

*Director's Protest Resolution Report*

**Price  
Resource Management Plan**

October 29, 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 NEPA** — Topic heading

**Submission number**

**Protest issue number**

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

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

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

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

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

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

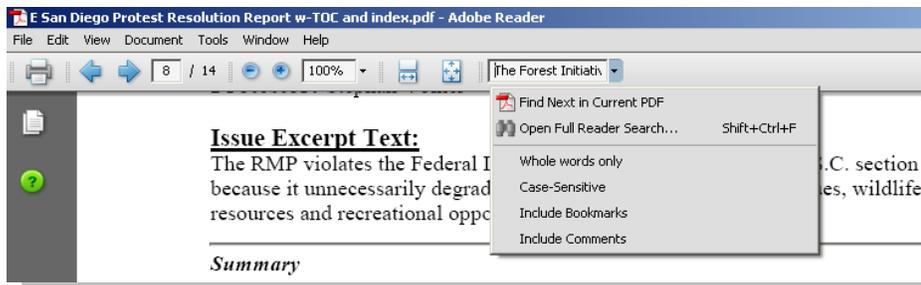
There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

**Response** — **BLM's response to the summary statement or issue excerpt if there is no summary.**

Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a

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

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



## List of Commonly Used Acronyms

ACEC	Area of Critical Environmental Concern	IB	Information Bulletin
APD	Application for Permit to Drill	IM	Instruction Memorandum
BA	Biological Assessment	MOU	Memorandum of Understanding
BLM	Bureau of Land Management	NEPA	National Environmental Policy Act of 1969
BMP	Best Management Practice	NHPA	National Historic Preservation Act of 1966, as amended
BO	Biological Opinion	NOA	Notice of Availability
CAA	Clean Air Act	NOI	Notice of Intent
CEQ	Council on Environmental Quality	NRHP	National Register of Historic Places
CFR	Code of Federal Regulations	NSO	No Surface Occupancy
COA	Condition of Approval	OHV	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
CSU	Controlled Surface Use	RFDS	Reasonably Foreseeable Development Scenario
CWA	Clean Water Act	RMP	Resource Management Plan
DM	Departmental Manual (Department of the Interior)	ROD	Record of Decision
DOI	Department of the Interior	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)
FWS	U.S. Fish and Wildlife Service		
GIS	Geographic Information Systems		

*Protesting Party Index*

<b>Protester</b>	<b>Organization</b>	<b>Submission Number</b>	<b>Determination</b>
	Center for Native Ecosystems	PP-UT-Price-08-0009	Granted in Part
	Public Employees for Environmental Responsibility	PP-UT-Price-08-0009	Dismissed-No Standing
	Sierra Club, Utah Chapter	PP-UT-Price-08-0009	Granted in Part
	Southern Utah Wilderness Alliance	PP-UT-Price-08-0009	Granted in Part
	The Wilderness Society	PP-UT-Price-08-0009	Granted in Part
Bell, Brooke	Anadarko Petroleum Corporation	PP-UT-Price-08-0003	Dismissed-Only Comments
Carter, John	Western Watersheds Project	PP-UT-Price-08-0008	Denied-Issues Comments
Cukjati, Gary	National Outdoor Leadership School	PP-UT-Price-08-0007	Denied-Issues Comments
Danenhauer, Mark	Utah Rivers Council	PP-UT-Price-08-0006	Denied-Issues Comments
Hansen, Steven	Individual	PP-UT-Price-08-0013	Dismissed-Only Comments
Hays, Ti	National Trust for Historic Preservation	PP-UT-Price-08-0010	Denied-Issues Comments
Hinchey, Maurice	U. S. House of Representatives	PP-UT-Price-08-0014	Denied-Issues Comments
Johnson, Gary	Individual	PP-UT-Price-08-0002	Dismissed-Only Comments
Kleiner-Roberts, Amy	Outdoor Industry Association	PP-UT-Price-08-0007	Denied-Issues Comments
Konopka, Carla	Petro-Canada Resources, Inc.	PP-UT-Price-08-0004	Granted in Part
Scotter, Troy	Utah Rock Art Research Association	PP-UT-Price-08-0001	Denied-Issues Comments
Sgamma, Kathleen	Independent Petroleum Association of Mountain States	PP-UT-Price-08-0012	Denied-Issues Comments
Spangler, Jerry	Colorado Plateau Archaeological Alliance	PP-UT-Price-08-0005	Denied-Issues Comments
Wolfe, Michael	Utah State University	PP-UT-Price-08-0011	Denied-Issues Comments

## Issue Topics and Responses

### NEPA

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

**Issue Number:** PP-UT-PRICE-08-0008-14  
**Organization:** Western Watersheds Project, Inc.  
**Protester:** John G. Carter

**Issue Excerpt Text:**

If the agency cannot provide baseline inventory and analytical information to support leaving the majority of the lands in the Planning 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-PRICE-08-0008-34  
**Organization:** Western Watersheds Project, Inc.  
**Protester:** John G. Carter

**Issue Excerpt Text:**

While admitting that OHVs are surface disturbing activities, the RMP does not analyze the baseline condition of the planning area OHV use. BLM has not presented baseline inventories and evaluations of OHV damage to the ecosystems and specific ecosystem components such as soils, microbiotic crusts, fish and wildlife, and native vegetation.

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**Issue Number:** PP-UT-PRICE-08-0008-46  
**Organization:** Western Watersheds Project, Inc.  
**Protester:** John G. Carter

**Issue Excerpt Text:**

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

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**Issue Number:** PP-UT-PRICE-08-0008-50  
**Organization:** Western Watersheds Project, Inc.  
**Protester:** John G. Carter

**Issue Excerpt Text:**

The RMP fails to present any baseline or other inventory data on weeds and invasive, in particular,

the most significant vectors spreading weeds: livestock grazing and OHVs.

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**Issue Number:** PP-UT-PRICE-08-0008-53  
**Organization:** Western Watersheds Project, Inc.  
**Protester:** John G. Carter

**Issue Excerpt Text:**

The RMP 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-PRICE-08-0008-56  
**Organization:** Western Watersheds Project, Inc.  
**Protester:** John G. Carter

**Issue Excerpt Text:**

Prior to making a decision that leaves the majority of the planning area open to OHV travel, the BLM must collect the type of baseline information required by FLPMA. Until then, it is arbitrary and capricious to authorize OHV use on these public lands.

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**Issue Number:** PP-UT-PRICE-08-0008-60  
**Organization:** Western Watersheds Project, Inc.  
**Protester:** John G. Carter

**Issue Excerpt Text:**

The RMP maintains the status quo by continuing with the same authorized use level and grazed areas with only *de minimus* changes between alternatives. 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 RMP 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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### ***Summary***

The BLM has failed to take the "hard look" required by NEPA because it did not use adequate baseline data for its analysis. The BLM also failed to take the "herd look" required by NEPA because necessary inventories and studies were not conducted related to OHV damage to the ecosystems and specific ecosystem components such as soils, microbiotic crusts, fish and

wildlife, and native vegetation; biological soil crusts; weeds and invasive species; and the impacts of current grazing.

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***Response***

The requisite 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 appendices in the PRMP/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 Appendices.

A land use planning-level decision is broad in scope and, therefore, does not require an exhaustive gathering and monitoring of baseline data. Although the 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 C.F.R. §§ 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, the 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 2.5 million acre planning area are 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 DRMP/DEIS 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 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. Such sources include, but are 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, various Native American Tribes, and the Utah Department of Environmental Quality. The BLM consulted with its cooperating agencies and other agencies with jurisdiction or expertise regarding the analysis and the incorporation of available data into the PRMP/FEIS. 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, 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 FO gathered the necessary data essential to make a reasoned choice among the alternatives. This data was analyzed in detail in the RMP/EIS. The resulting

analysis adequately disclosed and described the potential environmental consequences of the PRMP alternative and the other alternatives. As a result, the BLM has taken the requisite “hard look,” as required by the NEPA, at the environmental consequences of the alternatives to enable the decision maker to make an informed decision.

With regard to specific points raised by protesters:

Soils and macrobiotic crusts: Soil surveys and ecologic site descriptions were 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. Baseline information on soils, including biological soil crusts, is displayed in PRMP/FEIS Section 3.2.2. These ecological site descriptions generally do not contain specific information about the quantities of cryptobiotic crusts that are expected to be at the site. While a systematic inventory of soil crusts within the decision area does not yet exist, the BLM has data that confirms the existence of small areas of more dense soil, especially in areas with less dense vegetative cover. The BLM fully acknowledges 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, in conjunction with the vascular plants present, are adequate to support ecological processes occurring in functional and healthy ecological sites. The DRMP/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 level are addressed in Chapter 4, commensurate to the level of decision making in the PRMP/FEIS. Site-specific impacts to biological soil crusts will be considered in subsequent implementation-level NEPA analysis (e.g., term permit renewals, special recreation permits, realty actions, tenure adjustments).

OHV and grazing impacts to fish, wildlife, and native vegetation: The impacts and impact-producing factors of OHV use and grazing on natural resources are adequately analyzed in Chapter 4 of the RMP/EIS. Chapter 3 of the RMP/EIS presents the baseline (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 FO's existing land use plans. Cross-country travel is currently allowed in many areas within the planning area. 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, and closes a portion of the planning area to travel. No areas will be open to cross-country travel. The routes that are already in use are considered part of the baseline, and it is therefore not reasonable to consider the impacts to vegetation from existing linear disturbances such as routes. However, the impacts from current OHV use 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, pp. 2-13, decisions regarding authorized livestock use, levels, and the terms and conditions under which they are managed is an implementation decision (H-1610-1, Appendix C, p. 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 Grazing Management* are implemented through a formal decision-making 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. Lastly, the role of livestock grazing and OHV use in the spread of invasive species is noted at p. 4-22.

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### ***Analytical Discussion of Impacts***

**Issue Number:** PP-UT-PRICE-08-0008-19

**Organization:** Western Watersheds Project, Inc.

**Protester:** John G. Carter

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

Failure to Adequately Discuss Impacts and Best Available Information. The RMP fails to provide an adequate discussion of impacts to various resources, including a failure to incorporate best available information into the analysis. WWP highlighted this issue in its comments on the Draft RMP EIS with respect to biological crusts, livestock grazing, off-road vehicle use, fire frequency, invasive species, loss of ecosystem resiliency in the face of climate change 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 omission of 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, soils and wildlife that was published decades ago and remains accurate today.

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#### ***Summary***

The BLM has failed to provide an adequate analysis of the impacts (and consider relevant scientific research) related to the following resources/uses:

- microbiotic crusts;
  - livestock grazing;
  - OHV use;
  - fire frequency;
  - loss of ecosystem resiliency in the face of climate change; and
  - invasive species.
- 

#### ***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 decision maker 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 the alternatives. Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions. A more quantified, detailed, or specific analysis would be required only if the scope of the decision were a discrete or specific action.

The BLM will conduct subsequent NEPA analyses when site-specific project and implementation-level actions are contemplated, such as oil and gas field development, realty actions, range improvement project implementation, public land use authorizations, or other ground disturbing activities.. These activity plan-level analyses will tier to the RMP analysis and expand the environmental analysis when more specific information is known. 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 use on other resources, including soil resources, are discussed in Protest Issue 7.1.1 above. Western Watershed Project questions the BLM’s analysis of impacts attributed to 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 into Chapter 3, Affected Environment. 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. *See* analysis of the No Action Alternative. As stated previously, the BLM has provided a land use planning-level analysis based on the continued management of the public lands according to the *Standards for Rangeland Health*.

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## ***Response to Comments***

**Issue Number:** PP-UT-PRICE-08-0008-72

**Organization:** Western Watersheds Project, Inc.

**Protester:** John G. 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 FEIS. 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-PRICE-08-0009a-26

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

The BLM did not respond to my comment that it likely underestimated NOx emissions from drill rigs, based on the number of drill rigs assumed and the

average size of the drill rigs. *See* Williams 1/14/08 Comment Letter at 12 for details.

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**Issue Number:** PP-UT-PRICE-08-0009b-85

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

The manner in which BLM ignores the substance of the comment is unacceptable. The response simply refers the commenter back to the agency's section that is being questioned. This fails to address or respond to the concerns raised by The Wilderness Society, and is inadequate as a response. This form of response is not an isolated case. There are several comments (from The Wilderness Society, as well as other organizations and individuals) that call into question the validity of analysis performed by the agency. BLM has responded to them almost always by referring the commenter back to BLM's own section of the Draft RMP. The agency claims within its response that it performed analysis of BLM actions on a variety of sectors of the economy. However, only economic impacts from oil/gas development, grazing, and coal mining were evaluated. BLM does evaluate the effects of these industries on other economic sectors, like trucking, but this does very little to broaden the analysis performed. Economic impacts on recreation, ecological services, and economic diversification have been all but ignored. In addition, BLM dismisses The Wilderness Society's claim that environmental damage would be likely. The developments that BLM promotes (oil, gas, coal) are all environmentally harmful. The burden of proof is on the agency to show that these activities would not damage the environment.

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**Issue Number:** PP-UT-PRICE-08-0009b-87

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

BLM claims that non-labor income was considered, but the management plan shows no evidence of this analysis. The agency acknowledges that retiree populations are linked with the abundance and quality of natural amenities. The agency also acknowledges the environmental degradation that may come as a result of energy development and

motorized recreation. It seems, therefore, that BLM has ignored that the proposal opening 77 percent of the Price Field Office to oil and gas development and 78 percent to motorized recreation will more than likely have noticeable environmental consequences. If the agency assumes that impacts will not occur, or that they will not be significant, it is its own responsibility to provide evidence supporting this conclusion. This pattern of the agency presenting abbreviated comments to which it then refuses to respond is a violation of the BLM's responsibilities to consider and respond to public comments, as well as to ensure that those comments inform the ultimate management decisions. Taken in their entirety, the comments above do in fact offer specifics to support The Wilderness Society's requests, suggested data sources, existing methodologies, and peer-reviewed literature; these comments must be substantively addressed and the PRMP corrected.

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**Issue Number:** PP-UT-PRICE-08-0009b-89

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

BLM's response to the comment makes it seem, once again, that all potential social impacts from oil/gas development have been considered, either within the Draft RMP or the PRMP. However, even within the revised socioeconomic analysis in Chapter 4, BLM only performs a superficial qualitative analysis of possible impacts on local communities. The narrow range of analysis barely mentions impacts on recreation opportunities or boom bust cycles. The only detailed quantitative analysis was performed for the marketable costs and benefits of energy development and grazing. The remainder of socioeconomic affects is touched on in brief qualitative judgments by BLM. There is virtually no specific evidence to support the positions taken within the management plan. This narrow view is completely inadequate to address all potential impacts to socioeconomic conditions for local communities, which the PRMP/FEIS is supposed to do in order to assure informed decision-making. BLM has ignored the substance of the comments, preferring to look only at the narrow analysis they performed. At the very least, the agency must respond to any information presented in comments presented to it. Responding by pointing to the analysis in question is completely inappropriate, whether to The Wilderness Society, other organizations, or individuals. Furthermore, BLM's

use of small portions of submitted comments taken out of context highlights the disingenuous approach that the agency is taking to public review and participation. These deficiencies must be corrected before the record of the decision is issued.

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**Issue Number:** PP-UT-PRICE-08-0009b-90

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

In a particularly egregious example, The Wilderness Society presented BLM with a very extensive review of peer-reviewed literature on the costs associated with the impacts of off-road motorized recreation. This comment by The Wilderness Society was several pages long, and includes numerous examples of studies of the costs of off-road motorized recreation or its impacts. *See* The Wilderness Society Comments on Supplement to Price Draft RMP/EIS for Non-WSA Lands with Wilderness Characteristics at 36-39; *see* also original The Wilderness Society comments for the complete citations of the literature

referenced above. However, despite the issues cited within this section pointing out inadequacies of the Draft RMP/EIS, BLM has not responded to this substantive comment. BLM is required to respond to this comment in one of the ways provided in 40 C.F.R. § 1503.4. The agency must do so prior to issuing the record of decision. The comment presented by The Wilderness Society is legitimate and substantiated with considerable evidence from peer-reviewed economic literature on the socioeconomic costs associated with off-road motorized recreation and its impacts on the environment. This lack of response indicates a general disregard for science provided by The Wilderness Society, and public opinion in general. NEPA requires that BLM discuss “any responsible opposing view which was not adequately discussed in the draft statement and indicate the agency’s response to the issue raised” in preparing a final EIS. 40 C.F.R. § 1502.9. The Council on Environmental Quality interprets this requirement as mandating that an agency respond in a “substantive and meaningful way” to a comment that addresses the adequacy of analysis performed by the agency. As such, the agency stands in violation of NEPA.

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***Summary***

The BLM failed to adequately respond to comments on the DEIS. Specifically, the BLM failed to address:

- information from WWP on grazing systems and utilization rates;
- comment from SUWA regarding underestimation of NOx emissions; and
- comments from the Wilderness Society regarding socioeconomic impacts and environmental damage.

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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 letters received were compiled, reviewed and analyzed to determine whether the comments submitted were substantive. The systematic process used by the Price Interdisciplinary (ID) Team for identification of substantive comments is described in Section 5.6.2 of the PRMP/FEIS. The resulting coding and comment database assisted the ID Team in determining if the substantive comment that was 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 meaningful responses were provided, including the basis or rationale for the

methodology or assumptions used. As explained in CEQ'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.

With respect to specific comments referenced by protesters:

- The BLM carefully considered all information submitted by WWP regarding grazing systems and utilization. This information was incorporated into the administrative record. *See* Public Comments and Responses - Price Draft RMP/EIS WC Supplement – Sept. 2007 (Category) at 156, 158, 159,161.
- The public comment period on the Non-WSA lands with Wilderness Characteristics Supplement closed on December 14, 2007 and the comments from Ms. Williams were received in January. Because these comments were received well after the end of the public comment period, they did not require a response.
- Substantive comments submitted by the Wilderness Society on the DRMP/DEIS were responded to in the Responses to Comments (Sorted by Commenter) at 296-323. The Wilderness Society's comments on the ACEC Notice of Availability (December 2005), on the Price DRMP/DEIS ACEC Supplemental Information (June 2006), and on the Non-WSA Lands with Wilderness Characteristics Supplement (September 2007), have all been responded to as well. As a point of clarification, the BLM is not required to show that activities approved under the plan "would not damage the environment," as claimed by the protester. The Wilderness Society's comments on the BLM's economic impact analysis were adequately addressed. *See* Public Comments and Responses, Price Draft RMP/EIS WC Supplement, Sept. 2007 (Category) at 84-5; Public Comments and Responses, Price Draft RMP/EIS WC Supplement, Sept. 2007 (Commentor) at 124-25. Comments referred to in PP-UT-PRICE-08-0009b-90 were not considered substantive at the time of review, because it was "a representative sample of the vast body of research." *See* The Wilderness Society/SUWA/Center for Native Ecosystems Letter: Comments on Supplement to Price Draft RMP/EIS for Non-WSA Lands with Wilderness Characteristics, section G at 36). These comments did not provide specific details as to how the research quoted refuted any one section or assumption of the document. Those comments did not point out any specific areas where the BLM's analysis assumptions were remiss or in error but pointed to only general research ideals and examples.

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### *Limited Range of Alternatives*

**Issue Number:** PP-UT-PRICE-08-0008-18  
**Organization:** Western Watersheds Project, Inc.  
**Protester:** John G. Carter

**Issue Excerpt Text:**

Vegetation Restoration Treatments. The PRMP leaves out any discussion of planned acreages for vegetation treatments while indicating broad scale

treatments in sagebrush, pinyon-juniper and other communities and for fire and fuels management. There were no alternatives describing different levels of vegetation treatments, removing livestock grazing and other surface disturbing activities to accelerate restoration or protecting sensitive areas.

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**Issue Number:** PP-UT-PRICE-08-0008-4  
**Organization:** Western Watersheds Project, Inc.  
**Protester:** John G. Carter

**Issue Excerpt Text:**

In spite of these characteristics which combine to make the planning area unique and sensitive, there was no analysis 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 sensitive soils, cultural or paleontological resources, or wildlife resources, to livestock in spite of the documented benefits of doing so. This 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-PRICE-08-0008-6  
**Organization:** Western Watersheds Project, Inc.  
**Protester:** John G. Carter

**Issue Excerpt Text:**

In addition to little or no differentiation in stocking rates, there is no significant difference in the amount of acres of public lands the BLM considered leaving open, or available, for grazing. All alternatives continued the status quo of maintaining over 90% of the land open to grazing by livestock. In doing so, BLM has failed 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. This is unreasonable. NEPA requires that all alternatives must be reasonable. See 40 C.F.R. §§ 1502.14 (EISs must "[r]igorously explore and objectively evaluate all reasonable alternatives") (emphasis added); 1508.25 (scope of alternatives considered in an EIS must consist of "reasonable courses of actions").

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**Issue Number:** PP-UT-PRICE-08-0009b-4  
**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

BLM has failed to consider a no leasing alternative in the Price 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). In particular, the Federal District Court in Utah recently issued a decision confirming that a no leasing alternative is a necessary part of any analysis permitting oil and gas leasing and development. *See Southern Utah Wilderness Alliance v. Norton*, 457 F. Supp. 2d 1253, 1262–64 (D. Utah 2006). This decision was issued subsequent to the public comment period on the draft RMP.

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***Summary***

The protesting parties disputed the following:

- The DEIS/FEIS does not provide an adequate range of alternatives with respect to vegetation treatments.
- The DEIS/FEIS does not provide an adequate range of alternatives with respect to livestock grazing because (a) the acreage open to grazing is the same for all alternatives, and (b) 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 particularly because the acreage open to development is virtually identical for all alternatives.

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***Response***

The BLM considered a reasonable range of alternatives during the planning process, in full compliance with NEPA. CEQ Regulations at (40 CFR § 1502.1 require that the BLM consider reasonable alternatives, which 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); an alternative emphasizing conservation and constraints to resource use (Alternative C); an alternative emphasizing resource use (Alternative A); and a Proposed Plan (based on Alternative D) that increases conservation of resources compared to current management, and emphasizes moderate constraints on leasing for oil and gas and other (leasable) solid minerals. *See* PRMP/FEIS at 2-2 to 2-11. The Supplemental EIS considered an alternative (Alternative E) which would emphasize the protection of wilderness characteristics in lands found to have such characteristics. The acreage open or closed is similar for most alternatives; however, the level of constraints placed on new leases varies among 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.

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 in detail each variation. The BLM is not required to fully analyze those alternatives which are determined not to meet the RMP's purpose and need, or those determined to be unreasonable given BLM mandates, policies, and programs, including 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...[w]hen 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."

CEQ, 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.

The BLM considered a reasonable range of alternative with respect to vegetation treatments as required by 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 a mixture of vegetative types; elimination of noxious weeds and/or non-native invasive plant species; restoration and maintenance of healthy functioning landscapes; protection of habitats and riparian areas to benefit wildlife such as sage-grouse and others special status species; and to achieve rangeland health objectives.

A detailed rationale was provided for the alternatives and management options considered but eliminated from detailed analyses in Section 2.2.7. See PRMP/FEIS at 2-11 to 2-15. As described in this section, alternatives closing the planning area to all grazing or all oil and gas leasing was not considered in detail because they would not meet the purpose and need of the PRMP/FEIS. The BLM considered alternatives that would close the decision area to livestock grazing or make major adjustments to grazing, but did not carry forward the alternative in detail as explained in the PRMP/FEIS on pp. 2-12 and 2-13. Each of the alternatives, except for 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, the range of alternatives was further developed in coordination with cooperating agencies. The BLM also considered potential impacts to sensitive resources. See BLM Land Use Planning Handbook, H-1601-1, Appendix C, at 14 (B). For instance, alternatives with varying protective measures, some which would result in changes to grazing use, are considered where grazing impacts to the fish and wildlife habitat are identified. See PRMP/FEIS at 4-230, 4-232, 4-233, 4-235, 4-237, 4-240. Livestock grazing in both the existing and proposed ACECs varies by alternative and the impacts to those values present were considered. *Id.* at 4-231, 4-233, 4-234, 4-236, 4-239, and 4-241. The monitoring may result in differences in livestock management which will lead to differing levels of livestock use over the life of the plan. Due to the highly site-specific nature of these changes in management, the BLM is not able to quantify existing differences in the alternatives through the number of animal unit months (AUMs).

It is the 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. This ensures that the *Standards for Rangeland Health* and resource objectives are met. Regulations at 43 CFR § 4130.3 require that the terms and conditions under which livestock use are authorized "ensure conformance with the provisions of subpart 4180" (*Standards for Rangeland Health*), and that "livestock grazing use shall not exceed the livestock carrying capacity of the allotment."

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### ***Public Opportunities to Comment***

**Issue Number:** PP-UT-PRICE-08-0008-81

**Organization:** Western Watersheds Project, Inc.

**Protester:** John G. 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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### ***Response***

The BLM is in full compliance with Section 7(c) of the ESA and 40 C.F.R. § 1502.25. The 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 its 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, based on the Proposed RMP, was prepared and provided to FWS for review and comment. Because the FWS reviews only the PRMP/FEIS, there is no opportunity for public comment; no such public review is required under NEPA or the ESA. However, 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. *See* Section 4.2.5 of the PRMP/FEIS.

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 BLM has completed Section 7 consultation with the FWS, and has received a Biological Opinion which concludes that implementation of the plan will not likely jeopardize the continued existence of any listed species. A copy of the Biological Opinion will be included in the BLM Price FO RMP ROD.

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### *Discussion of Cumulative Impacts/Connected Actions*

**Issue Number:** PP-UT-PRICE-08-0012-31

**Organization:** Independent Petroleum Association of Mountain States

**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

IPAMS is also concerned that the combined timing stipulations for sage grouse leks and crucial winter habitat could make areas off-limits to development for a majority of the year. While Map 3-13 differentiates between Crucial Value Nesting/Brood Rearing and High Value Winter areas, if leks happen to fall within winter areas, users would be prohibited from performing surface-disturbing activities 2 miles around leks for 7 1/2 months of the year (December 1 - July 15). This restriction is excessive and BLM has not analyzed the cumulative impact of these combined timing stipulations. IPAMS recommends that BLM revise Appendix G to provide adequate exception, modification, or waiver that will preclude excessive cumulative timing stipulations.

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### ***Response***

BLM has analyzed the cumulative impact of combining timing limitation stipulations in Chapter 4 as well as the Energy Policy and Conservation Act Map 4-06. There are potentially many different combinations of timing limitation stipulations that could be applied to a well location. Chapter 4 of the PRMP/FEIS, Minerals and Energy Development, Impacts From the Proposed RMP, states:

[a]n analysis of oil and gas stipulations based on the 2006 EPCA report reveals the effect of cumulative timing stipulations from the Proposed RMP on oil and gas exploration and development, as well as on areas open to leasing subject to the standard terms and conditions on the lease form, areas open to leasing subject to minor constraints (timing limitations, CSU, and leasing notices), and areas unavailable to leasing. Cumulative timing limitations are divided into periods of less than 3 months, 3 to 6 months, 6 to 9 months, and greater than 9 months.”

PRMP/FEIS at 4-303, 4-304.

According to Table 4-38, Oil and Gas Leasing Restrictions and Cumulative Timing Limitations, there are 81,000 acres pen to leasing subject to minor constraints with timing limitations of 6 to 9 months.

Chapter 4 of the PRMP/FEIS states:

[i]mpacts resulting from timing limitation stipulations would apply to approximately 343,500 acres, which would make more land available with such stipulations, compared with the No Action Alternative. Dates of timing limitation stipulations would be the same as under Alternative B. Major leasing constraints (NSO) within a half-mile of greater sage-grouse leks in the Nine Mile Canyon and Tavaputs Plateau area would require drilling delays or directional drilling to extract hydrocarbon resources. Timing limitations within two miles of a greater sage-grouse lek or within greater sage-grouse crucial winter habitat would limit oil and gas exploration and development during specific time periods and would increase recovery costs.

PRMP/FEIS 4-302.

The criteria for using exceptions, waivers, or modifications are based on the current conditions of resource values related to a project proposal or the impacts to those resource values that may be deemed acceptable. *See* Appendix G, p. G-1. The exceptions, waivers, and modifications criteria do not apply to impacts to resource uses or restrictions to those uses. *See* BLM Handbook 1624-1, Planning for Fluid Mineral Resources, Chapter IV, C.3., Waivers, Exceptions and Modifications; 43 C.F.R. § 3101.1-4, Modification or Waiver of Lease Terms and Stipulations; BLM IM 2008-032, Exceptions, Waivers, and Modifications; Onshore Oil and Gas Order No. 1; Onshore Oil and Gas Operations; Federal and Indian Oil and Gas Leases; Approval of Operations, Chapter XI Waivers, Exceptions, or Modifications (72 Fed. Reg. 10,337, March 7, 2007). Exceptions, waivers, and modifications relating to timing limitations and greater sage-grouse leks are discussed in Appendix G at p. G-1.

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### *Analysis of the Indirect and Cumulative Impacts from Off-Highway Vehicles*

**Issue Number:** PP-UT-PRICE-08-0009b-65

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

The PRMP fails to adequately analyze and inform the public and the decision-maker as to the potential indirect and cumulative impacts to the natural and cultural resources from the ORV area and route designations and travel decisions. *See e.g.* PRMP at 4-441 (no discussion of ORV designations or ORV use in the air quality cumulative impacts analysis); 4-442 (no discussion of ORV designations or ORV use in soils, water, or riparian resource cumulative impacts analysis); 4-442 to -43 (no discussion of ORV designations or ORV use in vegetation cumulative impacts analysis); 4-443 to -444 (no discussion of ORV designations or ORV use in cultural resource cumulative impacts analysis); 4-445 (general statement that the Proposed plan would protect visual resources more than the No Action alternative, but less than Alternative E); 4-445 (no discussion of ORV designations or ORV use in the special status species cumulative impacts analysis); 4-446 (no discussion of ORV designations or ORV use in wildlife cumulative impacts analysis); 4-448 and 4-451 (general statement that cumulative effects on WSA lands and non-WSA lands with wilderness characteristics would vary depending on amount of ORV use allowed under various alternatives); 4-450 (general statement that cumulative effects on recreation and users would vary depending

on amount of ORV use allowed under various alternatives). Clearly these statements, or lack thereof, fail to adequately assess the cumulative impact that the dense network of proposed routes have on wildlife, soils, vegetation, riparian areas, air and water quality, WSAs, non-WSAs with wilderness character lands, visual and cultural resources, and other users, when taken in combination with other past, present and reasonably foreseeable actions, including oil and gas development, vegetation treatments, grazing, and climate change. BLM must supplement the PRMP and provide an unbiased, scientific and quantitative analysis of the cumulative and indirect impacts of the ORV designations and transportation decisions, and provide the public a chance to review and comment on the supplemental information before a decision is issued that could significantly affect the very resources BLM is entrusted to protect.

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### ***Response***

The scope and nature of the specific proposed action determines the level of analysis that must be performed in order to comply with the requirements of NEPA. Environmental analyses of RMPs are used to evaluate broad policies and provide an analytical foundation for subsequent project-specific NEPA documents. The Price PRMP/FEIS complies with NEPA in analyzing and disclosing the environmental impacts for the Proposed Plan. In Chapter 4 of the PRMP/FEIS, the BLM has provided an adequate and reasonable analysis that leads to a logical conclusion of the potential environmental consequences of the Proposed Plan and other alternatives. *See* PRMP/FEIS at 4-1 to 460. Regulations at 40 CFR § 1502.16 require 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.

Protesters express specific concerns relating to the BLM's impact analysis regarding Special Recreation Management Areas, OHV use, livestock grazing, and invasive species, among others. The discussion of direct and indirect effects in the PRMP/FEIS addresses these issues.

Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions. The BLM will conduct subsequent NEPA analyses, including site-specific project and implementation action levels such as oil and gas development, allotment management plans, and public land use authorizations. These activity plan-level analyses will tier to the land use planning analysis and extend the environmental analysis by using information from specific project proposals. In accordance with the NEPA process, the public will have the opportunity to participate in the environmental analysis process for these actions. Further NEPA analysis will be conducted to assess site-specific environmental impacts when grazing permit actions, oil and gas development, realty actions, or other ground disturbing activities are proposed.

A supplemental RMP/EIS, as defined by 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. This information did not lead to substantial changes in the proposed action or to significant new circumstances or information relevant to environmental

concerns which have bearing on the proposed actions. As a consequence, the range of alternatives and associated management prescriptions analyzed in the DRMP/DEIS have environmental consequences that are substantially similar to those described in the alternatives analyzed in the PRMP/FEIS.

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

**Issue Number:** PP-UT-PRICE-08-0008-26

**Organization:** Western Watersheds Project, Inc.

**Protester:** John G. Carter

**Issue Excerpt Text:**

BLM Fails to Disclose its Assessment and Inventory of Acres Suitable for Livestock Grazing. As was true with the Draft, the PRMP/FEIS fails to disclose BLM's criteria for its assessment of acres to be made available or not available for livestock grazing. 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 while making over 90% of the planning area available to livestock.

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**Issue Number:** PP-UT-PRICE-08-0008-63

**Organization:** Western Watersheds Project, Inc

**Protester:** John G. 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. Overwhelming scientific evidence points to livestock grazing as extremely environmentally destructive. Grazing cannot cause significant environmental degradation at the same time that it results in restoration, protection, or enhancement of the environment. This is not a reasoned decision.

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### ***Summary***

By leaving most of the lands open to livestock grazing, the BLM fails to meet FLPMA's multiple-use mandate and requirement to accelerate restoration. The BLM has failed to comply with the Land Use Planning Handbook regarding suitability determinations for livestock grazing.

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### ***Response***

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; the BLM has the discretion to make decisions that satisfy a range of needs. "Multiple-use" is defined in FLPMA 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." 43 U.S.C. § 1702(c). 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 in all areas of the public lands. That would preclude any form of balanced use. The purpose of the "multiple-use" mandate is to require the BLM to evaluate and select an appropriate balance of resource uses in each planning area, which involves tradeoffs between competing uses. The alternatives in the DRMP/DEIS and PRMP/FEIS reflect this directive.

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. See 43 CFR § 4130.2(a). For instance, the Proposed Plan establishes the objective to “(m)aintain, restore, and improve public rangelands to meet the *Standards for Rangeland Health*” on p. 2-50 of the PRMP/FEIS; includes monitoring and mitigating measures (including potential modification to livestock numbers, seasons of use, and grazing system) to address potential grazing impacts; and approves the use of grazing in various allotments to enhance vegetation and protect riparian areas. See PRMP/FEIS at 2-51 to 56. These decisions address potential impacts to these resources and are documented in the BLM’s analysis in Chapter 4.

The BLM also has sufficient latitude for periodic adjustments of a particular use. It is BLM’s policy to monitor and inventory range conditions under existing stocking levels and make adjustments, as necessary (and 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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### *The Unnecessary and Undue Degradation Standard*

**Issue Number:** PP-UT-PRICE-08-0008-65  
**Organization:** Western Watersheds Project, Inc.  
**Protester:** John G. Carter

**Issue Excerpt Text:**

There is no disclosure of criteria, no baseline analysis, nor a determination of which acres are capable and suitable for livestock grazing. Without this information, the BLM cannot claim that it has made an informed decision in the RMP and the agency ignores the multiple use and unnecessary and undue degradation mandates of FLPMA.

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**Issue Number:** PP-UT-PRICE-08-0009b-23  
**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

The Price PRMP transportation decisions and ORV area and trail designations of 2,930 miles of route, including 441 miles of route in agency-identified non-WSA lands with wilderness character, and 46 miles of route in WSAs, fail FLPMA’s UUD standard. See PRMP at ES-7, 2-74, 4-189. The proposed transportation decisions and ORV designations will harm natural and cultural resources in a number of important ways, including: unnecessarily increasing fugitive dust and degrading

air quality; unnecessarily fragmenting wildlife habitat; causing unnecessary damage to riparian areas, floodplains, and cultural resources; unnecessarily reducing naturalness in areas with identified wilderness characteristics; and impairing Wilderness Study Areas.

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**Issue Number:** PP-UT-PRICE-08-0010-26  
**Organization:** National Trust for Historic Preservation  
**Protester:** Ti Hays

**Issue Excerpt Text:**

The Proposed RMP failed to take the actions necessary to prevent unnecessary or undue degradation of eligible Wild and Scenic Rivers. The Proposed RMP will cause "unnecessary or undue degradation" of eligible WSRs that contain outstandingly remarkable cultural values. Under FLPMA, BLM is required to "take any action necessary to prevent unnecessary or undue degradation of the lands," 43 U.S.C. 1732(b).

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**Issue Number:** PP-UT-PRICE-08-0010-6  
**Organization:** National Trust for Historic Preservation  
**Protester:** Ti Hays

**Issue Excerpt Text:**

Finally, the Proposed RMP fails to prevent "unnecessary or undue degradation" of eligible Wild

and Scenic Rivers (WSRs) that possess outstandingly remarkable cultural values.

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### **Summary**

Management under the proposed plan will cause unnecessary and undue degradation.

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### **Response**

The BLM analyzed the impacts of grazing and travel management on other resources and uses in the planning area in Chapter 4 of the PRMP/FEIS. Congress recognized that, through the multiple-use mandate, there would be conflicting uses of and impacts to the public lands. Unnecessary and undue degradation is a management standard that does not apply to BLM management decisions for public lands.

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## ***The Federal Land Policy and Management Act Authority to Manage for Wilderness Characteristics***

**Issue Number:** PP-UT-PRICE-08-0012-12

**Organization:** Independent Petroleum Association of Mountain States

**Protester:** Kathleen M. Sgamma

### **Issue Excerpt Text:**

As justification for managing non-WSA lands with wilderness characteristics to solely preserve and protect their wilderness values, BLM relies on the general management authority found in Section 202 of FLPMA and two BLM Instruction Memoranda 2003-274 & 2003-275. IPAMS acknowledges that Section 202 of FLPMA provides BLM with authority to manage lands for multiple use, and not allowing all uses on all lands. BLM, however, relies on Section 103 of FLPMA as authority for "allocating resource uses, including wilderness character management, amongst the various resources...." Price PRMP Comments of the Supplement to the Draft RMP/EIS by Resource, pages 11-12. Importantly, in Section 103(c) of FLPMA, Congress listed resources that BLM should take into account in allocating management, and "wilderness characteristics" is not included as such a resource. On the other hand, mineral development is a "principal or major use" of public lands under FLPMA. 43 U.S.C. § 1702(1).

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### **Response**

Section 201 of FLPMA gives the BLM the authority to inventory for wilderness characteristics. Section 202 of FLPMA gives the BLM the authority for planning how the public lands are to be managed. It is BLM policy as stated in its Planning Handbook and in Instruction Memorandums 2003-274 and 2003-275 Change 1, that through planning, the BLM may consider managing for wilderness characteristics on non-WSA lands. The BLM's authority for managing lands to protect or enhance wilderness characteristics is derived directly from Section 202 of FLPMA, 43 U.S.C. § 1712. This section of the 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." 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. Pursuant to FLPMA Section 103(c), 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." 43 U.S.C. § 1702(c). Congress, through 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...[f]or authorized activities, include conditions of use that would avoid or minimize impacts to wilderness characteristics.” (Appendix C, page 12)

The BLM has long acknowledged that FLPMA Section 603, 43 U.S.C. § 1782, requiring a one-time wilderness review has expired. All current inventories of public lands are 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. Finally, the *Utah v. Norton* Settlement Agreement does not affect BLM’s authority to manage public lands. This Agreement merely distinguishes between WSAs established under Section 603 of FLPMA, which are required to be managed under Section 603’s non-impairment standard, and other lands that fall within the discretionary land management process pursuant to FLPMA § 202.

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### *The Federal Land Policy and Management Act’s Withdrawal Procedures*

**Issue Number:** PP-UT-PRICE-08-0012-22

**Organization:** Independent Petroleum Association of Mountain States

**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

Requirement for a Formal Withdrawal Process. If the BLM retains wilderness-like protections for non-WSAs with wilderness characteristics in the Record of Decision, despite their violation of FLPMA, the 1964 Wilderness Act, and the *Utah v. Norton* Settlement Agreement, a formal withdrawal process is necessary because of the closure to oil and gas leasing. On page 2-46 - 2-47, it states that the Mexican Mountain, San Rafael Reef, and Wild Horse Mesa non-WSAs would be closed to oil and gas leasing. However, decisions removing lands from mineral leasing are withdrawals. FLPMA defines a withdrawal as "withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws...." 43 U.S.C. § 17020). For tracts of lands greater than 5,000 acres, the Interior Secretary must provide Congress a variety of information in order to fully disclose the closure’s impacts, costs, and need so that Congress can decide whether to disapprove the withdrawal. A withdrawal also requires public notice and hearing,

and consultation with state and local governments. 43 U.S.C. at § 1714(c) (1)-(12), (h); 43 C.F.R. Parts 2300, 2310.

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**Issue Number:** PP-UT-PRICE-08-0012-23

**Organization:** Independent Petroleum Association of Mountain States

**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

By a 2006 Directive from the BLM Director, the BLM cannot effect a de facto closure of thousands of acres of public lands to oil and gas leasing without following FLPMA’s Section 204 withdrawal procedures: "Except for Congressional withdrawals, public lands shall remain open and available for mineral exploration and development unless withdrawal or other administrative actions are clearly justified in the national interest in accordance with the Department of the Interior Land Withdrawal Manual 603 DM 1, and the BLM regulations at 43 C.F.R. 2310." BLM Energy and Non-Energy Mineral Policy (April 21, 2006). The BLM formally adopted this policy through IM 2006-197. Consequently, the 2006 Energy and Non-Energy Mineral Policy with which the BLM must comply, conditions the closure

of lands available to mineral exploration and

development on FLPMA's withdrawal procedures.

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### **Summary**

Decisions removing lands from mineral leasing are withdrawals. Establishing withdrawals of more than 5,000 acres is contrary to law and Secretarial policy.

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### **Response**

The Price RMP closes approximately 569,000 acres to oil and gas leasing, of which 42,040 acres are outside WSAs. Price PRMP/FEIS at 2-88. Those 42,040 acres are closed to oil and gas leasing because the BLM determined that it is not reasonable to apply an NSO stipulation, particularly in areas where the oil and gas resources are physically inaccessible by current directional drilling technology from outside the boundaries of the NSO areas. Price PRMP/FEIS at 2-46 (Non-WSA Lands with Wilderness Characteristics, Mexican Mountain, San Rafael Reef and Wild Horse Mesa), 2-96 (Flat Tops ACEC), 2-98 (Bowknot Bend ACEC), 2-107 (San Rafael Reef ACEC, although most of this lies within WSAs), and 2-131 (Wild and Scenic River Designations, Green River segments).

The FLPMA withdrawal language cited by Independent Petroleum Association of Mountain States does not apply to those 42,040 acres outside Wilderness or WSAs. Withdrawals are defined by FLPMA § 103(j) as follows:

the term 'withdrawal' means *withholding an area of Federal land from settlement, sale, location, or entry*, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land . . . from one department, bureau or agency to another department, bureau or agency.

43 U.S.C. § 1702(j) (emphasis added). The terms "settlement," "sale," "location," or "entry" are all terms contemplating transfer of title to the lands in question, particularly the patenting, or potential patenting, of lands out of Federal ownership into the hands of private parties based on the provisions of the General Mining Law of 1872, as amended, the various Homestead Acts, and other general land law. It is inapplicable to mineral leasing occurring under the Mineral Leasing Act of 1920 (MLA). A Federal mineral lease sale is not a "sale" of public land under Section 203 of FLPMA and making public lands unavailable to leasing is not a "withdrawal" as described in Section 204 of FLPMA. Therefore, the BLM was not required to complete the procedures associated with a withdrawal when it decided to close the 569,000 acres in the Price planning area to oil and gas leasing in the Price PRMP/FEIS. Price PRMP/FEIS at 2-88.

The MLA is clear that leasing is discretionary. Therefore, no withdrawal is required to make public lands unavailable under this law.

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*Areas of Critical Environmental Concern*  
*Areas of Critical Environmental Concern Designation Priority*

**Issue Number:** PP-UT-PRICE-08-0009c-22  
**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**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 Price PRMP, BLM has neither recognized nor carried out this statutory mandate. To resolve this, once BLM has determined that certain areas in the Price Field Office contain the requisite relevant and important values (R&I values) and that the PRMP does not protect all of the R&I values—which the Price Field Office has already done—the agency must give priority to the designation of those areas as ACECs over other competing resource uses and likewise give priority to the protection of those areas over other competing resource uses. BLM has violated FLPMA by failing to give priority to the designation and protection of ACECs.

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**Issue Number:** PP-UT-PRICE-08-0009c-28  
**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees

for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

Areas with R&I values that are jeopardized by oil and gas drilling and ORV use should be designated as ACECs and provided with protective management prescriptions that would include road closures, restoration, and closure to oil and gas development, and/or application of best management practices where lands are already leased (such as no surface occupancy stipulations and timing limitations, which can be imposed by the agency and/or negotiated with leaseholders). Without these protections, BLM violates FLPMA’s mandate to prioritize the designation and protection of ACECs and their identified R&I values.

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**Issue Number:** PP-UT-PRICE-08-0010-4  
**Organization:** National Trust for Historic Preservation  
**Protester:** Ti Hays

**Issue Excerpt Text:**

Federal Land Policy and Management Act. The Proposed RMP violates the following three provisions of FLPMA. First, the Proposed RMP does not prioritize the designations of Areas of Critical Environmental Concern (ACECs) in the Price Field Office.

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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. Comment 124-68 on the CD. The rationale for designation of individual ACECs carried forward into the Proposed Plan is given in the ROD. BLM Manual 1613 .33E provides direction should BLM choose not to designate potential ACECs. . The BLM’s ACEC Manual (M-1613) requires that all potential recommended ACECs be carried forward into at least one alternative in the DRMP/DEIS. Alternative B analyzed the designation of all potential ACECs. The BLM Manual 1613.23 states:

[a]fter 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 proposal for designation and management of ACECs.

The BLM has full discretion in the selection of ACECs for the various alternatives. Development and selection of the preferred alternative is based on a comparison of estimated effects and trade-offs associated with each of the alternatives.

The BLM will protect relevant and important values where ACECs are not designated under the Proposed Plan. The ROD will explain how these values will be managed under proposed management schemes and will provide the rationale for all ACEC decisions. These decisions will be supported by analyses in the EIS.

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

**Issue Number:** PP-UT-PRICE-08-0009c-26  
**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

Where BLM has found special values that meet the R&I criteria, and where impacts could or would occur to these identified values if no special management prescriptions are implemented, BLM violates its FLPMA obligations by failing to designate the areas. BLM has improperly ignored or discounted the threats to special places from oil and gas development and ORV use. BLM has failed to

designate and/or failed to incorporate sufficient protections for proposed ACECs to protect R&I values from the irreparable harm that is likely to result from these other activities.

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**Issue Number:** PP-UT-PRICE-08-0010-5  
**Organization:** National Trust for Historic Preservation  
**Protester:** Ti Hays

**Issue Excerpt Text:**

Second, the Proposed RMP does not prioritize the "protection and prevent[ion] of irreparable damage to important historic, cultural, or scenic values" within designated ACECs. 43 U.S.C. 1702(a).

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### ***Summary***

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

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### ***Response***

The BLM gave full consideration to the designation and preservation of ACECs and their values during the land use planning process. Nominations for ACECs from the public were specifically solicited during the scoping period. Areas with relevant and important values identified during the ACEC process are proposed for ACEC designation in one or more alternatives. In cases where ACECs are not proposed for designation, these values are provided protective measures by other management actions in the Proposed Plan. This rationale will be documented in the ROD.

The BLM Manual 1613.23 states:

[a]fter 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 Manual 1613, Section 22b "*Incorporate Management Prescriptions for Potential ACEC into Appropriate Alternatives*," states that "management prescriptions will generally vary across the plan alternatives." It further states that, "[b]ecause 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 full discretion in the selection of ACECs for the various alternatives. A comparison of estimated affects and trade-offs associated with the alternative leads to development and selection of the preferred alternative. Nowhere does the 1613 Manual state 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.

In fact, the BLM Manual 1613 goes on to state:

[t]he management prescription for a potential ACEC may vary across alternatives from no special management attention to intensive special management attention. 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.

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### *Areas of Critical Environmental Concern within Wilderness Study Areas*

**Issue Number:** PP-UT-PRICE-08-0009c-30

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

ACECs may be designated for a range of R&I values, as listed in FLPMA, and Appendix L of the PRMP, which may not be protected by focusing on protecting wilderness character (although they will likely benefit). PRMP at Appendix L-9- to -10. 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-PRICE-08-0009c-33

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest

Chapter

**Issue Excerpt Text:**

In addition to conflicting with the directives of FLPMA regarding ACECs and the IMP, BLM's approach is also belied by the Moab Field Office's answer to San Juan County's formal comment that it is "opposed to 'layering' or the establishment of ACECs or SRMAs over WSAs and Wild and Scenic Rivers." To which the BLM responds, appropriately: "Layering" is planning. Under FLPMA's multiple use mandate, BLM manages many different resource values and uses on public lands. Through land use planning BLM sets goals and objectives for each of those values and uses, and prescribes actions to accomplish those objectives. Under the multiple use concept, the BLM doesn't necessarily manage every value and use on every acre, but routinely manages many different values and uses on the same areas of public lands. The process of applying many individual program goals, objectives, and actions to the same area of public lands may be perceived as

“layering.” The BLM strives to ensure that the goals and objectives of each program (representing resource values and uses) are consistent and compatible for a particular land area. Inconsistent goals and objectives can lead to resource conflicts, failure to achieve the desired outcomes of a land use plan, and litigation. Whether or not a particular form of management is restrictive depends on a personal interest or desire to see that public lands are managed in a particular manner. All uses and values cannot be provided on every acre. That is why land use plans are developed through a public and interdisciplinary process. The interdisciplinary process helps ensure that area resource values and uses can be considered together to determine what mix of values and uses is responsive to the issues identified for resolution in the land use plan. Layering of program decisions is not optional for BLM, but required by the FLMPA and National BLM planning and program specific regulations. For example, the BLM has a separate policies and guidelines as well as criteria for establishing ACEC as when the WSAs were established. These differing criteria make it possible that that same lands will qualify for both an ACEC and a WSA but for different reasons. The BLM is required to consider these different policies. The values protected by the 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

ACEC evaluations (Appendix I). The ACECs are evaluated and ranked on the presences and absence of the state R&I values. None of these values include wilderness characteristics. Additionally, the management prescriptions for the ACECs are limited to the scope to protect the R&I values and the BLM maintains that the size of the ACEC areas is appropriate to the R&I values identified. Moab PRMP Response to Comments, at 121-9. SUWA cannot make this argument any better than BLM does in the preceding paragraphs because BLM clarifies that different designations serve different purposes, and that designations are limited to protect only those values relevant to those particular designations. Therefore, the fact that an ACEC lies within a WSA cannot serve as a justification for failing to designate the ACEC. Similarly, other provisions of FLPMA, the NHPA, SRMAs, and other management prescriptions and regulations do not necessarily protect the R&I values of ACECs. SRMAs are designated to provide recreation opportunities for users of different types, e.g. motorized, equestrian, biking, hiking, etc., and have nothing to do with protecting R&I values of potential ACECs. The NHPA deals only with cultural resources, and applies different management prescriptions than ACECs. Therefore, BLM’s assertions that other designations, such as the NHPA, WSAs, and SRMAs, adequately protect R&I values of potential ACECs is not true, and BLM must designate all of the potential ACECs in order to adequately protect their R&I values.

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### ***Summary***

The fact that a proposed ACEC falls within a WSA is not sufficient reason not to designate the ACEC. Management under the Interim Management Policy for Lands Under Wilderness Review (IMP) does not necessarily protect relevant and important values. If WSAs are released by Congress, relevant and important values will not be protected.

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### ***Response***

The BLM agrees 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, then 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, 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. Price PRMP/FEIS at 2-92. 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. The relevant and important values identified in the PRMP/FEIS will be protected regardless of whether these values are within a WSA because any lands released from WSA status will continue to be managed consistent with the prescriptions identified in the Approved Plan unless and until such plan is amended.

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### *Map of the Areas of Critical Environmental Concern*

**Issue Number:** PP-UT-PRICE-08-0001-12

**Organization:** Utah Rock Art Research Association

**Protester:** Troy Scotter

**Issue Excerpt Text:**

In addition, we have been informed that the rock art ACEC map (2-66) is inaccurate. This map refers to a topic of primary interest to our organization. As a result, it is impossible to comment directly on most of this supplement.

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### *Response*

The BLM has determined that the information contained on Map 2-66 is correct. In addition, ACECs in the Proposed RMP depicted on Map 2-49 is accurate and includes all 10 proposed ACECs. The buffer zone around the proposed ACECs as depicted in Alternatives C and E is not part of the potential ACEC.

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### *Compliance with the Areas of Critical Environmental Concern Manual*

**Issue Number:** PP-UT-PRICE-08-0009c-72

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

NEPA and the BLM ACEC Manual require that BLM fully disclose, summarize, and circulate for public review and comment (i.e. before the ROD is issued), all data and information that it used to determine eligibility and suitability. BLM Manual § 1613.31 to .33; 42 U.S.C. § 4321 et seq.; *Robertson v. Methow Valley Citizens Council*, 490 U.S. at 349; *Inland Empire Public Lands Council v. U.S. Forest Service*, 88 F.3d 754, 757 (9th Cir. 1996). The BLM ACEC Manual requires that ACECs be given a name that limits confusion, a location described with clear proposed boundaries including the total acreage, and a map of each ACEC. BLM Manual § 1613.33(A). In the Price PRMP,

the ACEC evaluation process is presented in a confusing manner that fails to conform to the BLM Manual's directives. For example, the PRMP does not clarify why the ACEC boundaries for Interstate 70, Rock Art, San Rafael Canyon, Nine Mile Canyon, Uranium Mining District, and Heritage Sites changed between the DRMP and the PRMP. PRMP at 1-19. Furthermore, BLM changed the boundaries of existing ACECs in the San Rafael RMP, and the PRMP, and at times combined existing and potential ACECs without explaining the boundary changes and without including a map detailing the boundary changes.

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### **Response**

The Price PRMP/FEIS adequately complies with the name, location, and size requirements of BLM Manual § 1613.33(A). The PRMP/FEIS gives each ACEC a name and describes the boundaries in detail including the total acreage for each alternative. *See* Appendix L; Price PRMP/FEIS, Table 2-19 at 2-97; *see also* Map 2-45 (No Action Alternative); Map 2-46 (Alternative A); Map 2-47 (Alternative B); Map 2-48 (Alternative C); Map 2-49 (Proposed RMP).

The BLM 1613 Manual, Areas of Critical Environmental Concern, requires the BLM to disclose the rationale for ACEC designations brought forward into the Proposed Plan and analysis of the BLM's decision to not designate other potential ACECs. This rationale will be fully discussed in the Price ROD.

Chapter 4 of the PRMP/FEIS provides an initial analysis of the areas in question: Rock Art potential ACEC on p. 4-324; San Rafael Canyon potential ACEC on p. 4-326; Interstate-70 potential ACEC on p. 4-321; Nine Mile Canyon potential ACEC on p. 4-348; Heritage Sites potential ACEC on p. 4-353; and Uranium District potential ACEC on p. 4-355. The BLM noted the changed boundaries in the PRMP/FEIS. *See* p. Q-8.

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### ***Desolation, Mussentuchit, and Gordon Creek***

**Issue Number:** PP-UT-PRICE-08-0010-12

**Organization:** National Trust for Historic Preservation

**Protester:** Ti Hays

**Issue Excerpt Text:**

Potential Desolation Canyon, Mussentuchit Badlands and Gordon Creek ACECs. The Proposed RMP failed to prioritize ACEC designation for the Potential Desolation Canyon, Mussentuchit Badlands and Gordon Creek ACECs. All three of these potential ACECs exist in areas identified by BLM as having "high" potential for oil and gas occurrence and development. Compare L at Map 2-48 with *id.* at Map 3-21. Additionally, all three areas are, to varying extents, open to oil and gas leasing in the Proposed RMP subject to standard lease terms or minor constraints. *Id.* at 4-352, 4-358, 4-362. Pursuant to 43 U.S.C. 1712(c) (3) and 43 C.F.R. 1610.7-2, all three areas clearly require "special management attention" in order to ensure that oil and gas development does not irreparably damage their relevant and important cultural values. However, the Proposed RMP failed

to provide any of these areas with the "special management attention" required by FLPMA. Instead, the Proposed RMP states that Section 106 of the NHPA will provide the potential ACECs with adequate protection.

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**Issue Number:** PP-UT-PRICE-08-0007-10

**Organization:** Outdoor Industry Association

**Protester:** Amy Kleiner-Roberts

**Issue Excerpt Text:**

Desolation Canyon ACEC. Responses by the PFO to comments submitted during the Supplemental EIS on additional ACEC considerations indicate that there was a need to consider the Desolation Canyon ACEC because the existing Wilderness Study Area (WSA) did not incorporate adequate area that has values of relevance and importance. NOLS and OIA recognize that ACECs are not designated until an ROD is signed, but it appears that the Desolation Canyon ACEC is not included in the proposed planning maps, and therefore not subject to consideration (See Map 2-45 of the PFO Proposed RMP). Nowhere in the

plan have we been able to find the background and judgment that indicate a decision-making process regarding which potential ACECs would be considered, and which would be excluded. On the contrary, the only language regarding ACEC consideration for Desolation Canyon is found in Appendix L (See pp. L-17 - L-18 of the PFO Proposed RMP). The appendix states, when considering Relevance criteria, the presence of 17 species considered endangered, threatened, or sensitive. When considering importance criteria, that, when considering its importance criteria, the PFO makes many impressive claims. NOLS addressed this

lack of adequate transparency in the decision-making process in its comments on the ACEC SEIS, but they were never responded to: "The following paragraph is the only decisions background given, common to all alternatives, for the potential Desolation Canyon ACEC. It does not explain why, despite numerous criteria or relevance and importance, and the fact that FLPMA asks BLM to "give priority to the designation and protection of areas of critical environmental concern" (U.S.C. § 1712(c) (a) (3)), the preferred alternative does not favor it. The only explanation given is the existing Desolation Canyon WSA.

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### **Summary**

The Proposed RMP failed to prioritize ACEC designation for the Potential Desolation Canyon, Mussentuchit Badlands, and Gordon Creek ACECs. All three areas clearly require "special management attention" in order to ensure that oil and gas development does not irreparably damage their relevant and important cultural values.

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### **Response**

The BLM adequately protects the ecological, cultural, and scenic values identified as relevant and important in the Price DRMP/DEIS and in the supplemental information regarding ACECs. As presented in Chapter 4 of the Price PRMP/FEIS, seventy-five percent (118,000 acres) of the potential Desolation ACEC is within the Desolation Canyon and Jack Canyon WSAs. These areas will be managed according to the Interim Management Policy for Lands Under Wilderness Review (IMP). In these areas, the IMP will protect the relevant and important (R&I) ecological, scenic, or cultural values by restricting surface disturbing activities and through management of VRM Class I values. The areas are unavailable for oil and gas leasing and there are restrictions on mineral materials disposal. PRMP/FEIS at 4-358. In the 38,200 acres of the potential ACEC outside the WSA, oil and gas leasing will be subject to minor constraints (timing limitations, CSU, and lease notices) or open subject to major constraints (NSO). These stipulations are anticipated to reduce impacts on R&I values. Management objectives of the Desolation Canyon Special Recreation Management Area (SRMA) and timing and surface use stipulations for greater sage-grouse leks will provide adequate protection for the R&I values. These restrictions will reduce the potential for damage to cultural ecological and scenic R&I values. The cultural resource R&I values will receive protection from irreparable damage through adherence to the existing laws and policy, such as Section 106 of NHPA and FLPMA. Through compliance with these laws, regulations, and policies, cultural resources will be largely preserved in place or through data recovery following identification during inventories. *Id.*

Scenic values will be protected by the management of the WSAs and the SRMA as VRM Class I. The southern areas outside the WSAs will be managed as VRM Class II, maintaining the existing characteristics of the landscape (see the related CSU stipulation in Appendix G, page G-7). The northern portions of the potential ACEC outside the WSA will be managed as VRM Class III, which will allow oil and gas development to have a moderate level of change on the landscape. These VRM Class III areas will not be in areas with the highest scenic values, which are nearer the actual Desolation Canyon in the Desolation Canyon SRMA, WSA, wild and scenic

river segments, and National Historic Landmark. *Id.* Impacts to scenic values will also be reduced by implementation of Best Management Practices (BMPs), as described in Appendix S. These BMPs are applied when site-specific proposals are considered.

Although the majority of the potential Gordon Creek ACEC will be open subject to minor constraints (timing limitations, CSU, and lease notices), the western portion will be unavailable to oil and gas leasing. In the rest of the ACEC, riparian areas will be subject to major constraints (NSO). Cultural and historic resources for this area are protected by law, regulation, and policy. Burial sites, associated burial goods, and sacred items are protected in accordance with the Native American Graves Protection and Repatriation Act and the Archaeological Resources Protection Act. Should National Register-eligible cultural resources be found during an inventory, impacts to them will generally be reduced by cultural site avoidance. If the BLM determines that cultural resource sites cannot be avoided, the BLM will initiate consultation with the SHPO to develop a program for mitigation based on agreed upon stipulations. Also, OHV use on most of the potential ACEC will be limited to designated routes. Impacts will be limited to areas on or directly adjacent to identified routes and will not irreparably damage the structures. Lastly, working with the livestock grazing permittee will address potential impacts from livestock including damage to historic structures from livestock congregating in or rubbing against them. *Id.*

As presented on p. 4-362 of the Price PRMP/FEIS, the majority of the potential Mussentuchit Badlands ACEC will be open to oil and gas leasing subject to standard terms and conditions, except for a few riparian areas that will be NSO. Additional development potential exists for sand, gravel, and gypsum resources in the potential ACEC. The cultural resource R&I values will be protected through adherence to the existing laws and policy (i.e., Section 106 of NHPA and FLPMA). Enforced compliance with these laws, regulations, and policies will preserve cultural resources in place or through data recovery following identification during site-specific inventories. Additionally, the required site-specific inventories decrease the potential for inadvertent damage to sites. Further, monitoring of surface disturbing activities will protect cultural resource sites as disturbance takes place. Lastly, OHV use in the potential ACEC will be limited to designated routes, which will result in concentrating OHV impacts to the already existing designated routes (identified in the San Rafael Route Designation Plan) and areas directly adjacent thereto. Such travel will not irreparably damage cultural sites. *Id.*

The BLM will disclose the rationale for its ACEC decisions in the ROD.

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### *Dry Lake*

**Issue Number:** PP-UT-PRICE-08-0010-18

**Organization:** National Trust for Historic Preservation

**Protester:** Ti Hays

**Issue Excerpt Text:**

Additionally, the Proposed RMP would require block surveys of the Designated Dry Lake ACEC. Proposed RMP at 2-100. However, the Proposed RMP fails to specify when these surveys would occur, which is

critical because, although block surveys are a useful management tool, BLM must ensure that surveys are completed prior to making oil and gas leasing decisions.

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**Issue Number:** PP-UT-PRICE-08-0010-20

**Organization:** National Trust for Historic Preservation

**Protester:** Ti Hays

**Issue Excerpt Text:**

Thus, the cultural values of Dry Lake may also experience irreparable harm because the Proposed

RMP fails to require the completion of block surveys within these areas prior to the issuance of oil and gas leases.

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***Summary***

The cultural values of Dry Lake may be irreparably harmed because the Proposed RMP fails to require the completion of block surveys within these areas prior to the issuance of oil and gas leases.

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***Response***

The need for conducting block surveys prior to oil and gas leasing is reduced due to the Dry Lake ACEC management stipulation of NSO on all leases. Block surveys will be required before surface disturbing activities (e.g., mineral materials sales or range improvements) are approved in the ACEC.

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***Lower Green River***

**Issue Number:** PP-UT-PRICE-08-0009c-37

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

Furthermore, BLM admits that the scenic R&I values of the Lower Green River could be impacted because the area is largely open to oil and gas leasing. PRMP at 4-338. Nevertheless, BLM proposes to open the area to oil and gas leasing. Exhibit G.

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**Issue Number:** PP-UT-PRICE-08-0009c-39

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest

Chapter

**Issue Excerpt Text:**

Despite the requirements of the ACEC Manual, BLM has not provided a sufficient explanation as to how the proposed management for this potential ACEC will protect the R&I values and thus cannot justify its decision not to propose designation of the Lower Green River ACEC. BLM Manual § 1613.21 to .22. Because BLM's proposed management would allow development within the potential ACEC, thereby adversely impacting the R&I values, and because BLM failed to prioritize the designation of the Lower Green River Potential ACEC and failed to provide a sufficient rationale supporting its decision, BLM's decision not to designate the Lower Green River ACEC must be overturned.

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***Summary***

The scenic R&I values of the Lower Green River could be impacted because the area is largely open to oil and gas leasing.

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***Response***

The relevant and important (R&I) values for the Lower Green River potential ACEC are ecology, scenic, vegetation, and cultural resources. PRMP/FEIS at 4-336. The potential ACEC is wholly subsumed by the Horse Canyon WSA, which is managed under Interim Management Policy for Lands Under Wilderness Review (IMP). Therefore, this acreage is managed as closed to oil and gas leasing, travel, and all other surface disturbing activities. These restrictions will

effectively protect the relevant and important values identified for the Lower Green River potential ACEC. Additionally, there are a myriad of other management actions that will protect the R&I values: (1) the Scenic designation of the Green River under the Wild and Scenic Rivers Act will protect the river corridor by managing the corridor as VRM Class II, NSO for oil/gas leasing, and limited to designated routes; (2) the Three River Withdrawal will preclude mineral entry; (3) Section 106 of the NHPA will protect cultural values; and (4) the Labyrinth SRMA will preclude development of facilities within the recreation opportunity spectrum primitive class areas and limit them in semi-primitive non-motorized and semi-primitive motorized areas. *Id.* Thus, the R&I values will be protected without ACEC designation.

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## *Sids Mountain*

**Issue Number:** PP-UT-PRICE-08-0009c-42

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

BLM's failure to propose any of the existing Sids Mountain Potential ACEC violates FLPMA because BLM fails to prioritize the protection of the R&I scenic value of the existing ACEC. By not designating any of the existing 68,720 acres as an ACEC, or any of the expanded 6,670 acres, BLM threatens the area's scenic values. PRMP at 4-313, Table 4-41. As discussed in Section C. above, the fact that an area lies within a WSA or an SRMA is not a justification for failing to designate an ACEC. Furthermore, BLM does not explain why it changed its decision from proposing the continued designation of Sids Mountain as an ACEC in the DRMP to not proposing designation in the PRMP. PRMP at 1-19.

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### *Summary*

The BLM's failure to designate any portion of the existing Sids Mountain Potential ACEC violates FLPMA because the BLM fails to prioritize the protection of the relevant and important (R&I) scenic value of the existing ACEC.

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### *Response*

The Price PRMP/FEIS will protect the identified R&I values within the Sids Mountain Potential ACEC, satisfying requirements of the FLPMA. This area lies completely within the Sids Mountain WSA, which is managed under the Interim Management Policy for Lands Under Wilderness Review. PRMP-FEIS at 4-333. Therefore, this acreage is managed as closed to oil and gas leasing and all other surface disturbing activities, and is closed to travel except for four conditionally open routes. Further, the areas within the viewshed of the WSA and potential ACEC are managed as VRM Class II, which will limit surface disturbance. This will further protect the scenic R&I value associated with the potential ACEC.

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## *Range Creek*

**Issue Number:** PP-UT-PRICE-08-0009c-48

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

Furthermore, BLM does not explain why it changed its decision from recommending designation of the Range Creek Potential ACEC in the DRMP to not

recommending designation in the PRMP. PRMP at 1-19.

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**Issue Number:** PP-UT-PRICE-08-0009c-50

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

In violation of BLM Manual 1613 .21 and .22 and .33. BLM has not provided a sufficient explanation and cannot justify its failure to designate the Range Creek Potential ACEC, or its decision to change the designation from proposed in the DRMP to potential in the PRMP. In order to protect the valuable scenic resources and to comply with FLPMA's prioritizing mandate for ACECs, BLM must propose to designate the Range Creek Potential ACEC.

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**Issue Number:** PP-UT-PRICE-08-0010-9

**Organization:** National Trust for Historic Preservation

**Protester:** Ti Hays

**Issue Excerpt Text:**

The decision to not designate the Range Creek ACEC is inconsistent with the "layering" of land use designations in RMPs, an approach expressly endorsed by BLM in the Proposed RMP. According to BLM, "layering" is "a planning tool" involving the application of "many individual programs, goals, objectives, and actions to the same area of public lands. . . ." Public Comments and Responses, Price Draft RMP/EIS, Sorted by Commenter at 224; *see also id.* at 11-12 (describing "layering" as a requirement of FLPMA). Here, BLM's decision concerning Range Creek is inconsistent with the "layering" approach because ACEC designation is consistent with the goals and objectives of the Desolation Canyon and Turtle Canyon WSA designations. *See id.* (layering not appropriate when leading to "inconsistent goals and objectives"). In fact, in at least two other instances, the Proposed RMP designated ACECs for areas also subject to WSA designations. Compare *lei* at Map 2-49 with *id.* at Map 3-28. Thus, BLM must follow the "layering" approach and designate the Potential Range Creek ACEC.

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***Summary***

BLM has not provided a sufficient explanation and cannot justify its failure to designate the Range Creek Potential ACEC, or its decision to change the designation from "proposed" in the DRMP to "potential" in the PRMP.

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***Response***

The BLM 1613 Manual, Areas of Critical Environmental Concern, requires the BLM to disclose the rationale for the designation of ACECs and the analysis for BLM's decision not to designate considered ACECs. BLM 1613 Manual § 1613.33(E). This rationale will be fully discussed in the Price ROD.

In deciding not to designate the Range Creek ACEC, the Price Field Office determined that the most appropriate management tool for the Range Creek area was a Special Recreation Management Area (SRMA) designation; not an ACEC designation. A SRMA will allow the BLM to proactively manage visitor access to the canyon, which is a primary concern for the protection of cultural resources. The management goals and objectives of the SRMA (pp. 2-61 and 2-62 of the PRMP/FEIS) are the same as those of the State of Utah Division of Wildlife Resources (UDWR). The majority of the Range Creek SRMA is within the Desolation Canyon and Turtle Canyon WSAs and is managed according to the Interim Management Policy for Lands Under Wilderness Review, which protects these areas from surface disturbing activities. Management within the SRMA is to be more restrictive than the special management proposed for the potential ACEC.

The BLM and UDWR are working together to develop a joint activity management plan for Range Creek to ensure consistent management of State and Federal lands. An interim plan is currently in place. The BLM will implement this interim management where it is more restrictive than management on public lands. *See* PRMP/FEIS at 2-62). Combined, WSA protections and a proactive SRMA plan addressing visitor access to the area will provide adequate protection for the area's relevant and important values. Management of the area as an SRMA was analyzed in Alternative C in the Draft RMP/EIS (where protection of Range Creek area was considered as part of the Desolation Canyon SRMA) and in Chapter 4 of the PRMP/FEIS, where the Range Creek SRMA is proposed. PRMP/FEIS at Q-6, 4-344.

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### ***Beckwith Plateau***

**Issue Number:** PP-UT-PRICE-08-0009c-56

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

The portions of the potential ACEC that lie outside of the WSA would be open to leasing under standard terms or with only minor constraints. PRMP at 4-340; Exhibit G. Opening these areas to oil and gas leasing and subsequent development threatens the R&I values, particularly the undisturbed natural processes of Beckwith Plateau Potential ACEC. In violation of FLPMA, BLM prioritizes development over the designation of ACECs. 43 U.S.C. § 1712(c)(3). In violation of BLM Manual 1613 .21 and .22, BLM has not provided a sufficient explanation and cannot justify its failure to designate Beckwith Plateau Potential ACEC.

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### ***Response***

The BLM analyzed the potential impacts to the relevant and important values (including natural processes) of allowing small parcels to the west of the WSA to be open to oil and gas leasing with standard terms and conditions and determined that those values will not be affected. As stated in the Proposed RMP/Final EIS, “[t]he 11 percent of the potential ACEC outside the WSA is comprised of small parcels extending on the west and south sides of the WSA...[a]ny impacts from mineral development in these areas will not irreparably damage the geologic or natural processes values present in the ACEC as a whole.” PRMP/FEIS at 4-340.

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### ***Temple-Cottonwood Dugout Wash***

**Issue Number:** PP-UT-PRICE-08-0009c-57

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

Temple-Cottonwood Dugout Wash Potential ACEC meets the R&I criteria for cultural values. PRMP at Appendix L-8, Table L-1. The archaic cultural sites that are buried in the sands of the Cottonwood wash complex are threatened by activities permitted in the PRMP. BLM proposes to designate several routes in

the potential ACEC and to open the area to oil and gas leasing with standard stipulations. Exhibits G and D. As explained in Section C. above, other management protections, such as Section 106 of the NHPA, do not adequately protect R&I ACEC values. *Cf.* PRMP at 4-342.

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**Issue Number:** PP-UT-PRICE-08-0010-10

**Organization:** National Trust for Historic Preservation

**Protester:** Ti Hays

**Issue Excerpt Text:**

Potential Lower Green River and Temple

Cottonwood Dugout Wash ACECs. The Proposed RMP failed to prioritize ACEC designation for the Lower Green River and Temple Cottonwood-Dugout Wash areas. For both of these areas, BLM found the conventional oil and gas occurrence as well as development potential to be "low." Compare Proposed RMP at Map 2-49 with *id.* at Map 3-21.

Yet the Proposed RMP largely opened both areas to oil and gas leasing subject to standard lease terms, which could damage the relevant and important values of these areas. *Id.* at 4-338, 342. Further, the Proposed RMP fails to provide special management attention to protect these areas in the place of ACEC designation.

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### **Summary**

The Proposed RMP failed to prioritize ACEC designation for the Lower Green River and Temple Cottonwood-Dugout Wash areas.

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### **Response**

The BLM adequately protects the cultural resource values identified as relevant and important (R&I) in the Price PRMP/FEIS at Appendix L. As presented in Chapter 4 of the Price PRMP/FEIS, compliance with Section 106 of the National Historic Preservation Act will ensure protection of cultural resources, as discussed in Protest Issue 9.6.1 above. Because no special management is deemed necessary to protect R&I values, the BLM did not designate this area as an ACEC. See BLM Manual 1613.12. Thus, the R&I values will continue to be protected without ACEC designation.

The Price PRMP/FEIS decision not to designate the potential Lower Green River ACEC satisfies the requirements of FLPMA to protect the identified R&I values as discussed in Protest Issue 9.6.3 above.

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## ***White-Tailed Prairie Dog Potential Area of Critical Environmental Concern***

**Issue Number:** PP-UT-PRICE-08-0009c-64

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

BLM fails to protect this important wildlife habitat, and instead proposes to designate routes through the potential ACEC and to open the area to oil and gas leasing. Exhibits G and D. As the Moab BLM stated, “[w]hite-tailed prairie dog habitat is fragile and very sensitive to OHV abuse, overgrazing, drought and oil and gas disturbance.” Moab PRMP at Appendix I-10 (emphasis added). Despite the sensitive nature of prairie dog habitat, BLM threatens the habitat and the animals that rely on it by violating FLPMA and prioritizing development over the protection of R&I values. 43 U.S.C. § 1712(c)(3).

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### **Response**

The BLM adequately protects the special status species values identified as relevant and important in the Price PRMP/FEIS at Appendix L. As discussed in the Fish and Wildlife section of the PRMP/FEIS, “the BLM would manage land uses within the occupied and historic white-tailed prairie dog colonies to preserve the habitat.” PRMP/FEIS at 2-36. This management decision will preserve all white-tailed prairie dog habitat in the planning area, not merely within the White-Tailed Prairie Dog Potential ACEC. PRMP/FEIS at 2-36 (see Table 2-8). The BLM will also “follow guidelines and implement management recommendations presented in species recovery or conservation plans or alternative management strategies developed in consultation

with USFWS.” PRMP/FEIS at 2-36 (see Table 2-7). Based on the number and size of white-tailed prairie dog colonies in the planning area, most will be avoided by minor adjustments in project designs. PRMP/FEIS at 4-360. Those prairie dog colonies that are too large to avoid with standard and/or minor stipulations are located in areas with a low occurrence potential and low development potential for oil and gas and coal bed natural gas. Through adhering to these decisions on a case-by-case basis at the implementation stage, any potential impacts to white-tailed prairie dogs will be mitigated. *Id.* Travel within these areas is limited to designated routes only, reducing impacts to the white-tailed prairie dog habitat. Therefore, the BLM satisfied the requirements of FLPMA for protecting the white-tailed prairie dog in the Price PRMP/FEIS.

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### ***Heritage Sites Area of Critical Environmental Concern***

**Issue Number:** PP-UT-PRICE-08-0009c-75

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

Three of the seven sites comprising the Heritage Sites Potential ACEC, i.e. Copper Globe, Swasey’s Cabin, and Temple Mountain, are existing ACECs. It is not clear how many of the three existing ACECs and how many acres of each ACEC would be carried forward as proposed ACECs in the PRMP. BLM should explain in detail which of the existing ACECs it intends to include in the Heritage Sites Potential ACEC. Then, BLM should clarify which areas comprise the 1,260 acres that BLM would include in Alternative C, but would drop in the PRMP. PRMP at 4-313, Table 4-41. As the PRMP now reads, BLM fails to summarize in a meaningful, understandable way what sites are considered part of the potential ACEC, and whether these sites comprise all or part of the existing ACECs.

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### ***Response***

All seven of the sites listed in the description of the Heritage Sites ACEC in Table 2-19 are part of the potential Heritage Sites ACEC. PRMP/FEIS at 2-120. This includes the existing Copper Globe, Swasey’s Cabin, and Temple Mountain ACECs. *See* Map 2-49. Under Alternative C, the potential Heritage Site ACEC (2,745 acres) includes acreage that is unnecessary to protect the relevant and important (R&I) values of Historic sites. Under the Proposed RMP (1,485 acres) all known historic sites within each of the identified areas are protected. As noted on p. 4-354, this reduction in acres is because the R&I values are decreasing in the Temple Mountain unit. Reclamation of portions of the Temple Mountain area by the bureau’s Abandoned Mine Lands program has reduced the area that contains R&I values. The boundaries of the designated ACEC were adjusted to not apply management to an area without R&I cultural values. Thus, no known historic sites will be affected. A complete discussion of acres and rationale will be included in the ROD.

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### ***Nine-Mile Canyon***

**Issue Number:** PP-UT-PRICE-08-0010-22

**Organization:** National Trust for Historic Preservation

**Protester:** Ti Hays

**Issue Excerpt Text:**

Although the National Trust supports NSO in the

canyon and agrees with BLM that avoiding further oil and gas infrastructure in Nine Mile Canyon is necessary to "protect and prevent irreparable damage to the relevant and important values" of the ACEC, NSO would not protect Nine Mile Canyon's cultural values from the damage caused by industrial traffic

traveling through the canyon to oil and gas project areas on the West Tavaputs Plateau.

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**Issue Number:** PP-UT-PRICE-08-0010-25

**Organization:** National Trust for Historic Preservation

**Protester:** Ti Hays

**Issue Excerpt Text:**

Because the Proposed RMP opens approximately 75 percent of the Price Field Office to oil and gas leasing, including areas on the West Tavaputs

Plateau, these impacts would continue under the Proposed RMP. Proposed RMP at Map 2-34. However, none of the management prescriptions proposed for the Nine Mile Canyon ACEC would address the traffic-related impacts of oil and gas development on the area's cultural values. In fact, BLM admits that the management prescriptions proposed for the Nine Mile Canyon ACEC would not prevent "[I]mpacts from . . . vehicle traffic along the road." *Id.* at 4-349. Consequently, the Proposed RMP fails to prioritize the protection of Nine Mile Canyon as required by FLPMA.

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***Summary***

NSO will not protect Nine Mile Canyon's cultural values from the damage caused by industrial traffic traveling through the canyon to oil and gas project areas on the West Tavaputs Plateau.

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***Response***

The National Trust is correct. The potential Nine Mile Canyon management of NSO will not restrict traffic using the canyon, either for the purpose of enjoying the unique cultural resources or for the purpose of commercial activity. However, the PRMP/FEIS proposes to designate the area as a Special Recreation Management Area and an ACEC. PRMP/FEIS at 2-69 to 2-70, 2-116 to 2-117. The BLM has little or no authority over public thoroughfares such as the Nine Mile Canyon Road which, in this area, is maintained by Carbon County.

The BLM has provided adequate measures to protect the cultural resources in Nine Mile Canyon to the extent practicable under applicable Federal law, regulation, and policy. As noted in the PRMP/FEIS, the BLM will continue to work with proponents and local officials to mitigate, to the extent possible, impacts to these resources. However, the BLM has little or no authority over vehicular traffic on the county road at issue here. Additionally, to the extent that mitigation could be applied to the West Tavaputs project to reduce impacts to cultural resources, such measures will be considered as part of the ongoing West Tavaputs EIS and subsequent site-specific analysis.

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***Air Resources***

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

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

The BLM justifies its failure to perform a quantitative analysis of air quality impacts as follows: "A qualitative emission comparison approach was selected for this RMP air quality analysis. This approach was used because: (1) sufficient specific

data were not available on future projects; (2) there was limited time available to complete the analysis; (3) as projects are defined, quantitative analysis will be required; and (4) the State of Utah will require demonstration of compliance for any future specific projects. There are limitations associated with this approach. However, given the uncertainties with the number, nature, and specific location of future sources and activities, the emission comparison approach is defensible and provides a sound basis to compare alternatives." Air Quality Baseline Report at iii.4 My review included the comment letters submitted to the BLM from me on January 14, 2008

(Williams), Vicki Stamper on November 22, 2004 (Stamper) and the EPA on November 30, 2004 (EPA) and the BLM's response to those comments in the Public Comments and Responses - Price Draft RMP/EIS. Note: The BLM did not respond to any of the comments I submitted on the supplement to the draft Resource Management Plan and EIS on January 14, 2008.<sup>17</sup> The BLM's first reason for failing to perform a quantitative analysis - that sufficient specific data are not available on future development projects - is not supported by evidence that the BLM either cannot obtain the needed information without exorbitant cost or cannot present a credible scientific estimation of the needed data based on methods generally accepted in the scientific community. These methods of dealing with unavailable data are required when addressing incomplete or unavailable information under NEPA and must be thoroughly exercised before abandoning a more rigorous analysis. See 40 CFR 1502.22. The BLM's second reason - arguing that there was limited time available - is without any basis. There is no support in the implementing regulations, and the BLM has not provided reference to any such allowance, for skipping details due to time constraints. Moreover, the Price field office initiated the planning process for this PRMP in the fall of 2001; there clearly was time to prepare such an analysis had the BLM made this a priority.<sup>5</sup> The BLM's third reason - that project-specific analyses will occur as projects are proposed - is not supported in practice by the BLM's past actions. The BLM has failed time and again to complete the appropriate analyses at the project proposal stage (e.g., for ozone impacts and cumulative impacts), instead saying that certain analyses are best completed at the regional planning stage.<sup>6</sup> The BLM cannot continue this pattern of dismissing required analyses at the project proposal stage and then again when the opportunity arises at the planning stage. Finally, the BLM's fourth reason - that the State of Utah will require compliance demonstrations for any future project - does not relieve the BLM of its own obligation to provide for compliance with all Clean Air Act requirements.<sup>7</sup> Not only is putting the required analysis off on the State not allowed under NEPA but the State's requirements do not necessarily satisfy all of the NEPA requirements (e.g., to perform a cumulative impacts analysis considering all existing and reasonably foreseeable development sources). NEPA requires that the BLM complete a rigorous evaluation of all alternatives and thoroughly present the direct, indirect and cumulative environmental impacts of each alternative in its EIS. 40 CFR §§ 1502.14, 1502.16.

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**Issue Number:** PP-UT-PRICE-08-0009a-33

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

At the project specific phase the BLM is saying ozone should be assessed on a regional level and yet the BLM fails to follow through with such an assessment for this regional planning document. The BLM is avoiding its obligation to complete such an assessment at both the planning stage and at the project proposal stage.

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**Issue Number:** PP-UT-PRICE-08-0009a-35

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

In order to meet its obligations under FLPMA, the BLM must demonstrate that the proposed increases in primary and secondary PM<sub>2.5</sub> emissions will not cause or contribute to violations of the PM<sub>2.5</sub> NAAQS. The BLM has failed to do this in the PRMP/FEIS.

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**Issue Number:** PP-UT-PRICE-08-0009b-46

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

The PRMP's failure to include an analysis of impacts on air quality from its ORV designations and travel management decisions does not comply with FLPMA's mandate to comply with federal and state air quality standards, NEPA's hard look requirement (including baseline information as well as impacts analysis) or with the ORV regulations' minimization requirements. Implementation of the PRMP will result in air pollution (e.g., through designation of, and approval of motorized use on, designated open areas and routes), which requires that air quality modeling and quantitative analysis be undertaken before the Final RMP is issued

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### ***Summary***

In order to comply with the Clean Air Act and NEPA, the BLM must complete a rigorous evaluation of all alternatives and thoroughly present the direct, indirect and cumulative environmental impacts to air quality of each alternative in its EIS. At the project specific phase the BLM is saying ozone should be assessed on a regional level and yet the BLM fails to follow through with such an assessment for this regional planning document. The BLM must demonstrate that the proposed increases in primary and secondary PM<sub>2.5</sub> emissions will not cause or contribute to violations of the PM<sub>2.5</sub> NAAQS.

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### ***Response***

The BLM evaluated the available information, the scope of the analysis, the issues, and the decisions to be made and from this determined that a qualitative emissions analysis was the most appropriate tool for comparing alternatives and evaluating potential effects on air resources from decisions made as part of this Resource Management Planning effort. The emissions calculations were based on the best available engineering data and assumptions, air, visibility, and atmospheric deposition data, and emission inventory procedures, as well as professional and scientific judgment. Where specific data or procedures were not available, assumptions were made. There are limitations associated with this approach. However, given the uncertainties with the number, nature and specific location of future sources and activities, the emission comparison provides a sound basis to compare alternatives. The full analysis is contained in The Revised (Final) Air Quality Baseline Report (AQRB; Booz Allen Hamilton, April 2008). Summary information is presented in the Final PRMP/EIS.

Ozone is a regional pollutant. Ozone concentrations in a given area can result from emissions that are transported into an area from distant VOC and NO<sub>x</sub> emission sources, as well as local or project sources. Models used for ozone are much different than models used for other air pollutants such as CO, PM<sub>2.5</sub>, or SO<sub>x</sub>. At present there are no sound screening approaches for ozone analysis, only photochemical grid models. Photochemical grid modeling requires specific knowledge of sources, emission rates, locations in order to provide reliable and reasonable results. Generally, to determine contributions from a specific project, regional ozone photochemical grid models must be developed and run both with and without the project specific information. This is a different kind of regional assessment than a PRMP planning document. In the judgment of BLM air quality specialists, the available, reasonably foreseeable data were not sufficient to go forward with dispersion modeling for ozone (or other air pollutants) as part of this planning effort. Ozone related to oil and gas activity is being addressed quantitatively through several regional modeling efforts in which specific project level information can be utilized, such as the West Tavaputs EIS and the White River EIS, as well as the Uinta Basin Air Quality Study. The Uinta Basin Air Quality Study is designed to set up the framework for ozone modeling for future project proposals for energy development within the Uinta Basin and nearby region, if these proposals warrant ozone modeling and have the site specific information necessary to run the model.

Chapter 2 of the PRMP clearly states 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. An emissions analysis was determined to be the appropriate level of analysis to compare alternatives and provide a general sense of potential air pollutant emissions

(CO, NO<sub>x</sub>, SO<sub>2</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub>, VOC, HAPs) over the life of the plan. A summary of this analysis is found in section 4.2.1. Discussions of how these emissions compare to base year and existing air quality in the planning area from cumulative sources is included. This summary and comparison to existing sources forms the basis for concluding that activities authorized under the PRMP are not likely to exceed NAAQS, such as PM 2.5. BLM cannot determine with reasonable certainty a number of key parameters that would be necessary for modeling of air pollutants at this time or at this scale of planning. The uncertainty of the modeling results from such an exercise would render the results virtually useless. The best available data and methodology were used in the analysis presented and in forming conclusions that NAAQS would be met.

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

**Issue Number:** PP-UT-PRICE-08-0009a-4

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

The Price PRMP fails to fully and accurately model the impacts of the activities that it permits on air quality in the planning area. Both NEPA and FLPMA require that BLM properly prepare such analysis. Without doing so BLM will not understand the effects of the pollutants that it has attempted to partially inventory and model in the Price PRMP, thereby violating NEPA and its requirement that BLM understand the environmental impacts of the activities it is permitting. Importantly, the Price PRMP will permit and plans for activities that will likely lead to exceedances of federal and state air quality standards, which BLM may not do.

**Issue Excerpt Text:**

BLM must perform comprehensive, complete quantitative modeling now. The fact that the implementation of the PRMP will immediately result in air pollution (e.g., through approval of motorized use on designated routes) requires that such modeling and quantification be undertaken. The routes identified in this plan that will be open to vehicular travel will never face further analysis whereby better estimates might be developed. BLM must conduct these analyses now. This is the time that BLM must conduct comprehensive ozone pollution modeling. BLM cannot ‘punt’ this obligation to some later date. 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-PRICE-08-0009a-6

**Organization:** Southern Utah Wilderness Alliance,

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### *Summary*

The BLM has 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) lack of modeling for near-field, far-field, and cumulative analysis.

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### *Response*

The BLM is in full compliance with the hard look requirements of FLPMA and NEPA. In Section 4.2.1 of the Price PRMP/FEIS, 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. See Price PRMP/FEIS at 4-8 to 4-34. The emission comparison approach provides a sound basis for comparing 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; and 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, 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 analyses 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 (NAAQS) are enforced by the Utah Department of Environmental Quality, Division of Air Quality, with Environmental Protection Agency (EPA) oversight.

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### *Compliance with the Clean Air Act*

**Issue Number:** PP-UT-PRICE-08-0009a-10

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

In summary, the Price 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. Because monitoring indicates that the planning area likely already has levels of PM<sub>2.5</sub> that exceed NAAQS, and because it appears that ozone could also be exceeding—or close to exceeding—NAAQS, BLM is prevented by FLPMA from approving any activities that would further exacerbate or exceed these levels. 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.

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**Issue Number:** PP-UT-PRICE-08-0009a-39

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

The BLM received comments from Vicki Stamper and me regarding the need for a comprehensive PSD increment analysis. See Public Comments and Responses – Price Draft RMP/EIS – Jul 2004 at 389 and Williams 1/14/08 Comment Letter at 16. In

response to Ms. Stamper’s comments, the BLM claims that “[t]he BLM never does a PSD Increment Consumption Analysis” and that “[t]he BLM does not have the authority or responsibility to do such.” Public Comments and Responses – Price Draft RMP/EIS – Jul 2004 at 389. Yet, the Air Quality Baseline Report includes results from the PSD increment analysis of the BLM’s own Ferron Natural Gas EIS showing Class II NO<sub>2</sub> increment violations (Table 15). In fact, the BLM is required, under NEPA, to analyze and disclose all significant air quality impacts, regardless of whether another agency might address an adverse environmental impact in the future. The BLM must consider the PSD increments as important and legally binding Clean Air Act requirements and it must provide for compliance with these requirements in the FEIS. The PSD increments are separate ambient air quality standards not to be exceeded, as set out in §163 of the Clean Air Act, that apply in addition to the national ambient air quality standards in clean air areas. The BLM is required under FLPMA, 43 U.S.C. § 1712(c)(8), to “provide for compliance with” all Clean Air Act requirements, and thus the BLM cannot authorize an action that would allow the PSD increments to be exceeded. *See also* 43 CFR § 2920.7(b)(3) (requiring the same for land use authorizations).

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**Issue Number:** PP-UT-PRICE-08-0009a-5

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

FLPMA requires that BLM manage the planning area according to federal and state air quality standards. *See* 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 U.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”). To properly comply with FLPMA, the Price PRMP must affirmatively state that BLM is obligated to “require compliance with air . . . quality standards established pursuant to applicable Federal or State law.” *See* 43 C.F.R. § 2920.7(b)(3).

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***Summary***

The BLM failed to conduct a comprehensive PSD analysis and also to adequately consider travel management impacts to air resources, particularly PM 2.5.

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***Response***

Chapter 2 of the PRMP clearly states 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 NAAQS pollutants in and near the planning area, including road and off-road emissions. Section 4.2.1 contains a summary of existing and predicted emissions for NAAQS, including authorized OHV use. The full analysis is contained in The Revised (Final) Air Quality Baseline Report (AQRB; Booz Allen Hamilton, April 2008).

The Prevention of Significant Deterioration (PSD) program applies only to stationary source permitting activities and does not apply to land use planning decisions. Under the Clean Air Act and EPA regulations, the sole legal responsibility for preparation of a PSD increment consumption analysis lies with the State, with EPA oversight, and not the BLM. This would be done by a regulatory PSD Increment Consumption Analysis (PICA) that would be triggered by a proposal for a large project or point source such as a power plant. However, BLM may sometimes use PSD increments in NEPA analysis as a significance threshold strictly for comparison and disclosure purposes.

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***Climate Change***

***Analysis of Potential Climate Change***

**Issue Number:** PP-UT-PRICE-08-0009a-46

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**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 documents 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 to 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 in the MFO, and an important aspect of that challenge.

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**Issue Number:** PP-UT-PRICE-08-0009a-48

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter,

Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**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 Price 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-PRICE-08-0009a-52

**Organization:** Southern Utah Wilderness Alliance,

The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

The impacts of climate change were simply not discussed; such an omission violates this section of the 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 Price Field Office. The predicted warmer, drier conditions will create fundamental change to the Price Field Office and BLM has simply ignored those coming changes, choosing instead to manage for the past, rather than for the future.

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***Summary***

The BLM failed to take a hard look, or virtually any look, at the impacts of climate change, despite the Secretarial Order.

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***Response***

The impacts of climate change are discussed at a level of detail appropriate to landscape-level analysis, given the lack of data or modeling methodology, in the Price PRMP/FEIS at pp 4-5 to 4-6. Information relating to the climate and to global climate change is provided in Chapter 3 of the Price PRMP/FEIS at pages 3-2 to 3-4.

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. Additionally, specific levels of significance have not yet been established. The EPA has not developed a regulatory protocol or emission standards regarding global climate change. When these protocols and standards are available, the BLM will analyze potential effects on global warming in the NEPA documentation prepared for site-specific projects. The BLM will conduct subsequent NEPA analyses, including site-specific project and implementation action levels, such as for 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 actions implementing the Proposed Plan. 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.

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## *Potential Supplemental Draft*

**Issue Number:** PP-UT-PRICE-08-0009a-56

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

As noted above, no analysis of potential climate change impacts was provided in the plan and EIS. BLM simply ignored the Secretarial Order, opting instead for the boilerplate insertion of superficial and incomplete information regarding climate change.

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**Issue Number:** PP-UT-PRICE-08-0009a-58

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

As noted above, BLM briefly discussed climate change in the PRMP, but entirely failed to mention it in the Draft RMP. But 40 C.F.R. § 1502.9(c)(1) requires BLM to prepare an 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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**Issue Number:** PP-UT-PRICE-08-0009a-60

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

Here, BLM introduced an important issue concerning the future management of the Price Field Office for the very first time in the final plan. The public, interested parties, and those with expertise in climate change had no opportunity to review the information before the release of the final plan 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***

Climate change is a significant new circumstance that requires supplementing the EIS.

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## ***Response***

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 because 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 decision maker about the impacts of BLM activities on global climate change. In the future, if climate change continues to have an effect on BLM-managed resources and programs, the BLM will re-evaluate the land management status for that given area and adjust management accordingly.

There is no technical basis or standard accepted protocols for evaluating activities conducted under this PRMP or for 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 or the environment, (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 (which is 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***

**Issue Number:** PP-UT-PRICE-08-0010-52

**Organization:** National Trust for Historic Preservation

**Protester:** Ti Hays

**Issue Excerpt Text:**

As described in Section IV.B.1 above, the Proposed RMP failed to describe the current condition of significant cultural resources in the Price Field Office. Thus, while BLM may have used "existing Class I and Class III inventory data" during the land use planning process to identify known cultural resources within the Price Field Office, it is not apparent if and how BLM took the current condition of these resources into account when weighing the various management alternatives. It goes without saying that, in order to "assume responsibility for the preservation" of a historic property under Section 110, BLM must first obtain an up-to-date assessment of the resource's condition.

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### ***Response***

The BLM acknowledges that its inventory of cultural resources within the Price Field Office is not complete. However, no site-specific activity will take place without an appropriate archaeological survey (as stated on page 2-24 of the PRMP/FEIS). The baseline data provided in Chapter 3 and various appendices in the PRMP/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. A land use planning level decision does not require an exhaustive gathering and monitoring of baseline data. Although the BLM realizes that more data could always be gathered, the baseline data provides the necessary basis to make informed land use plan-level decisions.

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### ***Compliance with Section 106 of the National Historic Preservation Act and Class III Inventory Requirements***

**Issue Number:** PP-UT-PRICE-08-0005-11

**Organization:** Colorado Plateau Archaeological Alliance

**Protester:** Jerry D. Spangler

**Issue Excerpt Text:**

As CPAA noted in its comments, 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 proposed plan appears to perpetuate the agency's failure to comply with Section 106 requirements in the past.

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**Issue Number:** PP-UT-PRICE-08-0005-24

**Organization:** Colorado Plateau Archaeological

Alliance

**Protester:** Jerry D. Spangler

**Issue Excerpt Text:**

Consulting Party Status. As discussed in CPAA's comments on the DRMP, there is no overt indication in the EIS that the PFO intends to preclude public participation in the Section 106 process, nor is there any explicit assurance that officials intend to engage interested publics as consulting parties through the Section 106 process. The BLM's response to CPAA (Response to Comments P. 48) accentuates this concern with the statement that "It is the BLM's position that the public is afforded ample opportunity to comply (sic) through the NEPA process and that a separate public participation process is not necessary." The BLM's stated "position" undermines the spirit and intent of Section 106 of the National Historic Preservation Act in that it fails to recognize the distinction between the public comment allowed under NEPA and the opportunity for public participation under the NHPA. Under NEPA, interested publics may, at their own instigation, comment on federal actions. Under NHPA, the implementing regulations (36 CFR 800.2(d)(1) clearly mandate that the federal agencies shall seek out participation from those publics with an interest in the undertaking.

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**Issue Number:** PP-UT-PRICE-08-0005-5

**Organization:** Colorado Plateau Archaeological Alliance

**Protester:** Jerry D. Spangler

**Issue Excerpt Text:**

The proposed plan represents a conundrum of "conflicting policies." Revised NHPA regulations state OHV permits are considered an undertaking subject to Section 106 review, but the BLM handbook, as well as the statewide protocol agreement, indicate that such permits are exempt from Section 106 review. CPAA contends that federal law takes precedence over BLM guidelines and state protocol agreements that are in direct conflict with federal laws and their implementing regulations.

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

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

Under NEPA, interested publics may, at their own

instigation, comment on federal actions. Under NHPA, the implementing regulations (36 C.F.R. § 800.2(d)(1) clearly mandate that the federal agencies shall seek out participation from those publics with an interest in the undertaking. The PFO has systematically precluded public participation in the Section 106 review process, with the caveat that the public has ample opportunities to comment through provisions of the National Environmental Policy Act (Gubbins 2006, *see also* identical letters denying consulting party status to the Southern Utah Wilderness Alliance and the National Trust for Historic Preservation). SUWA agrees with CPAA that the federal regulations are explicit, that federal agencies shall "seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties," as defined in 36 C.F.R. § 800.2(d)(1). The PRMP must be modified to clearly state the intent of the agency to comply with public participation provisions of Section 106 of the National Historic Preservation Act, in addition to provisions for public comment through NEPA. Such participation is at the heart of the National Historic Preservation Act.

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**Issue Number:** PP-UT-PRICE-08-0009b-36

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

Without first completing cultural resource surveys for each ORV area and trail that it proposes to designate in the plan, BLM lacks critical information on which to base ORV area and trail designation decisions, and the resulting PRMP is not in compliance with NEPA's hard look requirement, the NHPA, and FLPMA's UUD and minimization mandates.

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**Issue Number:** PP-UT-PRICE-08-0010-28

**Organization:** National Trust for Historic Preservation

**Protester:** Ti Hays

**Issue Excerpt Text:**

The Final EIS lacks an adequate description of the affected environment. The Final EIS lacks adequate baseline data concerning the existing condition of significant cultural resources in the Price Field Office. BLM is required to "describe the environment of the area(s) to be affected or created by the alternatives under consideration." 40 CFR 1502.15.

**Issue Number:** PP-UT-PRICE-08-0010-33

**Organization:** National Trust for Historic Preservation

**Protester:** Ti Hays

**Issue Excerpt Text:**

The Proposed RMP lacks even this bare minimum level of information about significant cultural sites in the Price Field Office. The information that is provided in the affected environment section consists almost entirely of general descriptions of the various site types. Proposed RMP at 3-29. When specific resources are mentioned, the Proposed RMP provides no information about their current condition, *See id.* at 3-31-32 (listing "National Register and Well-Known Sites" within the Price Field Office). In short, the Proposed RMP lacks the required baseline information on significant cultural sites.

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**Issue Number:** PP-UT-PRICE-08-0010-46

**Organization:** National Trust for Historic Preservation

**Protester:** Ti Hays

**Issue Excerpt Text:**

The Proposed RMP lacks a schedule for inventorying the areas identified for proactive inventory. Developing a schedule for initiating and completing proactive inventories is important because BLM will be making irreversible and irretrievable commitments of resources through the plan and should first survey potentially affected areas with significant cultural

resources before making these types of decisions, including oil and gas leasing decisions. Additionally, Section 14 of the Archaeological Resources Protection Act requires BLM to develop a schedule for surveying land under its management for scientifically valuable archaeological resources, 16 U.S.C. 470mm.

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**Issue Number:** PP-UT-PRICE-08-0010-51

**Organization:** National Trust for Historic Preservation

**Protester:** Ti Hays

**Issue Excerpt Text:**

The Proposed RMP violates Section 110(a)(2)(E)(i) of the NHPA, which requires an agency's Section 106 procedures to be consistent with the Advisory Council's regulations. Unlike the broad mandates of subsections (a)(1), (a)(2)(B) and (d), subsection (a)(2)(E)(i) of Section 110 imposes a discrete requirement upon BLM-to ensure "that the agency's procedures for compliance with Section 106 . . . are consistent with regulations issued by the Council." 16 U.S.C. 470h2(a) (2) (E) (I); *see also Northwest Env'tl. Def. Ctr. v. Bonneville Power Admin.*, 477 F.3d 668, 686 (9th Cir. 2007) (noting the obligatory nature of statutory consistency requirements). For the reasons spelled out in Section IV.C.2 of this protest, the Proposed RMP's Section 106 procedures are inconsistent with the Section 106 regulations. Therefore, BLM has violated Section 110(a)(2)(E)(i) of the NHPA.

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***Summary***

The BLM has failed to conduct inventories in OHV areas and designated routes, as well as areas open to oil and gas leasing. As a result, the PRMP/FEIS lacks baseline information upon which to base its decisions. Further, the BLM has not complied with the requirements of Section 106 of NHPA. The BLM has not provided opportunities for public input in the Section 106 process.

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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/DEIS, 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, it 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. The BLM will comply with its Section 106 responsibilities as directed by the NHPA regulations and BLM WO IM-2007-030, Clarification of Cultural Resource Considerations for Off-Highway Vehicle Designation and Travel Management. As described in 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 Effect and compliance with Section 106 prior to designation. Class III inventory of the Area of Potential Effect (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 (IM at page 2).

The BLM analyzed cumulative impacts in Chapter 4 and presented 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 alternative X than they would under alternative Y. The analysis is based in large part on existing legislation, regulation, and policy that require inventory and mitigation on all Federal undertakings. The BLM has conducted all necessary consultations with the SHPO, and the SHPO has provided written concurrence, which will be attached to the ROD.

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### *National Register of Historic Places Nominations*

**Issue Number:** PP-UT-PRICE-08-0009a-72

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

The stated intent expressed in the PRMP that the PFO will more aggressively pursue its Section 110 responsibilities through proactive surveys is laudable. However, the historic practice in BLM field offices throughout the West has been to prioritize budgets based on greatest demand, usually to the neglect of non-consumptive management initiatives. Given that non-energy-related BLM budgets have been static or have declined in recent years, there

would appear to be little incentive for the PFO to prioritize funding for non-project-driven initiatives, including National Register nominations and non-project-drive Class II and Class III surveys.

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### **Response**

As stated in the response to comments at p. 5-69 of the PRMP/FEIS,

[t]he BLM's multiple-use mission as directed by Congress is to sustain the health and productivity of the public lands for the use and enjoyment of present and future generations. The BLM accomplishes this by managing such activities as outdoor recreation, livestock grazing, mineral development, and energy production, and by conserving natural, historical, cultural, and other resources on the public lands. The BLM will seek to obtain funding for implementation and mitigation of the Proposed Plan. Because funding is provided by Congress, it is beyond the BLM's control. The BLM has assumed that because Congress has directed the BLM to manage public land, it would continue to fund it adequately to manage resource uses and protect the health and safety of the public and the resource values on the public lands."

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 the NHPA, outlines the procedures that BLM managers are to follow in order to meet their responsibilities under Section 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, has outlined 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. The potential effects of any such activity will also be analyzed in site-specific NEPA documentation..

Table 2-4 of the PRMP/FEIS (Cultural Resource Decisions) outlines which areas would receive priority for Section 110 inventories under the Proposed Plan. PRMP/FEIS at 2-25. Among the areas prioritized are those with "resources eligible for the NRHP at a national level of significance that have not been fully inventoried." *Id.*

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### **Protection of Cultural Resources**

**Issue Number:** PP-UT-PRICE-08-0001-4  
**Organization:** Utah Rock Art Research Association  
**Protester:** Troy Scotter

**Issue Excerpt Text:**

Why we believe the State Director's decision to be wrong. The RMP/EIS process fails to adequately

protect cultural resources within the district. Further, the final plan puts these cultural sites at greater risk from vandalism associated with increased industrial and recreational traffic near sites and pollution damage associated with energy development.

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**Issue Number:** PP-UT-PRICE-08-0009a-76

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

As demonstrated by recent surveys in this area (Spangler, Arnold and Boomgarden 2006; Spangler, Barlow and Metcalfe 2004), site density [for Range Creek] exceeds 20 sites per square mile and sites are found in all topographic settings, from the valley

floor to high on cliff faces. While some of these sites have been impacted to a greater degree by vandalism than sites inside the locked gates (*cf.* Spangler, Arnold and Boomgarden 2006), most retain a high degree of site integrity that makes them eligible for listing on the National Register. Given the extremely high density of significant sites, site avoidance is not a realistic expectation. It is also emphasized that management for “documentation,” as stated in the PRMP, is not an option specified in 36 C.F.R. § 800 wherein impacts are to be avoided, minimized or mitigated.

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***Summary***

The RMP/EIS process fails to adequately protect cultural resources within the district. Given the extremely high density of significant sites, site avoidance is not a realistic expectation. It is also emphasized that management for “documentation,” as stated in the PRMP, is not an option specified in 36 C.F.R. § 800 wherein impacts are to be avoided, minimized, or mitigated.

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***Response***

The BLM has completed all RMP-level consultations as required under Section 106 of NHPA prior to issuing the ROD. *See* PRMP/FEIS at 4-36. Additionally, subsequent activity or project-level planning decisions will be subject to compliance with Section 106 of NHPA. *Id.* This includes consultation with the Utah SHPO, Indian Tribes, and other interested parties to determine information needs, conduct site evaluations, evaluate effects of the proposed activity and resolve adverse effects to cultural resources. *Id.* Limiting OHV use to designated roads and trails will reduce both accidental and intentional disturbance of yet-unrecorded cultural sites. PRMP/FEIS at 4-57.

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***Examination of Baseline Data and Available Information***

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

**Organization:** Colorado Plateau Archaeological Alliance

**Protester:** Jerry D. Spangler

**Issue Excerpt Text:**

Best Available Data. CPAA is also concerned that the PRMP is not based on best available data related to cultural resources. The documents cites as a primary source a long-outdated Class I report (Spangler and Forsyth 1993) when there were two subsequent and much more detailed regional analyses available (Spangler 1995, 2002). The PRMP also failed to take into consideration the results of recent research conducted in the region, including Range Creek (Spangler, Barlow and Metcalfe 2004; Spangler Arnold and Boomgarden 2006) and Desolation Canyon (Spangler, Davis et al. 2007; Spangler, Boomgarden et al. 2007; Spangler, Jones et al. 2007). These reports are all on file at the Price Field Office and were available to planners.

The failure of the PRMP to incorporate the best available data is reflected in the flawed statement that there are 2,033 cultural resource sites in the SHPO data base. This number is grossly inaccurate and reflects carelessness on the part of BLM planners. All of Carbon and Emery counties are included within the jurisdiction of the PFO (as well as portions of Duchesne and Uintah counties). As of September 2007, and well within the DRMP planning process, a total of 3,875 sites had been documented in Emery County and 2,661 sites in Carbon County (this does not include

many hundred Nine Mile Canyon sites located in Duchesne and Uintah counties managed by the PFO). Given that more than 80 percent of these two counties are federal lands and that the vast majority of sites have been identified through Section 106 compliance activities, it can be stated with confidence that the BLM did not take into consideration in its planning process at least half of the known archaeological and historic properties under its jurisdiction.

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### ***Response***

The RMP was based on best available data related to cultural resources. The number of archeological sites was derived from the SHPO database. New sites are being reported all the time, but such information does not change the information on cultural resources presented in Chapter 3 nor affect the analysis in Chapter 4. Because the bureau has only a limited inventory of these resources (*see* p. 3-29), specific effects cannot be determined at the present time. The Section 106 process was completed on the RMP level. All site-specific activities that may affect archeology will be accompanied by a survey to the level and extent necessary, and will involve further Section 106 consultations. The BLM reviewed the additional information cited in the protest but determined that the information would not change the analysis or conclusions in the document.

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### ***Analysis of Impacts to the Hopi Tribe's Traditional Cultural Property***

**Issue Number:** PP-UT-PRICE-08-0010-37

**Organization:** National Trust for Historic Preservation

**Protester:** Ti Hays

**Issue Excerpt Text:**

BLM failed to evaluate the effects of the Proposed RMP on the Hopi Tribe's Traditional Cultural Property in Nine Mile Canyon. The Proposed RMP failed to consider effects on the Traditional Cultural Property (TCP) identified by the Hopi Tribe in Nine Mile Canyon. Under the NHPA, BLM is required to identify properties of religious and cultural significance to Indian tribes, including any TCPs, during the land use planning process, 16 U.S.C. 470a(d)(6)(A), (B).

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**Issue Number:** PP-UT-PRICE-08-0010-38

**Organization:** National Trust for Historic Preservation

**Protester:** Ti Hays

**Issue Excerpt Text:**

BLM must also "identify...potential effects on them," BLM Manual 8110.12, and in a manner that considers the views of affected tribes. *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 807 (9th Cir, 1999); BLM Manual 8130,15(A)(2). Although BLM consulted with the Hopi Tribe during the planning period, and the Hopi Tribe has identified Nine Mile Canyon as a TCP, the Proposed RMP lacks an assessment of potential effects on the TCP,

in particular decisions related to oil and gas leasing and development. Further, the Proposed RMP fails to disclose the Hopi's views concerning the management of Nine Mile Canyon, which the tribe has conveyed to BLM on several occasions in the past. Thus, the Proposed RMP violates the NHPA.

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**Issue Number:** PP-UT-PRICE-08-0010-39

**Organization:** National Trust for Historic Preservation

**Protester:** Ti Hays

**Issue Excerpt Text:**

First, the Proposed RMP failed to discuss the potential effects of oil and gas decisions on the TCP identified by the Hopi Tribe. For example, the Proposed RMP designates federally managed land in Nine Mile Canyon as open to oil and gas leasing subject to NSO. Proposed RMP at 2-116. While BLM correctly asserts that the NSO stipulation will largely prohibit lessees from placing oil and gas infrastructure within the canyon, the stipulation will not prevent traffic associated with lease from accessing project areas through Nine Mile Canyon. Thus, BLM erred in not assessing the effects of traffic on the TCP in the Proposed RMP.

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**Issue Number:** PP-UT-PRICE-08-0010-41

**Organization:** National Trust for Historic Preservation

**Protester:** Ti Hays

**Issue Excerpt Text:**

the Proposed RMP failed to consider the views of the Hopi Tribe concerning the management of Nine Mile Canyon. On several occasions in the past, the Hopi Tribe has raised objections with BLM concerning natural gas development projects in the Nine Mile Canyon region. *See* Letter from Leigh J. Kuwanwisiwma, Director, Hopi Cultural

Preservation Office, to Roger Bankert, Manager, Price Field Office (April 30, 2008) (commenting on the Draft EIS for the West Tavatpus Plateau Natural Gas Full Field Development Plan). In particular, the Hopi has objected to the ongoing use of Nine Mile Canyon Road as the principal means of access to natural gas project areas located on the West Tavaputs Plateau.

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***Summary***

The Proposed RMP failed to consider effects (including those from vehicular traffic) on the Traditional Cultural Property (TCP) identified by the Hopi Tribe in Nine Mile Canyon. The Proposed RMP failed to consider the views of the Hopi Tribe concerning the management of Nine Mile Canyon.

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***Response***

On p. 5-2 of the PRMP/FEIS, the BLM acknowledges that Nine Mile Canyon is considered a TCP. On p. 2-25, the PRMP/FEIS states that “[t]he BLM would coordinate with tribes or other cultural groups to identify and manage traditional cultural properties (TCP)...[t]he BLM would seek agreements with the tribes or other cultural groups to identify the types of projects or areas where they desire.” The BLM will adhere to these commitments in implementing of the Proposed Plan.

In a December 2007 letter, the Hopi Tribe expressed concern for the Nine Mile Canyon area, requesting that management of the Canyon avoid impacts to prehistoric archaeological sites and that an influx in visitation be addressed. In the Proposed Plan, the BLM is designating an ACEC (p. 2-116) and a Special Recreation Management Area (SRMA) (p. 2-69) to address these issues. The designation of the 26,200 acre Nine Mile Canyon ACEC provides special management for this area (a portion of which lies within the Vernal planning area) to protect these cultural resources. Management prescriptions for the area will limit surface disturbing activities (to NSO), utility corridor approvals (to one, with minimal disturbance), and OHV use (to designated routes).

The SRMA will more effectively manage recreation and interpretive activities for visitors of the cultural and historic resources. The SRMA closes semi-primitive non-motorized areas (as defined by the BLM’s Recreation Opportunity Spectrum (ROS)) to OHV use and limits camping to designated areas. Any new facilities (interpretive materials, signage, etc.) will only be allowed in ROS roaded natural areas.

Combined, the management of this area will provide protection of the TCP. Although there is no direct discussion of impacts to the Nine Mile Canyon in the context of the TCP, considerable analysis of impacts to Nine Mile Canyon from the BLM’s Proposed Plan has been provided. Impacts related to the ACEC designation are discussed on pp. 4-345 to 4-349. Impacts to the Nine Mile Canyon SRMA are discussed on pp. 4-252, 4-256, 4-263, and 4-268. The BLM incorporated the direct impacts to the TCP in the analysis of the impacts to Nine Mile Canyon. Thus, the BLM has adequately considered impacts to the TCP.

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

**Issue Number:** PP-UT-PRICE-08-0012-40

**Organization:** Independent Petroleum Association of Mountain States

**Protester:** Kathleen M. Sgamma

### **Issue Excerpt Text:**

Further, Appendix G states that mule deer fawning areas would be closed from May 15 - July 5 in crucial fawning areas located within the crucial summer habitat. Does this suggest that these timing stipulations will apply to the mule deer crucial value summer habitat areas found on Map 3-10 and the mule deer fawning areas found on Map 3-12a? The PRMP is not clear that these timing stipulations will apply to one or both of these areas and the inclusion of several different mapped habitats will lead to confusion when it comes to identifying exactly which management prescriptions pertain to each designated habitat. IPAMS recommends the BLM clarify which timing stipulations apply to each particular area and remove any mapped habitats areas that don't necessitate special management prescription.

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### **Response**

Only Map 3-12a of the PRMP/FEIS has bearing on the decisions within the Proposed Plan. This map depicts all areas within the planning area where stipulations described in Appendix G will apply. PRMP/FEIS at 2-34. To be clear, the Mule Deer fawning area stipulation described on page G-4 will be applied only to those areas depicted on Map 3-12a.

Map 3-12a was developed by the BLM for the PRMP/FEIS to include updated data provided by the State of Utah Division of Wildlife Resources (DWR) in 2006. This data was provided after the DWR changed its wildlife habitat classifications in 2005. The data depicted in Maps 3-9 through 3-12 was provided to the BLM in 2002. The 2006 update makes the habitat data provided in Maps 3-9 through 3-12 useful only for analytical purposes with regard to the Proposed Plan. Maps 3-9 through 3-12 were included in the PRMP/FEIS because the analysis of alternatives B, C, and E were based on this 2002 data. PRMP/FEIS at 2-34.

The BLM provided an explanation for this on pages 1-19 and Q-3 of the PRMP/FEIS. Only Map 12a will be included in the ROD and approved plan.

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## *Special Status Species*

**Issue Number:** PP-UT-PRICE-08-0008-84

**Organization:** Western Watersheds Project, Inc.

**Protester:** John G. Carter

### **Issue Excerpt Text:**

In the RMP, BLM ignores impacts to T&E species from livestock grazing which can directly alter habitats for T&E, Utah and BLM-sensitive species and Conservation Agreement species.

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### **Response**

The BLM has completed Section 7 consultation with the FWS, and has received a Biological Opinion which concludes that implementation of the plan will not likely 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 Appendices D and F of the PRMP/FEIS.

Additionally, the impacts of livestock grazing decisions on special-status species are discussed in the Price PRMP/FEIS. In general, impacts were found to be similar for all alternatives. These impacts would be minimized through adherence to the guidelines set forth on p. 4-96 of the *Utah Standards for Rangeland Health*. Under the Proposed Plan, there is a potential for impacts to the Mexican Spotted Owl and other riparian-obligate special status species from grazing in the Green River/Labyrinth Canyon Corridor. PRMP/FEIS at 4-117. However, these impacts would be reduced if the grazing permits were voluntarily relinquished. Pp. 2-52 and 53. Additionally, limiting grazing seasonally in the Hondo, Red Canyon, and McKay Flat allotments (p. 2-54) would mitigate and reduce the impacts described under the No Action Alternative (p. 4-117).

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### ***White-Tailed Prairie Dog***

**Issue Number:** PP-UT-PRICE-08-0009c-128

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

The U.S. Fish and Wildlife Service has indicated that additional management prescriptions are necessary to conserve the species, and these should be incorporated during RMP revision:

The white-tailed prairie dog range also occurs within the jurisdiction of the Price and Moab Field Offices, which do not have directives with regard to white-tailed prairie dog management. However, both of these field offices are currently revising their Land Use Plans and the new plans will consider the white-tailed prairie dog in special status species alternatives (S. Madsen, P. Riddle, BLM, pers. comm., as cited by Seglund et al. 2004), which would carry with it protections similar to those for species protected under the ESA. (*See* 69 Fed. Reg. 64899 (Nov. 9, 2004))

It is therefore completely arbitrary and capricious for BLM to conclude that all impacts to white-tailed prairie dogs will be mitigated with no new management prescriptions in the Price PRMP.

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### ***Response***

The Price PRMP/FEIS states that "[t]he BLM would manage land uses within occupied and historic white-tailed prairie dog colonies to preserve the habitat." Price PRMP/FEIS at 2-36, Table 2.7. In addition, the BLM, as directed by BLM Manual 6840, will manage habitat for sensitive species in a manner that will ensure that all actions authorized, funded, or carried out by the BLM will not contribute to the need for the species to become listed. Price PRMP/FEIS at 2-29. In implementing its Proposed Plan, the BLM will comply with these management objectives.

The direction of the 6840 Policy relative to non-listed sensitive species does not require that the BLM provide the species protections similar to those for species protected under the ESA, as the protester suggests. Rather, the 6840 Policy requires the BLM to carefully consider how BLM-authorized or initiated actions in occupied or historic white-tailed prairie dog habitat can be modified to avoid, reduce, or minimize impacts to either prairie dogs or their habitat. For example, Surface Use Regulations contained in 43 C.F.R. § 3101 pertaining to oil and gas development activities allow for movement of proposed activity up to 200 meters in order to avoid resource impacts such as disturbance of prairie dog habitat. Further, the BLM will "...implement the conservation actions identified in the Utah Comprehensive Wildlife Conservation Strategy (Gorrell et al., 2005), which identifies priority wildlife species and

habitats, identifies and assesses threats to their survival, and identifies long-term conservation actions needed, including those on BLM-administered lands." Price PRMP/FEIS at 2-30. To assist in achieving that objective, the BLM has entered into an Assistance Agreement with the Utah Division of Wildlife Resources to complete white-tailed prairie dog occupancy modeling surveys during 2008 which will establish a baseline for prairie dog occupancy. These surveys will be measured against repeated surveys at 3-year intervals to determine the white-tailed prairie dog population trend over time.

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## ***Migratory Birds***

**Issue Number:** PP-UT-PRICE-08-0008-23

**Organization:** Western Watersheds Project, Inc.

**Protester:** John G. Carter

### **Issue Excerpt Text:**

Migrant birds are not addressed in violation of NEPA, FLPMA and Executive Order 13186 requiring a memorandum of understanding with the Fish and Wildlife Service and to consider the effects that planned or authorized activities will have on migratory birds and their habitats and to consider migratory birds in their land use planning efforts.

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### ***Summary***

Migratory birds are not addressed in violation of NEPA, FLPMA, and Executive Order (EO) 13186.

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### ***Response***

Management of migratory bird habitat is described under the Proposed Plan at pp. 2-35 and 2-36. When taking actions to implement the Proposed Plan, the BLM will, "in accordance with EO 13186, incorporate conservation measures as outlined in the Utah Partners-In-Flight Avian Conservation Strategy...." PRMP/FEIS at 2-31). Likewise, "[I]and uses within [migratory bird] priority habitats would be managed to promote regeneration, diverse age class distribution, and preservation or restoration of diverse understory to include forbs, grass, and shrub species." *Id.* at 2-35. Also, see p. G-6 of the PRMP/FEIS for a seasonal stipulation for high-value breeding habitat.

When site-specific proposals are brought forward, the BLM will consider, in further NEPA analyses, potential impacts to migratory birds. These proposals will comply with Executive Order 13186 as well as the goals and objectives of the RMP. Impacts to migratory birds are included in the discussion in Chapter 4.2.8 *See id.* at 4-127, 4-150, 4-151.

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## **Leasable Minerals**

**Issue Number:** PP-UT-PRICE-08-0004-1

**Organization:** Petro-Canada Resources, Inc.

**Protester:** Carla Konopka

### **Issue Excerpt Text:**

Re: Protest of Price Proposed Resource Management Plan ("PRMP"). Petro-Canada Resources (USA) Inc.

("Petro-Canada") has reviewed the Proposed Resource Management Plan for the Price field office and would like to specifically address management prescriptions made for a tract of land in the south portion of 12-14E and the northeast portion of 13S-14E (the "Horse/South Ridge Tract"). Referencing Map 2-34, Fluid Mineral Leasing - Proposed RMP,

this tract of land has been changed from "Standard Stipulation" to "No Surface Occupancy" (NSO). The PRMP does not include a discussion of the justification for the NSO restriction, and our review of the resource concerns discussed in the PRMP do not reveal a reason for this area to be singled out for this designation change. Petro-Canada is the owner of a number of oil and gas leases in this area and although our existing leases would be subject only to the terms and conditions contained within the leases and would not be subject to the new leasing prescriptions contained in the PRMP, we are concerned that if BLM modifies its leasing stipulations in this area due to unknown resource concerns, in the future BLM may propose conditions of approval attached to individual APDs to protect such unknown resource concerns.

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**Issue Number:** PP-UT-PRICE-08-0004-3  
**Organization:** Petro-Canada Resources, Inc.  
**Protester:** Carla Konopka

**Issue Excerpt Text:**  
Since all five of the alternatives in the DRMP showed

the Horse/South Ridge Tract as either open subject to standard conditions or open subject to minor constraints, the NSO designation contained in the PRMP was not subjected to the required public notice nor public discussion. It is unclear where this NSO designation came from, but it raises serious concerns about the PRMP process. In addition to the Horse/South Ridge, I would note that the same circumstances apply to the NSO tract in the south part of 13S-15E. Although the PRMP shows this tract as NSO, none of the five alternatives in the DRMP showed it as NSO, so there was no public notice or discussion of the issue.

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**Issue Number:** PP-UT-PRICE-08-0004-5  
**Organization:** Petro-Canada Resources, Inc.  
**Protester:** Carla Konopka

**Issue Excerpt Text:**  
Also, the No Action Alternative in the PRMP is incorrect in depicting a portion of the lands as NSO as that was not the decision of the BLM in issuing the leases in 2007 with minor constraints.

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### **Summary**

The Horse/South Ridge tract and a tract in the south part of 13S-15E, are designated NSO. However, none of the five alternatives in the DRMP showed it as NSO, so there was no public notice or discussion of the issue. There is no justification provided for the change. The No Action Alternative in the PRMP is incorrect in depicting a portion of the lands as NSO as that was not the decision of the BLM in issuing the leases in 2007 with minor constraints.

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### **Response**

The NSO stipulation in 13S-15 E is implemented to protect the greater sage-grouse leks and is described in the PRMP/FEIS at 2-30, Table 2-7. The BLM introduced this stipulation in the PRMP/FEIS as denoted on pages ES-9, 1-19, and Q-3.

Upon review of Map 2-34, the BLM has determined that the polygon mapped as NSO is larger than the ½ mile NSO boundary. Therefore, Map 2-34 will be reproduced to show both the ½ mile NSO stipulation and the seasonal restriction for two miles around greater sage-grouse brood habitat. The mapping error will be corrected in the ROD.

The restrictions imposed by this RMP will have no affect on valid existing rights. See PRMP/FEIS at 1-13. Therefore, this requirement will not apply to leases previously issued.

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### ***The Reasonably Foreseeable Development Scenario***

**Issue Number:** PP-UT-PRICE-08-0009b-7  
**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for

**Issue Excerpt Text:**

The Price PRMP bases its analysis of oil and gas impacts in the planning area on the assumption that well density will not exceed one well per 80 acres and that most development will only occupy one well pad per 160 acres. *See* PRMP at M-5. However, this assumption is incorrect, as it is likely that many locations in the planning area will see up to one well per forty acres, a four-fold to two-fold increase in well density. The Independent Petroleum Association of Mountain States insists that 40-acre spacing will be necessary to develop the tight sands of the planning area. BLM, Response to Draft Comments, sorted by Resource, at 148.

Furthermore, BLM has evaluated numerous projects in the Price planning area that would implement 40-acre spacing while rejecting full scale directional drilling. *See, e.g.,* West Tavaputs Plateau Natural Gas Full Field Development Plan, Draft Environmental Impact Statement, UT-070-05-055, at 2-11, 2-149 (Feb. 2008) (implementing 40-acre spacing and rejecting full field directional drilling). As a result of this improper assumption the Price PRMP drastically understates the negative impacts that will result to wildlife, wilderness character, air quality, soils and water resources, vegetation, and visual resources from the high density development that is likely to take place in the planning area.

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***Response***

The 160-acre spacing used for estimating impacts refers to surface locations (well pads), not wellbores. *See* PRMP/FEIS at 4-280. Since modern directional drilling technology allows for multiple wells to be drilled from a single surface location, fields can be down-spaced with little additional surface footprint. Additionally, impacts to other resource values from oil and gas development would be further mitigated with the application of best management practices to future development proposals.

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**Recreation and Visitor Services**

**Issue Number:** PP-UT-PRICE-08-0009b-18

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

Unlike the detailed and clear flow chart for SRP issuance, the proposed method in the PRMP for issuing Letters of Agreement is ambiguous. Although BLM has created a matrix for determining when a SRP is not necessary, this is not nearly as specific as the matrix for SRP Classifications. Rather, it is focused mostly on health and safety concerns, bonding, and insurance. The two questions that may relate to protecting natural resources are simply, “Is the use appropriate to the site?” and “Does the activity further recreation program goals and objectives?” PRMP at J-4. These questions are vague and do not mandate an accurate assessment of potential damage to resources. Furthermore, the example of a Letter of Agreement provided in Appendix J, which is an overnight, 200-person

camporee, directly conflicts with the SRP matrix, which would place this activity between an SRP Class I and Class II. This broad discretion leaves potential for Letters of Agreement to be inappropriately substituted for SRPs and issued based on criteria that do not comply with the BLM’s statutory and regulatory obligations.

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**Issue Number:** PP-UT-PRICE-08-0012-33

**Organization:** Independent Petroleum Association of Mountain States

**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

5. Old Spanish Trail: The PRMP provides management prescriptions for three segments of 123 miles of the Old Spanish Trail in the PPA (Table 2-21, p.2-142 - 2-144). In one segment, oil and gas leasing and development would be subject to major constraints (NSO). In two segments, oil and gas leasing and development would be subject to minor constraints (timing limitations, controlled surface use and standard leasing stipulations). The PRMP /FEIS does not provide a distance from the trail corridor for

any related buffer zones or avoidance areas, where the constraints apply in each segment. For the final RMP /ROD, IPAMS recommends that the BLM clarify the size of buffer zones along each segment of the Old Spanish Trail and also quantify the size of the area that will be subject to major and minor

constraints. IPAMS recommends that the NSO buffer for the Lost Springs Wash/Trail Springs Wash segment be no more than 1/2-mile on each side of the trail, to allow a reasonable opportunity for oil and gas development

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### ***Summary***

Broad discretion leaves the potential for Letters of Agreement to be inappropriately substituted for special recreation permits (SRPs) and issued based on criteria that do not comply with the BLM's statutory and regulatory obligations.

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### ***Response***

The guidance provided in Appendix J, Evaluation Criteria for SRPs, is meant to be read in total. The guidance on Letters of Agreement is a continuation of the matrix and flow chart, not separate from it. The guidance in Appendix J is operational criteria the Price Field Office has been using for the past six years. It is important to remember that Letters of Agreement are only used with organized groups; they are never issued for commercial or competitive uses. A Letter of Agreement is documentation that the BLM has determined that an SRP is not required. The key inputs to the decision are the location of the event and the nature of the activity. If either the location or nature of the activity creates a need to manage the event and require stipulations, monitoring, insurance, or bonding, then an SRP is required. The Proposed RMP identifies a number of large group areas (Map 2-29) (i.e., locations where large group events present minimal risk to resources). Letters of Agreement will be used for most large organized group activities that are proposed for these areas. If large group use is requested for other areas, an SRP will likely be required. An SRP rather than a Letter of Agreement will be required for use of the large group areas if the nature of the activities proposed exceeded casual use-type activities such as use of firearms, pyrotechnics, aircraft or aerial delivery, etc.

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## ***Special Recreation Management Area Designation and Management***

**Issue Number:** PP-UT-PRICE-08-0007-8

**Organization:** Outdoor Industry Association

**Protester:** Amy Kleiner-Roberts

### **Issue Excerpt Text:**

NOLS made the following specific comments about Sand Wash in response to the Price FO's draft RMP:

"This lack of clarification and references in the Price draft RMP feeds the existing confusion surrounding the management of the Sand Wash area. While the old documents included Sand Wash in the special recreation management area for Desolation Canyon, an inter-office agreement exists between the Vernal and Price field offices with heavy consequences for its preservation as a developed recreation site. Management of mineral development in the Sand Wash area continues to be handled by the Vernal office while recreation components (including the permitting system and the facilities found on the site) are handled by the Price office. In the absence of sound and documented coordination between the two) it has been impossible for permit holders to engage early and in a proactive manner in the planning process for this segment of river. It is unclear what entity should be addressed when it comes to the planning process affecting Sand Wash and how coordination will be ensured in the future. The new plan offers no remedy to this confusion. In this void we would like to recommend that:

- Sand Wash be clearly established as part of the Desolation Canyon SRMA.
- The Desolation Canyon SRMA be better documented and co-managed by the Vernal and Price field offices (or at least clearly integrated and cross-referenced in both plans so that mineral development impacts on the recreation profile of the area can be openly discussed).
- Sand Wash be recognized in the new plan as an important developed -recreation site and recommended for withdrawal from mineral entry and either NSO or closed to mineral leasing.
- Sand Wash be geographically defined as a natural feature according to the same visual management protection criteria applied for Desolation Canyon, i.e. viewshed mapping analysis, scenic vistas considerations, placement on the recreation opportunity spectrum.
- A high ridge to high ridge approach be used to map out the necessary NSO stipulations within the Sand Wash scenic vista."

In its response, the Price FO did not address the Sand Wash issue at all:

"The Price and Vernal Field Offices have collaborated on the establishment and boundaries for the SRMA and the portions of the SRMA that overlap both Field Offices will be managed according to the inter-district (office) agreement for recreation. The Price Field Office agrees that additional coordination with the Vernal Field Office is necessary for management of the SRMA. The Vernal Draft RMPIEIS has been published and provides an opportunity for the public to review the SRMA boundaries and prescriptions that exist in both field offices. The existing Desolation and Gray Canyons of the Green River Management Plan would continue to be used as the activity plan for the Desolation Canyon SRMA. Extensive land use restrictions are proposed in the DEIS for Gray Canyon WMA and Desolation Canyon SRMA. Recreation use would be aggressively managed to meet the goals and objectives of these areas. Both the Gray Canyon WMA and the Desolation Canyon SRMA would be closed to OHV use and designated as NSO areas for oil and gas leasing (DEIS, Pgs. 2-41 and 2-69). These restrictions are considered adequate to protect the sensitive resource values within these areas."

NOLS and OIA would like to see their comments on the Sand Wash area addressed by both the Vernal and Price field offices, and the ambiguity resolved.

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***Response***

Under the Proposed Plan, management of the Sand Wash site will continue as it has since the completion of the Desolation and Gray Canyons of the Green River Management Plan (1979). Recreational activities at the Sand Wash site and in Desolation and Gray Canyons will continue to be managed by the Price Field Office through an interoffice agreement between the Price and Vernal Field Offices. Authority for managing recreation from Sand Wash south to the Field Office boundary lies with the Price Field Office.

Your recommendations and concerns were noted and taken into account. The BLM has made the following decisions that specifically address your concerns: The BLM will be managing the relevant and important scenic and riparian values present in this area. With its approved plan and Record of Decision, the Vernal Field Office designates the Lower Green River Corridor ACEC (8,470 acres), which includes the Sand Wash area. Protective measures include an NSO stipulation on 8,079 acres of the area in the river corridor. The NSO stipulation would be applied to within line of sight or up to one-half mile from the centerline of the river, whichever is less. OHV use will be limited to designated routes and VRM Class II would be applied. Please see pp. 2-60 and 2-61 of the Vernal PRMP/FEIS. These protective measures will be applied to all BLM-approved activities within the area.

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## Travel Management

**Issue Number:** PP-UT-PRICE-08-0009b-21

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

### **Issue Excerpt Text:**

Significantly, the PRMP fails to disclose the total miles of route to be designated, as it fails to disclose that an additional 1652 miles of route will be designated for motorized use, which are displayed on Map 2-74 as “BLM/County Roads.” These routes are located on public lands, and are included in the BLM’s ORV route designations, according to Map 2-74. Thus, 2928 miles, not 1,276 as stated at PRMP ES-7, will be designated. The PRMP misleads the public and the decision-maker by stating that only 1276 miles of route (670 miles from the San Rafael Route Designation Plan and 606 miles of designated route in the PRMP) will be designated in this PRMP. *Id.* at 2-74. The PRMP must be corrected in order to provide accurate information to the public and decision-maker prior to the issuance of a final decision.

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### ***Summary***

The PRMP fails to disclose the total miles of route to be designated, as it fails to disclose that an additional 1,652 miles of route will be designated for motorized use.

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### ***Response***

In the development of the recreational OHV route designation for the Price RMP, the proposed plan utilized the same criteria that were used in the development of the 2003 San Rafael Route Designation Plan (SRRDP). This approach was taken to maintain consistency with the recreational route designations within the planning area. The 2003 SRRDP Decision Record stated that route designations applicable to this effort do not apply to BLM system roads, County maintained (Class B) roads, or to State or Federal Highway System roads. These are the roads considered to be the primary infrastructure usually traveled by visitors to the San Rafael area. The planning area consists of approximately 1,430 miles of BLM system and County Roads that were not considered to be part of the recreational OHV designation. Therefore, the analysis of OHV impacts was restricted to the 606 miles of designated routes. The Price RMP referenced the San Rafael Route Designation Plan but did not modify the 670 miles of previously designated routes for OHVs. In other words, the 606 miles of designated routes in the Price RMP and the 670 miles of designated routes in the SRRDP were all considered in the cumulative impacts for the Price RMP. The BLM system and county roads were not included in this analysis. This assumption will be clarified in the Record of Decision.

Map 2-74 in the Price Proposed RMP Final EIS displays the following: BLM/ County roads (black); designated routes from the San Rafael Route Designation Plan (green), proposed routes (blue); other routes (gray); and Federal and State roads (red). The BLM system roads and county roads were shown to illustrate connectivity of the system, but are not part of the transportation plan in the Price RMP, the ROD will depict all BLM transportation system roads. The transportation system will also be available for the public’s use, and will be included on a final map available in the ROD and at the Price Field Office.

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## *Assessment of Off-Highway Vehicle Impacts*

**Issue Number:** PP-UT-PRICE-08-0009b-33

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

In the context of the Price PRMP, the decisions made with regard to designation of ORV areas and trails and travel management fail to fully analyze the effects of those decisions on riparian and wetland areas, cultural resources, soils, vegetation, air quality, water quality, wildlife and wildlife habitat, wilderness character areas, wilderness study areas, and other users, as discussed below.

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***Response***

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 determines the level of analysis that will be undertaken pursuant to NEPA. 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 C.F.R. § 1502.22, the BLM has also disclosed where baseline information is unknown or unavailable.

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## *Minimizing Conflicts between Users*

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

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

BLM has failed to minimize conflicts between ORV use and other uses. 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 comply with this duty.

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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. "Minimize" does not mean "reduce 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.

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## *Visitor Survey Data*

**Issue Number:** PP-UT-PRICE-08-0009b-57

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

Having actual visitor information is essential to guide BLM's long-term recreation management decisions and ORV area and route designation decisions. Merely stating that there will be beneficial impacts by moving from a predominantly "open" planning area to one that is managed predominantly as limited to designated routes, is not the equivalent of minimizing these impacts. Undertaking a visitor survey to ascertain actual visitor preferences and uses (motorized and non-motorized) would provide PFO with information on which to base informed decision, and comply with the ORV regulations' minimization criteria. This data must be incorporated into the affected environment and environmental consequences analysis sections to more accurately depict the impacts to non-motorized users of BLM's ORV area and route designations and travel management decisions.

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***Response***

The BLM considers the data presented in Section 3.3.3 of the PRMP/FEIS as the best available with which to estimate use and determine impacts at this level of analysis. These data are clearly identified as estimates in the PRMP/FEIS. More detailed data will be used for activity-level planning as necessary and appropriate.

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**Vegetative Communities and Riparian Policy**

**Issue Number:** PP-UT-PRICE-08-0009b-39

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

FLPMA, the ORV regulations, and the Utah Riparian Policy require BLM to protect and minimize impacts to riparian areas. The objectives listed in the PRMP could be effective to protect the riparian resources and minimize impacts from ORV designation decisions if BLM's subsequent decisions were consistent with these objectives. However, the proposed decisions fail to live up to the stated objectives. The PRMP fails to include critical baseline and other information, including: 1) a list of the PFO's perennial stream segments and their associated functioning conditions (i.e. proper, at risk, or not in functioning condition); 2) the number of miles of route within and/or near riparian areas and the number of stream crossings by proposed routes (this information should also be depicted on a map showing riparian areas and route designations); and 3) an objective, scientific analysis of the impacts to riparian areas of designating nearly 3,000 miles of motor vehicle routes.

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**Issue Number:** PP-UT-PRICE-08-0009b-71

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest

Chapter

**Issue Excerpt Text:**

The Price PRMP fails to provide much of the required information and analysis, and accordingly fails to reveal to the public the full impact of the Price Field Office's riparian resource management decisions. In addition to omitting much of the information required by BLM's own policy, the PRMP also lacks the information necessary to understand a riparian area's category status, how it will be managed under the RMP, and the relationship between those two designations.

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**Issue Number:** PP-UT-PRICE-08-0009b-74

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

Further, the PRMP provides no indication of the cause of the current status of each riparian area. As we stated in our comments to the DRMP, "[t]he Price RMP should identify all riparian and wetland areas, assess their current health and level of function, and analyze how management prescriptions in the various alternatives of the plan will affect the ecological function of such areas." SUWA Comments to the DRMP at 13. SUWA's comments urged BLM to "link these findings [of the total miles and percentage of riparian areas currently in proper functioning condition, functioning at risk, or not functioning] with land uses and management." *Id.* at 50. Without

this information, the public cannot fully understand BLM's proposed management of riparian areas or meaningfully participate in the decision-making process. We can only guess that BLM created a list of each riparian area, its status, the probable cause of its status, and how it will be managed when gathering the information presented in the table and maps, and utilized this information in making management decisions; this information, including indication of when the inventory was conducted, should have been available to the public by publishing it the PRMP. Until BLM provides this information, the public cannot discern whether BLM has implemented aggressive, protective riparian management decisions, as required by the BLM Utah Riparian Policy. Inclusion of such information in the PRMP is required by statute, the Utah BLM Riparian Policy, and judicial review standards against agency action that is arbitrary, capricious, and contrary to law.

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**Issue Number:** PP-UT-PRICE-08-0009b-75

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest

Chapter

**Issue Excerpt Text:**

Even with the information BLM does provide in the PRMP, BLM does not appear to have complied with its own policy to aggressively protect riparian areas. The Utah Riparian Policy clearly states that “[r]iparian areas are to be improved at every opportunity.” Utah BLM Riparian Policy at 4. The Price Field Office, however, fails to utilize most of the opportunities before it in this RMP process to improve riparian areas. While the Price PRMP explains the benefits of protecting riparian areas, it fails to adequately impose such protections on riparian resources in the Price Field Office. Further, the PRMP repeatedly explains the serious damage OHV use, grazing, and other interference inflict on riparian areas, but still allows such activities in many riparian areas. These failures demonstrate that BLM is falling short of meeting its responsibility to “maintain or improve riparian resources” and to “provide leadership . . . to preserve and enhance the natural and beneficial values of wetlands.” See Utah BLM Riparian Policy at 1; Exec. Order No. 11,990, 42 Fed. Reg. 26,961 (May 24, 1977).

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***Summary***

The PRMP fails to include critical baseline and other information, including:

- a list of the planning area's perennial stream segments and their associated functioning conditions;
- the number of miles of route within and/or near riparian areas and the number of stream crossings by proposed routes ; and
- analysis of the impacts to riparian areas of designating nearly 3,000 miles of motor vehicle routes.

Additionally, the PRMP fails to comply with the Utah Riparian Policy.

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***Response***

Background information on riparian areas can be found in Section 3.2.2 at the appropriate level of detail for a landscape-level document like the PRMP/FEIS. Price PRMP/FEIS at 3-9. Further, Section 4.2.2 explains the impacts of OHV use, grazing, and other activities on riparian areas. *Id.* at 4-9. Additionally, management decisions are designed to achieve the stated management objectives to "manage, maintain, protect, and restore riparian and wetland areas to the proper functioning condition (PFC)... achieve an advanced riparian obligate vegetation community," and to "maintain and/or enhance riparian areas through project design features and/or stipulations that protect riparian resources." *Id.* at 2-17.

The Utah Riparian Policy (UT-IM-2005-091), states that existing planning documents will be reviewed to determine if riparian 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 they are found to be noncompliant. This riparian policy was issued in 2005, nearly four years after the Price RMP Notice of Intent. Therefore, the Price RMP was considered to be an existing plan and any noncompliance with the Utah Riparian Policy would be rectified by activity-level planning. Nevertheless, the Price RMP has substantially complied with the policy as follows: The RMP states that the Price FO will emphasize management to "achieve diverse species composition of facultative wetland or riparian obligate species." (Page 2-22.) The condition of riparian areas is identified in Chapter 3 in Table 3.6. Price PRMP/FEIS at 3-17. In addition, the AMS lists every stream in the planning area with extensive data on its condition. Land tenure adjustments will result in "no net loss" of wetland or riparian areas. Monitoring objectives will be in the Monitoring Appendix accompanying the ROD.

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### ***Riparian Mapping***

**Issue Number:** PP-UT-PRICE-08-0009b-78

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

Additionally, the PRMP failed to even recognize several stretches of riparian areas. Map 3-4 marks the areas the PRMP acknowledges as riparian areas; this map reveals that sections of waterways, such as the Green River, Price River, and Range Creek, are mysteriously not marked as "riparian areas." The PRMP definition of "riparian area" states that "[t]ypical riparian areas include lands along, adjacent to, or contiguous with perennially and intermittently flowing rivers and streams." PRMP at GL-17. The PRMP provides no explanation as to why certain sections of waterways do not meet this definition and therefore will not benefit from the protections afforded the other, recognized riparian areas.

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### ***Response***

A number of the sections along the Price River, Green River, and Range Creek are not shown as riparian areas because they are bordered by State or private land (compare Map 3-4 and Map 1-2 of the PRMP/FEIS) and therefore are not subject to administration by the BLM. Nevertheless, the requirement on p. 2-19, to preclude new surface disturbance within 330 feet of riparian areas, applies to all riparian areas on public lands in the Price planning area. Site-specific activities will be subject to additional NEPA analysis and will be required to comply with the goals and objectives for riparian resources identified in Chapter 2.

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### **Water**

#### ***Baseline Information and Monitoring Data***

**Issue Number:** PP-UT-PRICE-08-0009c-10

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

Because BLM failed to analyze water quality baselines and similarly failed to model the water-quality effects of activities in the PRMP, there is no evidence that the Price PRMP will comply with federal and state water quality standards, as required by FLPMA and the BLM itself.

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**Issue Number:** PP-UT-PRICE-08-0009c-13  
**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

Without analyzing baseline concentrations and preparing modeling to determine what impacts permitted activities will have, BLM cannot understand or disclose the impacts on water quality from new activities that will increase pollutants. (For an example of water quality analysis and modeling, see Exhibit N). Thus, BLM's lack of water quality analysis does not satisfy NEPA's hard look requirement.

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**Issue Number:** PP-UT-PRICE-08-0009c-6  
**Organization:** Southern Utah Wilderness Alliance,

The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

Before permitting activities in the PRMP, and in order to comply with FLPMA, BLM must analyze the baseline water quality for all the water bodies in the planning area. The baseline analysis 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. Knowing the baseline water quality is essential to understanding whether the activities permitted in the PRMP will violate WQS, the CWA, and FLPMA. *See* 43 C.F.R. § 2920.7(b)(3); 43 U.S.C. § 1712(c)(8)

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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. Water quality monitoring is needed to establish a baseline.

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***Response***

Detailed baseline information on riparian condition is available at the Price Field Office and is part of the administrative record. This voluminous information was summarized in Section 3.2.2 of the PRMP/FEIS. Price PRMP/FEIS at 3-9. 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. Price PRMP/FEIS at 3-15. 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-PRICE-08-0008-78  
**Organization:** Western Watersheds Project, Inc  
**Protester:** John G. Carter

**Issue Excerpt Text:**

There was no analysis of the role of livestock in degradation of water quality, or the role of range improvements in degradation of water quality and

quantity, loss of wetlands and impacts to wildlife in the RMP.

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**Issue Number:** PP-UT-PRICE-08-0009c-1  
**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest

## Chapter

### **Issue Excerpt Text:**

The Price 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 PRMP will comply with federal and state water quality standards, as required by FLPMA.

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**Issue Number:** PP-UT-PRICE-08-0009c-15

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

### **Issue Excerpt Text:**

The PRMP has completely failed to consider such pollutants and their impact on the local water bodies. To comply with NEPA, BLM must take a hard look at the impacts of designating so many new routes, and must provide quantitative water quality analysis and modeling to ensure that its actions will not violate federal and state water quality standards. In addition to analyzing the baseline water quality, BLM must continue to monitor water quality throughout the life of the RMP.

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**Issue Number:** PP-UT-PRICE-08-0009c-2

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

### **Issue Excerpt Text:**

Without conducting water quality analyses and modeling, BLM will not understand the effects of the pollutants generated from activities authorized by the PRMP, 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-PRICE-08-0009c-4

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

### **Issue Excerpt Text:**

Because the Price PRMP permits activities (e.g., off-road vehicle travel on designated routes) and analyzes potential future activities (e.g. oil and gas leasing etc.) without modeling the effect that these activities will have on concentrations of pollutants in water, the PRMP fails to satisfy its FLPMA obligation.

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**Issue Number:** PP-UT-PRICE-08-0009c-8

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

### **Issue Excerpt Text:**

In order to comply with FLPMA, BLM must also analyze and model the various pollutant levels (e.g. phosphorus, dissolved oxygen, aluminum, nitrate, chloride, ammonia, selenium, etc.), as identified in the CWA, which will result from decisions made in the PRMP. The PRMP must also quantify contaminant levels to be expected from cumulative effects of any other activity that will cause fugitive dust, run-off, or erosion (e.g. mining, oil and gas development, grazing). These results should then be compared to the CWA standards for protection of WQS, including TMDLs and anti-degradation standards. *See, e.g.*, Exhibit N. Only in this way can BLM know whether it is complying with federal and state water quality standards, as FLPMA, and the Price PRMP, require.

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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 on grazing, OHV route designation, and oil and gas leasing.

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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. RMPs 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 PRMP/FEIS Section 4.2.2., 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 will be conducted, where necessary and appropriate, for site-specific analysis at the project-level.

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## *Wild and Scenic Rivers*

### *Wild and Scenic River Eligibility Process*

**Issue Number:** PP-UT-PRICE-08-0006-3

**Organization:** Utah Rivers Council

**Protester:** Mark Danenhauer

**Issue Excerpt Text:**

The BLM did not properly disclose its process and results as required by the WSRA and the 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). The BLM did not provide adequate documentation about its eligibility study of rivers in the Price Field Office in any documents, beginning with the July 2004 Draft RMP (footnote 3), and now the PRMP. This failure to fully disclose or document information that the BLM used to make eligibility determinations for rivers in the Price Field Office did not allow the public to understand the BLM's eligibility decisions or to provide meaningful comments and therefore, violates both the WSRA and NEPA. For example, in the Draft RMP the BLM found 81 river segments in the Field Office that were potentially eligible to become Wild and Scenic Rivers. The Draft RMP states that the BLM, "... focused on those identified as potentially eligible." (footnote 4). Then the Draft RMP goes on to list 81 potentially eligible and inventoried segments in Table C-1. Table C-2 lists the segments and the identification of the potentially outstandingly remarkable values. This table provides some very terse statements on the values. In some cases, the response states the BLM found the value not to be regionally significant, but provides no documentation for this conclusion. For example under Coal Creek, "Upon evaluating Coal Creek, BLM determined that this stream did not possess values that are at least regionally significant." (footnote 5). No basis or documentation for this decision is provided. (footnotes 2, 3, 4 --all are general citations to the Price Draft RMP, #5 cites Page C-9)). Only 39 of the 81 were determined to be

eligible by the BLM. Nowhere does the BLM provide any information, documentation, or maps that explain the reasons for the non-eligibility of 42 river segments on a river by river basis (other than the vague statement in Table C-2). The PRMP includes the same language as the Draft RMP regarding the eligibility study and therefore, also fails to include adequate documentation regarding the non-eligibility of 42 rivers that were identified as potentially eligible. The Council provided comments on the Draft RMP to this effect, "The process for determining regional or national significance of outstandingly remarkable values (ORVs) is unclear and not well documented." (footnote 6). In the same letter, "The Council respectfully requests that the Price Field Office provide the public and the Council with information about the process used to determine regional or national significance so that we may review and comment." (footnote 7). In the PRMP, the BLM provided the following response to this comment, "Appendix C of the Proposed RMP /Final EIS clearly explains how the region of comparison was identified and used to determine which values are at least regionally significant." (footnote 8). Despite this response from the BLM, the actual reason for finding 42 river segments ineligible is still not clear nor is it documented. This failure to fully document the BLM's eligibility decisions in both the Draft RMP and PRMP violates the Blue Book and BLM Manual 8351. If the BLM intends to disclose rationale for its eligibility processes in the Record of Decision (ROD), we submit that is unacceptable because the public will no longer be able to provide comment. Therefore, the BLM acted arbitrarily and capriciously in its eligibility study.

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**Issue Number:** PP-UT-PRICE-08-0006-7

**Organization:** Utah Rivers Council

**Protester:** Mark Danenhauer

**Issue Excerpt Text:**

While the BLM Price 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 its Draft RMP EIS or PRMP/FEIS.

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**Issue Number:** PP-UT-PRICE-08-0007-12

**Organization:** Outdoor Industry Association

**Protester:** Amy Kleiner-Roberts

**Issue Excerpt Text:**

Wild and Scenic Green River NOLS and OIA recognize that, while there are certain standards, criteria, and Outstandingly Remarkable Values that are weighed when considering the recommendation of a river for Wild, Scenic, or Recreational status, there is ultimately a subjective decision-making process involved. The desire of a segment of the public alone does not necessarily compel the responsible official to include river segment for nomination. What is not clear, however, is the judgment, and decision-making process employed by the Price BLM for including some segments of river

and excluding others (See Table 2-20, p. 2-132, and Appendix C of the PFO Proposed RMP). In its comments on the Wilderness Characteristics SEIS, NOLS and OIA requested that the entirety of the Green River running through the Price field office lands be included in the proposed RMP. This comment was never addressed: "NOLS and OIA strongly support the fair evaluation of outstanding remarkable values for Utah's Green River as is included in Alternative E, which recommends the listing of the entirety of the Green River for inclusion in the National Wild and Scenic Rivers System. In order to preserve the quality of the river view shed while a Wild & Scenic designation is being considered, we recommend the final plan include stringent management guidelines that preserve the primitive qualities of lands found to have wilderness characteristics along the Green River corridor." NOLS and OIA would like some explanation of the criteria used to exclude eligible river segments. It currently seems that the decision-making process was arbitrary. We would like the BLM to reconsider the middle segment of the Green River for inclusion in the Wild and Scenic River system.

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***Summary***

The BLM did not properly disclose its processes for segmentation and determinations of eligibility and results as required by the Wild and Scenic Rivers Act (WSRA), NEPA, and subsequent policy guidance, including BLM Manual 8351.

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***Response***

The BLM's rationale for all eligibility and suitability determinations is detailed in Appendix C of the PRMP/FEIS. The BLM is required to provide the rationale supporting suitability determinations for eligible river segments studied in the RMP. However, the BLM is not required to provide public review and comment for these decision rationales. Therefore, the rationale for the final decisions will be detailed in the ROD in compliance with BLM 8351 Manual section .33(b) (8351 – Wild and Scenic Rivers – Policy and Program Direction for Identification, Evaluation, and Management).

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***Wild and Scenic River Suitability Process***

**Issue Number:** PP-UT-PRICE-08-0006-23

**Organization:** Utah Rivers Council

**Protester:** Mark Danenhauer

**Issue Excerpt Text:**

It is absolutely unacceptable that the BLM provide the rationale regarding suitability in the Record of Decision. The BLM itself admits in the PRMP that, "The actual determination of whether or not each

eligible river segment is suitable is a decision that will be made in the Record of Decision for the Price RMP. (footnote 20). The BLM is stating that it will provide the rationale for its decision after the fact. This is unbelievably arbitrary and capricious. (footnote19) Bureau of Land Management: Price Field Office. Proposed Resource Management Plan and Final Environmental Impact Statement. August 2008.Public Comments and Responses-Price Draft

RMP/EIS, July 2004. Page 357 and 358.20; Bureau of Land Management: Price: Field Office. Proposed Resource Management Plan and Final Environmental Impact Statement. August 2008. The BLM has not explained, nor does it plan to explain, anywhere in the Draft RMP or PRMP how it has reached its decisions regarding the suitability of each river and will not give its rationale for the suitability of each river until the final decision has been made in the Record of Decision for the RMP. In other words, the BLM is stating that it will make its decision regarding suitability first and then will develop a rationale to fit the conclusion it has already reached; thereby cutting the public out of the process. This is completely and irrevocably arbitrary and capricious. Based on all documentation on record and the BLM's own response to the Council's comments, it appears that the BLM's suitability decisions were already made prior to any evaluation. The rationale for the evaluation is something that the BLM is proposing to create after the BLM has already decided which rivers are suitable and which are not suitable. This is truly arbitrary and capricious. By doing so, the BLM is cutting out the public from the process and making its own decisions based on some unknown factors.

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**Issue Number:** PP-UT-PRICE-08-0006-26  
**Organization:** Utah Rivers Council  
**Protester:** Mark Danenhauer

**Issue Excerpt Text:**

The BLM did not give the public adequate information necessary to provide meaningful comment, both upon publication of the Draft RMP and now with this latest document in the planning process, the PRMP. Most importantly, the BLM's own documentation show absolutely no information regarding the interpretation and weighing of the suitability factors for each river segment in order to justify or explain the conclusions reached regarding the suitability or non - suitability of each river segment. The BLM's own documents and records reveal no information on the evaluation of the suitability factors. The lack of any such records causes the BLM's suitability determinations to be questioned. It appears that the BLM is making its suitability recommendations based on some back room dealings and then is filling in the information in the suitability factors to justify their decisions. Therefore, the BLM acted arbitrarily and capriciously in its suitability determinations for all rivers in the Price Field Office.

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**Issue Number:** PP-UT-PRICE-08-0006-46  
**Organization:** Utah Rivers Council  
**Protester:** Mark Danenhauer

**Issue Excerpt Text:**

The lack of information listed for each river in the suitability factors in Appendix C, including how the different factors and information were evaluated; make it impossible to determine the true reasons for the BLM's suitability recommendations.

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**Issue Number:** PP-UT-PRICE-08-0006-49  
**Organization:** Utah Rivers Council  
**Protester:** Mark Danenhauer

**Issue Excerpt Text:**

In the BLM's comment analysis in Chapter 5 of the PRMP, it failed to adequately address substantive comments submitted by the Utah Rivers Council. For example, despite numerous examples of the BLM's failure to disclose its rationale for suitability determinations in Alternative C, the agency does not provide an adequate response that explains its actions and determinations.

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**Issue Number:** PP-UT-PRICE-08-0006-50  
**Organization:** Utah Rivers Council  
**Protester:** Mark Danenhauer

**Issue Excerpt Text:**

The Utah Rivers Council expressed strong concerns with this lack of information regarding the suitability evaluations in the Draft RMP in a letter to the BLM dated, November 29, 2004. Nowhere in the draft documents does the Price BLM share how they evaluated the factors to come to a decision about suitability. Because of this disconnect, the draft RMP's suitability determinations are not supported by substantial evidence on the record and so are not defensible." (footnote 47). The BLM responded to this concern from the Council in the PRMP. "The WSR Study Process, including suitability considerations for each eligible stream, is explained in detail in Appendix C of the Proposed RMP /Final EIS and has been revised since the Draft RMP /EIS." (footnote 48). This response from the BLM does not address the concern of how the suitability factors were evaluated. Additionally, as has been explained above, Appendix C does not actually provide enough information or documentation to explain the conclusions reached regarding the suitability or non-suitability of different rivers.

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### **Summary**

It is unacceptable, arbitrary, and capricious that the BLM provides the rationale regarding suitability only in the ROD.

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### **Response**

The BLM's rationale for all eligibility and suitability determinations is detailed in Appendix C of the PRMP/FEIS. The BLM is required to provide the rationale supporting suitability determinations for eligible river segments studied in the RMP. Documentation of the BLM's resource decisions and the rationale for those decisions are documented by the BLM in RODs at the conclusion of a planning and/or NEPA process. See 40 CFR § 1505.2. Therefore, the rationale for the final decisions will be detailed in the ROD, in compliance with BLM-M-8351 section .33(b) (8351 – Wild and Scenic Rivers – Policy and Program Direction for Identification, Evaluation, and Management).

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### **Designation of Wild and Scenic River Segments**

**Issue Number:** PP-UT-PRICE-08-0009c-89

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

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

BLM's Failure to Give Priority to River Segments That Face the Greatest Likelihood of Development Violates the WSRA. The WSRA requires the Secretaries of the Interior and Agriculture to prioritize the suitability designation for rivers that face the "greatest likelihood of development which, if undertaken, would render the rivers unsuitable for inclusion in the national wild and scenic rivers system." 16 U.S.C. § 1275(a)(1)(ii). Nine Mile Creek in particular faces devastating development due to existing gas development and extensive oil and gas proposals on the West Tavaputs Plateau above Nine Mile Creek. Industrial traffic along the road that parallels Nine Mile Creek is already damaging the scenic, cultural, and historic values of the river, and the degradation of the outstandingly remarkable values will likely increase with increased development. Water trucks siphoning water from the Creek and spraying it on dirt roads to control dust could threaten the Creek's free-flowing nature, while dust from the trucks and the road are already, and will continue to, threaten the cultural, scenic, and historic outstandingly remarkable values of the river. All of this development could render Nine Mile Creek unsuitable for inclusion in the NWSRS, and thus, BLM's failure to recommend Nine Mile Creek as suitable violates the WSRA. 16 U.S.C. § 1275(a)(1)(ii). Precisely because the free-flowing nature and outstandingly remarkable values of Nine Mile Creek are at greater risk, BLM must recommend the Creek as suitable in order to comply with the WSRA. 16 U.S.C. § 1275(a)(1)(ii).

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### **Summary**

BLM's failure to recommend Nine Mile Creek as suitable violates the Wild and Scenic Rivers Act (WSRA).

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### **Response**

BLM manual 8351.33c states:

[d]uring 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., an alternative where 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 C of PRMP/FEIS details the process (as outlined by the 8351 Manual) used to determine which river segments BLM recommends as suitable.

The final rationale supporting suitability determinations or eligible river segments studied in the RMP/EIS will be included in the ROD for the RMP. Additionally, Appendix C states that

[m]anageability of Nine Mile Creek if designated would be limited by the low percentage of public lands within the stream corridor. The BLM only manages 44 percent of the corridor. Because of the large amount of industrial activities within the corridor, both current and reasonably foreseeable, and agricultural activities associated with the private lands, management for the protection of the cultural, historical, and scenic values would prove challenging. On the other hand, given the proposed establishment of the Nine Mile Canyon ACEC, SRMA, other prescriptions proposed in the Price Proposed RMP/Final EIS, the potential National Historic Landmark, and other laws protecting cultural resources, the stream’s ORVs would be afforded a large degree of protection. With the exception of the potential National Historic Landmark, the status of the ACEC, SRMA, and other management prescriptions are subject to change as a result of congressional action or revised land use plans; therefore, the protection they afford the river values is subject to change.”

There are sufficient other protections to ensure that the outstandingly remarkable values in Nine Mile Canyon are not adversely affected. Also, the NSO restriction will preclude any surface-disturbing activities such as a dam or diversion on public lands that could affect the free-flowing nature of Nine Mile Creek. Therefore, these values are not at risk without the Wild and Scenic River designation.

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

**Issue Number:** PP-UT-PRICE-08-0006-27

**Organization:** Utah Rivers Council

**Protester:** Mark Danenhauer

**Issue Excerpt Text:**

The BLM acted arbitrarily and in violation of the WSRA because it considered factors beyond the 8 enumerated in the WSRA. If Congress had intended for agencies to consider factors beyond these then it would have explicitly stated so. Specifically, the BLM lists for consideration two inappropriate and arbitrary factors: a) Manageability of the river if designated and other means of protecting values; and b) 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-PRICE-08-0006-30

**Organization:** Utah Rivers Council

**Protester:** Mark Danenhauer

**Issue Excerpt Text:**

With respect to the PRMP, the BLM’s application of the suitability factors to all eligible rivers in the BLM Price Field Office’s jurisdiction is arbitrary because they consider factors beyond the eight enumerated in the WSRA. For example, the BLM considers, "Ability of the agency to manage and protect the values of a river area if it were designated, and other mechanisms to protect identified values other than Wild and Scenic Rivers designation." (footnote 24). This factor appears to be of extreme importance in

the BLM's suitability determinations due to the fact that the response to this factor in the suitability considerations for each river segment is the main one that seems to lead towards a not-suitable finding.

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**Issue Number:** PP-UT-PRICE-08-0006-32

**Organization:** Utah Rivers Council

**Protester:** Mark Danenhauer

**Issue Excerpt Text:**

Unfortunately, this manageability, factor is not included among those enumerated by Congress in the WSRA. The BLM should not consider this factor or base any of its suitability determinations on it. Therefore, the BLM acted arbitrarily and capriciously by including this factor and using it in the suitability study for all rivers in the Price Field Office.

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**Issue Number:** PP-UT-PRICE-08-0006-33

**Organization:** Utah Rivers Council

**Protester:** Mark Danenhauer

**Issue Excerpt Text:**

By considering factors beyond the original eight factors enumerated by Congress, the BLM is bypassing and shortcutting the designation process envisioned by Congress: In other words, by expanding the suitability factors, the BLM is standing in Congress shoes by rejecting rivers as unsuitable based on purely political grounds. The eight factors listed in the WSRA are a far cry from the BLM's current approach to suitability of rivers. By including several factors beyond those enumerated by the Congress the BLM has transformed the straightforward objective suitability standard outlined in the WSRA into an amalgam of subjective criteria that offers cover for all decision to reject rivers as unsuitable. Requiring an agency to include a suitability factor that lists uses that will be enhanced or foreclosed (the good and bad) does not equate to a river being deemed 'unsuitable' because the Federal agencies think other uses are more important than river protection. Indeed, any interpretation to the contrary would undermine the very purposes of the WSRA to preserve the Nation's outstanding rivers from the threat of development. In fact, the plain language of section 4(a) of the WSRA, the legislative history, the 1982 Guidelines, and express policy goals of the WSRA suggest that some threat of future development does not, and should not, render a river unsuitable (footnote 26).

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**Issue Number:** PP-UT-PRICE-08-0006-43

**Organization:** Utah Rivers Council

**Protester:** Mark Danenhauer

**Issue Excerpt Text:**

Wild and Scenic River Protection is the Only Guaranteed Way to Protect a River's Identified Outstandingly Remarkable Values. The BLM acted arbitrarily and capriciously by finding many river segments not-suitable because other protection mechanisms are in place that would protect: the identified values. Layering of protection or designating a river as a Wild and Scenic River when the river is located in an area that already has or is proposed to have some other form of protection is not duplicative. Each type of protection is unique and is designed to protect something different - the free-flowing character of a river for Wild and Scenic River designation. Designating a river as a Wild and Scenic River provides certain protections that are unique to the river and corridor. As stated earlier, this is the only type of protection whose goal is specifically to preserve the free-flow of the river. As section 1(b) of the Act states the river, "shall be preserved in free-flowing condition. Furthermore, section of the Act places restrictions on hydroelectric and water resource development projects. The Act explicitly prohibits the Federal Energy Regulatory Commission licensing of new construction for hydropower projects on designated rivers. (footnote 39) Price Field Office Proposed Resource Management Plan and Final Environmental Impact Statement. Appendix C, page C-51. There is absolutely no basis or rationale to find a river not suitable simply because other types of protections already exist or are being proposed. The Interagency Wild and Scenic Rivers Coordinating Council agrees and states in a technical report, " Congress has frequently added WSR status to rivers flowing through national parks, national wildlife refuges, and designated wilderness. Each designation recognizes distinct values for protection and generally do not conflict. In some cases, WSR designation extends beyond the boundaries of other administrative or congressional area designations, thereby providing additional protection to the free-flowing character and river values of the area" (footnote 40). Additionally, the Act itself includes some language in case a river is designated that is located within a Wilderness Section 10 (b) of the Act addresses potential conflicts between the Wilderness Act and the Wild and Scenic Rivers Act. It states, where this occurs the more restrictive provisions would apply (footnote 41).

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**Issue Number:** PP-UT-PRICE-08-0009c-79

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest

## Chapter

### **Issue Excerpt Text:**

BLM violates the WSRA and the BLM Manual by failing to recommend river segments that otherwise qualify for inclusion in the NWSRS simply because the segments are within WSAs, ACECs, SRMAs, and other management prescriptions. *See* 16 U.S.C. § 1275(a); BLM Manual § 8351.33(A); PRMP at Map 2-52, Map 2-75. Deciding to recommend segments as suitable for inclusion in the NWSRS should not be based on whether a river segment has an alternative method of protection. Rather, suitability determinations are factual determinations that must be based upon the enumerated criteria listed in the BLM Manual and in the WSRA, namely outstandingly remarkable values, land ownership, current uses in the area, reasonably foreseeable potential uses, the federal agency that administers the land, the cost of acquiring land, manageability, and historical or existing rights. BLM Manual § 8351.33(A)(1) – (8); 16 U.S.C. § 1275(a). In determining suitability for the rivers in the Price planning area, BLM considered factors beyond those enumerated in the WSRA and BLM Manual 8351, namely WSA status and the supposed protections of other management prescriptions, including ACECs and SRMAs. *See* 16 U.S.C. § 1275(a); BLM Manual § 8351.33(A).

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**Issue Number:** PP-UT-PRICE-08-0009c-80

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

### **Issue Excerpt Text:**

In the Price PRMP, BLM admits that several eligible segments are recommended non-suitable at least in

part because the outstandingly remarkable values identified would be protected by other methods of protection, including by WSA status, SRMAs, and ACECs. *See, e.g.*, PRMP at C-27, C-29, C-31, C-32, C-69. For those rivers where BLM’s non-suitability recommendations are based upon WSA status and other factors outside of the criteria listed in the Manual and the WSRA, these decisions must be overturned and the rivers recommended suitable. These river segments include Barrier Creek, Bear Canyon Creek, Buckskin Canyon Creek, Cane Wash, Cottonwood Wash, Keg Spring Canyon, Muddy Creek, Nine Mile Creek, North Fork Coal Wash, North Salt Wash, the Price River, Range Creek, Rock Creek, the San Rafael River, and South Fork Coal Wash. PRMP at Appendix C-22 to -24, C-26 to -72, Table C-4.

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**Issue Number:** PP-UT-PRICE-08-0009c-83

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

### **Issue Excerpt Text:**

Similarly, SRMAs do not protect the eligible river segments and their outstandingly remarkable values. SRMAs are designated to provide recreation opportunities for users of different types, e.g. motorized, equestrian, biking, hiking, etc., and have nothing to do with protecting outstandingly remarkable values for eligible rivers. Therefore, BLM’s assertions that other designations, such as ACECs, WSAs, and SRMAs, adequately protect rivers and their outstandingly remarkable values violates the purpose and mandates of the WSRA and the BLM Manual. 16 U.S.C. §§ 1271, 1272, 1275(a); BLM Manual § 8351.33(A)

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## ***Summary***

The BLM considered arbitrary and inappropriate factors in reaching the suitability decisions. These include manageability, interest of other agencies, adjacent private lands or inholdings, WSAs, ACECs, other protective designations and management, and other use and development.

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## ***Response***

The BLM suitability analysis complies with BLM policy and guidance as detailed in the BLM Wild and Scenic Rivers Manual BLM-M-8351 (8351 – Wild and Scenic Rivers – Policy and Program Direction for Identification, Evaluation, and Management). According to Manual 8351.33(a), 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.” Section .33(a)(8) also provides the BLM with discretion to consider issues and concerns other than those enumerated in the Wild and Scenic Rivers Act. Therefore, the specific factors considered by the BLM (detailed in Appendix C of the PRMP/FEIS) in ascertaining the eligibility or suitability of river segments in the Price Planning Area are within the discretion of the BLM and are not arbitrary and capricious.

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

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

**Organization:** Utah Rivers Council

**Protester:** Mark Danenhauer

**Issue Excerpt Text:**

The BLM acted arbitrarily and in violation of BLM Manual 8351, Blue Book guidance, and NEPA requirements in assigning segmentation to the Green River. According to BLM Manual 8351 and the Blue Book, the BLM should have segmented the Green River only once during the eligibility process as the BLM must determine tentative classification and ORVs according to those segments. Instead, the BLM re-segmented the Green River as it prepared for its suitability evaluation in the PRMP/FEIS, long after it had published its final determination of eligibility. It did not re-evaluate tentative classification or ORVs in either instance nor did it disclose the change for public comment. Re-segmentation is a significant change from the BLM's Final Eligibility determination as it results in differing protections for different portions of the original segments.

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**Issue Number:** PP-UT-PRICE-08-0006-15

**Organization:** Utah Rivers Council

**Protester:** Mark Danenhauer

**Issue Excerpt Text:**

Utah Rivers Council respectfully disagrees that classifications can be changed in the RMP alternatives because 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 change those classifications in various alternatives or to change them from the original tentative classification during the Final EIS process.

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**Issue Number:** PP-UT-PRICE-08-0006-42

**Organization:** Utah Rivers Council

**Protester:** Mark Danenhauer

**Issue Excerpt Text:**

In the Draft RMP the Green River segments from Swasey's down to Canyonlands National Park were all recommended as suitable. However, in the PRMP the BLM resegmented the river and finds the segments from Swasey's to the Confluence of the San Rafael River not suitable. The BLM provides no rationale for this resegmentation of the Green River in the PRMP.

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**Issue Number:** PP-UT-PRICE-08-0009c-87

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

BLM must explain why so many outstandingly remarkable values that were originally identified in the DRMP were eliminated from the PRMP. The WSRA and the BLM Manual indicate that the identification process of outstandingly remarkable values is a fact-based process that should not change significantly between the DRMP and the PRMP. *See* 16 U.S.C. §§ 1271, 1273(b); BLM Manual 8351.32(C). Based on the values identified in the DRMP, Barrier Creek should be eligible for scenery in addition to recreation, cultural, and ecologic outstandingly remarkable values. *See* DRMP at Appendix 3, Table 4. In addition to cultural and scenic values, Cane Wash should also be eligible for recreation outstandingly remarkable values. *See* DRMP at Appendix 3, Table 4. In addition to cultural and historic values, Coal Wash should also be eligible for recreation and scenic outstandingly remarkable values. *See* DRMP at Appendix 3, Table 4. In addition to scenic and cultural values, Keg Spring Canyon should also be eligible for recreation outstandingly remarkable values. *See* DRMP at Appendix 3, Table 4. In addition to scenic, recreational, historic, and cultural values, all three segments of Muddy Creek should also be eligible for geologic outstandingly remarkable values. *See*

DRMP at Appendix 3, Table 4. In addition to scenic, cultural, and historic values, North Salt Wash and both segments of North Fork Coal Wash should also be eligible for recreation outstandingly remarkable values. *See* DRMP at Appendix 3, Table 4. In addition to fish values, the Price River from the confluence of Fish Creek and White River to Poplar Street Bridge in Helper should be eligible for recreation outstandingly remarkable values. *See* DRMP at Appendix 3, Table 4. In addition to cultural, geologic, wildlife, and fish values, the Price River segment from the Bookcliffs escarpment to the mouth of the Green River should also be eligible for scenic and recreational values. *See* DRMP at Appendix 3, Table 4. In addition to cultural, scenic,

recreation, historic, and wildlife values, all five segments of the San Rafael River should also be eligible for geologic and fish outstandingly remarkable values. *See* DRMP at Appendix 3, Table 4. In addition to scenic, cultural, and historic values, both segments South Fork Coal Wash should also be eligible for recreation outstandingly remarkable values. *See* DRMP at Appendix 3, Table 4. Because the PRMP does not explain why the above-listed outstandingly remarkable values that were originally identified in the DRMP were eliminated in the PRMP, BLM violates the WSRA and the BLM Manual and all of the values included in the DRMP must be added to the PRMP. *See* 16 U.S.C. §§ 1271, 1273(b); BLM Manual 8351.32(C).

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### ***Summary***

The BLM arbitrarily and capriciously changed the segmentation and classification of segments between the eligibility and suitability determinations in violation of manual guidance.

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### ***Response***

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 that, "[w]henver 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)." The eligible segments were re-segmented to examine different combinations of classifications in the alternatives. In some cases, re-segmentation preserved the primitive character of parts of longer segments. The BLM considered suitability for all eligible river segments in their original tentative classifications in Alternative C.

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### ***Protective Management for Non-Suitable Segments***

**Issue Number:** PP-UT-PRICE-08-0009c-90

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

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

In the PRMP, BLM added language to Table 2-20 that violates the WSRA and the BLM Manual. PRMP at 2-125, 5-157. BLM added the following sentence: "Any eligible segment not determined to be suitable under an alternative would receive no special protection specifically for its free-flowing values, outstandingly remarkable values, and tentative classifications." PRMP at 2-125, Table 2-20. This language directly violates the BLM Manual, which requires that once BLM determines that a river segment is eligible, it must protect its outstandingly remarkable values and must not allow management activities to adversely affect either a segment's eligibility or its tentative classification. BLM Manual § 8351.32(C); 16 U.S.C. §§ 1271, 1273(b). To comply with the WSRA and the BLM Manual, BLM must delete the above-quoted sentence from the PRMP and must work to protect the outstandingly remarkable values, free-flowing nature, and tentative classifications of all eligible segments.

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### ***Response***

The Manual is clear that protective measures continue only for those segments found suitable, or

for those for which a determination is not made in the PRMP/FEIS. There is no requirement to continue protective management for non-suitable segments. See BLM Manual 8351.33.C.

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## Wilderness Characteristics

**Issue Number:** PP-UT-PRICE-08-0009c-111  
**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

### Issue Excerpt Text:

The PFO made a critical error in the Jack Canyon and Desolation Canyon 2007 Wilderness Character Review by eliminating portions of wilderness character units in anticipation of possible future impacts. The elimination of wilderness character areas prior to the resource being impacted is an arbitrary decision not supported by FLPMA. Approximately 7000 acres of the Jack Canyon and Desolation Canyon WIAs are found within the project area. Under the reasonable foreseeable developments (RFDs) analyzed in the WRP EA, approximately 37 acres were anticipated to be impacted by surface disturbing activities within both units by 2009. Monitoring and oversight of this development has not quantified the exact acreage affected, to date. This development will affect the naturalness directly for as long as the facilities remain and effective reclamation has become established, which maybe as long as another 50+ years. BLM's 2007 Wilderness Character Review – Desolation Canyon (emphasis added). BLM's Jack Canyon WCR further notes that the northern portion of Jack Canyon should not have been identified as having wilderness character. The WIA, as described in January 2002, contained 3,331 acres. This review illustrates why an overlooked ROW, a SITLA parcel and 2,035 acres of public land north of a tributary of Jack Creek (which lacks wilderness characteristics) was incorrectly included in that revision. BLM's 2007 Wilderness Character Review – Jack Canyon. However, the 2,035 acres within the northern portion of Jack Canyon is contiguous to Desolation Canyon WIA along the east. The only man-made impact in this area is a temporary pipeline that comes down the cliff face and crosses the canyon bottom which cannot be used to justify excluding the natural canyon systems north of Jack Canyon from the wilderness characteristics unit. As PFO knows, temporary features are allowed in wilderness character areas (as well as WSAs). In fact, the PFO has many temporary human features within WSAs

and wilderness character areas. Sids Mountain WSA has an extensive amount of signs, fences, kiosks, and barriers located within its boundaries, but according to the BLM, these are temporary intrusions that “reduce” but do not permanently affect the naturalness of the area. See PRMP at 4-307. Thus, the temporary pipeline that currently separates the Jack Canyon area from Desolation Canyon WIA should not be used to exclude a portion of the Jack Canyon area from being identified as retaining naturalness and wilderness characteristics. BLM must correct this error and identify the wilderness characteristics in both the Desolation Canyon and Jack Canyon areas – regardless of any potential future developments that may be anticipated in these areas.

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**Issue Number:** PP-UT-PRICE-08-0012-14  
**Organization:** Independent Petroleum Association of Mountain States  
**Protester:** Kathleen M. Sgamma

### Issue Excerpt Text:

By managing non-WSA lands solely to "protect, preserve and maintain wilderness characteristics," the BLM is violating its settlement agreement with the State of Utah. Price PRMP at 4-173. To justify this management, the BLM states that the "settlement agreement does not affect BLM's authority for managing public lands." Price PRMP Comments of the Supplement to the Draft RMP/EIS by Resource, pages 12. Many of these five areas proposed to be managed as wilderness are former Wilderness Inventory Areas (WIAs) created from the 1996-1999 wilderness re-inventory. The *Utah v. Norton* settlement agreement expressly states that "the 1999 wilderness re-inventory would not be used to create additional WSAs or to manage public lands as if they are or may become WSAs." Utah, 2006 WL 2711798 at \*4. The settlement agreement mandates that BLM "will not establish, manage or otherwise treat public lands, other than Section 603 WSAs and Congressionally designated wilderness, as WSAs or as wilderness pursuant to the Section 202 process absent congressional authorization." Settlement Agreement 7; Utah, 2006 WL 2711798 at \*21. Despite this settlement agreement, BLM seeks to create de-facto WSAs and wilderness areas in the RMP process. As the chart details, BLM is

essentially managing non-WSA lands with wilderness characteristics under FLPMA's § 603 non-impairment standard. While BLM has discretion to manage lands to protect specific resources, it may not abdicate its multiple use mandate for public lands, nor its responsibility to give priority to major uses of public lands, such as minerals development. In attempting to use the RMP process to protect lands solely for the protection of "wilderness characteristics," BLM has violated the *Utah v. Norton* settlement agreement.

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**Issue Number:** PP-UT-PRICE-08-0012-19

**Organization:** Independent Petroleum Association of Mountain States

**Protester:** Kathleen M. Sgamma

**Issue Excerpt Text:**

Thus, like the RARE inventories used in an attempt

to created illegal wilderness areas, the "non-WSA lands with wilderness characteristics" lands that BLM seeks to protect in the Price PRMP are based on the 1999 Wilderness Re-Inventory that applied "the same legal criteria used in the earlier inventory and the same definition of wilderness contained in the Wilderness Act of 1964." Utah Wilderness Inventory, U.S. Department of the Interior at vii (1999); Price PRMP at 3-63. Like the inventories in the Roadless Decision, the inventories for wilderness characteristics undertaken at the direction of then Secretary Bruce Babbitt were based on the Wilderness Act's definition of wilderness. Price RMP at 3-63. By protecting these lands solely for their "wilderness" values, BLM is violating the Wilderness Act by circumventing the legislative process and creating de facto wilderness in the RMP process.

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***Summary***

The Price Field Office made a critical error in the Jack Canyon and Desolation Canyon 2007 Wilderness Character Review by eliminating portions of wilderness character units in anticipation of possible future impacts. The elimination of wilderness character areas prior to the resource being impacted is an arbitrary decision not supported by FLPMA.

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***Response***

As stated in the response to comments on the Non-WSA Lands With Wilderness Characteristics Supplement, as part of BLM's wilderness characteristics inventory maintenance for the Desolation Canyon area, the BLM performed a combination of data and on-site reviews. Portions recommended for review in public comments were included from 1999 Inventory and 2002 Revision. OHV trails were known (shown on PRMP/FEIS map 2-71), coal potential is recognized (shown on Supplement map 2-70), and oil and gas potential is recognized (shown on Supplement map 3-23). The BLM did revise the Desolation non-WSA land with wilderness characteristics area in 2007 based on new oil and gas development activity. No new information was submitted that has not already been considered in BLM's wilderness characteristics inventory maintenance process.

As part of BLM's wilderness characteristics inventory maintenance for the Jack Canyon area, the BLM performed a combination of data and on-site reviews. This area was inventoried in 1999 and this inventory was revised in 2002. OHV trails were known, as shown on PRMP/FEIS Map 2-71. The BLM revised the Jack Canyon non-WSA land with wilderness characteristics in its 2007 wilderness characteristics maintenance-based on oil and gas development. No new information was submitted that has not already been considered in BLM's wilderness characteristics inventory maintenance process. PSEIS at 5-192 and 5-193.

During the 2007 update, the BLM considered only existing oil and gas development in revising the boundaries for both the Desolation Canyon and Jack Canyon non-WSA lands. The BLM did not use future disturbance as a rationale for excluding any area.

The BLM's authority to manage for wilderness characteristics was addressed above in our response to issues related to FLPMA.

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### *Lands with Wilderness Characteristics Inventory Data*

**Issue Number:** PP-UT-PRICE-08-0009c-103  
**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

Throughout the PRMP process, SUWA has submitted significant new wilderness resource information documenting wilderness characteristics that remain unidentified by the PFO. As discussed below, the Price PRMP has improperly and illegally ignored this resource information resulting in proposed planning decisions that are not based on the most current information for lands with wilderness characteristics, and fails to consider impacts to all of the lands that retain wilderness character.

The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

BLM's failure to consider SUWA's new information is arbitrary and capricious and must be reversed, as it violates FLPMA's mandate to maintain a current inventory of resources and NEPA's requirement to use accurate information in evaluating and making management decisions. BLM must revisit each of these proposed wilderness units and consider SUWA's new information concerning BLM's flawed boundaries and consider whether the areas—after appropriate boundary adjustments using human impacts—have the requisite attributes to be wilderness character areas (including areas of less than 5,000 acres).

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**Issue Number:** PP-UT-PRICE-08-0009c-106  
**Organization:** Southern Utah Wilderness Alliance,

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### ***Summary***

BLM's failure to consider Southern Utah Wilderness Alliance (SUWA)'s new information is arbitrary and capricious and must be reversed, as it violates FLPMA's mandate to maintain a current inventory of resources and NEPA's requirement to use accurate information in evaluating and making management decisions.

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### ***Response***

The BLM determined in the 1999 Utah Wilderness Inventory that 15 areas (483,900 acres) in the PFO outside of existing WSAs have wilderness characteristics. During scoping and the public comment period on the DRMP/DEIS, the Utah Wilderness Collation and Southern Utah Wilderness Alliance submitted information suggesting that additional areas outside of existing WSAs and those in the 1999 Utah Wilderness Inventory also have wilderness characteristics and should be managed to preserve those values.” (See p. 3-63) The BLM reviewed this and all subsequent submittals and has determined that all or portions of these areas have wilderness characteristics, including naturalness and outstanding opportunities for solitude or primitive recreation, and are greater than 5,000 acres or adjacent to WSAs. The BLM also reviewed other extant data for wilderness characteristics, such as the lands identified by the proposed Red Rocks Wilderness Act even though some of the areas had not been previously submitted to PFO (i.e. Never Sweat Wash) in the development of the *Supplement to the Price Field Office Draft RMP/ESI for Non-WSA lands with Wilderness Characteristics* released September 14, 2007 which analyzed the 15 areas plus an additional 12 more (totaling approximately 450,000 acres).

The BLM examined comments on this Supplement and concluded that these 27 areas in the Field Office, approximately 937,440 acres, are non-WSA lands with wilderness characteristics and carried those forward into the Proposed RMP / Final EIS (See Public Comments and Responses - Price Draft RMP/EIS WC Supplement – Sep 2007 sorted by commentor pages 128- 137. and Table 3-22 and Map 3-15 of the PRMP/FEIS). Many of the inventoried acres were also found to lack wilderness characteristics and are also identified in Table 3-22 as having no wilderness characteristics.

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### ***Routes in Non-Wilderness Study Area Lands with Wilderness Characteristics***

**Issue Number:** PP-UT-PRICE-08-0009b-52

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

BLM’s contention that routes in non-WSA lands with wilderness character will not impact the area’s natural character flies in the face of the agency’s own 1980 wilderness inventory documentation that included numerous statements regarding the existence of routes detracting from the naturalness of the area—which subsequently led BLM to drop areas from further wilderness consideration. BLM cannot have it both ways. Designating routes in wilderness character lands will encourage more motorized use of the trails and the existence of a well-used trail bare of vegetation affects the naturalness of the area and its future eligibility for wilderness designation.

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### ***Response***

In the context of the 1980 wilderness inventory, a vehicular route is only of concern if the impact on naturalness rises to the level of being substantially noticeable in the unit as a whole. The existence of a route in a wilderness characteristics area may detract from naturalness. However, this does not necessarily eliminate wilderness characteristics from the area altogether. See PRMP/FEIS at 4-211. The relative impact of a route on naturalness varies from case to case and those routes that are not noticeable would not compromise the wilderness characteristics.

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### **Wilderness Study Areas**

**Issue Number:** PP-UT-PRICE-08-0009b-99

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

Further, the PRMP states that five backcountry airstrips would continue to be open for use (*See id* at 2-146), yet nowhere in the PRMP is there any analysis of the impacts on WSAs, non-WSA lands with wilderness character, recreationists, and natural and cultural resources. As noted above with respect to route designations in closed areas, BLM must supplement its analysis to consider the impacts of this decision before the ROD is issued.

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**Issue Number:** PP-UT-PRICE-08-0009c-96

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

The PRMP fails to include a monitoring schedule for the “ways” that will be designated as open routes in the WSAs and clear standards or commitments for closure. Accordingly, the PRMP is neither preventing impairment of wilderness suitability nor meeting the other requirement to protect wilderness character imposed by the IMP and the ORV regulations. A detailed monitoring approach is also required under the BLM’s planning regulations: The proposed plan shall establish intervals and standards, as appropriate,

for monitoring and evaluation of the plan. Such intervals and standards shall be based on the sensitivity of the resource to the decisions involved and shall provide for evaluation to determine whether mitigation measures are satisfactory, whether there has been significant change in the related plans of other Federal agencies, State or local governments, or Indian tribes, or whether there is new data of significance to the plan. The Field Manager shall be responsible for monitoring and evaluating the plan in accordance with the established intervals and standards and at other times as appropriate to determine whether there is sufficient cause to warrant amendment or revision of the plan.43 C.F.R. § 1610.4-9 (emphasis added).

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**Issue Number:** PP-UT-PRICE-08-0009c-98

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

BLM Instruction Memoranda 2000-096 directs WSAs be managed as Visual Resource Management (VRM) Class I. The object of VRM Class I is “to preserve the existing character of the landscape” and management is so that the “level of change to the

characteristic landscape should be very low and must not attract attention” See BLM official Visual Resource Management information website at: <http://www.blm.gov/nstc/VRM/vrmsys.html> (last visited Sept. 28, 2008). The PRMP provides that it will, pursuant to BLM policy (and presumably the IMP), manage WSAs as VRM Class I. See PRMP at 4-307. Although SUWA supports BLM’s proposal to manage the WSAs as VRM Class I, other management decisions made in the PRMP regarding WSAs do not reflect the protection that should be afforded to VRM Class I areas. Specifically, the designation of 46 miles of ways as open routes for motorized vehicles will encourage motorized use of these ways, decreasing vegetation in these ways, and thereby increasing the visual impact of these ways in the WSA. The PRMP states “the appearance of naturalness would be enhanced on the 25 miles where routes would not be identified in the WSAs because signing would not be needed within them.” *Id.* Thus, by BLM’s own admission, not designating 46 miles of ways (or alleged ways) in the Sids Mountain and Desolation Canyon WSAs would more fully comply with the stated goals of the IMP and BLM’s VRM requirements to make wilderness values paramount to other uses, and the ORV regulation’s mandate to minimize impacts to resources, including visual resources.

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***Summary***

Not designating 46 miles of ways (or alleged ways) in the Sids Mountain and Desolation Canyon WSAs would more fully comply with the stated goals of the Interim Management Policy for Lands Under Wilderness Review (IMP) and BLM’s VRM requirements to make wilderness values paramount to other uses, as well as the ORV regulation’s mandate to minimize impacts to resources, including visual resources. Additionally, the PRMP fails to include a monitoring schedule for the “ways” that will be designated as open routes in the WSAs and clear standards or commitments for closure. The BLM failed to consider impacts from use of five backcountry airstrips.

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***Response***

The IMP allows for "ways" to remain open to motorized use:

Where routes would remain available for motorized use within WSAs, continue such use on a conditional basis. Use of the existing authorized routes in the WSA ("ways" when located within WSAs) could continue as long as the use of these routes does not impair wilderness suitability, as provided by the Interim Management Policy (IMP) (BLM 1995). If the Congress designates the area as wilderness, the routes may be closed, unless otherwise specified by Congress. In the interim, if use and/or non-compliance are found through monitoring efforts to impair the area’s suitability for wilderness designation, the

BLM would take further action to limit use of the routes or close them. The continued use of these routes, therefore, is based on user compliance and non-impairment of wilderness values.

IMP at 2-91.

The routes left open in the Sids Mountain WSA were part of the San Rafael Route Designation Plan of 2003 which was adopted and not open for reevaluation. The BLM has continued to monitor the four routes in the Sids Mountain WSA and determined that no impacts to wilderness values have resulted from vehicular use of these routes, therefore, there is no need to close them.

The BLM examines airstrips as part of the access issue to Federal lands in the Transportation sections of the PRMP/FEIS at Table 2-22 and sections 3.5.1 and 4.5.1. Chapter 2 refers to those airstrips presently being used and only carries them forward as existing structures to be minimally maintained as the need arises. *See* PRMP/FEIS at 2-146. Chapter 3 also depicts existing airstrips as part of the affected environment. *See id.* at 3-98 to 3-99. As explained in the opening paragraphs of Chapter 4, the transportation section analyzes transportation as well as access to, upon, and through Federal lands. *See id.* at 4-385. Other sections within the document reference the transportation issue including access and airstrips either individually like the Wild and Scenic Rivers section (*Id.* at 4-369, 4-371, 4-380), and Recreation and OHV section (*Id.* at 4-243, 4-244), or collectively as in the Cultural Resources (*Id.* at 4-41) or Fish and Wildlife sections (*Id.* at 4-128).

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### *Inventory of Wilderness Study Areas*

**Issue Number:** PP-UT-PRICE-08-0008-44

**Organization:** Western Watersheds Project, Inc

**Protester:** John G. Carter

**Issue Excerpt Text:**

While the BLM may argue that recommended WSAs submitted by the President to Congress in the 1990's need not be re-inventoried (because they remain "on the table" for Congress to act upon), this assumption certainly is erroneous with respect to WSAs not so recommended, or lands that have potential for wilderness. By virtue of the BLM's failure to continue to inventory these lands with respect to their wilderness suitability, the RMP fails to disclose any changes in the characteristics and wilderness suitability of those lands with wilderness potential that were not recommended and that may have occurred in the past two decades. The BLM's own Planning Handbook states: "New information, updated analysis, or new resource use or protection' proposals may require amending or revising land use plans and updating implementation decisions."

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### *Summary*

By virtue of the BLM's failure to continue to inventory these lands with respect to their wilderness suitability, the RMP fails to disclose any changes in the characteristics and wilderness suitability of those lands with wilderness potential that were (1) not recommended and (2) that may have occurred in the past two decades.

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### *Response*

The BLM does not have the authority to designate new WSAs under the land use planning process. The BLM has conducted additional inventories of public lands outside WSAs (1999 Utah Wilderness Inventory Report) to assess wilderness characteristics and the information

gathered in these inventories has been considered in the RMP and made available to the public. The BLM's authority for managing lands to protect or enhance wilderness characteristics is derived directly from Section 202 of FLPMA, 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." 43 U.S.C. §1712(c)(2).

The 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. . . ." 43 U.S.C. §1702(c). The Congress intended that the Secretary of the Interior would use land use planning as a mechanism for allocating resource use, including wilderness character management, amongs the various resources in a way that provides uses for current and future generations. The BLM has long acknowledged that Section 603 of FLPMA, 43 U.S.C. §1782, requiring a one-time wilderness review, has expired. All current inventory of public lands is authorized by Section 201 of FLPMA, 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.

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### *Motorized Use in Wilderness Study Areas*

**Issue Number:** PP-UT-PRICE-08-0009c-99

**Organization:** Southern Utah Wilderness Alliance, The Wilderness Society, Sierra Club - Utah Chapter, Center for Native Ecosystems, and Public Employees for Environmental Responsibility - Southwest Chapter

**Issue Excerpt Text:**

BLM Failed to Take a Hard Look at Impacts to WSAs from Route Designations

The IMP identifies the following wilderness and related values that BLM must analyze in evaluating the impact to wilderness values under the nonimpairment standard when designating ways as official routes: - How the proposed routes will (or will not) meet the conditions of the being substantially unnoticeable. - How the proposed routes will reduce or improve the overall wilderness quality of the WSA. - Soil stability, including erosion impacts. - Condition or trend of the vegetation including plant species composition and vegetal cover. - Natural biological diversity including numbers and species composition of microbes, invertebrates, fish, reptiles, amphibians, birds, and mammals. - Key visual resource characteristics (form, line, color and texture) of the landscape. - Naturalness.- Opportunities for solitude. - Opportunities for primitive and unconfined types of recreation, or quality of existing opportunities for primitive and unconfined types of recreation. - Description of special features. - Quality of surface water including dissolved solids, nutrient levels such as nitrates, and microbial concentrations. - Threatened or endangered plant and animal species. *See* H-8550-1 II.B.6.c. The PRMP fails to disclose baseline information as to current condition of the ways as well as the condition of the ways at the time of the wilderness inventory. The impacts discussion limited to conclusory statements such as "there would be no long-term impacts on wilderness values." PRMP at 4-307. This is not an analysis. It is insufficient, both under the IMP and under NEPA, for BLM not to analyze all direct, indirect, and cumulative impacts that are likely to occur. BLM must take the requisite hard look at the impacts of its proposal to designate ways and allow ORV use in WSAs, and revise the PRMP to reflect this analysis.

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### ***Summary***

BLM must take the requisite hard look at the impacts of its proposal to designate ways and allow ORV use in WSAs, and revise the PRMP to reflect this analysis.

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***Response***

The Interim Management Policy for Lands Under Wilderness Review (IMP) allows for continued use of inventoried ways in WSAs during the WSA phase. 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. 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, vehicular use of these routes has not resulted in impairment of wilderness values; they continue to be monitored for such impacts. Where routes will 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.