grazing. All alternatives continued the status quo of maintaining 78.5% of the land open to grazing by livestock. Failure to resolve livestock conflicts with low-impact recreation, fish and wildlife, erodible soils, biological crusts and other resources by including meaningful alternatives to protect these important resources, is unreasonable. NEPA requires that all alternatives must be reasonable.

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**Issue Number:** PP-UT-KANAB-08-0005-22  
**Organization:** ECOS Consulting  
**Protester:** Charles Schelz

**Issue Excerpt Text:**

Inadequate Range of Alternatives BLM's Kanab DRMP/DEIS fails to include a reasonable range of Alternatives. Specifically, it contains no alternative that would adequately protect the scarce riparian resources of the Kanab BLM Decision Area from OHV use, livestock grazing, mineral development and associated damages from these activities.

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**Issue Number:** PP-UT-KANAB-08-0009a-162  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

Another threat to recreation on public lands within the Kanab Field Office is oil and gas leasing. The proposed plan leaves almost 86% of the relevant land area open to leasing for oil and gas. This figure is almost identical with land open to leasing under both the No-Action and Pro-Development Alternatives of the Draft RMP and EIS. Even under the most protective alternative, almost 69% of the land is open to leasing for energy development. This is in direct conflict with recreation; the scope and visibility of the degradation caused by oil and gas development will certainly reduce demand for recreation of all types. However, BLM projects that visitation from all types of recreational users will increase. As such, it is clear that BLM has not considered an appropriate "range" of alternatives. This is confirmed by the lack of an option that truly protects the natural character of these public lands.

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**Issue Number:** PP-UT-KANAB-08-0009b-36  
**Organization:** Southern Utah Wilderness Alliance

**Issue Excerpt Text:**

The lack of variability in the range of alternatives considered by BLM does not reflect the full spectrum of tradeoffs among balanced multiple use management options

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***Summary***

The DEIS/FEIS does not provide an adequate range of alternatives with respect to livestock grazing. The acreage open to grazing is the same for all alternatives. There is no alternative which considers "no grazing" or closing sensitive areas to grazing.

The DEIS/FEIS does not provide an adequate range of alternatives with respect to oil and gas leasing. The acreage open to development is virtually identical for all alternatives.

There is no alternative which would provide for the protection of riparian areas from impacts due to grazing, mineral development, and OHV use.

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***Response***

The BLM considered a reasonable range of alternatives during the planning process, in full compliance with the NEPA. The CEQ regulations (40 CFR § 1502.1) require that the BLM consider reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment. While there are many possible alternatives or actions, the BLM used the scoping process to determine a reasonable range of alternatives. As a result, four alternatives were analyzed in detail in the PRMP/FEIS that best addressed the issues and concerns identified by the affected public.

The BLM's range of alternatives represented a full spectrum of options including a no action alternative (current management, alternative A); an alternative emphasizing conservation and constraints to resource use (alternative C); an alternative emphasizing resource use (alternative D); and a Proposed Plan (based on alternative B) that increases conservation of resources compared to current management and "emphasizes moderate constraints on leasing for oil and gas and other (leasable) solid minerals" (refer to pp. 2-11 through 2-16). The acreage open or closed is similar for most alternatives; however, the level of constraints placed on new leases varies between the alternatives. The management strategies considered range from the increased conservation and protection of natural, recreation, and cultural values and intensive management of surface-disturbing activities to an alternative focused on energy and commodity development with "the least protective management actions for physical, biological, and heritage resources" (refer to pp. 2-12 through 2-13).

The BLM acknowledges that there could be a large number of variations to alternatives put forth in the RMP process. However, the BLM is not required to analyze each variation in detail, including those determined not to meet the RMP's purpose and need or those determined to be unreasonable given BLM mandates, policies, and programs including the Federal Land Policy and Management Act (FLPMA) and other Federal laws and regulations applicable to public lands. The CEQ addressed this issue as follows: "For some proposals there may be a very large or even an infinite number of reasonable alternatives... When there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS" (Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 46 Fed. Reg. 18,026, 18,031 (March 23, 1981)). Each of the alternatives considered and analyzed in detail achieves the purpose and need for the plan, is implementable, and addresses all significant issues. The BLM's Proposed Plan is the result of a broad range of analysis and public input and represents a balanced, multiple use management strategy that protects resources and allows for commodity uses.

A detailed rationale was also provided for the alternatives and management options considered but eliminated from detailed analyses in Section 2.3 (refer to pp. 2-61 through 2-63). As described in Sections 2.3.2 and 2.3.4, alternatives closing the planning area to all grazing or all oil and gas leasing was not considered in detail because it would not meet the purpose and need of the PRMP/FEIS.

Regarding the range of alternatives for livestock grazing, the BLM considered an alternative that would close the decision area to livestock grazing, but did not carry forward the alternative in detail (as explained in the DRMP/DEIS on pages 2-32 and 2-33). Each of the alternatives, except for alternative A (the No Action alternative), represents an alternative means of satisfying the identified purpose and need or of resolving specific issues. Development of the range of alternatives began early in the planning process during public scoping as planning issues were identified and expanded throughout the process in coordination with cooperating agencies. Consideration was also made of potential impacts to sensitive resources (see appendix C, page 14 (B) of the BLM Land Use Planning Handbook, H-1601-1). For instance, alternatives with varying protective measures, some which would result in changes to grazing use, are considered where grazing impacts to the condition of riparian resources are identified (pp. 2-38 and 2-39 of the DRMP/DEIS). Livestock grazing in the proposed Cottonwood Canyon ACEC would be

permitted; the alternatives vary as to how impacts to the values present would be monitored (see page 2-98 of the DRMP/DEIS). The monitoring may result in differences in livestock management, leading to differing levels of livestock use over the life of the plan.

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## Vegetation Treatments

**Issue Number:** PP-UT-KANAB-08-0004-26  
**Organization:** Western Watersheds Project, Inc  
**Protester:** John Carter

**Issue Excerpt Text:**

Alternatives B - D allow treatment of 446,000 acres at an annual rate of 22,300 acres over the life of the plan. There is no difference between the amounts designated for treatment on an annual basis or over the life of the plan.

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***Summary***

The DEIS/FEIS does not provide an adequate range of alternatives with respect to vegetation treatments. The acreage to be treated is the same for alternatives B-D.

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***Response***

The BLM considered a reasonable range of alternatives with respect to vegetation treatments as required by CEQ regulations (40 CFR § 1502.1). The BLM designed the alternatives to provide the maximum flexibility in performing vegetation treatments to achieve specific goals and desired outcomes such as mixture of vegetative types, eliminate noxious weeds and/or non-native invasive plant species, restore and maintain healthy functioning landscapes, habitats and riparian areas to benefit wildlife such as sage-grouse and others special status species, and to achieve rangeland health objectives. The treatment of 22,300 acres a year is the maximum average amount of acres that would be potentially treated per year. This average is the ecological threshold that the vegetation communities are adapted to, based on the research described in chapter 3 of the PRMP/FEIS. This research is summarized in table 3-8, which identifies the thresholds of disturbance for the 20-year planning horizon for each vegetation type under both frequent and infrequent disturbance regimes. Variations in the alternatives consist of vegetation treatment methods (prescribed fire, mechanical, chemical biological, woodland product removal, and wildland fire use) and areas to be treated.

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## Public Opportunities for Comment

**Issue Number:** PP-UT-KANAB-08-0004-82  
**Organization:** Western Watersheds Project, Inc  
**Protester:** John Carter

**Issue Excerpt Text:**

Consultation must occur before a decision is made and any modifications of the selected alternative must be disclosed to the public and the public given an opportunity to comment on the modifications, in accordance with NEPA. At a minimum, the biological assessments and biological opinion(s) should have been made available to the public in the Final EIS so that the

public could review and provide comments on them. See 40 C.F.R. § 1502.25(a).

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**Issue Number:** PP-UT-Kanab-08-0007-4  
**Organization:** Garkane Energy  
**Protester:** Bryant Shakespear

**Issue Excerpt Text:**

Issue 2. The State Directors finding on page 1-25 and Appendix 11 of the PRMP that "the Proposed RMP/Final EIS does not contain different information from that which was presented to the public in the Draft RMP/EIS"



(page A11-1 PRMP) is incorrect. For this reason the public should be allowed the opportunity to comment on a Supplemental Draft RMP/EIS as required at 40 CFR 1502.9 (c). At least two changes rise to level of "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impact" (page A11-1 PRMP). The first significant change is the decision to manage 5 areas (27,000 acres) identified as non-WSA lands with wilderness characteristics differently than what was proposed in Alternative B or C (page 1-22 PRMP). As indicated on page 1-22 of the PRMP "This resulted in acreage changes to numerous allocations portrayed in the Preferred Alternative of the Draft RMP because management actions attributed to those land became more restrictive in the Proposed RMP." The assertion that the management of non-WSA lands with wilderness characteristics was analyzed in the Draft Resource Management Plan (DRMP) under Alternative C (A 11-1 PRMP) is incorrect. Alternative C of DRMP analyzed "10 WC areas (approximately 89,780 acres) to specifically maintain their wilderness characteristics." (ES-9 DRMP). This is clearly shown by comparing Map 2-21 of the DRMP and Map 11 of the PRMP, as shown on the maps Alternative C analyzed the 10 areas of non-WSA lands with wilderness characteristics for exclusion not avoidance. Over 50 Public comments meriting responses are shown commenting directly on the non-WSA lands with wilderness characteristics, not allowing supplemental comment on this change is at best a gross oversight and at worst an effort to hide a significant change between the DRMP and PRMP. The second change is enlargement of the crucial mule deer and elk winter range habitat boundaries (page 1-22 PRMP). The extent of the change is clear when comparing Map 3-10 and 3-11 of the DRMP to Map 2 and 3 of the PRMP.

"Timing stipulations for each species now apply to the whole crucial habitat area." (1-22 PRMP) Taken by themselves these will make the construction and maintenance of electrical distribution and transmission lines significantly more difficult and expensive due to deer and elk habitat restriction alone. Add the additional timing and location restriction for Bald Eagles (2-12 PRMP), California Condor (2-13 PRMP) Mexican Spotted Owl (2-13 PRMP), Other Raptors (2-18 PRMP), Utah Prairie Dog (2-13 PRMP), Greater Sage-Grouse (2-15 PRMP), and every other Special Status species it becomes overly burdensome if not impossible to construct and maintain the infrastructure needed to provide power the communities within the planning area. Garkane Energy, other utilities and the public should be given the opportunity for supplemental comment on the effects of the enlargement of the "crucial" habitat boundaries.

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**Issue Number:** PP-UT-KANAB-08-0009a-55

**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

Here, BLM introduced an important issue concerning the future management of the Kanab Field Office for the very first time in the PRMP. The public, interested parties, and those with expertise in climate change had no opportunity to review the information before the release of the PRMP and provide input to BLM about its accuracy or completeness. This is a violation of NEPA's objective to educate both the public and the decision maker, and as a result, the climate information should be improved and released for public comment in a draft plan and EIS.

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***Summary***

The public was not provided an opportunity to comment on significant changes between the DEIS and the FEIS and therefore a supplement is required. These changes include:

- the biological assessment and the biological opinion;
- differences in the management of non-Wilderness Study Area (WSA) lands with wilderness characteristics;
- changes in the designations of wildlife habitat; and
- information on climate change.

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***Response***

A supplemental RMP/EIS, as defined by the CEQ regulations 40 CFR 1502.9, is not warranted. The BLM made no substantial changes to the DRMP/DEIS. No significant new circumstances or information was identified that would substantially affect the BLM's decision. This information was included pursuant to public comment and did not lead to substantial changes in

the proposed action or to significant new circumstances or information relevant to environmental concerns and bearing on the proposed actions. As a consequence, the range of alternatives and associated management prescriptions analyzed in the DRMP/DEIS have substantially similar environmental consequences as the alternatives analyzed in the PRMP/FEIS.

The BLM is in full compliance with Section 7(c) of the Endangered Species Act (ESA) and CEQ regulations (40 CFR 1502.25). The U.S. Fish and Wildlife Service (FWS) is responsible for the administration of the provisions of the ESA. Section 7(c) of the ESA consultation process requires Federal agencies to consult with the FWS to ensure that agency actions are not likely to jeopardize the continued existence of any listed species. As presented in section 5.4.1, the BLM consulted with the FWS, as required. As part of the formal consultation process, a biological assessment prepared based on the proposed RMP was provided to FWS for review. The BLM used the same information and biological data to prepare both the biological assessment and to analyze the environmental consequences on affected endangered species contained in section 4.2.5.

The Biological Opinion is the formal opinion of the FWS as to whether or not a Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. The Biological Opinion is not subject to the public comment requirements of NEPA. The BLM completed the Section 7 consultation with the FWS and received a Biological Opinion which concludes that implementation of the plan would not be likely to jeopardize the continued existence of any listed species. A copy of the Biological Opinion will be included in the BLM Kanab Field Office RMP Record of Decision (ROD).

The Air Quality sections in chapters 3 and 4 were augmented to provide information relative to global climate change. A growing body of scientific evidence supports the concern that global climate change will result from the continued build-up of greenhouse gases in the atmosphere. While uncertainties remain, particularly in the area of exact timing, magnitude, and regional impacts of such changes, the vast majority of scientific evidence supports the view that continued increases in greenhouse gas emissions will lead to climate change. It should be noted, however, that the EPA has not developed regulatory protocol or emission standards regarding global climate change. The BLM will analyze potential effects to global climate change in the NEPA documentation prepared for site-specific projects in accordance with EPA policy when established.

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## *Discussion of Cumulative Impacts/Connected Actions*

**Issue Number:** PP-UT-KANAB-08-0009a-109  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

The PRMP curiously fails to include a discussion of the potential cumulative impacts to cultural resources. CPAA's comments on the DRMP noted that the DRMP failed to properly consider cumulative impacts. DEIS 4-

280 to -281. The PRMP likewise omits any discussion of cumulative impacts.

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**Issue Number:** PP-UT-KANAB-08-0009a-180  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

BLM did not assess cumulative impacts stemming from the issuance of SRPs; this renders the analysis

incomplete. BLM states that it intends to perform site-specific analysis for each SRP after possibly evaluating factors listed in the RMP. However, depending solely on site-specific analysis does not allow for cumulative impact analysis as required by NEPA.

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**Issue Number:** PP-UT-KANAB-08-0009a-43

**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

NEPA regulations also require that NEPA documents address not only the direct effects of federal proposals, but also "reasonably foreseeable" indirect effects. These

are defined as: Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. 40 C.F.R. § 1508.8(b). Again, the impacts of climate change were simply not discussed; such an omission violates NEPA regulations. Thus, it is clear that BLM has failed to take a hard look-or virtually any look-at the impacts of climate change on the public lands resources in the Kanab Resource Area.

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***Summary***

The DEIS/FEIS does not adequately address cumulative impacts with respect to:

- cultural resources; and
- special recreation permits (SRP).

The DEIS/FEIS does not address the indirect effects of induced changes in land use, growth, population density, or climate change.

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***Response***

The scope and nature of the specific proposed action drives what level of analysis must be done to comply with the requirements of the NEPA. Environmental analyses of RMPs are used to evaluate broad policies and provide an analytical foundation for subsequent project-specific NEPA documents. The cumulative analysis in the PRMP/FEIS considered the present effects of past actions, to the extent that they are relevant, and present and reasonably foreseeable (not highly speculative) Federal and non-Federal actions, taking into account the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. As a consequence, the cumulative analysis in section 4.6 of the PRMP/FEIS analyzing impacts associated cultural resources, special recreation permits, socioeconomics, and climate change is very different from the analysis that would be presented in an environmental document analyzing the authorization of a specific activity or permit. Therefore, the BLM has complied fully with the requirements of 40 CFR § 1508.7 in preparing a cumulative analysis based on the broad nature and scope of the proposed management options under consideration at the RMP stage.

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***Deferral of Analysis***

**Issue Number:** PP-UT-KANAB-08-0009a-176

**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

In response to our comments on the Draft RMP, BLM states that "[t]he effects of SRPs on various categories of land management are analyzed at the site specific level when issuing a SRP." PRMP Response to Comments at 132, sorted by commentor name. However, site-specific projects will tier to the NEPA analysis performed in the RMP and thus will never be fully analyzed. The possibility of future analysis does not justify BLM avoiding an

assessment of the potential environmental consequences of the action that it is approving in the RMP. As a matter of NEPA policy, compliance with the Act must occur "before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b). For purposes of NEPA compliance, "it is not appropriate to defer consideration of cumulative impacts to a future date when meaningful consideration can be given now." *Kern v. Us. Bureau of Land Management*, 284 F.3d 1062, 1075 (9th Cir. 2002).

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### ***Summary***

Consideration of the impacts of SRPs is improperly deferred to the NEPA analysis of site-specific actions.

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### ***Response***

The impact analysis prepared in the RMP/EIS is adequately presented based on the nature and scope of the management prescriptions associated with SRPs. However, because of the limited decisions being made on SRPs and lack of specific information concerning the nature of the activity or event (acreage, location, vehicles, equipment, etc.) it is neither required nor possible to present a site-specific analysis at this stage in the process. Because this information is too speculative at this time to be reasonably analyzed, the approval of SRPs will require its own distinct NEPA analysis, including a cumulative effects analysis.

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## ***Federal Land Policy and Management Act***

### ***Multiple-use Mandate***

**Issue Number:** PP-UT-KANAB-08-0004-35  
**Organization:** Western Watersheds Project, Inc  
**Protester:** John Carter

#### **Issue Excerpt Text:**

In its comments on the Draft RMP/EIS, WWP pointed out the requirements in BLM's Land Use Planning Handbook (H-1601-1) Appendix C which requires that BLM "Identify lands available or not available for livestock grazing (see 43 CFR 4130.2(a)), considering the following factors: 1. Other uses for the land; 2. terrain characteristics; 3. soil, vegetation, and watershed characteristics; 4. the presence of undesirable vegetation, including significant invasive weed infestations; and 5. the presence of other resources that may require special management or protection, such as special status species, special recreation management areas (SRMAs), or ACECs." Neither the DEIS or FEIS provide this analysis.

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**Issue Number:** PP-UT-KANAB-08-0004-67  
**Organization:** Western Watersheds Project, Inc  
**Protester:** John Carter

#### **Issue Excerpt Text:**

The RMP does not explain how authorizing grazing at the same levels and same locations as currently allowed

complies with this multiple use mandate and considers competing values.

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**Issue Number:** PP-UT-KANAB-08-0005-9  
**Organization:** ECOS Consulting  
**Protester:** Charles Schelz

#### **Issue Excerpt Text:**

This statute, the organic legislation that guides the management of public lands by the BLM, requires the agency to manage public lands in a manner that provides for "a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations. . . ." These values include "recreation. . . wildlife and fish, and natural, scenic, scientific and historical values." 43 U.S.C. § 1702(c). This Kanab PRMP/FEIS does not provide for this balance as livestock grazing is being allowed on the vast majority of lands covered by the RPMP, nor are the decisions for managing livestock grazing on these public lands in accordance to range science and ecological principles - thus allowing unacceptable damage to streams, riparian habitats, upland habitats, soils, soil crusts, vegetation, and fish and wildlife populations.

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**Issue Number:** PP-UT-KANAB-08-0006-12  
**Organization:** Alton Coal Development LLC

**Issue Excerpt Text:**

The excessive restrictions on surface mining activities will make the development of the Proposed Lease

economically and logistically infeasible, impairs the multiple use of the land and prevents the Alton Coal field from being fully productive in order to meet the present and future needs of the American people for coal.

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***Summary***

The BLM failed to comply with the multiple-use mandate of FLPMA because livestock grazing would remain at or near current levels in all alternatives considered in detail. The BLM did not consider factors as specified in the planning handbook in determining which lands would be made available for grazing.

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***Response***

The FLPMA makes it clear that the term “multiple use” means that the Secretary can make the most judicious use of the land for some or all of the resource uses. Therefore, the BLM has the discretion to make decisions that satisfy a range of needs. The term is defined in the FLPMA (Section 103(c)) as “the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people.” Accordingly, the BLM is responsible for the complicated task of striking a balance among the many competing uses to which public lands can be put. The BLM’s multiple use mandate does not require that all uses be allowed on all areas of the public lands. That would preclude any kind of balance. The purpose of the mandate is to require the BLM to evaluate and choose an appropriate balance of resource uses, which involves tradeoffs between competing uses. The alternatives in the DRMP/DEIS and PRMP/FEIS reflect this provision.

During the scoping process, the BLM considered a number of factors, including those identified in the BLM Land Use Planning Handbook (H-1601-1), when developing the range of alternatives for the grazing program. The potential impacts to these resources are analyzed within the EIS. This aided the BLM in identifying lands as available or not available for livestock grazing (43 CFR § 4130.2(a)).

The BLM also has sufficient latitude for periodic adjustments of a particular use. It is BLM’s policy, regarding the adjustments to the authorized levels of livestock use, to monitor and inventory range conditions under existing stocking levels and make adjustments, as necessary based on the collected data, to ensure that Standards for Rangeland Health and resource objectives are met. Therefore, the BLM appropriately applied its land use planning policy and is in full compliance with FLPMA’s principle of multiple use.

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***Alton Coal***

**Issue Number:** PP-UT-KANAB-08-0006-12

**Organization:** Alton Coal Development LLC

**Issue Excerpt Text:**

The excessive restrictions on surface mining activities will make the development of the Proposed Lease economically and logistically infeasible, impairs the multiple use of the land and prevents the Alton Coal field from being fully productive in order to meet the present and future needs of the American people for coal.

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## **Summary**

The excessive restrictions on surface mining activities will make the development of the Proposed Lease economically and logistically infeasible, impairing the multiple use of the land and preventing the Alton Coal field from being fully productive in order to meet the present and future needs of the American people for coal.

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## **Response**

As noted in the PRMP/FEIS on page 2-15, there are several management prescriptions to protect Greater sage-grouse habitat in the Alton Coal field area. These management actions are in accordance with the BLM National Sage-Grouse Habitat Conservation Strategy and have been developed in coordination with the Utah Division of Wildlife Resources. These prescriptions are necessary to protect sensitive resources and prevent further impacts such as the listing of the Greater sage-grouse on the Endangered Species list. However, as noted in appendix 3 of the PRMP/FEIS (pages 3-7, 3-16, and 3-17) these stipulations could be excepted, modified, or waived by the authorized officer. An exception exempts the holder of the land use authorization document from the stipulation on a one-time basis. A modification changes the language or provisions of a surface stipulation, either temporarily or permanently. A waiver permanently exempts the surface stipulation. The environmental analysis document prepared for site-specific proposals (such as the Lease by Application EIS currently being prepared for the Alton coal field) would need to address proposals to exempt, modify, or waive a surface stipulation. To exempt, modify, or waive a stipulation, the environmental analysis document would have to show that (1) the circumstances or relative resource values in the area had changed, (2) less restrictive requirements could be developed to protect the resource of concern, and (3) operations could be conducted without causing unacceptable impacts.

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## **Areas of Critical Environmental Concern**

### ***ACEC Designation Priority***

**Issue Number:** PP-UT-KANAB-08-0003-21

**Organization:** Land Use Volunteers of Kane County

**Protester:** Sky Chaney

**Issue Excerpt Text:**

Statement of Why the State Director's Decision is Believed to be Wrong: 1. The Final RMP failed to include nominated ACEC's despite the fact that the BLM found these areas to meet both the criteria of relevance and importance needed to qualify for this designation. The Federal Land Policy and Management Act (FLPMA) requires that the BLM "give priority to the designation and protection of areas of critical environmental concern". The ACEC's that need to be included in the Final RMP are: Welsh's Milkweed ACEC, Vermillion Cliffs ACEC, White Cliffs ACEC, and the Parunaweap Canyon ACEC.

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**Issue Number:** PP-UT-KANAB-08-0009a-267

**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

However, the PRMP preferred alternative designates only a small fraction of acreage (6%) evaluated by BLM to meet the relevance and importance criteria. This is a violation of FLPMA's mandate that "priority" be given to designation of ACECs.

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**Issue Number:** PP-UT-KANAB-08-0009b-13

**Organization:** Southern Utah Wilderness Alliance

**Issue Excerpt Text:**

BLM's decision to permit significant ORV use to continue unabated by failing to designate the proposed Vermillion Cliffs ACEC, with appropriate management

language, violates FLPMA's mandate that the agency give priority to ACEC designation and must be corrected

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### ***Summary***

The FLPMA requires that the BLM "give priority to the designation and protection" of ACECs. The number/size of ACECs designated in this plan does not fulfill this mandate.

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### ***Response***

There is no requirement to carry forward all of the potential ACECs into the preferred alternative, as described in the response to comments on the DEIS. The rationale for designation of individual ACECs carried forward into the PRMP/FEIS is given in the ROD. Should the BLM choose not designate potential ACECs, the BLM's ACEC Manual 1613 .33E provides direction in this process. The ACEC Manual requires that all potential ACECs be carried forward as recommended for designation into at least one alternative in the DRMP/DEIS. Alternative C analyzed the designation of all potential ACECs. The BLM Manual 1613.23 states that, "After completing the analysis of the effects of each alternative, the manager selects the preferred plan alternative which best meets the planning criteria and the guidance applicable to the area. The preferred alternative reflects the BLM's proposals for designation and management of ACECs." The BLM has discretion regarding the formulation of management prescriptions for ACECs. A comparison of estimated effects and trade-offs associated with the alternative leads to development and selection of the preferred alternative.

The preferred alternative reflects the BLM's proposals for designation and management of ACECs. However, the BLM will protect relevant and important values where ACECs are not designated under the Proposed Plan. How these values will be managed under proposed management and rationale for all ACEC decisions will be provided in the Record of Decision and supported by analysis in the EIS.

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## ***ACEC Relevant and Important Values***

**Issue Number:** PP-UT-KANAB-08-0009a-268

**Organization:** Southern Utah Wilderness Alliance (SUWA)

### **Issue Excerpt Text:**

In essence, FLPMA directs BLM to prioritize protection and designation of ACECs across all alternatives under consideration, not simply the "conservation" alternative. In the Kanab PRMP, BLM has neither recognized nor carried out this statutory mandate. To resolve this, once BLM has determined that certain areas in the Kanab Field Office contain the requisite relevant and importance values and that the PRMP does not protect all of the relevant and important values (R&I values) which the Kanab Field Office has already done-the agency must give priority to the designation of those areas as ACECs

over other competing resource uses. See, e.g., PRMP 4-114 to -115 (acknowledging that proposed management will protect "much"-but not all-of the proposed Vermillion Cliffs and White Cliffs ACECs Class A scenery).

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**Issue Number:** PP-UT-KANAB-08-0009b-15

**Organization:** Southern Utah Wilderness Alliance

### **Issue Excerpt Text:**

The PRMP does not explain how this designation protects "scenic and cultural values, wildlife resources, and botanical and geologic systems or processes." Id. Indeed, the PRMP concedes that impacts will be "reduced," but not eliminated through the use of standard stipulations or those with minor restraints. Id.

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### **Summary**

The relevant and important values associated with potential ACECs would not be protected under this plan.

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### **Response**

The BLM gave full consideration to the designation and preservation of ACECs during this land use planning process. Nominations for ACECs from the public were specifically solicited during the scoping period. A total of five ACEC nominations were received, and the relevance and importance of each was determined. All five of the ACEC nominations were found to meet both the criteria of relevance and importance, and all were included for special management as proposed ACECs in Alternative C of the DRMP/DEIS.

In 1613 Manual at Section 22b “*Incorporate Management Prescriptions for Potential ACEC into Appropriate Alternatives*” it states that “management prescriptions will generally vary across the plan alternatives.” It further states, “Because special management attention must be prescribed in at least one plan alternative, each potential ACEC will appear as a recommended ACEC in at least one plan alternative.” The BLM has discretion regarding the formulation of management prescriptions for ACECs. A comparison of estimated affects and trade-offs associated with the alternative leads to development and selection of the preferred alternative. It is not prescribed in the BLM 1613 Manual that a particular potential ACEC’s relevant and important values must be protected to the same level or degree of protection in all plan alternatives.

The 1613 Manual does state, “The management prescription for a potential ACEC may vary across alternatives from no special management attention to intensive special management attention.” Elaborating further, “Situations in which no special management attention would be prescribed (and therefore no designation) include ... those in which the alternative would necessitate the sacrifice of the potential ACEC values to achieve other purposes.” Such Manual guidance clearly allows for one or more RMP alternatives to be analyzed that would potentially impact relevant and important values in order to allow management for other prescribed purposes.

It is the BLM’s interpretation of its ACEC responsibility that relevant and important values must be protected whether designated an ACEC or not. The Kanab Field Office will discuss each ACEC in its Record of Decision. However, to completely respond to the issue raised in this protest, we are providing the following brief analysis:

The ACECs not carried forward in the Proposed Plan (Parunaweap Canyon and Welsh Milkweed) are wholly within WSAs that are managed under the interim management policy (IMP) for lands under wilderness review. Management of these lands under the IMP provides the necessary protections of the relevant and important values and BLM has determined that no special management is required. (Should the WSAs cited above be released from further wilderness review by congressional action, these lands would no longer be managed under the IMP. At that time the plan may require amendment to protect those relevant and important values within the two areas).



The potential Vermilion Cliffs ACEC would not be designated as an ACEC in the Proposed Plan either. However, the relevant and important values that qualified it for potential ACEC status would be protected. The BLM manages 80 percent of the area included within the potential Vermilion Cliffs ACEC as a Special Recreation Management Area (SRMA). The management decision for the SRMA is to restrict surface disturbing actions, including those related to oil and gas development under a “no surface occupancy” (NSO) stipulation. This restriction would eliminate many potential visual intrusions in the area from surface disturbing activities not conducive to SRMA objectives. In the large western portion of the SRMA, the management prescription is to manage Visual Resource Management (VRM) under a Class III objective. The BLM chose to manage for VRM Class III instead of VRM Class II in order to accommodate future infrastructure and facility needs for the motorized recreation management zone (RMZ) within the Kanab Community SRMA. The placement, design, and siting of any future surface disturbing activities to achieve SRMA management goals and objectives would be planned to avoid visual intrusions as seen from key observation points (KOP). With these restrictions in place, the relevant and important value of scenery will be protected under that designation. For the entire potential ACEC, management that would protect the relevant and important values of cultural, wildlife, and natural processes include limiting OHVs to designated trails (including a seasonal restriction), an NSO stipulation for oil and gas (which includes prohibiting other surface disturbing activities outside oil and gas development), and a seasonal restriction on oil and gas development and surface disturbing activities in mule deer crucial winter range.

For the 20 percent of the potential ACEC that is outside the Kanab Community SRMA, under the proposed RMP 2,430 acres are managed as VRM Class II; 985 acres as VRM Class III; and 1,228 acres as VRM Class IV. As noted in appendix 14 of the PRMP/FEIS, scenic value was determined relevant only if it was inventoried as Class A scenery by the BLM (p. A14-5). The 2,430 acres of VRM Class II have Class A scenery and the relevant and important value is protected by the VRM II management class. Although the potential Vermilion Cliffs ACEC has scenery, cultural, wildlife, and natural process as relevant and important values, this does imply that every acre of the potential ACEC possesses every value. The 2,213 total acres of VRM Class III and IV are not Class A scenery and, therefore, do not have the scenic relevant and important value that would require protection.

Regarding the potential White Cliffs ACEC, though the area was not carried forward into the Proposed Plan, 14,500 acres (or 55 percent of the potential ACEC) are non-WSA lands with wilderness characteristics located within the Upper Kanab Creek and are to be managed to specifically protect, preserve, and maintain their wilderness characteristics. As stated on pages 2-29 and 2-30 of the PRMP/FEIS, management prescriptions for the protection of wilderness characteristics include VRM Class II, OHV use limited to designated routes, NSO for oil and gas and other surface disturbing activities, and closure to woodcutting. These management prescriptions would sufficiently protect the relevant and important values of scenery, cultural, wildlife, and natural processes. Of the remaining 11,500 acres of the potential White Cliffs ACEC, the relevant and important values of cultural, wildlife, and natural processes are protected under the Proposed Plan through the limitation of OHV use to designated routes, the seasonal restriction on oil and gas development, and surface disturbing activities in mule deer crucial winter range as well as the prioritization of vegetation treatments to benefit wildlife, soils, and watershed health.

For the relevant and important value of scenery in the potential White Cliffs ACEC, 8,000 acres are managed as VRM Class II under the Proposed Plan. However, there are approximately 3,500 acres of the potential White Cliffs ACEC that were assigned as VRM Class III in the PRMP/FEIS. The intent of that decision was to accommodate future vegetative treatments designed to enhance sagebrush habitat while controlling pinyon-juniper encroachment. In reviewing this protest issue, the BLM has determined that to protect the relevant and important value of scenery for those 3,500 acres, the Proposed Plan will be modified so that the area is managed as VRM Class II (considered in the DRMP/DEIS), rather than VRM Class III (included in the PRMP/FEIS). This modification will be included in the BLM's Record of Decision for the Kanab RMP.

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### *Wilderness Study Areas*

**Issue Number:** PP-UT-KANAB-08-0009a-269  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

ACECs may be designated for a range of other values, as listed in FLPMA, which may not be protected by focusing on protecting wilderness character. Consequently, BLM cannot dismiss its obligations under FLPMA with regard to ACECs based on the existence of a WSA.

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**Issue Number:** PP-UT-KANAB-08-0009b-1  
**Organization:** Southern Utah Wilderness Alliance

**Issue Excerpt Text:**

Rather, the PRMP vaguely states that lands released from

WSA status "will be managed in accordance with the goals, objectives, and management prescriptions in th[e] RMP, unless otherwise specified by Congress in its releasing language." Id. The PRMP must be explicit that BLM will manage released lands to protect their important values, including wilderness characteristics and the other relevant and important values that the PRMP acknowledges, according to the same standards (IMP) as analyzed and contemplated in the plan. Without this change, BLM's failure to designate the Welsh's Milkweed, Parunuweap, and White Cliffs ACECs runs afoul of its own ACEC Guidance-cited in Response to Comments at 107-which requires that the agency must specifically detail the "other form of special management" relied upon as support for not designating a potential ACEC.

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### ***Summary***

Management under the Interim Management Policy (IMP) for Lands under Wilderness Review does not necessarily protect relevant and important values. If WSAs are released by Congress, relevant and important values would not be protected.

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### ***Response***

We agree that management under the IMP does not necessarily protect the relevant and important values associated with a potential ACEC. As discussed in the response to comments on the DRMP/DEIS, the BLM has separate policies and guidelines, as well as criteria, for establishing ACECs and WSAs. These differing criteria make it possible that the same lands will qualify as both an ACEC and a WSA but for different reasons. The BLM is required to consider these different policies.

The values protected by WSA management prescriptions do not necessarily protect those values found relevant and important in ACEC evaluation and vice versa. The relevant and important

values of ACECs within or adjacent to WSAs were noted in the ACEC Evaluation. The potential ACECs are evaluated and ranked based on the presence or absence of the identified relevant and important values. Relevant and important values do not include wilderness characteristics. Additionally, the management prescriptions for the ACECs are limited in scope to protect the relevant and important values.

It is possible that certain relevant and important values can be protected by the IMP. Where proposed ACECs fall within WSAs and the management under the IMP has been deemed sufficient to protect the relevant and important values, it is not necessary to designate the area as an ACEC as current management prescriptions are sufficient to protect those values.

As described in chapter 2 of the PRMP/FEIS, (p. 2-57), should any WSA, in whole or in part, be released from wilderness consideration, such released lands will be managed in accordance with the goals, objectives, and management prescriptions established in this RMP, unless otherwise specified by Congress in its releasing legislation. The BLM will examine proposals in the released areas on a case-by-case basis but will defer all actions that are inconsistent with RMP goals, objectives, and prescriptions until it completes a land use plan amendment. Because any released lands will continue to be managed consistent with the prescriptions identified in this plan unless and until the plan is amended, the relevant and important values would continue to be protected regardless of whether these lands are within the WSA or not.

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## *Air Resources*

### *Emissions Inventory/Modeling and Air Quality Resources*

**Issue Number:** PP-UT-KANAB-08-0009a-12

**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

II. Air Quality. The Kanab PRMP fails to model the impacts of the activities that it permits on air quality in the planning area. Both NEPA and FLPMA require that BLM prepare such analysis. Without preparing near-field, far-field, and cumulative air quality analyses, BLM will not understand the effects of the pollutants that it has attempted to partially inventory in the Kanab PRMP, thereby violating NEPA and its requirement that BLM understand the environmental impacts of the activities it is permitting. In addition, BLM must model pollution concentrations in order to understand if this plan will comply with federal and state air quality standards, as required by FLPMA.

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**Issue Number:** PP-UT-KANAB-08-0009a-13

**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

FLPMA, and the Kanab PRMP, require that BLM manage the planning area according to federal and state air quality standards. See Kanab PRMP at 2-3; 43 C.F.R. § 2920.7(b)(3) (requiring that BLM "land use authorizations shall contain terms and conditions which shall. . . [r]equire compliance with air. . . quality standards established pursuant to applicable Federal or State law") (emphasis added). See also 43 D.S.C. § 1712(c)(8) (requiring BLM in land use plans-which would therefore require implementation in daily management to "provide for compliance with applicable pollution control laws, including State and Federal air. . . pollution standards or implementation plans"). These air quality standards include both the national ambient air quality standards (NAAQS) and the prevention of significant deterioration (PSD) increment limits. Both the State and Federal standards are based on ambient concentrations of various air pollutants. For this reason, the Kanab PRMP has failed to satisfy its FLPMA obligation: it permits activities (e.g. oil and gas development, route designation, vehicle travel on designated routes, mining) without modeling the effect that these activities will have on ambient concentrations of NAAQS and PSD pollutants.

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**Issue Number:** PP-UT-KANAB-08-0009a-15  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

Not only has BLM prepared an incomplete emissions inventory for the Kanab PRMP, but it has, also failed to conduct modeling that analyzes the likely concentrations of pollutants that will result. See, e.g., PRMP at 4-9 to -15 (predicting likely quantities in tons per year-not ambient concentrations--of various pollutants that will result from plan implementation). As discussed below, the Kanab PRMP emissions inventory suffers from a number of flaws that have led to underestimates for various pollutants. With such flaws the emissions inventory cannot be used to accurately quantify and model pollutant concentrations in the planning area.

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**Issue Number:** PP-UT-KANAB-08-0009a-20  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

Without preparing modeling to determine what the ambient concentrations of relevant pollutants will be, BLM cannot understand or disclose the impacts of these pollutants on humans, wildlife, vegetation, water bodies, or the climate. Since it is actual ambient concentrations that will impact these various components of the ecosystem, BLM must model concentrations to understand these impacts. BLM's deficient emissions inventory does not satisfy NEPA's hard look requirement.

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**Issue Number:** PP-UT-KANAB-08-0009a-219  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

Although the PRMP acknowledges these impacts, it fails to include quantitative modeling to predict the impacts on air quality from fugitive dust and other air pollutants due to ORV use and the ORV area and trails designations.

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**Issue Number:** PP-UT-KANAB-08-0009a-23  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

Aside from failing to analyze the fugitive dust generated by routes and ORVs and other vehicles that will travel on the routes identified in this plan, the Kanab PRMP has failed to inventory sulfur dioxide or ozone precursors that will be generated by these machines. This, in turn,

means that these pollutants cannot be modeled. The Kanab PRMP improperly attempts to quantify select ORV emissions by simply extrapolating what the percentage of ORVs traveling in the planning area might be based on national ORV-use figures multiplied by the fraction of the nation's population living in Utah further multiplied by the planning area's acreage compared to the acreage of the state as a whole. This methodology is deeply flawed because it does not account for the actual estimated ORV-usage figures for the planning area and the mathematical function relationship between the number of routes designated and the number of miles traveled by ORVs and other vehicles.

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**Issue Number:** PP-UT-KANAB-08-0009a-26  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

The Kanab PRMP suggests that air quality modeling and full quantification analyses are not practical at this stage because BLM does not have adequate information to conduct such analyses. See Kanab PRMP Response to Public Comments at 106. The fact that the implementation of the PRMP will result in air pollution (e.g., through approval of motorized use on designated routes and in the Moquith Mountain WSA and sand dunes) requires that such modeling and quantification be undertaken. See PRMP at 3-11 (admitting that various activities, including oil and gas development and ORV use, generate CO<sub>2</sub> and methane, as well as fugitive dust). The routes identified in this plan that will be open to vehicular travel will never face further analysis whereby better estimates might be developed. Now is the time to conduct such analysis. Besides, as SUWA pointed out, BLM has prepared models and more comprehensive emissions inventories in its Farmington, New Mexico; Vernal, Utah; and Roan Plateau, Colorado RMPs. This reality directly refutes the Kanab PRMP's insistence that such efforts would be too difficult at this time. Finally, as part of the "hard look" requirement, NEPA demands that BLM determine baseline conditions so that it, and the public, can fully understand the implications of proposed activities. BLM has failed to do this here.

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**Issue Number:** PP-UT-KANAB-08-0009a-27  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

In summary, the Kanab PRMP does not adequately analyze the impacts to air quality that will result from the area and route designations, and activities planned and permitted in this document. These failures are contrary to both FLPMA, which requires that BLM observe air quality standards, and NEPA, which requires that BLM

disclose the impacts of the activities it is analyzing. BLM must prepare a comprehensive emissions inventory, which includes fugitive dust emissions, and then model these figures in near-field, far-field, and cumulative analyses. Without doing so, BLM cannot know what impact these activities will have and whether it is complying with federal and state air quality standards.

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### **Summary**

The BLM failed to satisfy its FLPMA and NEPA obligations to take a hard look at air quality resources. The inadequacies include (1) lack of comprehensive emissions inventory, (2) inadequate modeling, and (3) modeling for near-field, far-field, and cumulative analysis.

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### **Response**

The BLM is in full compliance with the requirements of the FLPMA and the NEPA. The BLM analyzed the potential impacts to air quality using the best available information from various monitoring networks, existing emission inventories, and predicted emissions from reasonable foreseeable actions. The emission comparison approach is defensible and provides a sound basis for comparing base year air quality emissions with those expected to be produced from the base year air quality emissions with those expected to be produced from the PRMP. Emissions calculations were based on the best available engineering data and assumptions, air, visibility, and emission inventory procedures as well as professional and scientific judgment. This approach was selected because of uncertainties about the number, nature, and specific location of future sources and activities. A more quantitative approach or dispersion modeling requires specific knowledge of sources, emission rates, and locations in order to provide reliable and reasonable results. At the land use planning level, this type of analysis is not possible due to the lack of site specific information regarding sources. A site-specific air quality impact analysis will be conducted during site-specific NEPA analysis on a case-by-case basis and may include dispersion modeling where that is deemed to be appropriate and necessary.

National Ambient Air Quality Standards are enforced by the Utah Department of Environmental Quality, Division of Air Quality, with EPA oversight. Chapter 1 of the PRMP clearly states the BLM's intent to continue to manage air quality in accordance with the air quality standards prescribed by Federal, State, and local laws, regulations, and policies. Section 3.2.1 provides a thorough summary of the best available information regarding existing levels of National Ambient Air Quality Standards (NAAQS) pollutants in and near the planning area. It also includes information regarding other Air Quality Related Values, such as visibility and impacts to soil and water from acid deposition based on data from nearby Class 1 areas. Section 4.2.1 contains a summary of existing and predicted emissions for NAAQS. Emission calculations included hazardous air pollutants (HAPs) to the extent that data were available or could be estimated. The Prevention of Significant Deterioration (PSD) program applies only to stationary source permitting activities and does not apply to land use planning decisions. Any new stationary sources would be considered on a case-by-case basis and required to comply with all applicable regulatory permitting procedures and laws.

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## ***Compliance with Clean Air Act***

**Issue Number:** PP-UT-KANAB-08-0009a-14

**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

The Kanab PRMP has also failed to consider

hazardous air pollutants (HAPs) that may be generated by activities approved in this plan; HAPs are also subject to regulation under the Clean Air Act.

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**Issue Number:** PP-UT-KANAB-08-0009a-18  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

In addition, the Kanab PRMP and its inventory do not discuss or examine PSD increment limits (particulate matter, nitrogen oxides, carbon monoxide, sulfur dioxide). These federal air quality standards are also the State of Utah's air quality standards. Thus, there is no evidence, certainty, or indication that the Kanab PRMP will comply with federal and state air quality standards as NEPA and FLPMA require.

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***Summary***

The BLM failed to adequately consider HAPs and PSD under the Clean Air Act and the associated State of Utah Air Quality Standards.

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***Response***

Section 4.2.1 contains a summary of existing and predicted emissions for NAAQS. Emission calculations included hazardous air pollutants (HAPs) to the extent that data were available or could be estimated. The Prevention of Significant Deterioration (PSD) program applies only to stationary source permitting activities and does not apply to land use planning decisions. Any new stationary sources would be considered on a case-by-case basis and required to comply with all applicable regulatory permitting procedures and laws.

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***Climate Change***

***Analysis of Potential Climate Change***

**Issue Number:** PP-UT-KANAB-08-0009a-51  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

As noted above, no analysis of potential climate change impacts was provided in the PRMP. BLM simply ignored the Secretarial Order.

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***Summary***

No analysis of potential climate change impacts was provided in the PRMP.

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***Response***

The impacts of climate change are discussed at a level of detail appropriate to landscape-level analysis in the PRMP/FEIS at page 4-8. The PRMP/FEIS is in compliance with the Secretarial Order. See also the response provided in the NEPA - Close Examination of Baseline Data and Modeling section above.

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***Possible Supplemental Draft***

**Issue Number:** PP-UT-KANAB-08-0009a-53  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

D. BLM Must Prepare a Supplemental Draft Which Addresses the Issue of Climate Change and its Impacts on the Kanab Resource Area. As noted above, BLM briefly discussed climate change in the FEIS, but entirely failed to mention it in the DEIS. PRMP at Appendix 11-1. But 40 C.F.R. § 1502.9(c)(1) requires BLM to prepare a Supplemental EIS (SEIS) if "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impact." The new climate change information should warrant an SEIS because it meets the threshold for "significant" new information, as outlined in 40 C.F.R. § 1508.27.

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***Summary***

The new climate change information warrants a Supplemental EIS (SEIS) because it meets the threshold for "significant" new information.

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***Response***

The DRMP addressed existing climate and drought issues within the planning area (section 3.2.2.), but did not directly address global climate change. Based on public comment and internal technical guidance, general language regarding climate change and related potential impacts to and from BLM activities was added in the FEIS. The information provided (section 3.2.1 and 4.2.1) was also available to the public and planning team for consideration during the planning effort, even though it was not presented in a formal manner in the DEIS. Though there is new information regarding climate change, the existing analysis remains valid in light of this new information because the new information does not substantially change the analysis of the proposed action and does not change any of the final decisions. Changes were not made in the alternatives based on the information presented. There is no technical basis or standard accepted protocols for evaluating activities conducted under this PRMP or making changes to alternatives considered based on global climate change. Because (1) it is not possible at this time to link specific quantities of emissions to specific impacts to climate change (i.e. change in temperature or ambient atmospheric concentration), (2) the FEIS addresses climate and drought issues adequately given the information available at the time such analyses were conducted, (3) the newest information available does not indicate that the climate and drought analyses are inadequate for the purposes of making a reasoned choice among the alternatives, and (4) new information will be assessed at the implementation level, subject to the public notice and comment process, the information on climate change cited in the protest does not meet the criteria for new or significant information, nor does it change the context or intensity of the effects analyzed in this decision.

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***Cultural Resources***

***Discussion of Cumulative Impacts***

**Issue Number:** PP-UT-KANAB-08-0009a-227  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

In addition, BLM must complete its NHP A Section 106 consultations with the SHPO and tribes before finalizing the ORV area and trail designations and issuing the

travel plan decision. The PRMP states that Section 106 consultations are "in progress." Id. at 4-53.

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**Issue Number:** PP-UT-Kanab-08-0010-18  
**Organization:** Colorado Plateau Archaeological Alliance  
**Protester:** Jerry Spangler

**Issue Excerpt Text:**

The PRMP curiously fails to include a discussion of the potential cumulative impacts to cultural resources. CPAA's comments on the DRMP noted that the DRMP failed to properly consider cumulative impacts (DEIS 4-280 to 4-281). The PRMP likewise omits any discussion of cumulative impacts.

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**Issue Number:** PP-UT-Kanab-08-0010-19  
**Organization:** Colorado Plateau Archaeological Alliance  
**Protester:** Jerry Spangler

**Issue Excerpt Text:**

recommended, in our comments on the Kanab DRMP that the RMP be modified to acknowledge and fully analyze the potential impacts of ORV use on such a massive scale that could result in cumulative effects to site setting and integrity, even if the historic properties themselves are not directly impacted (see 364 CFR 800.5(a)(2)(v)). The designation of more than 1,400 miles of ORV routes within the KFO has significant potential to create cumulative adverse effects that are not anticipated or analyzed by the draft EIS.

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**Issue Number:** PP-UT-Kanab-08-0010-35  
**Organization:** Colorado Plateau Archaeological Alliance

**Protester:** Jerry Spangler

**Issue Excerpt Text:**

CPAA's comments on the DRMP also noted that there is no acknowledgement that future OHV use of designated trails through archaeological sites could result in accelerated erosion that would expose subsurface cultural deposits not evident when the site surface was initially damaged. The PRMP responds with an unsupported statement that limiting OHV use to designated routes would "... not increase erosion above natural rates in these areas. This would maintain existing levels of natural deterioration to cultural sites." PRMP at 4-55. The PRMP fails to include data to support this contention; making an unsupported counter statement is not responsive to CPAA's stated concern.

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**Issue Number:** PP-UT-Kanab-08-0010-39  
**Organization:** Colorado Plateau Archaeological Alliance  
**Protester:** Jerry Spangler

**Issue Excerpt Text:**

vehicular traffic may subsequently expose cultural materials that were not visible at the time a Class III inventory was conducted, enhancing the need for ongoing monitoring and future data recovery. BLM did not respond to CPAA's concern in the PRMP.

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***Summary***

The BLM has not properly addressed impacts to cultural resources. Specifically, the direct and cumulative impacts of OHV use on existing routes are not addressed. Impacts are not known because sites remain undiscovered. The BLM did not respond to comments on the DEIS related to impacts to cultural resources. The BLM must comply with Section 106.

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***Response***

The prerequisite level of information necessary to make a reasoned choice among the alternatives is based on the scope and nature of the proposed action. In preparing the PRMP/FEIS, the BLM used the best available information to form the basis for the cultural resources analysis. This baseline data is a result of Sections 106 and 110 inventories of the area and represents the volume of information available. Based on the BLM's professional knowledge and experience, the BLM determined that sufficient information was available on the nature and extent of the direct, indirect, and cumulative effects associated with the alternatives to form the basis of the analysis. In addition, substantive comments received concerning cultural resources were considered and addressed, as appropriate. Any potential surface disturbing activities based on future proposals will require compliance with section 106 and site-specific NEPA documentation.

The BLM will comply with its section 106 responsibilities as directed by the National Historic Preservation Act (NHPA) regulations and BLM Washington Office (WO) Instruction Memorandum (IM) 2007-030 "Clarification of Cultural Resource Considerations for Off-



Highway Vehicle Designation and Travel Management.” As described in the BLM WO-IM-2007-030, cultural resource inventory requirements, priorities, and strategies will vary depending on the effect and nature of the proposed OHV activity and the expected density and nature of historic properties based on existing inventory information:

A. Class III inventory is not required prior to designations that (1) allow continued use of an existing route, (2) impose new limitations on an existing route, (3) close an open area or travel route, (4) keep a closed area closed, or (5) keep an open area open.

B. Where there is a reasonable expectation that a proposed designation will shift, concentrate, or expand travel into areas where historic properties are likely to be adversely affected, Class III inventory and compliance with Section 106, focused on areas where adverse effects are likely to occur, is required prior to designation.

C. Proposed designations of new routes or new areas as open to OHV use will require Class III inventory of the Area of Potential Effects (APE) and compliance with Section 106 prior to designation. Class III inventory of the APE and compliance with Section 106 will also be required prior to identifying new locations proposed as staging areas or similar areas of concentrated OHV use.

D. Class II inventory, or development and field testing of a cultural resources probability model, followed by Class III inventory in high potential areas and for specific projects, may be appropriate for larger planning areas for which limited information is currently available.

The BLM’s cumulative impacts analysis presents a reasonable estimate of the incremental impact to cultural resources as a result of trends in management direction, oil and gas development, increased recreational use of public lands, and the protection or lack thereof afforded by the various alternatives. While these impacts are impossible to quantify, the PRMP/FEIS presents what the BLM considers to be a realistic and qualitative forecast of the general types of impacts that may be expected from various uses. This forecast is comparative; for example, these kinds of impacts would increase or decrease more under one alternative than they would under another alternative. The BLM has conducted all necessary consultation with Utah State Historic Preservation Officer (SHPO) and the Utah SHPO has provided written concurrence which will be appended to the ROD.

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## *Area of Potential Effect*

**Issue Number:** PP-UT-KANAB-08-0009a-121

**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

As with the DRMP, the PRMP makes little effort to address Areas of Potential Effect (APE) outside of designated corridors or to justify a 60-meter corridor as the APE. PRMP at 2-27. In fact, as noted in CPAA’s comments on the DRMP, research elsewhere in Utah demonstrates a survey 30 meters on either side of centerline would be grossly insufficient and would fail to properly consider adverse effects to cultural resources in those areas adjacent to or accessible from the actual routes. Recent research in southeastern Utah has demonstrated that damage to archaeological sites by ORVs can be both direct (driving vehicles through archaeological deposits) and indirect

(using ORVs to gain access to topographic locations where sites are located). Indirect impacts were considered to be more common in that archaeological sites were being impacted by pedestrians who used mechanized vehicles to arrive at or near site locations. Research also found that sites with the greatest evidence of adverse human impacts were those visible from an existing ORV route. Spangler 2006. BLM did not respond to CPAA's concerns regarding the APE.

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### **Summary**

The 60-meter corridor along routes is not an appropriate Area of Potential Effect.

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### **Response**

The 60-meter corridor is not an Area of Potential Effect (APE), but rather is a proposed guideline for prioritizing proactive inventories along existing routes (see p. 2-27 of the PRMP/FEIS). The actual Area of Potential Effect for any future project will be determined in the Section 106 consultation process with the SHPO in accordance with 36 CFR § 800.4(a)(1).

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## **Class III Inventory**

**Issue Number:** PP-UT-KANAB-08-0009a-128

**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

This recommendation is particularly relevant to the establishment of cross-country OHV play areas in dune areas near Coral Pink Sand Dunes. Throughout the greater Southwest, sand dunes have been found to contain large and important archaeological sites, primarily evidence of hunting and gathering during all periods of human occupancy of the region. Although the PRMP notes that there would be a "very low potential for impacts on cultural resources" due to previous Section 106 and 110 inventories, the nature of subsurface deposits in sand dunes is such that many archaeological sites may not be identified until after the ground surface has been altered, either through natural erosion or human factors. Hence, vehicular traffic may subsequently expose cultural materials that were not visible at the time a Class III inventory was conducted, enhancing the need for ongoing monitoring and future data recovery. BLM did not respond to CPAA's discussion of this concern in the PRMP.

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**Issue Number:** PP-UT-KANAB-08-0009a-189

**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

Without first completing cultural resource surveys for each ORV area and trail that is designated in the PRMP, BLM cannot comply with the Executive Order and federal regulations' mandate to minimize impacts to these irreplaceable resources.

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**Issue Number:** PP-UT-KANAB-08-0009a-225

**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

Without first completing cultural resource surveys for each ORV area and trail that is designated in the PRMP, BLM cannot have adequate information on which to base ORV area and trail designation decision.

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**Issue Number:** PP-UT-Kanab-08-0010-23

**Organization:** Colorado Plateau Archaeological Alliance

**Protester:** Jerry Spangler

**Issue Excerpt Text:**

The failure of the BLM to conduct adequate analysis in the past related to OHV impacts along routes currently being used by motorized vehicles was and still remains an abrogation of agency's Section 106 responsibilities, and the failure of the agency to recognize or correct this deficiency in the new Travel Plan appears to validate and perpetuate the agency's failure to comply with Section 106 requirements in the past;

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**Issue Number:** PP-UT-Kanab-08-0010-36

**Organization:** Colorado Plateau Archaeological Alliance

**Protester:** Jerry Spangler

**Issue Excerpt Text:**

The BLM did not respond to CPAA's concern that damage to historic properties along vehicle routes has, historically, not been well documented, and there has

been little effort by the KFO to identify sites along ORV damage. routes that have been damaged or are vulnerable to

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### **Summary**

The BLM cannot fulfill its responsibilities under Section 106 of the National Historic Preservation Act without additional Class III inventories. This is particularly true in OHV open areas and along designated routes. Sites in existing routes that are subject to damage by OHV use should also be inventoried.

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### **Response**

Please see the response to Cultural Resources – Discussion of Cumulative Impacts above and refer to BLM WO IM-2007-030. The BLM has completed the Section 106 process and the concurrence letter from the SHPO will be included as an appendix to the ROD.

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## ***National Register of Historic Places Nominations***

**Issue Number:** PP-UT-KANAB-08-0009a-133  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

### **Issue Excerpt Text:**

The PRMP reflects an unwillingness on the part of the agency to fully embrace BLM's responsibilities under Section 110, as it does not identify those eligible properties the agency will nominate to the National Register, nor do they indicate the willingness of the agency to prioritize properties under its jurisdiction for National Register nominations. Given the federal agency's mandate to actually "nominate" properties to the register, the PRMP should reflect the commitment of BLM to nominate eligible sites and archaeological districts where the cultural resources have been determined eligible for National Register listing. CPAA's comments on the DRMP noted this concern, and BLM failed to respond.

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**Issue Number:** PP-UT-Kanab-08-0010-44  
**Organization:** Colorado Plateau Archaeological Alliance  
**Protester:** Jerry Spangler

### **Issue Excerpt Text:**

The PRMP reflects an unwillingness on the part of the agency to fully embrace the BLM's responsibilities under Section 110, as it does not identify those eligible properties the agency will nominate to the National Register, nor do they indicate the willingness of the agency to prioritize properties under its jurisdiction for National Register nominations. Given the federal agency's mandate to actually "nominate" properties to the register, the PRMP should reflect the commitment of the BLM to nominate eligible sites and archaeological districts where the cultural resources have been determined eligible for National Register listing. CPAA's comments on the DRMP noted this concern, and BLM failed to respond.

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### **Summary**

The BLM did not fulfill its responsibilities under section 110 because appropriate properties are not identified to be prioritized for nomination to the National Register of Historic Places, nor does BLM commit to do so in the future.

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### **Response**

The BLM integrates the protection of cultural resources with its responsibilities for land use planning and resource management under FLPMA to ensure that the effects of any activity or undertaking is taken into account when developing land use plans. In addition, the National Programmatic Agreement, which serves as the basis for the BLM's compliance with National Historic Preservation Act, is the procedural control for BLM managers to meet their responsibilities under Sections 106 and 110.

Until 1980, Section 106 of the NHPA required agencies to consider the effects of their undertakings only on properties listed on the National Register of Historic Places. However in 1980, Section 106 was amended to require agencies to "...take into account the effect of the undertaking on any district, site, building...that is included in or eligible for inclusion in the National Register." Since that time the BLM, through its land use planning process, outlines specific management prescriptions and mitigation measures to protect sites both listed and eligible for the National Register. Any potential surface disturbing activities based on future proposals will require compliance with Section 106 of the NHPA and site-specific NEPA documentation.

The PRMP/FEIS's Cultural Resource Decisions on page 2-27 outline, by alternative, which areas would receive priority for Section 110 inventories. Proactive Section 110 cultural surveys are taking place on a case-by-case basis.

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### *Validity of Statistical Sample*

**Issue Number:** PP-UT-KANAB-08-0009a-99  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**  
BLM cannot properly manage cultural resources it does not know exist, and hence the absence of a statistically valid sample militates against adequate consideration of potential impacts to unknown cultural resources.

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**Issue Number:** PP-UT-Kanab-08-0010-4  
**Organization:** Colorado Plateau Archaeological Alliance  
**Protester:** Jerry Spangler

**Issue Excerpt Text:**  
Class III inventories have been conducted on approximately 57,000 acres, or 10%, of the KFO area. Id. It must be concluded the BLM has little or no data as

to the nature, diversity or distribution of cultural resources on roughly 90 percent of the lands its manages, and that entire environmental and ecological ranges remain unexamined. Thus, the cultural resource data on which the PRMP decisions are based do not comprise a meaningful and statistically valid sample for the entirety of the KFO.

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**Issue Number:** PP-UT-Kanab-08-0010-8  
**Organization:** Colorado Plateau Archaeological Alliance  
**Protester:** Jerry Spangler

**Issue Excerpt Text:**  
The BLM cannot properly manage cultural resources it does not know exist, and hence the absence of a statistically valid sample militates against adequate consideration of potential impacts to unknown cultural resources.

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### *Summary*

Too little of the planning area has been inventoried to allow a valid statistical sample for estimation of effects to cultural resources.

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### *Response*

The prerequisite level of information necessary to make a reasoned choice among the alternatives is based on the scope and nature of the proposed action. In preparing the PRMP/FEIS, the BLM used the best available information to form the basis for the cultural resources analysis. This baseline data is a result of Section 106 and 110 inventories of the area and represents the volume of information available. Based on the BLM's professional knowledge and experience, the BLM determined sufficient information exists to form the basis

of the analysis. Any potential surface disturbing activities based on future proposals will require compliance with Section 106 and site-specific NEPA documentation.

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## ***Fish, Wildlife, Plants, Special Status Species***

### ***Special Status Species***

**Issue Number:** PP-UT-KANAB-08-0004-88

**Organization:** Western Watersheds Project, Inc

**Protester:** John Carter

#### **Issue Excerpt Text:**

In its RMP Appendix M, BLM ignores impacts to T&E species from livestock grazing which can directly alter Mexican spotted owl, southwest willow flycatcher, Utah prairie dog habitats. Appendix M (page AM-5) provides no protection for Utah prairie dog from OHVs, instead stating, "As funding allows, the BLM should complete a comprehensive locating and mapping off-highway vehicle (OHV) use areas that interface with Utah prairie dog populations."

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#### ***Summary***

The PRMP/FEIS does not consider the impacts of livestock grazing on the Mexican spotted owl, southwestern willow flycatcher, and Utah prairie dog. There are no provisions in the plan to protect the Utah prairie dog from OHV use.

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#### ***Response***

The BLM has completed the Section 7 consultation with the FWS and has received a Biological Opinion which concludes that implementation of the plan would not be likely to jeopardize the continued existence of any listed species, including the ones cited in the protest. Resource Protection Measures for special-status species are identified in appendixes 8 and 9.

Livestock grazing was not identified as an issue with respect to the Mexican spotted owl, southwestern willow flycatcher, and Utah prairie dog. This is because the management prescriptions in the PRMP protects riparian areas that encompass southwestern willow flycatcher habitat, and livestock grazing typically does not occur in steep, narrow slot canyons favored by Mexican spotted owls. Adherence to standards and guidelines for grazing would provide protection in Utah prairie dog habitat. Future range projects would be subject the further NEPA analysis and committed mitigation measures outlined in appendixes 8 and 9 would be applied.

Stipulations to protect the Utah prairie dog are found at page 2-13 and appendix 9 of the PRMP/FEIS. Among other requirements, OHV use is limited to designated roads and trails.

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## ***Habitat Connectivity***

**Issue Number:** PP-UT-KANAB-08-0005-26

**Organization:** ECOS Consulting

**Protester:** Charles Schelz

#### **Issue Excerpt Text:**

The Kanab DRMP lists six objectives for the management office and wildlife, but there is no plan, other than the vague term "vegetation treatments"

discussed for obtaining these objectives. The third objective is to "Maintain habitat connectivity and unrestricted wildlife movement between ecological zones to the maximum extent possible." However, the BLM Kanab PRMP/FEIS fails to propose a plan to accomplish this objective, especially when one considers the extent of livestock grazing and the Travel Plan and the haphazard spider-web of proposed designated OHV routes.

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**Issue Number:** PP-UT-KANAB-08-0009a-92  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

B. Requested Remedy. In order to comply with the requirements of NEPA to conduct a thorough analysis of impacts of the management alternatives and to facilitate meaningful public participation and review of the RMP, BLM must thoroughly analyze the specific impacts of habitat fragmentation on affected species and provide a comparison of the management alternatives.

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***Summary***

There are no provisions to maintain habitat connectivity and reduce fragmentation in general for all fish and wildlife species.

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***Response***

Fragmentation of habitat of special status species is addressed on page 2-11 of the PRMP/FEIS. Among the many protective measures in the PRMP/FEIS designed to protect habitat and, thereby, promote habitat connectivity are no surface occupancy or seasonal restrictions on various surface-disturbing activities including oil and gas leasing, prioritization of vegetation treatments to enhance habitat, and right-of-way avoidance areas. Limiting OHV use to designated roads will also reduce additional habitat fragmentation. Decisions implementing the Proposed Plan will be consistent with the goals and objectives regarding habitat fragmentation and connectivity; such decisions will be analyzed in future site-specific NEPA analyses.

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***Lands and Realty***  
***Local Development Concerns***

**Issue Number:** PP-UT-Kanab-08-0007-2  
**Organization:** Garkane Energy  
**Protester:** Bryant Shakespear

**Issue Excerpt Text:**

Issue 1. The State Directors finding that "Exclusions and constraints on ROWs under the Proposed RMP are not expected to substantially constrain local economic development." (4-146 PRMP) is incorrect. As we indicated in item 4 of our comment letter (Public Comments and Responses-Kanab Draft RMP/EIS-July 2008 page 8). The ROW limitations created by exclusion, no surface disturbing action, and visual resource management class I and class II areas will have the effect of cutting Hatch, Spry, Long Valley, Cedar Mountain, and Alton from needed improvements to the electrical transmission system. Based on current and projected electrical demand we anticipate that residences and business in the areas indicated above will experience outages and brownouts during peak load conditions beginning the winter of 2009 or 2010. If this is the case Garkane will be forced to institute no growth policies and we anticipate that existing customers will experience a further erosion in service as the fixed electrical capacity is used to power the ever growing list of electrical devices and appliances.

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### **Summary**

Right-of-way exclusion zones, NSO, and VRM Class I and II areas would preclude needed improvements to the electrical transmission system. This would substantially constrain local development, contrary to the assertion in the PRMP/FEIS.

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### **Response**

As stated in chapter 4 of the PRMP/FEIS on p. 4-105, “ROWs would be excluded on 75,700 acres (14 percent) (Map 11). ROW exclusion areas include WSAs, wilderness areas, and suitable Wild and Scenic River (WSR) corridors with a tentative classification of “wild” or “scenic.” ROWs would be avoided on 106,670 acres (19 percent). ROW avoidance areas include the areas managed for wilderness characteristics, Greater sage-grouse habitat, and Utah prairie dog colonies. In VRM Class I areas (76,000 acres) and Class II areas (94,400 acres), stipulations to meet VRM objectives could be applied to lands and realty actions. These designations and VRM classes could require design and siting requirements and affect associated costs on new ROWs or amended ROWs. Such requirements may restrict placement and could limit future access, delay availability of energy supply (by restricting pipelines, transmission lines, and wind and solar projects), and create dead zones or delay availability of communications service. Such requirements could also require utility corridors and communication sites to be installed in less desirable locations or areas with more restrictions on accessibility or construction.”

While the FLPMA requires the BLM to identify and provide areas for ROWs development, it also calls for the protection of sensitive resources. The PRMP provides many management prescriptions that restrict ROW development for the purpose of protecting special status species (Utah prairie dogs), wild and scenic river corridors, and VRM classes and objectives. The BLM acknowledges that there could be increased costs and delays in siting and approving future ROW as a result of these prescriptions. However, these prescriptions are necessary to protect sensitive resources and mitigate further impacts.

After a result of reviewing the protest, the BLM has removed the decisions to make Greater sage-grouse habitat an ROW avoidance area within one mile of an active lek and within nesting and brood rearing habitat. This change makes the Kanab planning decisions consistent with BLM conservation strategies and Greater sage-grouse land use plan decisions state-wide. This would reduce the acres listed above as ROW avoidance areas from 106,670 acres to 51,570 acres. This change is reflected in a modification to the ROD.

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### ***Parcels Considered for Disposal***

**Issue Number:** PP-UT-KANAB-08-0008-10

**Protester:** Gale Hill

**Issue Excerpt Text:**

ACCESSIBILITY According to FLPMA the lands that should be considered for disposal are typically difficult to access and therefore hard to manage. These acres are directly on Scenic Byway 12 frontage, easily accessed by anyone, and already accessed by Federal Land

Management employees in GSENM or USFS thereby demonstrating that these acres are not at all difficult to manage.

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**Issue Number:** PP-UT-KANAB-08-0008-11

**Protester:** Gale Hill

**Issue Excerpt Text:**

CONSISTENCY There is a lack of consistency as to

which lands the Kanab RMP includes on its "disposal" list and which were removed. For example, the acreage in the NW section of T. 35S, R1E were originally included on this proposed disposal list and then removed when it was called out that the lands were in a riparian area. When I asked the Kanab Planners why the same criterion was not considered for the lands that did end up on this disposal list, they had no evaluation criteria to demonstrate their decision, although the subject lands are both riparian areas and barely within 1/4 mile of one another. These parcels should be treated in the same manner and retained in public land status as riparian area lands to be protected.

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**Issue Number:** PP-UT-KANAB-08-0008-4  
**Protester:** Gale Hill

**Issue Excerpt Text:**

these same maps appear to be inconsistent when compared to one another, specifically when comparing the Inventoried Riparian/Wetland Areas Map [Map 27] with the Fourth-Order Watersheds Maps [Map 25] and the Areas Available for FLPMA Section 203 Sales Proposed RMP [Map 13] the criteria of these acres contradict one another. In other words, if the riparian

areas are to be protected in the watershed corridor, then why would those same acres be listed on a proposed disposal list?

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**Issue Number:** PP-UT-KANAB-08-0008-6  
**Protester:** Gale Hill

**Issue Excerpt Text:**

**PUBLIC PROCESS** Changing the status of the land, from public lands that belong to everyone, to private lands that are owned and developed by a select, elite, few should require a more thorough process, evaluation, and consideration of consistency before arbitrarily being implemented. By their own admission, the Kanab lead Planners had no criteria by which they made this decision. They simply took a list of lands proposed for disposal, made by a single individual and now retired employee, and they added the lands to their resource management plan without substantial criteria to uphold this determination. There is not an alternative that calls out the details of putting these lands on a list for disposal; the process has been pushed through without full public participation and transparency in regards to the maps and text that would detail the evaluation of the lands.

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***Summary***

The list of lands suitable for disposal contains parcels that should not be considered suitable under BLM's guidance. The list includes parcels which have convenient public and administrative access or contain riparian areas.

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***Response***

The following public lands were listed for disposal for potential sale as set forth in the FLPMA, Section 203 Sales in the PRMP/FEIS: Township 35 South, Range 1 East, Section 33 SW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub> and Township 36 South, Range 1 East, Section 4, Lots 1, 2, SW<sup>1</sup>/<sub>4</sub>. Upon review of the protestor's concerns, the BLM has determined that the two parcels do have public access and riparian resources. The protest is granted and the tracts will be removed from those to be listed for disposal under FLPMA, Section 203 Sales.

The listing of 6,400 acres of lands within the planning area that are identified for potential disposal in the PRMP/FEIS is not of itself a decision to dispose of these BLM-managed lands. As stated in chapter 2 of the PRMP, before any land tenure adjustments, the BLM will complete further site-specific NEPA analysis.

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## Leasable Minerals No Leasing Alternative

**Issue Number:** PP-UT-KANAB-08-0009a-256  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

BLM has failed to consider a no leasing alternative in the Kanab PRMP. As part of its analysis BLM must consider a no leasing alternative-in addition to a no action alternative. Federal courts have made clear that a no leasing alternative should be a vital component in ensuring that agencies have all reasonable approaches before them. See, e.g., Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228 (9th Cir. 1988).

(SUWA)

**Issue Excerpt Text:**

The PRMP dismisses the no leasing alternative by mischaracterizing its implications and conflating it with the no action alternative. See Kanab PRMP at 2-62 to -63. The no-leasing alternative does not require BLM to buy back all existing leases. See Kanab PRMP at 2-62. It simply requires that BLM analyze a program in which no future leases are offered. This is not a useless exercise; it allows BLM to compare the difference in impacts between the no leasing alternative and the development alternatives. BLM must fully analyze the no leasing alternative. The present analysis is insufficient.

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**Issue Number:** PP-UT-KANAB-08-0009a-259  
**Organization:** Southern Utah Wilderness Alliance

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### ***Summary***

The PRMP/FEIS fails to consider a realistic no-leasing alternative. The no-leasing alternative considered but eliminated from detailed analysis would require a "buy-back" of existing leases. This mischaracterizes the alternative; a more realistic "no-leasing" alternative would not require a "buy-back" of existing leases, but simply that no new leases would be issued. This alternative should have been analyzed in detail for baselining purposes.

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### ***Response***

A "buy-back" of existing leases was considered as only one potential feature of a "no-leasing" alternative, not necessarily the defining feature. The BLM determined that a "no-leasing" alternative would not meet the purpose and need for the plan because it would lead to the elimination of a principle use of the public lands in the Kanab Field Office.

A "no-leasing" alternative would be considered only if other constraints and management actions, including no-surface-occupancy, were found to be insufficient to resolve issues or conflicts raised during scoping. The Draft RMP/EIS analyzed various categories of decisions, including no leasing of certain areas throughout the planning area. However, an alternative that considered complete elimination of mineral leasing was not necessary to resolve issues related to protection of competing resource values and uses. The proposed oil and gas leasing categories, associated lease stipulations, and best management practices (identified in appendix 1) sufficiently address issues or conflicts raised during scoping and address competing resource values and uses.

A "no future leasing" alternative was not considered because other alternatives were available that (1) would meet the purpose and need of the land use plan, (2) would reduce the adverse environmental effects of the proposed action, (3) are feasible, (4) are not substantially similar in effects to other alternatives that analyzed, and (5) whose effects can be analyzed.

## *Accuracy of Reasonably Foreseeable Development Scenario*

**Issue Number:** PP-UT-KANAB-08-0009a-261

**Organization:** Southern Utah Wilderness Alliance (SUWA)

### **Issue Excerpt Text:**

BLM must also modify its reasonably foreseeable development (RFD) scenario figures in the Kanab PRMP to better reflect historical rates of development. As SUWA demonstrated in its comments on the Kanab Draft RMP, the RFD rate is improperly high. As discussed above, the agency is required to use high quality data and methods for analyses; the inaccurate RFD must be corrected. The PRMP now contends that this high rate is proper and that SUWA did not suggest an alternative method for analyzing development alternatives. See, e.g., Kanab PRMP, Public Comments and Responses at 33, sorted by category name. However, this is incorrect. SUWA pointed out that BLM's RFD scenario was too high and then asked that BLM lower the RFD scenario to be in line with historic development rates.

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### ***Summary***

The BLM ignored a comment that the RFD is unrealistically high and not in line with historic rates.

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### ***Response***

The RFD is a planning and analysis tool which represents unconstrained development potential. The scenario assumes that only standard stipulations and technical limitations would be in place and does not include the overlay of restrictions, stipulations, and timing. In considering this analysis tool, the BLM's Mineral Potential Report explains why recent drilling rates were not included in the RFD: "The recent period of low rates of drilling in the Kanab planning area makes it difficult to use historic drilling rates to predict future activity" (page 72). Developed by the Utah Geological Survey with the best available data, the RFD for the Kanab planning area is the most reasonable and useful scenario for conducting the EIS's analysis.

As more fully explained in the Mineral Potential Report (page 72):

...Looking only at those years when most of the drilling took place (1952-1986) indicates 84 wells drilled in the planning area over a 35-year period for a rate of 2.4 wells per year. From 1952 through 1986, the number of wells drilled per year varied from none to 8 wells per year. During the development of the Upper Valley field (1965 through 1972), a total of 39 wells were drilled for an average or about 5 wells per year. Future drilling on the KPA is projected to vary from 2 to 8 wells per year and average 5 wells per year; however, if a new discovery occurs, then drilling activity would likely be more intense and require a site-specific environmental impact study. Based on an historic average of 5 wells per year, drilling in the planning area during the next 15 years could be expected to involve 75 new well sites. What historic drilling rates do not account for is whether increased demand for petroleum or advances in drilling and seismic technology and reservoir characterization may make parts of the planning area more attractive targets now than they were in the recent past. One such new development is the fact that improvements in horizontal drilling techniques now allow companies to test the crest and both limbs of an anticlinal structure from one well location. A second new technological development is the improvement in seismic data acquisition and interpretation that now allows 3-D visualization of reservoirs and potential hydrocarbon accumulations. Another

new development is an improved understanding of petroleum systems and, as a result, the formulation of a play with reservoirs sourced by organic-rich Proterozoic sedimentary strata. In light of the improved exploration technologies and understanding of petroleum systems, estimates of future drilling in the planning area is estimated by individual petroleum play rather than for the area as a whole. Mirroring the small number of drill holes in the planning area is the small number of oil and gas leases, and the correspondingly small number of acres leased for oil and gas in the Kanab Field Office. As of 2005, a search of the Premier Data System records (BLM written communication, 2005) indicate only 15,520 acres (mostly in the Upper Valley field) of the nearly 1.8 million acres in the planning area are leased for oil and gas (see Map 2). The leased acreage is less than 0.8 percent of the planning area. Availability of lands for oil and gas leasing will be a major factor in determining the level of future exploration and development drilling.

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## **Recreation, Visitor Services**

**Issue Number:** PP-UT-KANAB-08-0009a-170

**Organization:** Southern Utah Wilderness Alliance (SUWA)

### **Issue Excerpt Text:**

In response to our comments on Special Recreation Permits (SRPs) in the Draft RMP, BLM states, "[t]he Federal regulations at 43 CFR 2930 and the BLM Handbook (H-2930-1) govern the issuance of SRPs. Permit durations are managed according to BLM Handbook H-2930-1, and are tailored to the specific proposed use." PRMP Response to Comments at 132, sorted by commentor name. While both statements are true, BLM has not responded to the issue at hand, which deals with what BLM should consider during the land use planning process per the BLM Handbook and regulations. We reiterate that BLM should provide more detailed criteria governing the issuance of SRPs for lands in the planning area due to concerns with the often intensive uses associated with these permits.

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### **Summary**

The BLM did not respond to the comment that criteria governing the issuance of SRPs should be specified in more detail.

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### **Response**

The BLM's response to the comment cites the applicable regulation and guidance pertaining to SRP issuance. This guidance specifies that detailed criteria for SRP issuance are determined when site-specific, implementation level activities are proposed. It is not necessary to provide such detail at the planning tier of analysis. The PRMP/FEIS (pp. 2-41 through 42) provides general evaluation factors, criteria, and restrictions for SRPs appropriate to the issues raised in the RMP.

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## **Soil**

**Issue Number:** PP-UT-KANAB-08-0005-13

**Organization:** ECOS Consulting

**Protester:** Charles Schelz

### **Issue Excerpt Text:**

Failure to Manage Soil Destroying Activities. Activities that disturb and destroy the soil surface and Biological Soil Crusts (BSC's) such as livestock grazing, off-road vehicle use, mining and oil and gas development activities, have a severe impact on many vital parts and

functions of the ecosystem. Soil trampling and destruction from OHV routes and use, and livestock grazing, contribute immensely to soil erosion and the production of fugitive dust. The BLM has failed to take steps to analyze these impacts thoroughly and to minimize impacts. The PRMP fails to include management actions to address and reduce fugitive dust and its negative impacts on vegetation, BSC's, water and air quality, snowpack, etc.

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**Issue Number:** PP-UT-KANAB-08-0005-17

**Organization:** ECOS Consulting

**Protester:** Charles Schelz

**Issue Excerpt Text:**

Not considering the direct, indirect, and cumulative impacts of fugitive dust and the destruction of BSC's is a direct violation of the BLM's own "Fundamentals of Rangeland Health", which directs the BLM to manage livestock grazing so that: "Ecological processes. . . are maintained, or there is significant progress toward their attainment, in order to support healthy biotic populations and communities," 43 C.F.R. § 4180.1(b); and Watersheds are in, or be making significant progress toward, "properly functioning physical condition, including their upland, riparian-wetland, and aquatic components," 43 C.F.R. § 4180.1(a).

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***Summary***

The PRMP/FEIS does not analyze and disclose the impacts of various activities on soils and biological soil crusts and does not employ all feasible management actions needed to minimize impacts. Soil impacts contribute to the production of fugitive dust. This is contrary to the policy in the BLM's own "Fundamentals of Rangeland Health."

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***Response***

Land use planning is a tiered process ranging from broad general allocations and management prescriptions to subsequent site-specific authorizations. Impacts to soils are detailed in the PRMP/FEIS at 4.2.2 at a level of detail appropriate to a planning-tier analysis. Impacts are analyzed and mitigation measures developed in more detail in the site-specific NEPA documents prepared for project-level actions.

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**Travel Management**

**Issue Number:** PP-UT-KANAB-08-0009a-160

**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

BLM's ORV regulations require the agency to designate areas and trails for ORV use "to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors," 43 C.F.R. § 8342( c), but the PRMP fails to take that into account.

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**Issue Number:** PP-UT-KANAB-08-0009a-215

**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

route designations

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**Issue Number:** PP-UT-KANAB-08-0009a-246

**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

BLM's response to SUWA's comment merely restates the number of miles of route to be designated, and notes that this is a change from the current management strategy. See PRMP Response to Comments at 117. In addition, BLM states that since the routes are "already in use. . . it is not reasonable to consider the impacts to vegetation [and soils] from these already disturbed linear surfaces." Id. at 118. BLM's response is non-responsive and a non-starter, as it does not address SUWA's concern regarding the lack of analysis of ORV impacts in the baseline, affected environment discussion.

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**Issue Number:** PP-UT-KANAB-08-0009a-251

**Organization:** Southern Utah Wilderness Alliance

(SUWA)

**Issue Excerpt Text:**

The DRMP did not present this information with respect to the various ORV use area designations, trail designations, and the travel plans under consideration and the PRMP did not correct these gross omissions.

Without this information and data, the public has no way of discerning the basis for BLM's decisions regarding the specific area and trail designations, and cannot confirm that BLM has, in fact, ensured that these designations comply with the minimization requirements and other legal and policy obligations set out above.

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***Summary***

The PRMP/FEIS does not present sufficient information or analysis of the impacts of OHV use on soils or vegetation.

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***Response***

As noted in response to comments on the DRMP/DEIS, the BLM has presented sufficient information and analysis to reach informed decisions related to travel management at the planning level. The scope and nature of the specific proposed action drives what level of analysis must be done to comply with the requirements of the NEPA. The RMPs are used to evaluate broad policies and plans and provide an analytical foundation for subsequent project-specific NEPA documents. Correlations based on BLM's professional judgment associated with OHV activities within the planning area provide sufficient information to form the basis of the analysis. In accordance with 40 CFR § 1502.22, the BLM has also disclosed where baseline information is unknown or unavailable.

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***Discussion of Impact Minimization***

**Issue Number:** PP-UT-KANAB-08-0009a-192  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

the PRMP does not assess the impacts of area and trail designations in the sensitive and fragile soil areas.

**Issue Excerpt Text:**

The PRMP's discussion of water resources fails to include a determination or supporting analysis which shows that impacts (including increased sedimentation and other pollutants) from DRV area and trail designations will be minimized, as required by the ORV regulations.

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**Issue Number:** PP-UT-KANAB-08-0009a-197  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

Although decreasing the number of acres open to cross-country travel might produce less fugitive dust and reduce impacts to air quality, the PRMP does not explain or incorporate the agency's analysis of how designating a 1,000-acre open play area, and over 1,400 miles of dirt route on public lands (some of which are currently rarely used) minimizes the impacts to air quality, or minimizes fugitive dust.

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**Issue Number:** PP-UT-KANAB-08-0009a-200  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

Although prescribing designated trail use rather than cross-country use for most of the decision area might be expected to decrease the impacts to wildlife and wildlife habitat, as noted at PRMP 4-44, there is no information or analysis in the PRMP that suggests that the designated ORV use areas and trails "minimize" the impacts to wildlife and wildlife habitat.

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**Issue Number:** PP-UT-KANAB-08-0009a-198  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

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**Issue Number:** PP-UT-KANAB-08-0009a-204  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

The PRMP states "conflicts between recreationists involved in motorized and non-motorized activities will increase with increasing use of public lands." PRMP at 4-97. However, the PRMP does not include BLM's analysis for determining that its ORV area (such as the Moquith Mountain open area) and trail designations and travel plan minimize conflicts among users, as required by the ORV regulations.

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**Issue Number:** PP-UT-KANAB-08-0009a-208  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

The PRMP's Goals and Objectives stated in the "Transportation" section misstate BLM's responsibilities regarding ORV management, and area and trail designations. The PRMP states that BLM's goals include "[m]aintain access" and "[p]rovide opportunities for OHV use on public lands," and "establishing a route

system that contributes to protection of sensitive resources, accommodates a variety of uses" and minimizes user conflicts." PRMP at 2-42. The PRMP must be corrected to reflect the requirements of the federal ORV regulations that direct BLM "to protect the resources of the public lands. . . and to minimize conflicts among the various uses of those lands." 43 C.F.R. § 8340.0-2 (emphasis added). Specifically, BLM is required to locate ORV areas and trails "to minimize damage to soil, watershed, vegetation, air, or other resources of the public lands, and to prevent impairment of wilderness suitability. . . [and] to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands. . . taking into account noise and other factors." 43 C.F.R. § 8342.1(a), (c) (emphasis added). BLM's own 8340 manual explains that "minimizing" means that the agency should reduce impacts to the maximum extent feasible. See BLM Manual 8340 - Off-Road Vehicles (General) (1982).

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***Summary***

The BLM violates NEPA and Executive Orders because it has not employed all feasible measures to reduce impacts to various resources.

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***Response***

The Executive Orders, regulations, and policy requirements to minimize impacts cited by protester must be understood in light of both a "rule of reason" and the multiple-use mandate. Minimization of impacts does not necessarily mean that impacts should be reduced to zero. Designated routes were screened for impacts to sensitive resources. By limiting OHV use to designated roads and trails in most areas, along with closing some areas to OHV use, the BLM has minimized impacts while still providing an appropriate mix of uses of the public lands. The NEPA does not require the decisionmaker to select the environmentally preferable alternative or prohibit all adverse environmental effects. Where it is feasible to do so, specific protections or mitigation measures to minimize impacts to resources, such as air quality, fragile soils, wildlife, cultural resources, etc. have been developed to reduce, eliminate, compensate for, or avoid the adverse effect.

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***Analysis of Off-Highway Vehicles Impacts***

**Issue Number:** PP-UT-KANAB-08-0009a-218  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

In the context of the Kanab PRMP, the decisions made with regard to transportation and designation of ORV areas and trails fail to fully analyze all effects of those decisions and other planning decisions. Thus, the indirect, cumulative, and site specific environmental and

social impacts of these decision are not adequately analyzed. Specifically, the PRMP fails to take a hard look at the effects of the travel plan and ORV area and trail designations on the following resources.

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**Issue Number:** PP-UT-KANAB-08-0009a-223  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

Various riparian areas, including the E. Fork of the Virgin River and Upper Kanab Creek are in ORV use areas with designated routes in the riparian areas, yet the PRMP fails to disclose the potential direct, indirect and cumulative effects such decisions will have on the riparian areas.

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**Issue Number:** PP-UT-KANAB-08-0009a-232  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**  
the PRMP fails to discuss enforcement strategy to keep ORV users on the "designated" routes, and also fails to analyze the impacts of designating routes within WC lands and managing the WC lands for motorized use.

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**Issue Number:** PP-UT-KANAB-08-0009a-235  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

the PRMP fails to adequately analyze the potential impacts to wildlife and wildlife habitat from the ORV area designations, trail designations, and the travel plan.

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**Issue Number:** PP-UT-KANAB-08-0009a-238  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

Soils. The PRMP states that "there is insufficient soils data to Map (sic) these areas [sensitive and fragile soils] accurately. . ." and that detailed soils surveys for the Kanab Field Office area are not available. PRMP at 3-19, 4-5. As this information is critical to assessing the impacts of designated open areas and ORV routes in various soil types, the PRMP fails to take a hard look at the impacts of ORV area and trail designations with respect to the soil resource.

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**Summary**

The PRMP/FEIS fails to take the required "hard look" at the impacts of travel management decisions and OHV use. Specifically, the PRMP/FEIS does not adequately analyze impacts to riparian areas and wildlife.

Impacts to fragile and sensitive soils cannot be adequately analyzed because detailed soils mapping is not available.

No OHV enforcement strategy is presented in the plan.

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**Response**

The general impacts of decisions related to OHV use are discussed and adequately disclosed in the various sections as related to each resource. For example, the discussion of impacts to riparian areas is found at section 4.2.4; and to wildlife at section 4.2.6. Impacts from OHV use are included in those discussions. In addition, please see the response to NEPA – Baseline Data and Modeling above.

As stated in the PRMP/FEIS on page 3-19, there is insufficient soils data to map all sensitive soils accurately. However, sensitive soils are usually identified at the project level through onsite visits and field verification of available data. Fragile soils (i.e., highly erosive soils) is a subset of these sensitive soils that is identified and mapped using the available soil, geology, topographic information, and best professional judgment and experience (see map 24 of the PRMP/FEIS).

As noted in response to multiple comments on the DRMP/DEIS, allocation of BLM law enforcement resources is an administrative action that does not require a planning decision.

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## *Authority to Conduct Travel Management Planning*

**Issue Number:** PP-UT-KANAB-08-0012-8

**Organization:** Kane County Commission

**Protester:** Mark Habbeshaw

### **Issue Excerpt Text:**

The wording on page 2-43 fails to address the BLM's duties and an obligation related to processing non-binding determinations and assumes unilateral authority regarding "route modifications" which is not the case. These pages indicate that "establishing a route system" and "transportation system" management of all roads across BLM managed lands is under BLM authority. It fails the requirements of R.S. 2477, FLPMA §§ 509(a) and 701 (a)(h), controlling case law and BLM regulations dealing with the establishment of valid exiting rights

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### ***Summary***

The BLM lacks the unilateral authority to establish a route system or transportation system. The BLM has a duty and obligation to process R.S. 2477 non-binding determinations.

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### ***Response***

The FLPMA provides the BLM with ample authority to establish a route/transportation system on public lands. This PRMP/FEIS does not adjudicate, analyze, or otherwise determine the validity of claimed rights-of-way. Chapter 1 of the Draft RMP/EIS (p. 1-13) and chapter 1 of the PRMP/FEIS under section 1.3.2, both clarify that the State of Utah and Kane and Garfield counties may hold valid existing rights-of-way in the planning area pursuant to Revised Statute (RS) 2477, Act of July 28 1866, chapter 262, 8, 14 Stat. 252, 253, codified at 43 USC 932 (repealed by FLPMA, 43 USC § 1701 et seq.). However, nothing in the PRMP/FEIS extinguishes any valid right-of-way or alters in any way the legal rights the State and counties have to assert and protect RS 2477 rights or to challenge in Federal court or other appropriate venue any use restrictions imposed by the RMP that they believe are inconsistent with their rights.

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## **Tribal Interests**

### ***Impacts to Cultural Resources/Traditional Properties***

**Issue Number:** PP-UT-KANAB-08-0014-2

**Organization:** Kaibab Band of Paiute Indians

**Protester:** Ona Segundo

### **Issue Excerpt Text:**

We have a documented history protesting the damage that will be done to our cultural resources with the proposed Alton Coal Mine; the BLM cannot claim that "cultural values would be protected. . ." because clearly they ) will be destroyed. [Page: 4-53 in the Internal Review Copy; also see comment letter]

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**Issue Number:** PP-UT-KANAB-08-0014-4

**Organization:** Kaibab Band of Paiute Indians

**Protester:** Ona Segundo

### **Issue Excerpt Text:**

We continue to oppose OHV usage that is not adequately policed in the BLM regions within our homelands. The BLM claims that "cultural resources away from designated routes would be protected from OHV impacts" and "there would be no impacts from OHV use on 25,000 acres closed to OHV use, in areas away from the designated routes, and on 75 miles of closed routes" but cannot substantiate those claims in any way; shape or form through analysis. Page: 4-51 in the Internal Review Copy; also see comment letter]

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### ***Summary***

The proposed Alton Coal Mine would destroy cultural values. The tribe opposes OHV use that is not adequately policed in the BLM regions within our homelands because of the potential for damage to cultural resources.

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### ***Response***

The Alton Coal Mine was considered as a reasonably foreseeable development action in the Reasonably Foreseeable Development scenario (RFD) for mineral resources, and the environmental consequences of the RFD actions were analyzed in the PRMP/FEIS. However, the decisions in PRMP do not authorize any leasing or development activities associated with the mine. The issuance of a lease for the mine is being addressed in a site-specific EIS.

The PRMP/FEIS was based on the premise that public land users would comply with all OHV regulations, i.e., the users would stay on designated routes. Any increase in the allocation of BLM law enforcement resources to patrol a particular area or protect a particular resource is an administrative action that does not require a planning decision.

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## ***Environmental Justice***

**Issue Number:** PP-UT-KANAB-08-0014-3

**Organization:** Kaibab Band of Paiute Indians

**Protester:** Ona Segundo

### **Issue Excerpt Text:**

We have gone on record with the Utah and Arizona regional BLM offices as opposing OHV rides in the Elephant Butte/Moquith Mountain area during part of the year as it stresses the mule deer herd that ranges onto our reservation and represents both a large source of income as well as a traditional food resource for our community, yet the BLM's Draft RMP concludes (without data to support their conclusion) that no disproportionate adverse impacts to our community will occur from its implementation. [Page: 4-51 in the Internal Review Copy; also see comment letter]

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### ***Summary***

OHV use in the Elephant Butte/Moquith Mountain area would cause impacts to a mule deer herd that is a large source of income as well as a food source for tribal members. This would cause a disproportionate adverse impact to the tribal community.

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### ***Response***

As cited in the chapter 3 discussion of mule deer (p. 3-54 of the PRMP/FEIS), OHV use is not a major cause of deer habitat decline: "The cause of habitat decline is generally associated with decadent sagebrush steppe and encroaching pinyon-juniper communities."

The Zion Deer Herd Management Unit – referred to by the protester - is located in Iron, Kane, and Washington counties (specifically, the area spans from I-15 and the Utah/Arizona State line, north along Interstate 15 to State Route (SR) 14, east on SR 14 to US 89 to US 89A, south on US 89 A to the Utah/Arizona State line, and west on the Utah/ Arizona State line to Interstate 15). Only a small portion of the management unit is located in the planning area. A major portion of this herd unit is located on private land.

Currently, the Zion Deer Herd Unit Management Plan (prepared by Utah Division of Wildlife Resources) requires the winter-modeled population to be 9,000 deer on the entire Wildlife Management Unit and to maintain a unit-wide three-year average post-season buck to doe ratio of 15 to 20 bucks per 100 does. The Deer Herd Unit management goals include maintaining a healthy deer population with a post-season numbers that are in balance with available winter range. The Deer Herd Unit's objectives include maintaining and protecting adequate habitat to support herd populations, improving quality of critical deer winter range east off I-15 and south of Cedar City, reduction of highway deer mortality, working with private landowners to maintain both summer and winter habitat on private lands, and working cooperatively to maintain deer winter range between Cedar City and Anderson Junction.

The PRMP/FEIS decisions are consistent with the goals and objectives of the Utah DWR's Zion Deer Herd Management Plan for reduction of fragmentation of deer winter range on the Deer Herd Unit through elimination of cross country OHV travel and limitation of use to a designated route system. The designated route system includes only existing routes and would not result in new fragmentation; no new routes are proposed.

Recent data shows that the Zion Deer Herd Management Plan's goals and objectives are being met. Recent herd health, post-season counts for 2007-2008 show 53 fawns per 100 does; 42 fawns per 100 adults; and 25 bucks per 100 does, with 45 percent of bucks being 3 point or higher. These figures are within the objectives and goals of the Deer Herd Unit. In addition, the PRMP provides for AUM (animal unit months) in each livestock grazing allotment to support the winter modeled population of 9,000 deer unit-wide and the 15 to 20 bucks per 100 doe ratio (see table 3-24, pages 3-81 through 3-84 of the PRMP/FEIS).

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## *Vegetative Communities*

### *Vegetation Treatment Decisions*

**Issue Number:** PP-UT-KANAB-08-0005-18  
**Organization:** ECOS Consulting  
**Protester:** Charles Schelz

**Issue Excerpt Text:**

The BLM is proposing to manage the resources by various "vegetation treatments" over an average of 22,300 acres a year, or over 88% of the total area of the Decision Area in the next 20 years. This appears to be an arbitrary and excessive figure for which little basis is provided in the PRMP/FEIS.

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**Issue Number:** PP-UT-KANAB-08-0005-25  
**Organization:** ECOS Consulting  
**Protester:** Charles Schelz

**Issue Excerpt Text:**

The BLM fails to show that the lands covered by of the Kanab PRMP/FEIS are functioning properly, or what they will do to ensure proper functioning in the next 10-20 years.

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**Issue Number:** PP-UT-KANAB-08-0005-3  
**Organization:** ECOS Consulting  
**Protester:** Charles Schelz

**Issue Excerpt Text:**

These conditions [such as properly functioning physical condition of the watersheds] are not evident in the Kanab Field Area and are not adequately described or addressed in the Kanab PRMP/FEIS, even though these management requirements were established almost 15 years ago.

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**Summary**

The PRMP/FEIS does not provide adequate support for the decisions related to vegetation. The BLM fails to show that lands are functioning properly or that management actions will ensure proper functioning. There is no basis for the decision to conduct vegetation treatments on 22,300 acres per year.

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**Response**

As stated in the responses to comments on the DRMP/DEIS, the management action to perform vegetation treatments on an average of 22,300 acres a year is designed to give the BLM management flexibility in performing vegetation treatments. The treatment of 22,300 acres a year is the maximum average amount of acres that would potentially be treated per year. This average is based on the ecological threshold that the vegetation communities are adapted to based on the research described in chapter 3 of the PRMP/FEIS. This research is summarized in the table 3-8, which identifies the thresholds of disturbance for the 20-year planning horizon for each vegetation type under both frequent and infrequent disturbance regimes. The areas to be prioritized for treatment are described in the discussions by resource (soils, water, vegetation, special-status species, etc.), with resource-based rationale as to how the treatment would contribute to proper functioning of the ecosystem and other pertinent management objectives. The actual areas to be treated in any given year will vary based on available funding, cooperator support, and availability of contractors and other resources.

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**Off-Highway Vehicle Use in Riparian Areas**

**Issue Number:** PP-UT-KANAB-08-0009a-185  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

The Kanab PRMP ORV area designations, trail designations, and the travel plan fail to comply with the minimization requirements of the Executive Orders and FLPMA's implementing regulations.

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**Issue Number:** PP-UT-KANAB-08-0009a-186  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

The PRMP fails to disclose how these designation decisions will minimize impacts to these and other riparian areas, and it fails to analyze the impacts of ORV area and trail designations on riparian areas.

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**Summary**

The PRMP/FEIS does not demonstrate that allowing OHV use in riparian areas implements the objectives of Executive Order 11990.

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**Response**

The BLM applied the requirements of Executive Orders in the development of management prescriptions in the PRMP/FEIS to protect and minimize impacts to riparian areas. The Executive Orders require that impacts be minimized to the extent practical but do not require prohibition of activities that may cause impacts. The Utah BLM Riparian Policy (IM-UT-2005-091) provides specific guidance to Utah BLM riparian lands while supporting all BLM national guidance directives.

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## *National and Utah Riparian Policy*

**Issue Number:** PP-UT-KANAB-08-0009a-59

**Organization:** Southern Utah Wilderness Alliance (SUWA)

### **Issue Excerpt Text:**

Inclusion of such information in the PRMP, including the exact location and function status of each riparian area, is required by statute, the Utah BLM Riparian Policy, and judicial review standards against agency action that is arbitrary, capricious, and contrary to law. FLPMA, 43 U.S.C. §§ 1701-1785, § 1701(a)(2) (2000), declares that "the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried." The Utah BLM Riparian Policy explains that each field office is "responsible for. . . mapping and inventorying all riparian areas in [its] jurisdiction" and "will, to the extent possible. . . [i]nventory and map riparian areas within each office." Utah BLM Riparian Policy at 3. The policy further explains that this responsibility will normally be completed during the Resource Management Planning (RMP) process. In order to be useful, the RMP, at a minimum will: Contain the Field Office riparian area priority list. Identify key riparian areas using PFC inventory and determine whether or not they are properly functioning systems. Identify riparian areas for possible acquisition. Identify riparian areas which

meet policy tests for disposal or exchange. Identify easement acquisition which will improve Bureau management of existing riparian areas. Identify riparian areas with outstanding qualities to be considered for special designation or management. Contain planning and monitoring objectives for riparian area management. Utah BLM Riparian Policy at 7-8. This required information, however, is noticeably absent from the PRMP.

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**Issue Number:** PP-UT-KANAB-08-0009a-61

**Organization:** Southern Utah Wilderness Alliance (SUWA)

### **Issue Excerpt Text:**

The aggressively protective management approach urged by the Utah BLM Riparian Policy and Executive Order 11990 precludes allowing ORV use in riparian areas. Without discussion of whether areas or designated trails open to ORV use include or cross riparian areas, or information of the exact location and status of riparian areas located in the decision area, it is impossible to determine whether the PRMP implements the objectives of the Executive Orders and BLM policy to which it is bound. The absence of this and other information required by the Utah BLM Riparian Policy illustrates the PRMP's failure to adequately address riparian and wetland areas.

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### ***Summary***

The BLM did not comply with national and Utah riparian policy.

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### ***Response***

The Utah Riparian Policy, UT-IM-2005-091, states that existing planning documents will be reviewed to determine if riparian areas are in compliance with the minimum requirements list for RMPs cited by the protesters. Pursuant to the policy, existing plans will be updated through activity level plans or plan revisions if the plans are found to be noncompliant. The Southern Utah Wilderness Alliance is correct in that because the Utah Riparian Policy was issued in 2005, the Kanab RMP should have complied with all of the requirements in the Land Use Planning section of this policy. The Kanab PRMP/FEIS, however, complies with the BLM 1737, Riparian-Wetland Area Management (USDI, 1992) and substantially complies with UT-IM-2005-091 as follows:

- Developed a Field Office riparian area priority list based on watershed as listed in the Management of Riparian Areas portion of chapter 2 of the PRMP, page 2-6.
- Identified key riparian areas using PFC inventory and determined whether or not they are properly functioning systems in table 3-9 (PRMP/FEIS at page 3-35).
- Identified criteria for acquisition or exchange which would guide future acquisition or exchange of riparian areas (PRMP/FEIS at page 2-8).

- Identified riparian areas with outstanding qualities to be considered for special designation or management including the Cottonwood Canyon ACEC, which protects many riparian areas that contain the water system of Fredonia, AZ. Also the Wild and Scenic Rivers recommended as suitable protect some of the main riparian areas in the Kanab Planning Area, for example the Virgin River.
- Developed planning and monitoring objectives for riparian area management and put them in the RMP (PRMP/FEIS at page 2-8).

The sections required by the Utah Riparian Policy that were omitted from the PRMP/FEIS, including developing a riparian area priority list and identifying riparian areas for easement acquisition, do not significantly affect the analysis or any of the decisions in the document. Additionally, the Utah Riparian Policy recognizes that the stated goals for RMPs can be achieved through activity level planning after the plan has been completed. Thus, the BLM will prioritize completion of the requirements as listed UT-IM-2005-091 as part of the implementation of the Kanab Approved Plan.

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## **Visual Resource Management**

**Issue Number:** PP-UT-KANAB-08-0009a-136

**Organization:** Southern Utah Wilderness Alliance (SUWA)

### **Issue Excerpt Text:**

BLM guidelines for assigning VRM Classes clearly states that "Class I is assigned to those areas where a management decision has been made previously to maintain a natural landscape. This includes areas such as national wilderness areas and other congressionally and administratively designated areas where decisions have been made to preserve a natural landscape." BLM, BLM Manual 8410 - Visual Resource Inventory at V(A)(1). Designating most non-WSA lands managed for wilderness characteristics as Class II is contrary to BLM's own internal policy.

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### ***Summary***

The BLM violates its own policy by not managing non-WSA lands with wilderness characteristics as VRM Class I, as required by BLM Manual 8410.

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### ***Response***

The decisions associated with non-WSA lands with wilderness characteristics in the Proposed Plan are discretionary allocation decisions and do not represent formal designation, administrative or otherwise. The VRM Manual 8400 explains that visual management objectives are established in RMPs in conformance with the land use allocations made in the plan. These area-specific objectives provide the standards for planning, designing, and evaluating future management projects. Instructional Memorandum 2004-096 added Wilderness Study Areas to the list of areas that should be classified as VRM Class I, and managed as such until the Congress decides to designate the area as wilderness or release it for other uses. This directive does not extend this protection to areas that have wilderness characteristics.

The BLM chose to manage these lands as VRM Class II to retain the existing character of the landscape and allow for only low levels of change. This management objective is similar to that for VRM Class I. VRM Class I is reserved for congressional and administrative designations,

whereas VRM Class II, III and IV are associated with an area's scenic quality, public sensitivity and visibility. VRM Class II is the most protective management classification of the three classifications that consider scenic quality, public sensitivity and visibility.

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## Water

### *Baseline Information and Monitoring Data*

**Issue Number:** PP-UT-KANAB-08-0005-7

**Organization:** ECOS Consulting

**Protester:** Charles Schelz

**Issue Excerpt Text:**

The BLM fails to identify any riparian areas where assessments were performed, a poor functional condition was determined, or where there was an effective change of management that changed the rating and trend of a riparian area. This is a violation of [the National Riparian Area Management Policy] NRAMP, the Riparian-Wetland Initiative, the Fundamentals of Rangeland Health and Standards and Guidelines, 43 CFR § 4180, and the following executive orders: Executive Order (EO) 11988 (May 24, 1977), the Floodplains EO, EO 11990 (May 24, 1977), the Wetlands EO, EO 12088 (October 24, 1978), the Local Water Quality EO, and EO 12962 (1995), Fisheries and Aquatic Ecosystems EO.

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**Issue Number:** PP-UT-KANAB-08-0008-3

**Protester:** Gale Hill

**Issue Excerpt Text:**

The Kanab RMP should include a Field Office riparian area priority list that identifies key riparian areas using PFC inventory to determine functioning riparian systems. There appears to be no documentation of use of these riparian guidelines or monitoring steps included in the Kanab RMP.

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**Issue Number:** PP-UT-KANAB-08-0009a-228

**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

The PRMP notes that impacts to water resources from cross-country ORV use would be "nearly eliminated" because cross-country travel will be limited to 1,000 acres, and that ORV use on designated routes "would maintain existing vegetation and soil resources by focusing impacts on existing linear disturbances that have already been affected." PRMP at 4-19. However, the PRMP fails to reference or incorporate BLM's analysis that supports this assertion, and the PRMP fails to provide the public and decision-maker with any

monitoring reports that discloses the effects on water quality due to ORV use in and near streams and creeks (including increased sedimentation and other pollutants).

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**Issue Number:** PP-UT-KANAB-08-0009a-66

**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

In order to comply with FLPMA, the PRMP should provide a summary of water quality analyses for the water bodies in the planning area. This summary should provide monitoring of water quality indicators, including temperature, alkalinity, specific conductance, pH, dissolved oxygen, turbidity, hardness, dissolved solids, and suspended solids, as required by the CWA. The PRMP should state what the current baseline water quality is, as measured by these indicators, for each water body in the planning area. Knowing the baseline water quality is essential to understanding whether the activities permitted in the PRMP will violate WQS. See 43 C.F.R. § 2920.7(b)(3); 43 D.S.C. § 1712(c)(8).

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**Issue Number:** PP-UT-KANAB-08-0009a-77

**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

Without analyzing baseline concentrations and preparing modeling to determine what the baseline concentrations of relevant pollutants will be, BLM cannot understand or disclose the impacts of these pollutants on water quality. BLM's lack of water quality analysis does not satisfy NEPA's hard look requirement. BLM must analyze and model water quality to understand these impacts. BLM's failure to comply with FLPMA, as discussed above, also constitute NEPA failures on the part of the BLM because it does not understand the impacts of those activities it is permitting on water and water quality standards.

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### **Summary**

The PRMP/FEIS does not disclose sufficient baseline information on riparian area condition or water quality to support the impact analysis or the decisions. Riparian PFC monitoring results should be disclosed and areas prioritized. Water quality monitoring is needed to establish a baseline.

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### **Response**

Detailed baseline information on riparian condition is available in the Kanab Field Office, and is part of the administrative record. This voluminous information was summarized in Section 3.2.5 of the PRMP/PFEIS. The BLM works cooperatively with the State of Utah Department of Environmental Quality (DEQ) to monitor water quality. The results of this water quality monitoring, along with other best available data, formed the basis for the discussion of existing water quality in Section 3.2.4. In particular, the DEQ annual Integrated Report was incorporated. The nature and scope of the proposed action dictates the level of analysis, and specificity of information required. For the broad planning level analysis, the information provided in Chapter 3 provides a general summary of baseline water quality, which is sufficient to make a reasoned choice among the alternatives. Therefore, more detailed water indicators are not necessary or required.

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## ***Impact Analysis and the Need for Modeling***

**Issue Number:** PP-UT-KANAB-08-0004-79  
**Organization:** Western Watersheds Project, Inc  
**Protester:** John Carter

**Issue Excerpt Text:**

No discussion of the role of livestock in degradation of water quality, or the role of range improvements in degradation of water quality, loss of wetlands and impacts to wildlife are provided in the RMP.

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**Issue Number:** PP-UT-KANAB-08-0009a-65  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

Because the PRMP permits activities (e.g. oil and gas development, vehicle travel on designated routes, mining) without modeling the effect that these activities will have on ambient concentrations of pollutants in water, the PRMP fails to satisfy its FLPMA obligations.

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**Issue Number:** PP-UT-KANAB-08-0009a-67  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

The PRMP also fails to quantify the various pollutant

levels (e.g. phosphorus, dissolved oxygen, aluminum, nitrate, chloride, ammonia, etc.), as identified in the CWA, which will result [from the decisions made in the RMP. Likewise, the PRMP fails to quantify contaminant levels to be expected from cumulative impacts in the area. After determining the baseline pollutant concentrations, BLM must model the effects on water quality that will result from the activities authorized in the PRMP. These results should then be compared to the CWA standards for protection of WQS. Only then can BLM determine whether it is complying with federal and state water quality standards, as FLPMA requires.

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**Issue Number:** PP-UT-KANAB-08-0009a-75  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

Because BLM failed to analyze water quality baselines and similarly failed to model the water-quality effects of activities allowed under the PRMP, there is no evidence, certainty, or indication that the Kanab PRMP will comply with federal and state water quality standards, as required by FLPMA.

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**Issue Number:** PP-UT-KANAB-08-0009a-82  
**Organization:** Southern Utah Wilderness Alliance

(SUWA)

**Issue Excerpt Text:**

The PRMP also fails to quantify the water pollution that will result from such activities as mining and oil and gas development. Even though both of these activities can contaminate water supplies, BLM has not discussed this or quantified these impacts.

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**Issue Number:** PP-UT-KANAB-08-0009a-84

**Organization:** Southern Utah Wilderness Alliance

(SUWA)

**Issue Excerpt Text:**

In summary, the Kanab PRMP does not adequately analyze the impacts to water quality that will result from the activities planned for in this document. These failures are contrary to both FLPMA, which requires that BLM observe water quality standards, and NEPA, which requires that BLM disclose the impacts of the activities it is analyzing.

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***Summary***

The PRMP/FEIS fails to adequately analyze the impacts to water quality. Modeling is required for an adequate impacts analysis.

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***Response***

The scope and nature of the specific proposed action drives what level of analysis must be done to comply with the requirements of NEPA. Resource Management Plans are used to evaluate broad policies and plans (not to authorize any site specific activity), and provide an analytical foundation for subsequent project-specific NEPA documents. The impacts to water quality as a result of the management decision in the PRMP/FEIS are analyzed at the appropriate level of detail for RMP-level decisions and are fully disclosed in Section 4.2.3., as well as in sections pertaining to specific water uses.

Water quality modeling was not conducted at the planning level of analysis because many of the necessary inputs or variables, such as detailed information on sources, are not available. Modeling at a landscape-level is extremely complex and standardized models and protocols are not available. However, modeling would be conducted, where appropriate, for site-specific analysis at the project-level.

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***Wild and Scenic Rivers***

***Wild and Scenic River Act Eligibility Process***

**Issue Number:** PP-UT-Kanab-08-0011-12

**Organization:** Utah Rivers Council

**Protester:** Amy Defreese

**Issue Excerpt Text:**

b. In its Draft Evaluation Report (2005), the BLM includes Attachment 1: Summary of All Potentially Eligible River Segments Considered and Identification of ORVs and Attachment 2: Evaluation of Outstandingly Remarkable Values. In Attachment 1, the BLM identifies Segment 9-10 of Kanab Creek from point 9 to the dam north of Kanab as perennial, free-flowing and containing potential scenic and wildlife ORVs. Yet the BLM did not carry this

segment forward to Attachment 2 for ORV evaluation. The BLM similarly identified Section 10-11 of Tiny Creek (beginning at the BLM boundary in Section 6 to confluence with Kanab Creek) as perennial, free-flowing and containing potential wildlife ORVs. Yet again, the BLM did not carry this segment forward to Attachment 2 for ORV evaluations. The BLM appears to have acted in an arbitrary and capricious manner in its evaluation of potentially eligible river segments. In subsequent EIS documentation, the BLM did not explain its rationale for dropping these segments from consideration between Attachment J and 2.



**Issue Number:** PP-UT-Kanab-08-0011-13  
**Organization:** Utah Rivers Council  
**Protester:** Amy Defreese

**Issue Excerpt Text:**

c. In attachment 2: Evaluation of Outstandingly Remarkable Values in the BLM's Draft Evaluation Report (2005), the BLM documents that the North Fork of the Virgin River, Segment 48-49 within Sections 31-33 is Eligible with a classification as Wild. Yet in Appendix G of the Draft RMP/EIS, the BLM only includes Sections 31-32 as Eligible for suitability consideration (Table AG-2). The BLM discloses no rationale for its determination to release Section 33 from eligibility. Therefore, we can only conclude that the BLM's eligibility decision is arbitrary and capricious.

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**Issue Number:** PP-UT-Kanab-08-0011-14  
**Organization:** Utah Rivers Council  
**Protester:** Amy Defreese

**Issue Excerpt Text:**

i. In Attachment 2 of the BLM Draft Evaluation Report (2005), the BLM identifies three ORV's for North Fork Virgin River, segment 46A7, yet it does not disclose sufficient rationale for its determination that the ORVs are not outstandingly remarkable. Specifically, it is unclear why the scenery is not notable, scarce or exemplary when the entire segment is rated as Class A scenery.

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**Issue Number:** PP-UT-Kanab-08-0011-3  
**Organization:** Utah Rivers Council  
**Protester:** Amy Defreese

**Issue Excerpt Text:**

Based on the description provided in the Draft Evaluation Report; we submit that the BLM's initial act to inventory eligible rivers was arbitrary and capricious, and in violation of the Wild & Scenic Rivers Act (WSRA).

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**Issue Number:** PP-UT-Kanab-08-0011-35  
**Organization:** Utah Rivers Council  
**Protester:** Amy Defreese

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***Summary***

The BLM failed to provide adequate support and rationale for various non-eligibility decisions for Wild and Scenic Rivers.

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***Response***

The BLM's rationale for all eligibility determinations is detailed in the Eligibility Report. The rationale for the final decisions will be detailed in the ROD.

**Issue Excerpt Text:**

b) The BLM acted arbitrarily in its final suitability determinations for each river it evaluated. While it discloses the considerations it made under each suitability factor (for some eligible rivers), it did not ultimately disclose why each river was determined suitable or unsuitable. Information is absent regarding how the BLM used the information it disclosed in its suitability evaluations for actual determination of suitability.

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**Issue Number:** PP-UT-Kanab-08-0011-5  
**Organization:** Utah Rivers Council  
**Protester:** Amy Defreese

**Issue Excerpt Text:**

While the BLM Kanab Office clearly conducted a process of segmentation, it does not articulate how the process was conducted nor does it document the results of that process in the Draft Evaluation Report (2005) or subsequent NEPA documents.

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**Issue Number:** PP-UT-Kanab-08-0011-6  
**Organization:** Utah Rivers Council  
**Protester:** Amy Defreese

**Issue Excerpt Text:**

We submit that the BLM did not disclose its process of segmentation which is critical to public's understanding of BLM decision-making.

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**Issue Number:** PP-UT-Kanab-08-0011-7  
**Organization:** Utah Rivers Council  
**Protester:** Amy Defreese

**Issue Excerpt Text:**

In the case of Kanab Creek in particular, the BLM arbitrarily re-segmented the reaches under consideration between its 2005 Draft Evaluation Report and the Draft RMP/EIS, or after it evaluated the free flowing nature and ORV's of the segments. The BLM does not disclose its rationale for the change and we submit that the agency acted arbitrarily and in conflict with Interagency Guidance.

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## *Designation of Wild and Scenic River Segments*

**Issue Number:** PP-UT-KANAB-08-0009b-31  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

In addition, not protecting the segment and permitting development in the Cottonwood Complex would impair the eligible status of the river in violation of the WSRA and BLM's own manual. 16 U.S.C. § 1273; BLM Manual § 8351.32(C).

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**Issue Number:** PP-UT-Kanab-08-0011-36  
**Organization:** Utah Rivers Council  
**Protester:** Amy Defreese

**Issue Excerpt Text:**

c) The BLM failed to evaluate suitability for Segment

45-45a of Orderville-Esplin Gulch although it included this segment as eligible in Table AG-2 of Appendix G of the Draft EIS/RMP.

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**Issue Number:** PP-UT-Kanab-08-0011-4  
**Organization:** Utah Rivers Council  
**Protester:** Amy Defreese

**Issue Excerpt Text:**

Furthermore, we submit that the BLM did not properly disclose its process and results as required by the WSRA and the National Environmental Policy Act (NEPA) as well as subsequent policy guidance including BLM Manual 8351, and the Wild & Scenic River Review In the State of Utah, Process and Criteria for Interagency Use (July 1996) (Blue Book).

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### *Summary*

The BLM failed to designate the following eligible segments as suitable, violating the NEPA, the Wild and Scenic Rivers Act (WSRA), and BLM's own Manual (M-8351):

- Cottonwood Canyon complex; and
- Orderville-Esplin Gulch.

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### *Response*

As per BLM Manual 8351.33c (8351 – Wild and Scenic Rivers – Policy and Program Direction for Identification, Evaluation, and Management), “During the formulation of RMP/EIS alternatives, management of all public lands, including river areas and corridors, is addressed. At least one alternative analyzed in detail shall provide for designation of those eligible river segments (being studied in the RMP/EIS) in accordance with the tentative classifications which have been made. Another alternative shall provide for no designation. The no-action alternative, i.e., a suitability determination is not made, should provide for on-going management, including continuation of protective management of eligible segments. Additional alternatives may be formulated for any combination of designations and/or classifications.” According to the WSRA and the 8351 Manual there is no requirement to make each eligible river suitable. Appendix 13 of PRMP/FEIS details the process (as outlined by the 8351 Manual) used to determine which river segments BLM recommends as suitable.

Rationale supporting suitability determinations or eligible river segments studied in the RMP/EIS shall be included in the ROD for the RMP. Although the Cottonwood Canyon complex is not recommended as suitable, the Orderville-Esplin Gulch segment is recommended as suitable in the PRMP/FEIS.

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## *Designated Habitat for the Spotted Owl*

**Issue Number:** PP-UT-Kanab-08-0011-16

**Organization:** Utah Rivers Council

**Protester:** Amy Defreese

**Issue Excerpt Text:**

In addition, in Appendix 11 of the Proposed RMP and Final EIS, the BLM provides rationale for its determination that the Wildlife ORV it previously identified for this segment of the North Fork Virgin River is not outstandingly remarkable. The BLM states that "Spotted owl designated critical habitat is present; however, per BLM -M -8351 Section .3(c) ('Contiguous habitat conditions are such that the biological needs of the species are met'), the habitat in this corridor is not contiguous and does not meet the needs of the species in this area." This rationale is arbitrary and capricious as well as inaccurate. It is arbitrary and capricious because it is in conflict with the WSRA and guidance in the Blue Book that does not limit outstandingly remarkable determinations to whether habitat is contiguous.

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**Issue Number:** PP-UT-Kanab-08-0011-18

**Organization:** Utah Rivers Council

**Protester:** Amy Defreese

**Issue Excerpt Text:**

The BLM found an adjacent segment of North Fork

Virgin River (segment 48A9) eligible because it contained Spotted owl designated critical habitat managed cooperatively with Zion NP. We submit that if the BLM considered the larger North Fork Virgin River corridor, there is 'clearly contiguous Spotted owl habitat and Segment 46-47 is part of that contiguous habitat. It appears that management considerations drove the ultimate determination for each segment as one segment is managed cooperatively with Zion National Park and the other is not. Congress and subsequent agency guidance limits the factors of eligibility to free-flowing waters and the presence of at least one ORV. Management is not an attribute considered in the eligibility process.

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**Issue Number:** PP-UT-Kanab-08-0011-21

**Organization:** Utah Rivers Council

**Protester:** Amy Defreese

**Issue Excerpt Text:**

iv. In its determination of ORVs for Kanab Creek, the BLM acts arbitrarily in its decision that the ORVs are not "outstanding". For example, in Appendix G of the Draft RMP/EIS, the BLM determines that the Recreational ORV it applied to Segment 9-10 is apparently not outstanding because use is primarily local. Whether recreation use is local or not is not a factor of eligibility

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### ***Summary***

The BLM's determination that a segment of the North Fork of the Virgin River is not eligible for WSR designation is arbitrary and capricious because the determination of outstandingly remarkable values (ORVs) does not depend on whether the spotted owl habitat is contiguous, nor whether the habitat is managed cooperatively with another agency. The BLM's determination that a segment of the Kanab Creek is not eligible for WSR designation is arbitrary and capricious because the determination of outstandingly remarkable values does not depend on whether recreation use is local or not.

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### ***Response***

The language cited by protester regarding contiguous habitat is quoted directly from the BLM Manual 8351 (8351 – Wild and Scenic Rivers – Policy and Program Direction for Identification, Evaluation, and Management), and as such, represents BLM policy. If the habitat does not meet the needs of the species, the standard for outstandingly remarkable value is not met. However, the BLM may consider contiguous habitat managed by other agencies under a cooperative agreement in determining if the habitat as a whole meets the needs of a species.

The BLM may also consider manageability in determining eligibility. In contrast to the segment found eligible, the majority of the land in this area of the segment of the North Fork of the Virgin River is private and subject to development.

For determinations of eligibility under the Recreation Category, the BLM is to determine whether the segment has "regional or national" significance. Purely local interest is not considered to meet this standard.

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### *The Eight Wild and Scenic River Act Factors*

**Issue Number:** PP-UT-Kanab-08-0011-29

**Organization:** Utah Rivers Council

**Protester:** Amy Defreese

**Issue Excerpt Text:**

b) That BLM acted arbitrarily, and in violation of the WSRA, because it considered factors beyond the 8 enumerated in the WSRA. Specifically, the BLM lists for consideration these inappropriate factors: i. Manageability of the river if designated and other means of protecting values; and ii. Interest of federal, public, state, tribal, local, or other public entity in designation or non-designation, including administration sharing.

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**Issue Number:** PP-UT-Kanab-08-0011-30

**Organization:** Utah Rivers Council

**Protester:** Amy Defreese

**Issue Excerpt Text:**

Manageability of the river upon designation is an inappropriate and unlawful suitability factor. Congress specifically states in the WSRA that the Secretary of the Interior and the Secretary of Agriculture shall give priority to those rivers which possess the greatest proportion of private lands within their areas. Yet, in the BLM's suitability evaluation of Deep Creek for example, it states that land status and

classification level would create problems for manageability because the segment is isolated and surrounded by private land. The BLM thereby determines that Deep Creek is unsuitable for designation because it is surrounded by private land which is in direct conflict with Congressional direction in the WSRA.

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**Issue Number:** PP-UT-Kanab-08-0011-31

**Organization:** Utah Rivers Council

**Protester:** Amy Defreese

**Issue Excerpt Text:**

The WSRA enumerates a suitability factor that only considers the interest of the State in helping to preserve and administer suitable rivers. The BLM again inappropriately and unlawfully expands the scope of suitability factors to include the willingness of other governments to participate and those government's opinions on designation. Specifically, as it evaluates the "interest of federal, public, state, tribal, local or other public entity in designation or non-designation, including administration sharing", the BLM uses local, state agency, and water users' opposition to designation to support its non-suitability determinations. Again, the BLM acts arbitrarily and in direct conflict with suitability factors clearly articulated in the WSRA.

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### ***Summary***

The BLM violated the WSRA by considering factors for suitability beyond the eight enumerated in the WSRA such as:

- manageability of the river if designated;
- other means of protecting values; and
- interest of Federal, public, State, tribal, local or other public entities.

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### ***Response***

The BLM is in full compliance with BLM Manual 8351 (8351 – Wild and Scenic Rivers – Policy and Program Direction for Identification, Evaluation, and Management). According to BLM Manual 8351, the BLM should consider among other factors:

- Federal, public, State, tribal, local, or other interests in designation or non-designation of the river, including the extent to which the administration of the river, including the costs thereof, may be shared by State, local, or other agencies and individuals.
- Other issues and concerns, if any.

Thus, the BLM can consider other factors for determining suitability than those enumerated in the WSRA. The specific factors considered are detailed in Appendix 13 of the PRMP/FEIS.

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### *Changed Wild and Scenic River Act Classifications*

**Issue Number:** PP-UT-KANAB-08-0009b-20  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

In violation of its own manual, and in disregard of SUWA's comments on the draft RMP, BLM chose to downgrade the classification of segment 37-40a of the East Fork of the Virgin River, through Parunuweap WSA, from "wild" to "scenic." PRMP at 2-52; see BLM Manual § 8351.32(C); 16 U.S.C. § 1273(b).

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**Issue Number:** PP-UT-Kanab-08-0011-38  
**Organization:** Utah Rivers Council  
**Protester:** Amy Defreese

**Issue Excerpt Text:**

1. The range of alternatives the BLM chose to include was inadequate and incomplete. According to its own internal guidance, "At least one alternative analyzed in detail shall provide for designation of those eligible river segments in accordance with the

tentative classifications which have been made" (BLM Manual 8351). Yet, in Alternatives B and C the BLM downgrades the classification of segment 36-37 East Fork Virgin River from Scenic to Recreational. Therefore, the BLM does not consider one alternative that analyzes in detail the designation of eligible river segments in accordance with the tentative classifications made during the eligibility process.

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**Issue Number:** PP-UT-Kanab-08-0011-41  
**Organization:** Utah Rivers Council  
**Protester:** Amy Defreese

**Issue Excerpt Text:**

classification is an objective determination the BLM made in its eligibility process based on the type and degree of human development associated with the river and adjacent lands as they exist at the time of the evaluation. It is arbitrary and capricious to downgrade those classifications in various alternatives during the Draft and Final RMP process.

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### ***Summary***

The BLM's decision to downgrade segments from "wild" to "scenic," or from "scenic" to "recreational," violates the policy stated in Manual 8351.32(C). The BLM must consider at least one alternative that analyzes the designation of eligible segments in accordance with the tentative classifications made during the eligibility process.

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### ***Response***

As stated in the response to comments on the DRMP/DEIS, the BLM's Wild and Scenic Rivers manual BLM-M-8351 section .33(c) (8351 – Wild and Scenic Rivers – Policy and Program Direction for Identification, Evaluation, and Management) states, "Whenever an eligible river segment has been tentatively classified, e.g., as wild, other appropriate alternatives may provide for designation at another classification level (scenic or recreational)." During the alternative preparation process, the BLM Interdisciplinary Team made a specific field trip to the East Fork Virgin River segments in August 2006 to review the initial findings of the inventory. Based on that field trip, the two inventoried segments were revised to be three segments. The East Fork Virgin River segment 36-37, which was originally classified as "scenic" was found to include more route crossings than were originally known. As a result, its tentative classification was adjusted to "recreational" to comply with BLM-M-8351 section .51(C). As the field trip continued along the entire extent of the route, it was found that the some routes came close to the

river several times along the upper portion of the segment. As a result, the East Fork Virgin River segment 41-37 was separated into two segments, with segment 41-40a retaining the “wild” classification between the last route and the planning area boundary and segment 40a-37 being modified to “scenic” to comply with BLM-M-8351 sections .51(A) and .51(B).

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## *Rights-of-Way in Wild and Scenic River Areas*

**Issue Number:** PP-UT-KANAB-08-0009b-23  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

Furthermore, the WSRA requires that, once classified as "wild," a river segment must be administered to preserve its existing Outstandingly Remarkable Values, including that it remain "generally inaccessible except by trail." 16 U.S.C. § 1273(b)(1). By opening segments 37-40a of the East Fork of the Virgin River to RS-2477 rights-of-way, BLM would make the river accessible by routes and impair the river's Outstandingly Remarkable Values, in direct violation of the WSRA. 16 U.S.C. § 1273(b).

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**Issue Number:** PP-UT-KANAB-08-0009b-25  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

Also, as discussed in detail in our comments on the draft RMP, claimed RS 2477 rights-of-way are not legitimate bases for designation of motorized routes. Designations must be made based on the BLM's regulations (43 C.F.R. § 8342.1) and, in this context, the IMP and the WSRA. The agency must adhere to

applicable laws and policies in designating routes and must forego any approach that could lead to a legally-questionable validation of RS 2477 rights-of-way claims. Designation of routes should be consistent with the management objectives set out in the RMP to prioritize certain uses and protect specific values, such as the Outstandingly Remarkable Values of this river segment. To the extent that BLM is basing its classification of this river segment and the resulting management on the existence of R.S. 2477 assertions and not on the priorities established in the applicable laws, policies, and regulations, BLM is violating governing law and policy. BLM has never made an administrative determination that a valid RS 2477 right-of-way exists here, nor has the County apparently requested (or BLM granted) a Title V right-of-way for the area. Therefore, BLM has no basis for managing this river corridor as if a right-of-way may exist. Further, if Kane County wishes to establish that it has a RS. 2477 valid right-of-way against BLM, the County bears the burden of proof in federal court under the Quiet Title Act. See *SUWA v. BLM*, 425 F.3d 735 (10th Cir. 2005) (placing the burden of proof squarely on those claiming to hold RS. 2477 rights-of-way). The County has never filed such a suit.

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### ***Summary***

The BLM inappropriately used a claimed R.S. 2477 right-of-way as a factor to downgrade a Wild and Scenic River segment of the East Fork Virgin River.

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### ***Response***

In Appendix 13 (pp. 18-19) of the PRMP/FEIS, the BLM incorrectly identified a Kane County claimed R.S. 2477 route as a factor to downgrade a Wild and Scenic River segment of the East Fork Virgin River (Segment 37-41). This should have been identified as a “way” that was open to motorized use. The presence of the way was the factor considered in classifying the segment as “scenic.” The county’s claim that the way is an R.S. 2477 right-of-way is not a determining factor and the BLM erred by including the R.S. 2477 reference. A clarification to the ROD will be made to reflect this correction.

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## *Application of Protective Management*

**Issue Number:** PP-UT-KANAB-08-0012-16  
**Organization:** Kane County Commission  
**Protester:** Mark Habbeshaw

**Issue Excerpt Text:**

BLM has no authority to perform interim management under a standard other than multiple use and sustained yield, on alleged eligible Wild and Scenic River "WSRA" segments that are proposed but not yet approved by Congress. Congress has granted no such authority to BLM to stray from the multiple use, sustained yield mandate.

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**Issue Number:** PP-UT-KANAB-08-0012-26  
**Organization:** Kane County Commission  
**Protester:** Mark Habbeshaw

**Issue Excerpt Text:**

In May of 2008, the County submitted the following comments: The Wild and Scenic Rivers Act does not confer authority on BLM to perform interim protective management on so-called "suitable segments." Those segments are still subject to the multiple use mandate unless and until Congress actually places those segments in the National Wild and Scenic River System.

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### *Summary*

The BLM has no authority to apply interim protective management prescriptions on segments determined to be eligible or suitable. Those segments are still subject to the multiple use mandate unless and until Congress actually places those segments in the National Wild and Scenic River System.

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### *Response*

The FLPMA gives the BLM broad authority to manage the public lands, including management of eligible and suitable river segments. For eligible rivers, it is BLM's policy to protect certain values identified in the eligibility determination process to ensure that a decision on suitability can be made. To accomplish this objective, the BLM's management prescriptions must protect the free-flowing character and tentative classifications and identify outstandingly remarkable values of eligible rivers according to the prescriptions and directions of the current, applicable RMP per BLM Manual Section 8351.32C (8351 – Wild and Scenic Rivers – Policy and Program Direction for Identification, Evaluation, and Management). The BLM Manual further states that should a determination on suitability not be made during the planning process, "the RMP must prescribe protective management measures to ensure protection shall be afforded the river and adjacent public land area pending the suitability determination" (Section 8351.33A). The NEPA specifies that while work on the EIS is in progress, BLM cannot undertake or authorize any actions in the interim that would prejudice the RMP decision or, in this case, the suitability determination (40 CFR § 1505.1 (c)(3)).

A case-by-case evaluation of potential impacts resulting from a proposed action must be made to ensure that all eligible rivers are considered for suitability among the range of RMP alternatives, thus avoiding prejudice in the decisionmaking process. Implementation of the interim management to protect eligible rivers, therefore, is applied through site-specific NEPA analysis of environmental impacts on a case-by-case basis. The NEPA compliance, required for all Federal actions that could significantly affect the environment, ensures that BLM consider alternatives to the proposed action and provides BLM with an opportunity to apply mitigation measures that will reduce impacts on a given resource such as an eligible stream. With the release of the Record of Decision, protective prescriptions are applied to those river segments determined to be suitable (for example, visual resource management, OHV use restrictions, and mineral leasing stipulations are applied). No special management objectives would be applied

to eligible rivers that were determined not to be suitable; these segments would be managed without additional consideration, according to the provisions of the plan.

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### ***Compliance with Manual 8351– Wild and Scenic Rivers: Policy and Program Direction for Identification, Evaluation, and Management***

**Issue Number:** PP-UT-Kanab-08-0011-24

**Organization:** Utah Rivers Council

**Protester:** Amy Defreese

**Issue Excerpt Text:**

On page 3 of the Draft Evaluation Report where it describes an overview of its process, the BLM states that it will determine final eligibility by reviewing public comments received and by making a final determination of eligible river segments. It then states that all eligible rivers will be carried into the Draft Kanab RMP for further consideration as to their suitability, therefore implying that the final determination will not be made in the Draft RMP, but prior to it. Yet, the BLM only released its final eligibility determination in the Draft RMP.

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**Issue Number:** PP-UT-Kanab-08-0011-25

**Organization:** Utah Rivers Council

**Protester:** Amy Defreese

**Issue Excerpt Text:**

In Blue Book guidance for the eligibility process, the authors articulate in Step 12 that agencies should "Complete documentation of findings and provide

feedback". Specifically, they should "consider comments that are received before making findings of eligibility and tentative classification" and "provide feedback to all involved entities" (page 7). The BLM did not follow this guidance as it did not disclose how it considered comments received after it released its Draft Evaluation Report in 2005 specific to the eligibility process.

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**Issue Number:** PP-UT-Kanab-08-0011-26

**Organization:** Utah Rivers Council

**Protester:** Amy Defreese

**Issue Excerpt Text:**

Furthermore, in BLM Manual 8351.06 C, the BLM states that "All data and information upon which WSR river determinations (eligibility and suitability) are based shall be included in the planning records and summarized in documents circulated for public review in sufficient detail to permit full disclosure and clear and widespread understanding." We submit that the BLM did not follow this guidance as it did not articulate in the Draft RMP how it considered public comment received after it released its Draft Evaluation Report in 2005

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### ***Summary***

The BLM failed to follow the process specified in Manual 8351(8351 – Wild and Scenic Rivers – Policy and Program Direction for Identification, Evaluation, and Management) because the Draft RMP does not disclose how comments received on the Draft Evaluation Report were addressed, and because the final eligibility determinations were not released until the Draft RMP.

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### ***Response***

The BLM complied with all applicable policy in the 8351 Manual and the Blue Book. The Draft Wild and Scenic River Eligibility Report was made available for public comment as required. The BLM reviewed the comments received and incorporated changes, as necessary. The final determinations were issued and published in the Draft RMP, which was available for a 90-day public comment period. Appendix G of the DRMP/DEIS and Appendix 13 of the PRMP/FEIS detail this process.

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## *Wilderness Characteristics*

### *Consideration of Small Parcels*

**Issue Number:** PP-UT-KANAB-08-0009a-151  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

In addition, BLM arbitrarily reviewed and divided the proposed Vermilion Cliffs wilderness character unit into many smaller units that the agency then rejected from further consideration as containing wilderness character.

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**Issue Number:** PP-UT-KANAB-08-0009a-154  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

First, as SUWA explained in its comments on the Kanab DRMP, BLM's outright rejection of SUWA-nominated wilderness character areas that are contiguous with roadless Forest Service lands that, combined, total over 5,000 acres, is arbitrary. See SUWA DRMP Comments at 28-30. As we noted in our comments, the Wilderness Act does not preclude BLM from considering lands outside of its

jurisdiction to arrive at a 5,000 acre unit. BLM admits as much. See PRMP at 3-75. In its response to comments, BLM nevertheless continues to insist that it will not consider these smaller areas if they are not contiguous with roadless lands that are administratively endorsed for wilderness by another agency: "[f]or lands to qualify for consideration, they need to be 5,000 acres in size or adjacent to areas administratively endorsed by another federal agency." PRMP Response to Comments at 112, sorted by commentor name. There is no basis whatsoever for this additional criterion either in the Wilderness Act or BLM policy. Importantly, BLM itself acknowledges in the PRMP that "[a]reas of less than 5,000 acres are generally not large enough to provide" outstanding opportunities for solitude and/or primitive recreation," thus leaving the door open that in some cases units less than 5,000 acres may provide these opportunities. PRMP at 3-75 (emphasis added). But see PRMP Response to Comments at 112, sorted by commentor name (stating that units must either be 5,000 acres or adjacent to administratively endorsed wilderness from another federal agency)

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### *Summary*

The BLM arbitrarily divided the proposed Vermilion Cliffs wilderness character unit into many smaller units that the agency then rejected from further consideration. Additionally, BLM arbitrarily rejected parcels under 5,000 acres that are contiguous with lands managed by other agencies (but are not administratively endorsed for wilderness management).

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### *Response*

As noted in the BLM wilderness characteristics review (part of the RMP administrative record), the Vermilion Cliffs wilderness character unit was subdivided based on various man-made visual intrusions. These included numerous vehicle routes, previous land treatments and seedings, range improvements, and widespread woodcutting.

As noted on page 3-75 of the PRMP/FEIS, "In evaluating areas for their wilderness characteristics, the Kanab Field Office took into consideration the language of the 1964 Wilderness Act, and concluded that a size criterion is an important indicator of whether or not outstanding opportunities for solitude and/or primitive recreation exist." That criterion, however, was not a conclusive deciding factor.

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## *Consideration of New Wilderness Study Areas*

**Issue Number:** PP-UT-KANAB-08-0004-49  
**Organization:** Western Watersheds Project, Inc

**Protester:** John Carter

**Issue Excerpt Text:**

This [lack of WSA re-inventory] not only violates FLPMA and its regulations, but it also violates NEPA's policy of full public disclosure of the significant environmental impacts, affected environment, reasonable alternatives, and changed circumstances.

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**Issue Number:** PP-UT-KANAB-08-0009a-152  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

Finally, BLM violated NEPA when it refused to even

mention, let alone fully analyze, an alternative that would have designated new WSAs.

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**Issue Number:** PP-UT-KANAB-08-0009a-157  
**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

Finally, as discussed in SUWA's comments on the Kanab DRMP, BLM violated NEPA when it failed to even mention-let alone fully analyze-an alternative that would designate new wilderness study areas pursuant to the agency's broad authority under 43 U.S.C. § 1712. See SUW A DRMP Comments at 25-26.57

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***Summary***

The BLM failed to consider an alternative that would have created new Wilderness Study Areas (WSAs) from the non-WSA lands with wilderness characteristics.

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***Response***

The BLM has long acknowledged that FLPMA Section 603 (43 U.S.C. § 1782) requiring a one-time wilderness review has expired. All current inventory of public lands is authorized by FLPMA Section 201 (43 U.S.C. § 1711). The BLM does periodically, and on a continuing basis, monitor existing WSAs in accordance with the Interim Management Policy for Lands under Wilderness Review (IMP), but has no authority to create new ones.

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***Managing for Wilderness Characteristics***

**Issue Number:** PP-UT-KANAB-08-0012-4  
**Organization:** Kane County Commission  
**Protester:** Mark Habbeshaw

**Issue Excerpt Text:**

The management of "non-WSA lands with wilderness characteristics" is a reiteration of the 1999 attempt to manage for wilderness beyond the authority to do so by Congress. In Chapter 2, pages 2-29 and 2-30 the County protests any decision to manage for wilderness characteristics as proposed. In Chapter 3, pages 3-74 to 3-80, the BLM proposes to manage specific units as inventoried areas with wilderness characteristics. The County protests all references to management in these pages as being beyond the BLM's authority. In Chapter 4, 4-76 to 4-87 the BLM applies much more restrictive criteria for the management of land inventoried as having wilderness characteristics. The County protests all such references to implementing stricter criteria the management of public land based on wilderness values or inventory criteria as being beyond the BLM's authority.

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***Summary***

The BLM has no authority to manage lands for wilderness characteristics.

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***Response***

As noted on page 5-42 of the PRMP/FEIS, the BLM has long acknowledged that FLPMA Section 603 (43 U.S.C. 1782) requiring a onetime wilderness review has expired. All current inventory of public lands is authorized by FLPMA Section 201 (43 U.S.C. 1711). In September 2006, the Utah District Court affirmed that the BLM retained authority to protect lands it

determined to have wilderness characteristics in a manner substantially similar to the manner in which such lands are protected as WSAs (*SUWA v. Norton*, 457 F. Supp. 2d 1253 (D. Utah 2006)). The BLM's authority for managing lands to protect or enhance wilderness characteristics is derived directly from FLPMA Section 202 (43 U.S.C. 1712). This section of BLM's organic statute gives the Secretary of the Interior authority to manage public lands for multiple use and sustained yield. Nothing in this section constrains the Secretary's authority to manage lands as necessary to "achieve integrated consideration of physical, biological, economic, and other sciences" (FLPMA, Section 202(c)(2) (43 U.S.C. 1712(c)(2))).

Further, FLPMA makes it clear that the term "multiple use" means that not every use is appropriate for every acre of public land, and that the Secretary can "make the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use" (FLPMA, Section 103(c) (43 U.S.C. 1702(c))). FLPMA intended for the Secretary of the Interior to use land use planning as a mechanism for allocating resource use, including wilderness characteristics management, among the various resources in a way that provides uses for current and future generations. In addition, the *BLM Land Use Planning Handbook* (H-1601-1) directs BLM to "identify decisions to protect or preserve wilderness characteristics (naturalness, outstanding opportunities for solitude, and outstanding opportunities for primitive and unconfined recreation)" and to "include goals and objectives to protect the resource and management actions necessary to achieve these goals and objectives. For authorized activities, include conditions of use that would avoid or minimize impacts to wilderness characteristics." Finally, the *Utah v. Norton Settlement Agreement* does not affect the BLM's authority to manage public lands. This Agreement merely remedied confusion by distinguishing between WSAs established under FLPMA Section 603 and those lands required to be managed under Section 603's non-impairment standard, and other lands that fall within the discretionary FLPMA Section 202 land management process.

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## *Wilderness Study Areas*

### *Motorized Use in Wilderness Study Areas*

**Issue Number:** PP-UT-KANAB-08-0009a-148

**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Issue Excerpt Text:**

Given this framework, BLM's decision to continue permitting motorized use on so-called "inventoried ways" in WSAs is arbitrary. First, to the extent that BLM fully knows the location of inventoried ways in WSAs, SUWA disputes that BLM is taking the steps outlined in the PRMP to eliminate motorized vehicles when users leave existing ways. For example, Kanab BLM field staff reports prepared in the late 1990s confirmed that ORV users were frequently traveling cross-country and damaging soils and vegetation in the Parunuweap WSA. Though BLM issued a closure order in the Parunuweap WSA and other WSAs in 2000 pursuant to 43 C.F.R. § 8341.2, that illegal use has not entirely abated. The IMP requires that BLM

prohibit motorized use outright in the Parunuweap WSA. Second, the IMP prohibits surface disturbing activities such as permitting motorized use off of "existing ways;" that is, on ways that were not in existence, inventoried, and documented when the WSA was first established. See, e.g., IMP H-8550-1.I.B.3. Here, BLM is proposing to permit motorized use on a portion of the so-called "Loop Route" in the Moquith Mountain WSA that was not in existence at the time of the initial wilderness inventory. See *id.* at Glossary of Terms (defining "way" and "existing way"). This decision violates FLPMA's non-impairment mandate as defined by the IMP.

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**Issue Number:** PP-UT-KANAB-08-0009a-149

**Organization:** Southern Utah Wilderness Alliance (SUWA)

**Protester:**

**Issue Excerpt Text:**

BLM's decision to permit cross-country motorized use on vegetated sand dunes in the Moquith Mountain WSA is also contrary to the IMP and thus the PRMP must be changed to prohibit such activity. See PRMP at 4-127; SUWA Comments at 65-69. In its response to comments, BLM generally asserted that because it has permitted cross-country motorized use in the sand dunes since 1980 this use is permissible. See PRMP Response to Comments at 138. As noted above, the IMP strictly prohibits surface disturbance that requires activities such as "restoration of native plant cover." See supra. Though the IMP does permit BLM to designate open areas for motorized vehicles in sand dunes, H-8550-1.III.H.11,

this activity must still comply with the IMP's explicit prohibition of surface disturbance. As BLM is well aware, the section of the Coral Pink Sand Dunes located within the Moquith Mountain WSA contains unique and important vegetated dunes. See PRMP at 3-30 (describing Coral Pink Sand Dunes as containing a myriad of native plant species); 3-41 to -42 (discussing Coral Pink Sand Dunes Tiger Beetle and Welsh's Milkweed). Despite BLM's repeated efforts for years to prohibit motorized users from traveling cross-country through the vegetated dunes, such use continues today in violation of the IMP, See photo of Moquith Mountain (attached as Exhibit D). BLM must thus close the Moquith Mountain WSA sand dunes area to motorized use.

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***Summary***

Motorized use in Wilderness Study Areas (WSAs) violates the Interim Management Policy for Lands under Wilderness Review (IMP) where such use occurs on routes not documented in the inventory used to establish the WSA or where such use occurs off a road or way and creates surface disturbance that would impair the suitability of the area for designation as wilderness.

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***Response***

The IMP allows for continued use of inventoried ways in WSAs while WSAs are pending Congressional action. The IMP does not specify that ways will be opened or closed. However, any use of ways must maintain the suitability of the WSA for designation as wilderness. The decision to allow continued use is based on a determination that such use does not affect wilderness suitability and, therefore vehicular use may continue. Likewise, the cross-country use of sand dunes is permitted where it is determined that such use does not affect the suitability of the WSA for designation as wilderness. BLM monitoring has indicated that cross-country use in the sand dunes has not impaired wilderness suitability. As for the identified routes (ways) available for motorized use, these routes have not resulted in impairment of wilderness values and are continually monitored. Where routes would remain available for motorized use within WSAs, such use could continue on a conditional basis. Use of the existing ways could continue as long as the use of these routes does not impair wilderness suitability, as provided by the IMP.