

Director's Protest Resolution Report

**Vernal
Resource Management Plan**

October 28, 2008



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Reader's Guide

How do I read the Report?

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

Report Snapshot

Issue Topics and Responses

NEPA — Topic heading

Submission number

Protest issue number

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

Organization: The Forest Initiative — Protesting organization

Protester: John Smith — Protester's name

Issue Excerpt Text: — Direct quote taken from the submission

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

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

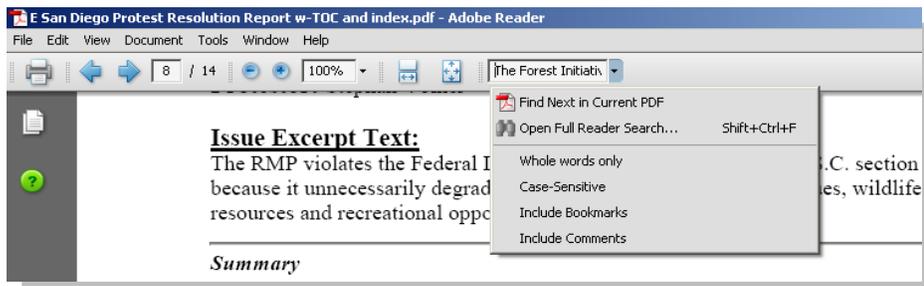
There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

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

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

How do I find my Protest Issues and Responses?

1. Find your submission number on the protesting party index which is organized alphabetically by 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

Protester	Organization	Submission Number	Determination
	Center for Native Ecosystems	PP-UT-VERNAL-08-0013	Granted in Part
	Public Employees for Environmental Responsibility	PP-UT-VERNAL-08-0013	Dismissed-No Standing
	Sierra Club, Utah Chapter	PP-UT-VERNAL-08-0013	Granted in Part
	Southern Utah Wilderness Alliance	PP-UT-VERNAL-08-0013	Granted in Part
	The Wilderness Society	PP-UT-VERNAL-08-0013	Granted in Part
	Uintah County Commission	PP-UT-VERNAL-08-0011	Denied-Issues Comments
	Vermillion Ranch Limited Partnership	PP-UT-VERNAL-08-0003	Denied-Issues Comments
Bell, Brooke	Anadarko Petroleum Corporation	PP-UT-VERNAL-08-0004	Denied-Issues Comments
Carter, John	Western Watersheds Project	PP-UT-VERNAL-08-0014	Denied-Issues Comments
Cukjati, Gary	National Outdoor Leadership School	PP-UT-VERNAL-08-0007	Denied-Issues Comments
Danenhauer, Mark	Utah Rivers Council	PP-UT-VERNAL-08-0010	Denied-Issues Comments
Elder, Tom, Diane Ackerman, Linda West and Gary Mott	Uintah Mountain Club	PP-UT-VERNAL-08-0008	Denied-Issues Comments
Hays, Ti	National Trust for Historic Preservation	PP-UT-VERNAL-08-0006	Denied-Issues Comments
Hinchey, Maurice	U. S. House of Representatives	PP-UT-VERNAL-08-0016	Dismissed-Late Submission
Kleiner-Roberts, Amy	Outdoor Industry Association	PP-UT-VERNAL-08-0007	Denied-Issues Comments
Leith, Stewart	Daggett County Commission	PP-UT-VERNAL-08-0015	Dismissed-Late Submission
Matheny, Paul	Questar Explorations and Production Company	PP-UT-VERNAL-08-0009	Granted in Part
Perkins, Jane and Jim	Individuals	PP-UT-VERNAL-08-0002	Denied-Issues Comments

Scotter, Troy	Utah Rock Art Research Association	PP-UT-VERNAL-08-0001	Dismissed-Only Comments
Sgamma, Kathleen	Independent Petroleum Association of Mountain States	PP-UT-VERNAL-08-0005	Granted in Part
Wolfe, Michael	Utah State University	PP-UT-VERNAL-08-0012	Denied-Issues Comments

Issue Topics and Responses

NEPA

Close Examination of Baseline Data and Modeling

Issue Number: PP-UT-VERNAL-08-0006-12

Organization: National Trust for Historic Preservation

Protester: Ti Hays

Issue Excerpt Text:

The omission of detailed information about the current condition of the Nine Mile Canyon Archeological District (NMCAD) is particularly glaring. In recent years, a series of oil and gas projects approved by BLM for the Nine Mile Canyon area have adversely affected this historic property, along with individual sites in the canyon that contribute to the district's National Register eligibility. See, e.g., Prickly Pear CR Report at 20-21 (identifying traffic as a "potential adverse effect" of oil and gas development in the Nine Mile Canyon region). However, the Proposed RMP's description of the NMCAD provides no indication that prior oil and gas activity has affected, let alone adversely affected, this internationally significant historic resource. As a consequence, the public is left completely in the dark about the existing condition of the NMCAD, and thus cannot make a fully informed assessment of the management decisions that may affect the integrity of the canyon during implementation of the Vernal RMP.

Issue Number: PP-UT-VERNAL-08-0014-13

Organization: Western Watersheds Projects, 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.

Issue Number: PP-UT-VERNAL-08-0014-31

Organization: Western Watersheds Projects, Inc.

Protester: John G. Carter

Issue Excerpt Text:

BLM has not presented baseline inventories and evaluations of the impacts that livestock grazing has had, and continues to have, on ecosystems and specific ecosystem components such as soils,

microbiotic crusts, fish and wildlife, and native vegetation.

Issue Number: PP-UT-VERNAL-08-0014-33

Organization: Western Watersheds Projects, Inc.

Protester: John G. Carter

Issue Excerpt Text:

While admitting that OHVs, as a surface-disturbing activity, impacts cultural, soil, paleontological, riparian and wildlife resources, similar to the inadequate analysis of livestock grazing, 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.

Issue Number: PP-UT-VERNAL-08-0014-42

Organization: Western Watersheds Projects, 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.

Issue Number: PP-UT-VERNAL-08-0014-46

Organization: Western Watersheds Projects, 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.

Issue Number: PP-UT-VERNAL-08-0014-48

Organization: Western Watersheds Projects, 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.

Issue Number: PP-UT-VERNAL-08-0014-51
Organization: Western Watersheds Projects, Inc.
Protester: John G. Carter

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.

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.

Summary

The PRMP/FEIS provides no baseline information on the impacts of OHV use or current range conditions. The PRMP/FEIS provides no baseline information on biological soil crusts. The Proposed RMP's description of the Nine Mile Canyon Archeological District (NMCAD) provides no indication that prior oil and gas activity has affected, let alone adversely affected, this internationally significant historic resource.

Response

The requisite level of information necessary to make a reasoned choice among the alternatives in an Environmental Impact Statement (EIS) is based on the scope and nature of the proposed decision. The baseline data provided in Chapter 3 and various appendices in the Proposed Resource Management Plan (PRMP)/Final EIS (FEIS) are 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 of baseline data. Although the BLM realizes that more data could always be gathered, the baseline data provide the necessary basis to make informed land use plan-level decisions. Land use plan-level analyses are typically broad and qualitative rather than quantitative or focused on site-specific actions. The BLM will conduct subsequent project-specific NEPA analyses for projects proposed for implementation under the land use plan, which may include, but are not limited to, oil and gas field development, allotment management plans, and public land use authorizations. These subsequent NEPA analyses will tier to the land use planning analysis, and evaluate project impacts at the site-specific level (see 40 CFR § 1502.20 and 1508.28). As part of the NEPA process, the public will be presented with the opportunity to participate in the environmental analysis process for these actions.

Before beginning the land use plan revision process and throughout the planning effort, the BLM considered the availability of data from all sources, adequacy of existing data, data gaps, and the type of data necessary to support informed management decisions at the land use plan level. The data needed to support broad-scale analysis of the 1.7 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 Draft RMP/Draft EIS and PRMP/FEIS is presented in map form and is sufficient to support the gross scale analyses required for land use planning.

The BLM used the most recent and best information available that was relevant to a land use planning scale of analysis. During preparation of the RMP/EIS, the BLM consulted with and used data from other agencies and sources, including, but not limited to: 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 Resources Conservation Service; Native American Tribes; and the Utah Department of Environmental Quality. The BLM consulted on the analysis and the incorporation of available data into the PRMP/FEIS with its cooperating agencies, and other agencies with jurisdiction or expertise. Considerations included, but were not limited to: big game herd numbers and trends; migratory routes and uses; crucial habitat areas (e.g., 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 consultations, the Field Office gathered the necessary data essential to make a reasoned choice among the alternatives analyzed in detail in the RMP/EIS. The BLM utilized the available data to provide an adequate analysis that led to an adequate disclosure of the potential environmental consequences of the PRMP alternative and other alternatives. As a result, the BLM has taken a “hard look,” as required by the NEPA, at the environmental consequence of the alternatives to enable the decision maker to make an informed decision.

With regard to specific points raised by protesters:

OHV impacts on fish, wildlife, and native vegetation: The impacts and impact producing factors of OHV use on natural resources are adequately analyzed in Chapter 4 of the RMP/EIS. Chapter 3 of the RMP/EIS presents the baseline (current situation under the No Action alternative) for analysis in Chapter 4 and describes the ongoing and baseline issues surrounding cross-country travel currently permitted by the Field Office’s existing land use plans. Cross-country travel is currently allowed in many areas within the Field Office. The impacts associated with cross-country OHV use are described in Chapter 4 under the No Action Alternative. The Proposed Plan limits travel to designated, existing routes (and closes a portion of the Field Office to travel, and opens approximately 6,000 acres to cross-country travel). The routes that are already in use are considered part of the baseline, and therefore, it is not reasonable to consider the impacts to vegetation from existing linear disturbances such as routes. However, the impacts from the current situation are considered in the cumulative analysis. 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, page 2-5 and page 2-21 (Table 2.1.6), decisions regarding authorized livestock use, levels and the terms and conditions under which they are managed are implementation decisions (H-1610-1, Appendix C, page 15). The BLM assesses the condition of rangeland health, conducts monitoring and inventories, and evaluates these 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 the *Standards for Rangeland Health and Guidelines for Grazing Management for BLM Lands in Utah* 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 broad-scale, planning level, decisions concerning grazing in the RMP.

Soils and macrobiotic crusts: Soil surveys and ecologic site descriptions are provided by Natural Resources Conservation Service (NRCS). The BLM's standard is to use NRCS data, recognizing this agency's special expertise and responsibility. As NRCS develops and updates the surveys and site descriptions, the BLM will use that information. Baseline information on soils, including biological soil crusts, is presented in Section 3.15.3.2.1. While there has not been a systematic inventory of soil crusts within the decision area, the BLM has data that confirm that small areas of more dense soil crusts do exist, especially in areas with less dense vegetative cover. The BLM does fully acknowledge the important role macrobiotic crusts serve within a range or forested landscape. The BLM's interdisciplinary team of specialists, using their professional judgment, determined that the amount of biological crusts present in functional and healthy ecological sites are adequate to support ecological processes in conjunction with the vascular plants present. The Draft RMP/EIS management alternatives address the functioning and ecological condition of the planning unit rather than attempting to manage for biological crusts alone. The alternatives in the EIS are designed to maintain or improve rangeland health. Functioning rangelands in healthy condition tend to maintain biological soil crusts at an appropriate level and distribution. The impacts to biological soil crusts at the landscape levels are addressed in Chapter 4, commensurate to the level of decision making in the PRMP/FEIS. Site-specific impacts to biological soil crusts will be covered in implementation level NEPA analysis (e.g., term permit renewals, special recreation permits, realty actions, tenure adjustments).

Nine Mile Canyon Archeological District (NMCAD): Information concerning the present condition of that portion of the NMCAD administered by the Vernal Field Office (VFO) is found in Chapter 3, Section 3.3, Cultural Resources, page 3-10, of the Proposed RMP/Final EIS. Predominately, the series of oil and gas projects approved by the BLM for the Nine Mile Canyon mentioned by the Protester were approved by the Price Field Office. The report mentioned by the protestor - the 'Prickly Pear Cultural Resources Report,' at 20-21 – concerns a project within the Price Field Office and not on lands administered by the Vernal Field Office. Potential impacts to the Nine Mile Canyon ACEC within the Vernal Field Office will consist of: the travel of oil and gas service companies to and from offices in Duchesne and Uintah Counties headquarters for work on projects located within the Price Field Office boundaries, pipeline corridors for produced natural gas, and tourism. The roads are claimed by the counties who provide maintenance. As stated on page 4-434 and shown in Figure 12 of the Proposed RMP/FEIS, the cultural resources within the canyon from the upper rim are open to leasing with No Surface Use stipulated. The table lands above the main and tributary canyons may be covered by Timing Limitation and Controlled Surface Use Stipulations.

Additionally, the BLM analyzed the cumulative impacts to cultural resources, including those present in the NMCAD, in the Vernal PRMP/FEIS, and determined that there is a risk of some cumulative impacts from the oil and gas development in adjacent lands. However, all such development is subject to the process outlined in the NHPA Section 106, which will be used to identify important cultural resources within the area of potential effect and to consider alternatives to avoid and mitigate impacts to such resources. Therefore, the potential for direct and indirect impacts will be reduced.

Within the portion of the NMCAD administered by the VFO, Off Highway Vehicles (OHV) are limited to designated routes for most of the canyon and the area acquired in Nine Mile Canyon (noted in Chapter 1, page 1-12 as “lands near the mouth of Nine Mile Creek [that] were acquired as mitigation” and referred to in the RMP as the Nine Mile Acquired Area) is closed to OHV travel. The Vernal RMP applies only to those portions of Nine Mile Canyon administered by the Vernal Field Office. These areas are signed to notify users that OHV restrictions apply. Within the main canyon, monitors funded by private industry document the traffic load and speed of vehicles. Mitigation measures and Best Management Practices are used to control dust and any potential impact to cultural resources. Various types of dust suppression materials are used to prevent dust plumes from occurring. Additional studies will further analyze the effect of travel through the area. The monitoring plan of the portions of Nine Mile Canyon administered by the Vernal Field Office will be documented in the Approved RMP.

Analytical Discussion of Impacts

Issue Number: PP-UT-VERNAL-08-0014-18

Organization: Western Watersheds Projects, Inc.

Protester: John G. Carter

Issue Excerpt Text:

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.

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

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

The adequacy of the BLM's impacts analyses of livestock grazing and OHV impacts on other resources, including soil resources, are discussed under "Close Examination of Baseline Data and Modeling" above. Western Watershed Project questions the BLM's analysis of livestock grazing impacts within the planning area, citing perceived failures to incorporate scientific information into the description of fire frequency and invasive species within the planning area (in particular, section 3.18 of the PRMP/FEIS). The studies cited by the protesting party, however, relate less to the existing condition of these resources than to the historic cause for the existing condition of the resource. The BLM has adequately disclosed and analyzed the impacts from livestock grazing as a result of current management (refer to the DRMP/DEIS analysis of the No Action alternative). As stated previously, the BLM has provided a land use planning level analysis based on continued management of public lands according to the Standards for Rangeland Health.

Response to Comments

Issue Number: PP-UT-VERNAL-08-0007-3

Organization: Outdoor Industry Association

Protester: Gary Cukjati

Issue Excerpt Text:

NOLS' substantive and legitimate comments on management in the Sand Wash area were either overlooked or ignored. The following comments remain unaddressed: "Goal: 'Continue to implement the 1979 Green River Management Plan for Desolation and Gray Canyons to protect the Desolation Canyon Historical Landmark within VFO.' The 1979 plan prescribed clear protective management actions for a Green River management area that included Sand Wash and the public lands adjacent to it (p6). The area was described as a 'visual corridor limited to what can be seen or heard from

the river, ranging from one-half to two miles from the river but averaging about one mile in width (...) corresponding to special stipulations placed on oil and gas leasing in the area in 1975, documented in an environmental analysis on file with the Moab district.", "Objective C of the 1979 plan was to "provide a continuing opportunity for a quality wilderness type experience between Sand Wash and Nefertiti Rapid." The visitor perception study BLM commissioned at the time revealed that 82% of visitors considered wilderness a value they sought when making their trip. Uses out of harmony with that objective were to be controlled. We believe the Vernal draft should uphold this objective by protecting the wilderness quality of the Sand Wash area." "The draft does not ensure the preservation of scenic vistas deemed most important for their contribution to the quality of

recreational visitor experiences. Specifically, the Sand Wash area VRM management class II status needs to be upheld by an NSO stipulation on surrounding lands within a 2-mile radius from the ranger station."

Issue Number: PP-UT-VERNAL-08-0007-6

Organization: Outdoor Industry Association

Protester: Gary Cukjati

Issue Excerpt Text:

NOLS and OIA expressed this sentiment in their comments by addressing view sheds (map 39), oil and gas stipulations (map 12), and Off-Highway Vehicle (OHV) travel (map 33) within areas of wilderness character. Unfortunately, the comments were never addressed: - "Areas that retain wilderness characteristics along the White and Green River corridors should be managed to preserve those characteristics in the final plan. This would entail establishing a 1-mile corridor on each bank of these rivers that is either closed to leasing or open only with a No Surface Occupancy stipulation. In particular, the Desolation Canyon and White River parcels identified as Non- WSA Lands with Wilderness Characteristics, which have been given a "no leasing" designation in Alternative E, should be carried through to the final plan in order to adequately protect the river experience." - "Development in places along these river corridors that have already been impacted by mineral development should be limited by an NSO stipulation, and existing well-pads should be subject to stringent mitigation measures to restore the natural quality that has been lost." - "Alternative E does, however, address management to protect wilderness characteristics and opportunities of primitive recreation, where "opportunities for motorized recreation and developed facilities would not be provided in these areas" (p. 4-58). NOLS and OIA recommend that such management be applied in the final plan, allowing only primitive recreation in Non-WSA lands with wilderness characteristics, especially along the Green and White River corridors." - "The VFO should strive to create a more balanced final plan, and closing the Desolation Canyon and White River Non-WSA lands with Wilderness Characteristics to OHV travel would be an excellent step in that direction, and would help to reduce conflicts between the motorized and river-runner communities."

Issue Number: PP-UT-VERNAL-08-0007-9

Organization: Outdoor Industry Association

Protester: Gary Cukjati

Issue Excerpt Text:

NOLS and AIA addressed these opportunities in the following comments, but they were' not considered: - "Currently, the Vernal BLM field office has proposed in Alternative A the Lower Green River segment and the White River for Area of Critical Environmental Concern (ACEC) designation. In Alternative C, the Middle Green River segment is included. As one of the few commercial river users to operate in all of these sections, NOLS is compelled to support the designation of all three proposed ACECs in the final plan. Additionally, Non-- WSA lands with wilderness characteristics should be included in the Desolation Canyon and White River segments." - "NOLS and OIA ask that a Wild, Scenic, or Recreational designation be granted to all three segments of the Green River under Vernal jurisdiction in the final plan. Each segment analyzed by the Vernal Field Office was found to be eligible for designation, yet only the lower section is recommended in Alternative A. Segments of the White River that flow through Non-WSA lands with Wilderness Characteristics should also be recommended for Wild, Scenic, or Recreational designation in the final plan. Stringent management guidelines should be implemented in the final plan to preserve the primitive qualities of lands found to have wilderness characteristics along the Green and White River corridors."

Issue Number: PP-UT-VERNAL-08-0008-5

Protester: Diane, Brent, Linda, Patty Ackerman, Hansen, West McCourt

Issue Excerpt Text:

The first of two issues being protested is the management of the Dry Fork-Red Mountain ACEC & SRMA: The Dry Fork - Red Mountain area is the most heavily used recreational resource on BLM lands in Uintah County. It also contains numerous archeological resources, including both extensive rock art and also at least one Fremont village that have been excavated by BYU, as well as the relict plant communities on Red Mountain and Little Red Mountain. The Dry Fork - Red Mountain ACEC also serves as the striking view shed for the High Uintas-Flaming Gorge National Scenic Byway, both the stretch across the BLM land, and the stretch on USFS land descending off of Taylor Mountain. We insist that these recreational and scientific resources are too important to be compromised by the FEIS's excessive bias in favor of minerals development and ATV use. The BLM's only response to our comment was,

"comment noted." We do not accept this curt rejection of our arguments.

Issue Number: PP-UT-VERNAL-08-0008-7

Protester: Diane, Brent, Linda, Patty Ackerman, Hansen, West McCourt

Issue Excerpt Text:

BLM's response to our request that the [White River] area be removed from leasing and the White be recommended "suitable" for W & S River status is; "comment noted".

Issue Number: PP-UT-VERNAL-08-0012-8

Organization: Dept. of Wildland Science Utah State University

Protester: Michael Wolfe

Issue Excerpt Text:

On a broader scale, I believe that some of my comments were accorded only perfunctory consideration under the premise (either explicit or implicit) that wildlife management is the purview of the state. This is not a sufficient response, because it is only partially true. Management of wildlife on federal lands is subject to a division of responsibilities with the states responsible for managing populations of most resident species, whereas the federal agencies are responsible -in fact obligated- for managing wildlife habitat. This tradition is long-standing (Bean and Rowlands 1997) and anchored in federal legislation (i.e. FLPMA, 43 V.S.C. § 1702(c)) as well as case law dating back to *Hunt v. United States* (278 U.S. 96, 1928).

Issue Number: PP-UT-VERNAL-08-0013b-104

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 its own section of

the Draft RMP. 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.

Issue Number: PP-UT-VERNAL-08-0013b-106

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 Vernal Draft RMP/EIS or the Proposed RMP/Final EIS. 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. BLM does acknowledge the possibility of boom bust to exhibit itself within natural resource-based economies; however, the agency goes into no site-specific detail and largely dismisses the possibility by saying that no characteristic trends of boom bust cycles have been seen in the Vernal planning area. The fact that these trends have not yet been exhibited within the planning area is irrelevant. BLM must take account of the possible effects should a boom occur as a result of oil/gas development. The only detailed quantitative analysis was performed for the marketable costs and benefits of oil and gas development. This' narrow view is completely inadequate to address all potential impacts to socioeconomic conditions for local communities, which the RMP/EIS 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 information¹⁰²presented 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 continual blatant

use of small portions of submitted comments highlights the disingenuous approach that the agency is taking to public review and participation.

Issue Number: PP-UT-VERNAL-08-0013b-113

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 agency's response to comments highlights its ongoing 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. 53 As such, the agency has violated NEPA's requirements.

Issue Number: PP-UT-VERNAL-08-0013c-129

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 states that one of our comments was "The assessment of grazing in the DEIS is deficient and must be improved." See BLM Response to Comments, sorted by Commenter, at 1014. The BLM responds by saying "Without specific identification of the perceived deficiencies, the BLM cannot address this comment." Id. However, the perceived "comment" was merely a subheading to a highly detailed section explicitly describing why the Draft RMP was deficient. BLM ignored many of these comments and recommendations. The following are substantive comments provided on the Draft RMP that BLM has not responded to in any way in clear violation of 40 C.F.R. 1503.4:

Issue Number: PP-UT-VERNAL-08-0013c-131

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

Chapter

Issue Excerpt Text:

For many of our substantive comments, the response was simply "comment noted." This is not one of the five options provided for responding to comments in 40 C.F.R. 1503.4. BLM must respond to each of these comments by one of the following means: 6. Modify alternatives including the proposed action. 7. Develop and evaluate alternatives not previously given serious consideration by the agency. 8. Supplement, improve, or modify its analyses. 9. Make factual corrections. 10. Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response. 40 C.F.R. 1503.4(a).

Issue Number: PP-UT-VERNAL-08-0013c-139

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 many cases the responses to comments refer back to sections of the PRMP that either do not exist or are not germane. For example, response SS49 states, "Information concerning the taxonomic changes to *Sclerocactus glaucus* has been addressed in Section 1794.15.2.3.1.1 of the PRMP/FEIS." No such section exists, and we found no discussion of this taxonomic change. SS61 states, "Section 4.14.1.3.2 in the PRMP/FEIS describes the range of protection measures for the white-tailed prairie dog." Again, there is no such section. Response SS63 directs the reader to what is actually a section on soils and water instead of impacts to black-footed ferrets as the response claims. In response to our concerns about lack of analysis of impacts of grazing on sage-grouse, response SS65 points to a section again that is instead about impacts to soils and water. Perhaps some of these issues are indeed addressed, but BLM has made it extremely difficult to locate this information, if it does exist.

Issue Number: PP-UT-VERNAL-08-0013c-93

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:

[SUWA commented on the DRMP that] The Vernal PRMP fails to evaluate, assess or account for SUWA's significant new wilderness resource information. Only in the Response to Comments, Supp. by Commenter at 174-3 does BLM even acknowledge this new information: A BLM Interdisciplinary Team conducted an internal review of non- WSA lands with wilderness character and concluded that not all areas proposed in the 1999 inventory met the wilderness criteria.¹⁶⁰This response, however, misses the mark. The 1999 Utah Wilderness Inventory for the VFO failed to include all of the wilderness character areas in the VFO. In fact, most of the new information that SUWA submitted to BLM during the PRMP process is for areas that were not included in the 1999 inventory, including Badland Cliffs, Bitter Creek, Bourdette Draw, Dragon Canyon, Goslin Mountain, Lower Flaming Gorge, Mexico Point, Mountain Home, Moonshine Draw, Red Creek Badlands, Red Mountain, Split Mountain Benches, Stone Bridge

Draw, and Unita Mountain wilderness character areas. In addition the 1999 inventory is 10 years old, and FLPMA requires BLM to keep and maintain on a continuing basis a current inventory of the public lands and their resources. See 43 V.S.C. 1711(a). Nevertheless, the VFO appears to mistakenly rely on the 19~9 inventory as a representation of all of the possible non- WSA lands with wilderness characteristics.

Issue Number: PP-UT-VERNAL-08-0014-59

Organization: Western Watersheds Projects, 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/EIS. These are fully incorporated into this protest. BLM ignored this information, and has ignored the role of livestock and range management on the environment.

Summary

The BLM failed to respond to comments on the DRMP/DEIS. By summarizing comments, the BLM ignored information.

Specifically, the BLM failed to respond to:

- NOLS (define) comments regarding management in the Sand Wash area, areas that retain wilderness characteristics along the White and Green River corridors, and management of the Lower Green River segment.
- Uintah Mountain Club's comments regarding the Dry Fork - Red Mountain ACEC. "Comment noted" is not an adequate response.
- The Wilderness Society's comments regarding data sources, existing methodologies, literature, and opposing views.
- SUWA's (define) comments on the analysis of grazing in the DEIS. "Comment noted" is not an adequate response.
- References to the DEIS in the BLM's response to the Southern Utah Wilderness Alliance's comments are incorrect.
- information submitted by the Southern Utah Wilderness Alliance on wilderness character areas and relied on the outdated 1999 inventory.
- Michael Wolfe's comments on wildlife, because the BLM believes that wildlife is under the exclusive jurisdiction of the state.
- The Western Watershed Project's information on grazing systems, utilization rates, the need for rest, and other criteria for livestock grazing.

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 Vernal Interdisciplinary (ID) Team for identification of substantive comments is described Section 5.5.1. The resulting coding and comment database assisted the ID Team in determining if the substantive comment raised warranted adding or modifying the analyses by making factual corrections or explaining why the comment did not warrant any action. Many of the comments were especially voluminous, providing extensive information on issues such as the role of livestock and range management on the environment, cultural resources, 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 NEPA's Forty Most Asked Questions, it is acceptable to summarize especially voluminous comments. Opinions, judgments, preferences or views, although read and considered, were determined to be non-substantive comments, and therefore did not warrant a response, as required by CEQ regulations.

Upon review of comments submitted on the DRMP/DEIS, the BLM determined that the comments from NOLS and Uintah Mountain Club regarding various special designations did not present new information or point out flaws in the analysis. The comments were found to simply express an opinion or preference for an alternative or decision. Under BLM policy, comments will not receive a specific response if the commenter did not provide any rationale why the suggested changes are necessary or how the current data and analysis are incorrect, if the suggested changes express personal opinions or preferences, or if the suggested changes have little relevance to the adequacy or accuracy of the RMP/EIS.

Many of SUWA's comments regarding the analysis of grazing were used to update the RMP after the DRMP and Supplement to the DRMP/DEIS. The BLM provided responses where a comment was determined to be a substantive comment rather than expressing an opinion or recommendation.

The incorrect references noted by the Southern Utah Wilderness Alliance in the BLM's responses to comments refer to sections of the DEIS and not to the FEIS. Since completion of the DRMP/DEIS, section numbers have changed. The reference to Section 4.15.2.3.1.1 (SS49) from the DEIS has been changed to Section 4.17.2.3.1.1 in the FEIS. It should be noted that the text in this FEIS no longer includes the taxonomic descriptions for the plants for the ease of reading for the general public. The scientific name for shrubby-reed mustard should also have been removed from Section 4.17.2.3.1.1 to be consistent with the deletions made to the other plant species. Section 4.14.1.3.2 (referenced in SS61) of the DEIS has been changed to Section 4.16.1.2.2 in the FEIS. Section 4.16.1.2.2 states: "The VRM Class II objectives, limiting OHV travel to designated routes, and oil and gas leasing with controlled surface use, will limit surface disturbance that will protect habitat for the white-tailed prairie dogs." Section 4.15.2.2 (reference in SS65) of the DEIS has been changed to Section 4.17.2.2 in the FEIS. This section describes the impacts of forage allocation and livestock grazing decisions on special status species and directs the reader to also review the information presented in Section 4.17.1.

With respect to SUWA's comments regarding the wilderness inventory: As stated in the Response to Comments, Supp. (spell out) by Commenter at 174-3, the BLM did not rely solely on the 1999 inventory. As stated: "As part of the BLM's wilderness characteristics inventory maintenance, the BLM performed a combination of data and on-site reviews. This included specific field inspections, Interdisciplinary Team review of data such as range files, County and BLM GIS data, and high-resolution 2006 aerial photographs. The BLM's findings are described in the 1999-2003 wilderness re-inventory documentation, as well as the 2007 wilderness characteristics review process (findings from this review are available on the Vernal Field Office planning website, and in the Administrative Record). The BLM is confident of [the] high-standard approach used to inventory the public lands and stands by its findings, particularly the findings which involved wilderness characteristics inventory maintenance." The majority of the "new" information submitted by SUWA was a reissue of what was part of the 1999 Wilderness Inventory. The assertion that this information was not considered is incorrect. All information submitted was considered during the 2007 wilderness characteristics review process.

The BLM provided adequate response to the comments posed by the Wilderness Society relating to the DRMP/DEIS's socioeconomic impact analysis (pages 223-227 of comments sorted by resource). As noted in those responses, the BLM made revisions to the section between the DRMP/DEIS and the PRMP/FEIS. The potential impacts on socioeconomics from the proposed BLM management of the planning area are adequately presented in the revised discussion in Chapter 4 of the PRMP/FEIS (refer to pp. 4-364 through 4-396). This analysis includes a general discussion of the impacts of minerals development on economic and social conditions in the planning area which is sufficient to draw a contrast between the alternatives considered (see sections 4.14.3.2 and 4.14.3.3, respectively). The level of analysis is discussed in an appropriate manner for a land use plan. The analysis also adequately describes general impacts of recreation management on the area's socioeconomics (Section 4.14.2.4) and notes the beneficial impacts of recreation management within the Field Office, including the potential for increased jobs and potentially populations, and generally the potential for "overall prosperity in the communities" (page 4-366).

The BLM does not have available, and was not required to prepare, analysis of non-market values to include in its socioeconomic analysis. Analysis of such non-market values and associated impacts is considerably more speculative than the analysis of "hard" benefits, such as those that would result from mineral development and extractive activities. For these reasons, disclosure of anticipated non-market costs is appropriately stated in qualitative terms.

With respect to Michael Wolfe's comments regarding wildlife: These comments were fully considered and responded to (see Response to Supplement Comments, Sorted by Commenter, 12-1 through 7, pages 208-212). The BLM is committed to managing important habitat for wildlife and has a long history of working cooperatively with the Utah Department of Wildlife Resources in this regard.

The BLM carefully considered all information submitted by commenters on the DRMP/DEIS.

Limited Range of Alternatives

Issue Number: PP-UT-VERNAL-08-0002-5

Protester: Jane & Jim Perkins

Issue Excerpt Text:

Alternative E appears to be identical to Alternative C, with the exception of very minimal changes regarding wilderness characteristics for 277,000 acres of land. As mentioned above, we believe that far more acreage should be denoted by the BLM as having wilderness value and characteristics. We believe that the DRMPIDEIS and Supplement fail to comply with the requirements of NEPA because they fail to pose real alternatives with discernable differences between them.

Issue Number: PP-UT-VERNAL-08-0013b-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:

BLM has failed to consider a no leasing alternative in the Vernal 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.

Issue Number: PP-UT-VERNAL-08-0014-16

Organization: Western Watersheds Projects, Inc.

Protester: John G. Carter

Issue Excerpt Text:

Over the course of a 20 year planning period, this

would amount to 1,072,050 acres, or 62% of the planning area affected. In addition, Vegetation Resources (Table 2.1.23) describes 200,000 acres of sagebrush manipulations and other possible manipulations that are not defined. 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.

Issue Number: PP-UT-VERNAL-08-0014-5

Organization: Western Watersheds Projects, 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, or wildlife resources, to livestock in spite of the documented benefits of doing so within the RMP itself. This approach with respect to livestock grazing violates the National Environmental Policy Act (NEPA), 42 V.S.C. §§ 4321-4361, requirement that federal agencies analyze a reasonable range of alternatives.

Issue Number: PP-UT-VERNAL-08-0014-7

Organization: Western Watersheds Projects, 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 98% 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.

Summary

The DEIS/FEIS did not consider an adequate range of alternatives. A greater area than 277,000 acres should have been considered to have wilderness character. The BLM failed to consider a

"no-leasing" alternative for oil and gas. All alternatives would leave 98% of the area open to grazing.

Response

The BLM considered a reasonable range of alternatives during the planning process, in full compliance with the NEPA. The CEQ regulations (40 CFR § 1502.1) require that the BLM consider reasonable alternatives, 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, five alternatives were analyzed in detail in the PRMP/FEIS that best addressed the issues and concerns identified by the affected public.

The BLM's range of alternatives represented a full spectrum of options including a No Action alternative (current management, Alternative D); an alternative emphasizing conservation and constraints to resource use (Alternative C); an alternative emphasizing resource use (Alternative B); an alternative emphasizing protection of wilderness characteristics (Alternative E); and a Proposed Plan (based on Alternative A) that increases conservation of resources compared to current management and emphasizes moderate constraints on leasing for oil and gas and other (leasable) solid minerals (refer to Sections 2.2.1 and 2.2.2). The acreage open or closed is similar for most alternatives, however, the level of constraints placed on new leases vary between the alternatives. The management strategies considered range from the increased conservation and protection of natural, recreation, and cultural values and intensive management of surface-disturbing activities to an alternative focused on energy and commodity development with the least protective management actions for physical, biological, and heritage resources.

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

The maximum area to be considered to have wilderness character was determined by inventory. Alternative E considered the protection of the wilderness character of these lands. A detailed rationale was also provided for the alternatives and management options considered but eliminated from detailed analyses in Section 2.3. As described in Sections 2.3.2 and 2.3.4, alternatives closing the planning area to all oil and gas leasing were not considered in detail because they would not meet the purpose and need of the PRMP/FEIS. Sections 2.3.1 and 2.3.2

discuss the reasons a "no grazing" alternative, or major adjustments to grazing, were not considered in detail.

Public Opportunities to Comment

Issue Number: PP-UT-VERNAL-08-0014-63

Organization: Western Watersheds Projects, 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).

Summary

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.

Response

A supplemental RMP/EIS, as defined by the CEQ regulations 40 CFR 1502.9, is not warranted. The BLM made no substantial changes to the DRMP/DEIS. No significant new circumstances or information were identified that would result in significant new impacts that would substantially affect the BLM's decision. This information was included pursuant to public comment and did not lead to substantial changes in the proposed action or to significant new circumstances or information relevant to environmental concerns and bearing on the proposed actions. As a consequence, the range of alternatives and associated management prescriptions analyzed in the DRMP/DEIS have substantially similar environmental consequences as the alternatives analyzed in the PRMP/FEIS.

The BLM is in full compliance with Section 7(c) of the Endangered Species Act (ESA) and CEQ regulations (40 CFR 1502.25). The U.S. Fish and Wildlife Service (FWS) is responsible for the administration of the provisions of the ESA. Section 7(c) of the ESA consultation process requires Federal agencies to consult with the FWS to ensure that its actions are not likely to jeopardize the continued existence of any listed species. As presented in Sections 5.2.4, the BLM consulted with the FWS as required. As part of the formal consultation process, a biological assessment based on the proposed RMP was provided to the FWS for review and comment, and therefore would not have been available for public comment. 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 4.17).

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 Vernal Field Office RMP Record of Decision (ROD).

Discussion of Cumulative Impacts/Connected Actions

Issue Number: PP-UT-VERNAL-08-0013a-43

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:

Failing to include the above-mentioned sources will result in an analysis that under-predicts cumulative impacts in the planning area. The extent of this under-prediction could be quite significant considering the magnitude of the oil shale and tar sands leasing program identified in the programmatic EIS. Again, the BLM must base its air quality analyses on a comprehensive inventory of sources in order to meet its obligation to ensure the scientific validity of this analysis. 40 CFR? 1502.24.

Issue Number: PP-UT-VERNAL-08-0013b-88

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:

4. The PRMP Fails to Adequately Assess the Indirect and Cumulative Impact of ORV Area and Route Designations. 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 OHV area and route designations and travel decisions. See e.g. PRMP at 4-617 (no discussion of ORV designations or OHV use in the air quality cumulative impacts analysis); 4-618 (no discussion of ORV designations or OHV use in cultural resource cumulative impacts analysis); 4-621 (no discussion of ORV designations or OHV use in cumulative impacts analysis for non-

WSA lands with wilderness characteristics); 4-622 (no discussion of ORV designations or ORV use in cumulative impacts analysis for riparian areas); 4-624 ("travel. . . decisions would cause beneficial to minimal cumulative effects to soil and water resources from the Proposed RMP . . . OHV use would be adverse to soils"); 4-625 ("cumulative impacts of activities proposed for all resource decisions on special status plants is projected to be moderate to detrimental at localized areas within the short-term. Major contributors include OHV activities throughout most of the area."); 4-626 (no discussion of OHV designations or ORV use in cumulative impacts analysis for the vegetation resource); 4-627(management decisions could "produce long-term cumulative impacts on visual resources. . . [i]mpacts could be caused by ... OHV use."); and 4-627 (no discussion of OHV designations or ORV use in cumulative impacts analysis wildlife resource).These statements, unanalyzed and asserted with no supporting data, are no substitute for scientific, quantitative analysis. The PRMP fails to adequately assess the cumulative impact that the dense network of routes (over 96% of public lands in the VFO are available for ORV use) 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, 86scientific and quantitative analysis of the cumulative and indirect impacts of the ORV designations and travel management 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.

Summary

The BLM fails to consider specific emissions sources leading to underestimation of cumulative air quality impacts. The BLM has failed to consider the cumulative impacts of OHV use on cultural resources.

Response

The scope and nature of the specific proposed action drives what level of analysis must be done to comply with the requirements of the NEPA. Environmental analyses of Resource Management Plans are used to evaluate broad policies and provide an analytical foundation for subsequent project-specific NEPA documents. The cumulative analysis in the PRMP/FEIS considered the present effects of past actions, to the extent that they are relevant, and present and reasonably foreseeable (not highly speculative) Federal and non-Federal actions, taking into account the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. As a consequence, the cumulative analysis in Section 4.23 of the PRMP/FEIS analyzing impacts associated cultural resources, special recreation permits (SRP), socioeconomics, and climate change is very different from the analysis that would be presented in an environmental document analyzing the authorization of a specific activity or permit. Therefore, the BLM has complied fully with the requirements of 40 CFR § 1508.7 and prepared a cumulative analysis to the extent possible based on the broad nature and scope of the proposed management options under consideration at the RMP stage.

Deferral of Analysis

Issue Number: PP-UT-VERNAL-08-0013b-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:

2. BLM must seriously consider impacts from alternatives developed during the land use planning process. The PRMP states that "Special Recreation Permits (SRPs) would continue to be considered on a case-by-case basis. All proposed applications for permits would be evaluated to determine compliance with the goals and objectives of this plan." PRMP at 2-44. However, site-specific projects will tier to the NEPA analysis performed in the RMP and thus will never be fully analyzed. The possibility of future analysis does not justify BLM avoiding an assessment of the potential environmental consequences of the action that it is approving in the RMP. As a matter of NEPA policy, compliance with the Act must occur "before decisions are made and before actions are taken." 40 C.F.R. 1500.1(b). For purposes of NEPA compliance, "it is not appropriate to defer consideration of cumulative impacts to a future date when meaningful consideration can be given now." *Kern v. US. Bureau of Land*

Management, 284 F.3d 1062, 1075 (9th Cir.

2002). Because BLM will use the criteria in the RMP for processing SRPs at the site specific level, the RMP itself must provide meaningful analysis of the environmental impacts of SRPs. a. Requested Remedy BLM must fully and critically analyze impacts from SRPs at the RMP level. This means that BLM should take into consideration all comprehensive, reasonable, and specific criteria for issuing SRPs, and the potential impacts of various types of SRPs on the natural and cultural resources, as well as impacts on other users.

Issue Number: PP-UT-VERNAL-08-0013b-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:

BLM did not assess impacts stemming from the issuance of SRPs; this renders the analysis incomplete. The PRMP states that BLM will consider applications for SRPs on a case-by-case basis. However, depending solely on site-specific analysis does not allow for cumulative impact analysis as required by NEPA.

Summary

The BLM improperly defers analysis of the impacts of special recreation permits (SRPs) until the site-specific level. This does not allow a proper analysis of the cumulative impacts.

Response

The issuance of a SRP is a site-specific implementation level authorization, which requires full compliance with NEPA, including analyzing the direct, indirect and cumulative impacts associate with each proposal. The scope and nature of the specific proposed action drives what level of analysis must be done to comply with the requirements of NEPA. The impact analysis prepared in the RMP/EIS is adequately presented based on the nature and scope of the management prescriptions associated with SRPs. Because of the limited decisions being made on SRPs and lack of specific information concerning the nature of the activity or event (acreage, location, vehicles, equipment, etc.) it is neither required nor possible to present a site-specific analysis at this stage in the process. Because this information is too speculative at this time to be reasonably analyzed, the approval of SRPs will require its own distinct NEPA analysis, including a cumulative effects analysis.

Federal Land Policy and Management Act

Issue Number: PP-UT-VERNAL-08-0014-25
Organization: Western Watersheds Projects, Inc.
Protester: John G. Carter

Issue Excerpt Text:

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/FEIS, 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 98% of the VPA available to livestock.

Issue Number: PP-UT-VERNAL-08-0014-53
Organization: Western Watersheds Projects, 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.

Issue Number: PP-UT-VERNAL-08-0014-55
Organization: Western Watersheds Projects, 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.

Summary

There is no assessment of acres to be made available or not available for livestock grazing as required by FLPMA.

Response

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

During the scoping process, the BLM considered a number of factors, including those identified in the BLM Land Use Planning Handbook (H-1601-1), when developing the range of alternatives for the grazing program. The potential impacts to these resources are analyzed within the EIS. This aided the BLM in identifying lands as available or not available for livestock grazing (43 CFR § 4130.2(a)). For example, lands acquired by acquisition of properties in the Nine Mile Acquired Area will not be grazed to enhance riparian and watershed values. The BLM also has sufficient latitude for periodic adjustments of a particular use. The BLM assesses the condition of rangeland health, conducts monitoring and inventories, and evaluates these 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 *Standards for Rangeland Health and Guidelines for Grazing Management for BLM Lands in Utah* 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.

The BLM appropriately applied its land use planning policy and is in full compliance with FLPMA’s principle of multiple use.

Inventory of Public Lands

Issue Number: PP-UT-VERNAL-08-0014-37

Organization: Western Watersheds Projects, Inc.

Protester: John G. Carter

Issue Excerpt Text:

The RMP does not conduct a re-inventory of existing WSAs. This directly contradicts with FLPMA’s mandate that the BLM conduct an inventory of the public lands and their resources, and use that inventory in its wilderness study efforts, “on a continuing basis.” 43 U.S.C. Id. § 1711(a). The BLM’s analysis of its duties under FLPMA is flawed:

completion of one inventory and wilderness recommendation document when the WSA recommendation was forwarded to Congress in no way constitutes a "continuing" inventory and analysis. The word "continuing" in the BLM's statutory mandate necessarily means that the process is never complete.

Summary

The RMP does not conduct a re-inventory of existing WSAs. This directly contradicts with FLPMA's mandate that the BLM conduct an inventory of the public lands.

Response

As stated in responses to numerous comments on the DRMP/DEIS, the BLM has long acknowledged that FLPMA Section 603 (43 U.S.C. §1782), requiring a one-time wilderness review, has expired. All current inventory of public lands is authorized by FLPMA Section 201 (43 U.S.C. §1711). The BLM does periodically, and on a continuing basis, monitor existing WSAs in accordance with the Interim Management Policy and Guidelines for Lands Under Wilderness Review (IMP). The BLM has conducted inventories for wilderness character on the subject lands. The results of these various inventories were considered, and impacts to wilderness characteristics are analyzed, in the FEIS.

The Unnecessary and Undue Degradation Standard

Issue Number: PP-UT-VERNAL-08-0013b-41

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 Vernal PRMP travel plan and ORV area and trail designations (including 4,860 miles of route), including the decision to allow cross-country travel for 300 feet on either side of the designated trail for campsite access - creating a 600 foot wide cross-country corridor along all designated routes - fail FLPMA's UUD standard. See PRMP at 2-44. The proposed travel plan and ORV designations will harm natural 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.

Summary

The travel plan and ORV area and trail designations (including 4,860 miles of route), including the decision to allow cross-country travel for 300 feet on either side of the designated trail for campsite access - creating a 600- foot wide cross-country corridor along all designated routes - fail FLPMA's undue and unnecessary degradation (UUD) standard.

Response

The term "600-foot wide cross-country corridor," grossly mischaracterizes the decision to allow off-road travel to campsites. As stated in the PRMP/FEIS at page 2-44, access will be allowed for 300 feet on either side of the centerline of designated routes to existing disturbed dispersed campsites. The access to such campsites is not considered equivalent to a motorized "open" area. The BLM will monitor these areas and, if use is such that undue environmental impacts are taking place, the BLM will close and rehabilitate damaged areas (page 2-44). The BLM

analyzed the impacts of travel management as outlined and described in Chapter 4 of the PRMP/FEIS. Congress recognized that, through the multiple-use mandate, there would be conflicting uses and impacts on the public land. Unnecessary and undue degradation is a management standard that does not apply to the BLM's management decision for public lands.

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

Issue Number: PP-UT-VERNAL-08-0005-16

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 and 2003-275. IPAMS acknowledges that Section 202 of FLPMA provide 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..." Vernal PRMP Response to Comments at 274. 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~).

Response

As stated in response to comments on the DRMP/DEIS, FLPMA Section 201 gives the BLM the authority to inventory for wilderness characteristics. Section 302 of FLPMA gives the BLM general management authority for the public lands. 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. Nothing in FLPMA constrains BLM's ability to manage lands as necessary to "achieve integrated consideration of physical, biological, economic, and other sciences." (FLPMA, Section 202(c)(2) (43 U.S.C. §1712(c)(2))) Further, FLPMA makes it clear that the term "multiple use" means that not every use is appropriate for every acre of public land, and that the Secretary can "make the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use. . . ." (FLPMA, Section 103(c) (43 U.S.C. §1702(c))) The FLPMA intended for the Secretary of the Interior to use land use planning as a mechanism for allocating resource use, including wilderness character management, amongst the various resources in a way that provides uses for current and future generations.

The BLM has long acknowledged that FLPMA Section 603 (43 U.S.C. §1782) requiring a onetime wilderness review has expired. All current inventory of public lands is authorized by FLPMA Section 201 (43 U.S.C. §1711). In September 2006, the Utah District Court affirmed that the BLM retained authority to protect lands it determined to have wilderness characteristics in a manner substantially similar to the manner in which such lands are protected as WSAs.

The Federal Land Policy and Management Act's Withdrawal Procedures

Issue Number: PP-UT-VERNAL-08-0005-26
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. The 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. By proposing 99,458 acres of land in the non-WSA areas with wilderness characteristics except White River,

the BLM must comply with the formal withdrawal process.

Issue Number: PP-UT-VERNAL-08-0005-27
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 1M 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.

Summary

The BLM may not close areas of greater than 5,000 acres to oil and gas leasing without following FLPMA's withdrawal procedures.

Response

There are no withdrawals of greater than 5,000 acres proposed under the Proposed Plan. The action alternatives do propose removing areas from mineral leasing which is discretionary and does not require a withdrawal.

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 makes 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.

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

Issue Number: PP-UT-VERNAL-08-0006-9
Organization: National Trust for Historic Preservation
Protester: Ti Hays

Issue Excerpt Text:

The Proposed RMP does not prioritize the protection of ACECs as BLM adopted the least restrictive management alternative for each ACEC with cultural and/or historic values. For Nine Mile Canyon, the Proposed RMP opened the entire ACEC to oil and gas leasing. Proposed RMP at 2-63. Additionally, the Proposed RMP applied standard lease terms to 60 percent of the ACEC rather than more broadly applying a protective constraint like No Surface Occupancy. As a result of these decisions, "fewer acres [in Nine Mile Canyon] . . . would retain relevant and important values" over the life of the plan. J at 4-427; see also id. ("In cases where mineral development would be allowed, the likelihood of surface disturbance affecting relevant and important values would be much greater in areas where standard stipulations or timing and controlled surface use stipulations would be applied."). Thus, BLM violated FLPMA by adopting the alternative that will afford Nine Mile Canyon with the least amount of protection from oil and gas activity. Similarly, the Proposed RMP adopted the least stringent management alternative for Brown's Park. ii at 4-436-37. This will mean lesser "restrictions on mineral development and landscape modification," and in turn diminished "protection of wildlife habitat, cultural resources, and recreation opportunities"-i.e.,

the relevant and important values that FLPMA requires BLM to prioritize for protection in the Proposed RMP. Ji at 4-436. This decision also violates FLPMA.

Issue Number: PP-UT-VERNAL-08-0013c-41
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 Vernal PRMP, BLM has neither recognized nor carried out this statutory mandate. To resolve this, once BLM has determined that certain areas in the Vernal 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 Vernal 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 protection to the designation and protection of ACECs.

Issue Number: PP-UT-VERNAL-08-0013c-47
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 OR V use and oil and gas drilling 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.

Summary

The Proposed RMP fails to prioritize the protection of relevant and important (R&I) values in ACECs as required by FLPMA.

Response

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

The BLM has protected relevant and important values where ACECs are not designated under the Proposed Plan. How these values will be managed under proposed management and rationale for all ACEC decisions will be provided in the Record of Decision and supported by analysis in the EIS.

Consideration of Two Area of Critical Environmental Concern Nominations

Issue Number: PP-UT-VERNAL-08-0013c-140

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:

3. BLM Fails to Provide Adequate Management for Graham's Penstemon and Pariette Cactus BLM still has not acknowledged the nominations for ACECs we have submitted for Graham's penstemon and Pariette cactus. Response to comment 174-7-ACE just points back to Appendix G which makes no mention of these nominations. The BLM Manual requires that ACEC nominations be evaluated for relevance and importance criteria and there is no evidence that BLM has done this for these nominations. BLM therefore is in violation of its own Manual as well

as FLPMA's requirement to give priority to the designation and protection of ACECs in the planning process. We have obtained numerous emails through the Freedom of Information Act indicating that BLM staff believe that No Surface Occupancy stipulations for Graham's penstemon are not only appropriate but necessary, and that these should be included in the Vernal RMP revision. The agency's failure to take this action is arbitrary and capricious and fails to consider the best available science. BLM is contributing to the need to list the penstemon under the Endangered Species Act by failing to make use of its own regulatory mechanisms that could provide substantial benefits to the penstemon.

Response

The BLM has reviewed its administrative record and found that comments submitted in February 2006 (during a comment period for gathering input on potential ACECs) did include recommendations for designating ACECs to protect Graham's penstemon and Pariette cactus habitat. These recommendations were mistakenly overlooked. Because the BLM did not review or consider the recommendations in accordance with the BLM 1613 Manual, the protest is granted and these recommended areas will be considered at the earliest opportunity as part of the next planning process conducted in the Field Office.

The following measures are currently (and will continue to be) implemented to mitigate impacts to the sensitive plant species from submitted projects with proposed surface disturbance: 1) Within suitable habitat, site-specific inventories will be conducted to determine occupancy. The inventories will be conducted for lands within 300 feet of proposed surface disturbance; 2) In suitable habitat, the project infrastructure will be designed to minimize impacts; and, 3) Within occupied habitat, the project infrastructure will be designed to avoid direct disturbance and to minimize indirect impacts to populations and individual plants. The nearest proposed surface disturbance to a plant will be at least 300 feet away.

Relevant and Important Values

Issue Number: PP-UT-VERNAL-08-0013c-44

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 then violates its FLPMA obligations by failing to even designate the areas or large enough acreage areas. BLM has improperly ignored or discounted the threats to special places from oil and gas development and off-road vehicle (ORV) use, and so 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.

Response

The BLM gave full consideration to the designation and preservation of ACECs during this land use planning process. Nominations for ACECs from the public were specifically solicited during the scoping period. A total of sixteen ACEC nominations were received, and the relevance and importance of each were determined. Ten of the ACEC nominations were found to meet both the criteria of relevance and importance and all these were included for special management as proposed ACECs in Alternative C of the DRMP/DEIS. (Some of these nominations were combined in Alternative C and analyzed as a single unit).

The BLM Manual 1613.23 states that “After completing the analysis of the effects of each alternative, the manager selects the preferred plan alternative which best meets the planning criteria and the guidance applicable to the area. The preferred alternative reflects the BLM’s proposals for designation and management of ACECs.” In 1613 Manual at Section 22b “*Incorporate Management Prescriptions for Potential ACEC into Appropriate Alternatives*” it states that “management prescriptions will generally vary across the plan alternatives.” It further states, “Because special management attention must be prescribed in at least one plan alternative, each potential ACEC will appear as a recommended ACEC in at least one plan alternative.” The BLM has discretion regarding the formulation of management prescriptions for ACECs. A comparison of estimated affects and trade-offs associated with the alternative leads to development and selection of the preferred alternative. 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 1613 Manual goes on to state, “The management prescription for a potential ACEC may vary across alternatives from no special management attention to intensive special management attention.” Elaborating further, “Situations in which no special management attention would be prescribed (and therefore no designation) include ... those in which the alternative would necessitate the sacrifice of the potential ACEC values to achieve other purposes.” Such Manual guidance clearly allows for one or more RMP alternatives to be analyzed that would potentially impact relevant and important values in order to allow management for other prescribed purposes.

It is the BLM’s interpretation of its ACEC responsibility that relevant and important values must be protected whether designated an ACEC or not. The Vernal Field Office will discuss each ACEC in its Record of Decision. However, to completely respond to the issues raised regarding ACECs, we are providing a brief analysis for Bitter Creek, Four Mile Wash, Brown’s Park, and Middle Green River below.

Areas of Critical Environmental Concern within Wilderness Study Areas

Issue Number: PP-UT-VERNAL-08-0013c-49

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 other values, as listed in BLM Manual 1613, which may not be protected by focusing on protecting wilderness character (although they will likely benefit). Consequently, BLM cannot dismiss its obligations under FLPMA with regard to ACECs based on the existence of a WSA.

Issue Number: PP-UT-VERNAL-08-0013c-51

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 resistance to layering is also belied by the Vernal Field Office’s answer to Uintah 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 tool. Under FLPMA’s multiple-use mandate, the 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 does not 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 upon a personal interest or desire to see that public lands are managed in a particular manner. Not all uses and values can be provided¹³⁸for on every acre. That is why land use plans are developed through a public and interdisciplinary process. The interdisciplinary process helps ensure that all resource values and uses are considered 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 is required by the FLPMA and National BLM planning and program specific regulations. The FLPMA directs BLM to manage public lands for multiple use and sustained yield (Section 102(a)(7)). As a multiple-use agency, the BLM is required to implement laws, regulations and policies for many different and often competing land uses and to resolve conflicts and prescribe land uses through its land use plans. The BLM's Land Use Planning Handbook requires that specific decisions be made for each resource and use (See, Appendix C, Land Use Planning Handbook "H-1601-1"). Specific decisions must be included in each of the alternatives analyzed during development of the land use plan. As each alternative is formulated, each program decision is overlaid with other program decisions and inconsistent decisions are identified and modified so that ultimately a compatible mix of uses and management prescriptions result. Vernal ACEC Comments, at 002-6, p. 12. SUW A cannot make this argument any better than BLM does in the preceding paragraphs. However, we reiterate that BLM must revise the decisions in the Vernal PRMP to comply with this accurate statement of the agency's policies and obligations

Summary

The BLM cannot dismiss its obligations under FLPMA with regard to ACECs based on the existence of a WSA. Management under the Interim Management Policy for Lands under Wilderness Review (IMP) does not necessarily protect relevant and important values.

Response

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

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

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

As described in Chapter 2 of the PRMP/FEIS (page 2-73), should any WSA, in whole or in part, be released from wilderness consideration, such released lands will be managed in accordance with the goals, objectives, and management prescriptions established in this RMP, unless otherwise specified by Congress in its releasing legislation. The BLM will examine proposals in the released areas on a case-by-case basis but will defer all actions that are inconsistent with RMP goals, objectives, and prescriptions until it completes a land use plan amendment. The relevant and important values identified in the PRMP/FEIS will continue to 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.

Map of the Areas of Critical Environmental Concern

Issue Number: PP-UT-VERNAL-08-0013c-53

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:

E. Errors in PRMP Figure 30 There are several errors in Figure 30, a map depicting special designations in Alternative A, the Draft preferred alternative. This map is valuable to the public for comparing BLM's preferred alternative with the Proposed RMP, but unfortunately is very inaccurate and misleading: - Bitter Creek ACEC is depicted by a tiny box (<600 acres) when in Alternative A it is really proposed as 68,834- White River ACEC, proposed for 17,810 acres in Alternative A, is missing entirely from the map- Coyote Basin ACEC, proposed for 87,743 acres in Alternative A, is also omitted in entirety- Browns Park ACEC is incorrectly depicted as smaller than the 52,721 acres proposed in Alternative A - Figure 30 instead shows the scaled down ACEC that belongs in the Proposed PRMP The discrepancy may be a mapping error, but it obscures the true scale of variance with regard to ACECs between the Draft preferred alternative and the Final PRMP. Either by accident or via a more sinister process, the PRMP depiction of ACECs in the Draft Alternative A seriously misrepresents what is actually proposed in Alternative A. The PRMP fails to provide accurate data and analyses to the public in violation of NEP A. 40 CFR1500.1(b).

Response

The Southern Utah Wilderness Alliance is correct that ACECs are incorrectly depicted on Figure 30 as follows:

- Figure 30, Special Designations-Alternative A, in the Vernal the PRMP/FEIS did not properly depict the proposed Bitter Creek ACEC and did not show the proposed Coyote Basin and White River ACECs.
- The existing Browns Park ACEC is shown in black on the map but is not correctly identified in the legend.

The DRMP/DEIS, in January 2005, contained Figure 22, Special Designations-Alternative A, which properly depicted Bitter Creek, Coyote Basin, White River, and Browns Park ACECs. Additionally, the DRMP/EIS adequately analyzed these ACECs. No major changes or modifications were made to Alternative A from the DRMP/DEIS to the PRMP/FEIS for the ACECs in question. The Approved RMP management decisions did not designate the proposed Bitter Creek, Coyote Basin, and White River areas as ACECs. Also, the existing Browns Park ACEC was reduced in size. This has been noted in the errata, Section E in the ROD. Despite the mapping error, the analysis in the PRMP/FEIS was correct.

Bitter Creek

Issue Number: PP-UT-VERNAL-08-0013c-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:

Despite this recommendation of special management attention needed to protect the area's R&I values, the PRMP directly threatens these values by applying only minor constraints like timing stipulations, which are also subject to exception, modification and waiver, to oil and gas drilling. Numerous ORV routes would be designated in the area. The VRM rating for the entire potential ACEC in the proposed plan would be Class III, offering no meaningful protection from visual surface disturbances. The explanation at PRMP 4-428 that some of the relevant and important values would still be protected rings hollow. In the non- WSA lands with wilderness characteristics section, the BLM admits that under the proposed plan, 99% of the Bitter Creek wilderness characteristics lands' will be affected by surface disturbance, mostly related to oil and gas drilling. See PRMP at 4-204. This is inconsistent with protection of the identified R&I values in the area.

Response

The BLM identified old growth forest, significant cultural and historic resources, important watershed, and critical ecosystem for wildlife and migratory birds as relevant and important values for the Bitter Creek Potential ACEC. The BLM determined that special management attention is not required to protect the potential ACEC because standard management prescriptions are sufficient to protect the relevant and important values from risk of degradation.

The old growth pinyon-juniper woodlands identified as a relevant and important value for the Bitter Creek ACEC will be protected by limiting leasing for oil and gas development to no surface occupancy (NSO) for the old growth pinyon pine area (160 acres). PRMP/FEIS at K-31. These management actions will preserve pinyon pine habitat, with indirect positive benefits to wildlife that use that type of habitat. Additionally, these management actions will also result in decreased fire risk and improved water quality in streams in the Bitter Creek Watershed.

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 (NAGPRA) and the Archaeological Resources Protection Act (ARPA). Should National Register-eligible cultural resources be found during an inventory, impacts to them will generally be reduced by cultural site avoidance (PRMP/FEIS at 2-17 (Table 2.1.4)). If the BLM determines that cultural resource sites cannot be avoided, the

BLM will initiate consultation with the State Historic Preservation Officer (SHPO) to develop a program for mitigation based on agreed upon stipulations after consultation between Vernal FO, the SHPO, and the Advisory Council on Historic Preservation, as necessary.

The important watershed values are protected by extensive prescriptions on riparian areas. Such areas are managed to prohibit surface disturbing activities which will protect natural systems by precluding new surface disturbing activities within active flood plains, wetlands, public water reserves, or 100 meters of riparian areas (PRMP/FEIS at K-33). The BLM will manage to achieve proper functioning condition (PFC) as a minimum acceptable riparian goal for riparian/wetland areas. The BLM will utilize mitigation measures to achieve these goals including, but not limited to: (1) keeping construction of all new stream crossings to a minimum; (2) Designing and constructing stream crossings with culverts to allow fish passage, where needed; (3) Requiring the design and construction of all stream crossings to ensure minimal impacts to riparian and aquatic habitat; and, (4) relocating existing routes out of riparian areas where feasible or necessary to restore watershed and riparian stability (PRMP/FEIS at 2-52 (Table 2.1.16)). Additionally, a variety of management actions with regard to livestock grazing will be implemented to meet riparian goals and objectives and Rangeland Health Standards including fencing, herding, change of livestock class, temporary closures, and/or change of season for livestock grazing.

Migratory birds are protected in accordance with the Migratory Bird Treaty Act as well as Executive Order 13186 (Responsibilities of Federal Agencies To Protect Migratory Birds), which incorporates conservation measures for the protection of migratory birds, as outlined in the Utah Partners-In-Flight Avian Conservation Strategy and other scientific information, into all surface-disturbing activities (PRMP/FEIS at 2-77 (Table 2.1.21)).

Appendix K describes various surface stipulations to be used during surface-disturbing activities to protect wildlife and wildlife habitat. As described in Appendix K Table 1, these stipulations include the following:

- No surface occupancy (NSO), controlled surface use (CSU) and timing limitations (TL) for special status species.
- TL, CSU, and NSO raptor buffers as well as habitat mitigation to protect raptor nesting areas and foraging habitat when identified;
- TL for antelope fawning areas where necessary;
- TL for crucial elk calving and deer fawning habitat where it exists;
- 45,322 acres of TL for deer migration corridors; and
- 26,192 acres of TL and CSU stipulations for crucial deer winter range.
- 65,745 acres of TL and CSU stipulations crucial elk winter range

Lastly, special status species are also protected through compliance with the requirements of the Endangered Species Act (ESA). The BLM will manage all listed T&E plant species and the habitats upon which they depend in such a manner as to conserve and recover these species to the point where protection under the ESA is no longer necessary. In collaboration with the FWS, the Utah Division of Wildlife Resources (UDWR), and other partners, the BLM will develop and implement habitat management plans or conservation strategies for sensitive species. As

additional data are collected over the life of the RMP, land managers will continually re-evaluate population and habitat status. The BLM will continue to implement the specific goals and objectives of all Recovery Plans, Conservation Plans and Strategies, and activity level plans. Recovery Plan revisions or new Recovery Plans will also be implemented. The BLM will work with UDWR and other partners to implement conservation actions identified in the State Wildlife Action Plan (Comprehensive Wildlife Conservation Strategy) (UDWR, 2005), which identified priority wildlife species and habitats, assessed threats to their survival, and identified long-term conservation action needs (per WO IM 2006-114) (PRMP/FEIS at 2-77 (Table 2.1.21)). The BLM also provides specific lease notices for oil and gas development and conservation measures for each species on Utah's Threatened and Endangered Species List (See Appendix L).

Thus, based on the prescriptions outlined above, the relevant and important values identified for the Bitter Creek potential ACEC will continue to be adequately protected under the Approved Plan under the BLM 1613 Manual.

Four Mile Wash

Issue Number: PP-UT-VERNAL-08-0013c-62

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:

5. Four Mile Wash Potential ACEC The R&I values of this potential ACEC are the high value scenery, the riparian ecosystem and special status fish species. This potential ACEC overlay an area inventoried and found to possess wilderness characteristics. See PRMP at Appendix G-4. This potential ACEC would not be designated in the PRMP; however the BLM claims that other resource management decisions would protect some of the R&I values, mainly in the river corridor. See PRMP at 4-430 to -431.143 However, the proposed management will ensure the utter destruction of the R&I values for the vast majority of the potential ACEC. The PRMP envisions that during the life of the plan, wilderness characteristics will be lost on 72% of the acreage in this area. See PRMP at 4-211. The proposed management actions of the area contained in the potential ACEC are woefully inadequate to protect the R&I values: Almost all of the potential ACEC not in the immediate river corridor will be open to standard leasing terms ensuring continuing encroachment of oil field development into this area. See Attachment F map... Almost all of the potential ACEC not in the immediate river corridor will be managed at VRM Class IV, which allows the maximum amount of surface disturbance and is the least possible protective of the high value scenery that the potential ACEC would protect. The proposed management is not protective in any meaningful way to R&I values that this ACEC would protect. In order to fulfill its statutory obligations under FLPMA and give priority to protecting these R&I values, BLM must add this ACEC designation to the Final RMP and Record of Decision.

Response

For the Four Mile Wash potential ACEC, the BLM identified high value scenery, important riparian ecosystem, and special status fish as relevant and important values. The BLM determined that special management attention is not required to protect the potential ACEC because standard management prescriptions are sufficient to protect the relevant and important values from risk of degradation.

Impacts to scenery in Four Mile Wash are restricted by 1,551 acres of VRM Class I, and 13,012 acres of Class II objectives that protect the high value scenery that was identified exclusively in the Green River corridor (See PRMP/FEIS at 4-530 (Table 4.19.2); also see Figure 39). The

remaining acres which are located outside of the river corridor consist of VRM Class III (5,076 acres) and Class IV (30,546 acres) areas. These areas are located above the canyon rim and do not contain high quality scenic values. These VRM Class III and IV areas will be managed with timing limitations, controlled surface use, and standard stipulations. BMPs are used as appropriate to reduce visual impacts (e.g., masking, well site location, painting, etc.) (Ibid) Off-highway vehicles are limited to travel on designated routes which will help reduce the impact of OHV use on visual resources (PRMP/FEIS at 2-82). Additionally, oil and gas leasing is restricted to NSO in the Green River corridor which will further protect the high quality scenic values found there (PRMP/FEIS at 2-61; also see Figure 12).

As discussed above concerning the Bitter Creek potential ACEC, important riparian ecosystem values are protected by general prescriptions in the RMP for riparian areas, including preclusion of surface disturbing activities, managing for PFC, and adherence to the *Standards for Rangeland Health and Guidelines for Grazing Management for BLM Lands in Utah* (PRMP/FEIS at K-33; PRMP/FEIS at 2-52 (Table 2.1.16)).

The BLM will continue to work with FWS and others to ensure that recovery plans and agreements for the endangered Colorado River are updated as necessary to reflect the latest scientific data. Recovery plans have been finalized for bonytail, Colorado pikeminnow, humpback chub, and razorback sucker (PRMP/FEIS at 2-77 (Table 2.1.21)). In the case of Colorado River cutthroat trout, the BLM has implemented a Conservation Agreement and Strategy (PRMP/FEIS at 2-78). The following measures from the agreement will be implemented:

- Monitoring vegetation with low level infrared photography;
- Continuing macroinvertebrate sampling;
- Fencing to exclude foraging animals;
- Stream bank stabilization;
- Stream flow modifications; and
- Pursue in flow agreements.

Finally, special status species are also protected through compliance with the requirements of the Endangered Species Act (ESA), lease notices, and conservation and recovery plans in collaboration with State and Federal partners. See Bitter Creek potential ACEC discussion above; (PRMP/FEIS at 2-77 (Table 2.1.21); also see Appendix L).

For these reasons, the BLM concludes that the Vernal PRMP/FEIS adequately protects the relevant and important values present in the Four Mile Wash potential ACEC area pursuant to the BLM 1613 Manual.

Brown's Park

Issue Number: PP-UT-VERNAL-08-0006-5

Organization: National Trust for Historic Preservation

Protester: Ti Hays

Issue Excerpt Text:

Perhaps most troubling is BLM's treatment of Brown's Park and White River. In the Proposed RMP, BLM reduced the existing ACEC designation for Brown's Park by 65 percent—from 52,721 acres to

18,490 acres. kl at 2-57.3 No explanation or apparent justification accompanied this reduction, although BLM attempts to reassure the public that it "would continue to protect the relevant and important values" of the excised area through limitations on off-highway vehicle (OHV) use and oil and gas leasing. kl at 4-436.

Issue Number: PP-UT-VERNAL-08-0006-6

Organization: National Trust for Historic Preservation

Protester: Ti Hays

Issue Excerpt Text:

3 This decision [to reduce the size of the Brown's Park ACEC by 65%] renders the Proposed RMP

internally inconsistent because, in Appendix G, BLM states that each of the seven existing ACECs would "be carried forward as ACECs in the Vernal RMP." Proposed RMP at G-2; see also id. at 4-38 ("Seven existing ACECs in the region, Browns Park, Nine Mile Canyon, Red Mountain/Dry Fork, Red Creek Watershed, Pariette Wetlands, the Lower Green River Corridor, and Lears Canyon, would be maintained under the Proposed RMP and all alternatives."). However, the existing ACEC designation for Brown's Park has not been carried forward. Rather, the Proposed RMP designated a modified and significantly reduced version of this ACEC. !c:J. at 2-57-58. BLM must resolve this inconsistency prior to issuing the record of decision.

Summary

The reduction in size of the Brown's Park ACEC will not protect relevant and important (R&I) values. The reduction is inconsistent with Appendix G, which states, "Seven existing ACECs in the region, Browns Park..., would be maintained under the Proposed RMP and all alternatives."

Response

The BLM identified high value scenery, wildlife habitat, cultural, and historic resources as relevant and important values for the Browns Park ACEC. The BLM determined that special management attention is not required to protect the 34,231 acres dropped from the Browns Park ACEC because standard management prescriptions are sufficient to protect the relevant and important values from risk of degradation in those areas.

Despite the fact that 34,231 acres will not be designated as part of the Browns Park ACEC, the high value scenery in those areas will continue to be protected under the Approved RMP. Twenty-seven thousand, one-hundred and forty-one acres that are not with WSA lands will be managed for VRM Class II objectives. The areas that fall with the West Cold Spring WSA (3,200 acres) and Diamond Breaks WSA (3,900 acres) will be managed under IMP, therefore those lands will be restricted to a VRM Class I objective (Compare Figure 39 and Figure 29). Off-highway vehicles are limited travel to designated routes which will help reduce the impact of OHV use on visual resources (PRMP/FEIS at 2-82).

As detailed in the Bitter Creek potential ACEC discussion, the wildlife habitat will be protected by a myriad of surface disturbance stipulations as outlined in Appendix K, Table 1. Those stipulations will apply as follows:

- No surface occupancy (NSO), controlled surface use (CSU) and timing limitations (TL) for special status species.
- TL, CSU, and NSO raptor buffers as well as habitat mitigation to protect raptor nesting areas and foraging habitat where identified;
- TL for antelope fawning areas where necessary;
- TL for crucial elk calving and deer fawning habitat where it exists;

- 16,740 acres of TL for deer migration corridors; and
- 14,404 acres of TL and CSU stipulations crucial elk winter range.

Above, in the Bitter Creek potential ACEC response, we outlined the legal, regulatory, and procedural protections for cultural and historic resources. These safeguards will apply with equal force in those areas excluded from the Browns Park ACEC and will adequately protect the cultural resources present.

The riparian ecosystem values identified as relevant and important in the lands dropped from the Browns Park ACEC in the proposed plan continue to be protected by comprehensive prescriptions on riparian areas as described in the response to the Bitter Creek potential ACEC issue (PRMP/FEIS at K-33; PRMP/FEIS at 2-52 (Table 2.1.16)).

Thus, based on the prescriptions outlined above the BLM has effectively protected the relevant and important values identified in those areas dropped from the Browns Park ACEC in the Approved Plan.

Middle Green River

Issue Number: PP-UT-VERNAL-08-0013c-59

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:

3. Middle Green River Potential ACEC The R&I values for this potential ACEC include riparian ecosystem and high value scenery. The growing numbers of boaters seeking recreation on this section and fragile ecosystem warrant special management attention. See PRMP at Appendix G-3. The proposed management actions of the area contained in the potential ACEC are insufficient to protect the R&I values associated with this world-famous river. The entire potential ACEC appears to be open to standard oil and gas leasing terms offering no protection whatsoever from these impacts. The PRMP claims there would be protection in the form of minor timing constraints along the river (PRMP at 4-431), but this is not consistent with Figure 12, the map depicting Oil and Gas Designations, which show the entire potential ACEC as open with standard terms. See Attachment F map.

Response

The BLM identified riparian ecosystem and high value scenery as relevant and important values for the Middle Green River potential ACEC. The BLM determined that special management attention is not required to protect the 34,231 acres dropped from the Browns Park ACEC because standard management prescriptions are sufficient to protect the relevant and important values from risk of degradation in those areas.

The important riparian ecosystem values are protected by general prescriptions in the RMP for riparian areas including preclusion of surface disturbing activities, managing for Proper Functioning Condition (PFC), and adherence to the *Standards for Rangeland Health and Guidelines for Grazing Management for BLM Lands in Utah* as summarized above in the response to the Bitter Creek potential ACEC issue (PRMP/FEIS at K-33; PRMP/FEIS at 2-52 (Table 2.1.16)).

The Approved Plan protects the identified high value scenery from impacts in the Middle Green River by managing for VRM Class II objectives across the entire area of the potential ACEC. PRMP/FEIS at 4-530 (Table 4.19.2); also see Figure 39. Additionally, as mentioned above, off-highway vehicles are limited to travel on designated routes and oil and gas leasing is restricted to NSO in the Green River. PRMP/FEIS at 2-82. Both of these measures will further protect the high quality scenic values found there. Thus, the relevant and important values will continue to be protected in accordance with the BLM 1613 Manual.

Air Resources

Emissions Inventory/Modeling and Air Quality

Issue Number: PP-UT-VERNAL-08-0013a-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:

The Vernal PRMP fails to fully and accurately model the impacts of the activities that it permits on air quality in the planning area. Both NEP A 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 Vernal PRMP, thereby violating NEPA and its requirement that BLM understand the environmental impacts of the activities it is permitting. Importantly, the Vernal PRMP will permit and plans for activities that would lead to exceedances of federal and state air quality standards, which BLM may not do.

Issue Number: PP-UT-VERNAL-08-0013a-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:

BLM must perform comprehensive, complete modeling now. The fact that the implementation of the PRMP will 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. There is no better time to conduct comprehensive ozone pollution modeling. BLM cannot punt this obligation to some later date. As part of the "hard look" requirement, NEP A 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.

Issue Number: PP-UT-VERNAL-08-0013b-69

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.

Summary

The BLM has failed to satisfy its FLPMA and NEPA obligations to take a hard look at air quality resources. The inadequacies include lack of inventory and modeling of effects.

Response

The BLM is in full compliance with the hard look requirements of FLPMA and NEPA. In Section 4.2 of the Vernal 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 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, and locations in order to provide reliable and reasonable results. At the land use planning level, this type of analysis is not possible due to the lack of site specific information regarding sources. A site-specific air quality impact analysis will be conducted during site-specific NEPA analysis on a case-by-case basis and may include dispersion modeling where that is deemed to be appropriate and necessary. National Ambient Air Quality Standards (NAAQS) are enforced by the Utah Department of Environmental Quality, Division of Air Quality, with Environmental Protection Agency (EPA) oversight.

Chapter 2 of the PRMP clearly states the BLM's intent to continue to manage air quality in accordance with the air quality standards prescribed by Federal, state, and local laws, regulations, and policies. Section 3.2.1 provides a thorough summary of the best available information regarding existing levels of NAAQS pollutants in and near the planning area. It also includes information regarding other Air Quality Related Values, such as visibility and impacts to soil and water from acid deposition based on data from nearby Class 1 areas. Section 4.2.1 contains a summary of existing and predicted emissions for NAAQS. Emission calculations included hazardous air pollutants (HAPs) to the extent that data were available or could be predicted using standard methodology and assumption factors.

Compliance with the Clean Air Act

Issue Number: PP-UT-VERNAL-08-0013a-11

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 Vernal 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 already

has levels of PM_{2.5} 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.

Issue Number: PP-UT-VERNAL-08-0013a-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:

In order to meet its obligations under FLPMA, the BLM must demonstrate that the proposed increases in primary and secondary PM2.5 emissions will not cause or contribute to violations of the PM25 NAAQS.

Issue Number: PP-UT-VERNAL-08-0013a-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:

The BLM did not include any revisions to its PSD increment consumption "analysis" for the PRMP/FEIS. However, it did receive comments from Vicki Stamper and the State of Utah, which call into question the integrity of the BLM's so-called PSD increment analysis. In response to these comments, the BLM claims that "[t]he analysis of increment consumption is the sole responsibility of State air agencies that have been delegated authority by EPA under the Clean Air Act." Response to Comments by Resource AQ 26 at 46. In fact, the BLM is required, under NEP A, 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).

Issue Number: PP-UT-VERNAL-08-0013a-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 D.S.C. §1712(c)(8) (requiring BLM in land use plans-which would therefore require implementation in daily management-to "provide for compliance with applicable pollution control laws, including State and Federal air . . . pollution standards or implementation plans"). To properly comply with FLPMA, the Vernal PRMP must affirmatively state that BLM is obligated "require compliance with air... quality standards established pursuant to applicable Federal or State law." See 43 C.F.R. § 2920.7(b)(3).

Summary

The PRMP/FEIS does not adequately analyze the impacts to air quality, particularly particulate matter 2.5 (PM 2.5) and ozone, from activities planned and permitted in this document. Therefore the BLM has failed to demonstrate that National Ambient Air Quality Standards (NAAQS) will not be exceeded.

Response

Chapter 2 of the PRMP clearly states the BLM's intent to continue to manage air quality in accordance with the air quality standards prescribed by Federal, state, and local laws, regulations, and policies. Section 3.2.1 provides a thorough summary of the best available information regarding existing levels of NAAQS pollutants in and near the planning area. It also includes information regarding other Air Quality Related Values, such as visibility and impacts to soil and water from acid deposition based on data from nearby Class 1 areas.

Section 4.2.3 contains a summary of existing and predicted emissions and concentrations for NAAQS based on the near- and far-field modeling that was conducted. These projections and modeling assumptions are discussed in detail in Section 4.2.3 and in the Air Quality Technical Support Document (TSD, Trinity and Nicholls 2006). Quantitative analysis was conducted for CO, PM10, PM 2.5, SO_x, NO_x, and Hazardous Air Pollutants (HAPs).

The BLM recognizes that ozone concentrations are a serious issue. Ozone concentrations have approached the NAAQS throughout the western United States. Ozone is a regional issue, meaning that concentrations in a given area can result from emissions that are transported into the area from distant Volatile Organic Compound (VOC) and NO_x emission sources, as well as local or project sources. The Vernal FO is proactively working with industry to address regional ozone impacts resulting from oil and gas activities through efforts outside of this PRMP. Results of these studies will be considered in future activity-level planning as appropriate.

Under the Clean Air Act and EPA regulations, the sole legal responsibility for preparation of a Prevention of Significant Deterioration (PSD) increment consumption analysis lies with the State, with EPA oversight, and not the BLM. This will 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. The State of Utah did not request nor require PICA as part of their review of this Proposed Plan. Generally, most of the emission sources related to activities analyzed in the PRMP were considered to be temporary or mobile sources, for which PSD increment analysis generally does not apply as explained in sections 4.2.3.6.1.3. In certain situations, PSD increments may be used as thresholds of significance for NEPA analysis, as was presented in sections 4.2.3.6.7.2, 4.2.3.6.7.4, and 4.2.3.6.8.2, and summarized in Table 4.2.8, in which the modeling and analysis determined that no potential concentrations predicted would exceed the Class I or Class II increments for BLM sources only.

NO_x Modeling Correction

Issue Number: PP-UT-VERNAL-08-0013a-20

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 response to Vicki Stamper's comment on the inconsistencies between the stack parameters for compressor engines modeled for the near-field analysis and those modeled for the far-field analysis (2004 Air Quality Assessment Report Table 3-19 at p. 34 versus Table 3-10 at p. 23), the BLM revised the parameters for the near-field analysis to match those used in the far-field analysis and indicated that the initial modeling was in fact based on these [now corrected] source parameters and therefore did not need to be redone. However, the results Tables for the near-field 8 February 4, 2008 letter from Larry Svoboda, EPA region 8, to William Stringer, BLM Vernal Field Office, Re: Final Environmental Impact Statement (EIS) for EOG Resources Inc., Chapita Wells Stagecoach Area Natural Gas Development, CEQ #20070549, p. 3.20analysis show otherwise. Table 5-68 in the 2006 Air Quality Assessment Report (p. 114) shows the near-field modeling results with a maximum modeled annual NO₂ concentration in the Vernal management area of 1.4 J.lg/m³ compared with 7.7 J.lg/m³ in the 2004 Air Quality Assessment Report (p. 116). This reduction in emissions by over 80% does not support the BLM's claim that the modeling is the same. The BLM must explain the huge reduction in NO_x emissions presented in the PRMPIFEIS.

Response

Table 3-19 was corrected for the Final EIS. However, all of the correct stack parameters (Table 3-9) were used in both analyses. The change in modeling results was due to a change in the NO_x emission rate from compressors to correct a previous error. With this correction, all of the source parameters were the same for the near- and far-field modeling analyses.

Enforcement of Air Quality Standards

Issue Number: PP-UT-VERNAL-08-0004-10
Protester: Brooke S. Bell

Issue Excerpt Text:

BLM lacks the statutory authority to impose the proposed emission controls and existing federal and state regulations adequately address the issue; therefore, the BLM must delete the proposed NO_x emissions measures from the final RMP.

Issue Number: PP-UT-VERNAL-08-0005-10
Organization: Independent Petroleum Association of Mountain States
Protester: Kathleen M. Sgamma

Issue Excerpt Text:

Without rules establishing the emission limitations or mitigation measures the BLM proposes, the BLM lacks any authority to impose the measures it proposes in the PRIVIP. Accordingly, the BLM must remove the proposed emission standards on engines, and its language suggesting that it may impose additional controls in the future, from the RMP /Record of Decision (ROD).

Issue Number: PP-UT-VERNAL-08-0005-8
Organization: Independent Petroleum Association of Mountain States
Protester: Kathleen M. Sgamma

Issue Excerpt Text:

Neither the UDAQ nor EPA has established rules or regulations to impose the specific limitations on NO_x emissions that the BLM has proposed in the PRIVIP.

Issue Number: PP-UT-Vernal-08-0009-6
Organization: Questar Explorations and Production Company
Protester: J Paul Matheny

Issue Excerpt Text:

The BLM must remove its language regarding emission limitations from the RMP/ROD because the BLM lacks authority to impose emission controls and limitations beyond those adopted by states and the U.S. Environmental Protection Agency (EP A). The Clean Air Act (CAA) does not confer upon the BLM the ability to regulate air emissions. See generally 42 U.S.C. §§ 7401 - 7671q (as amended). Instead, under the CAA, the UDAQ has authority under its EP A-approved State Implementation Plan to regulate certain emissions sources, except on Indian reservations where EP A retains primary Clean Air Act jurisdiction. The Federal Land Policy and Management Act obligates the BLM to provide for compliance with existing air quality regulations established by UDAQ or, where applicable, EPA, but not by BLM. See 43 U.S.C. § 1712(c)(8).

Summary

The BLM lacks the authority to impose emission restrictions beyond those adopted by the State of Utah and the EPA.

Response

The BLM has the authority to impose conditions of approval, and require Best Management Practices of permitted activities on the public lands to meet the requirements of the Clean Air Act and to ensure compliance with State emissions standards. The BLM works cooperatively with the Utah Department of Environmental Quality (DEQ) in this regard. The BLM is relying on Utah DEQ, the agency with jurisdictional authority, to establish air quality standards.

The State of Utah has asked the BLM (see letter in Appendix O) to include interim NO_x control measures on compressor engines used in oil and gas development.

Climate Change

Analysis of Potential Climate Change

Issue Number: PP-UT-VERNAL-08-0013a-53
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 MFa, and an important aspect of that challenge.

Issue Number: PP-UT-VERNAL-08-0013a-55
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 Vernal PRMP.

Summary

The BLM failed to analyze the potential impacts of climate change, in violation of the Secretarial Order.

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 PRMP/FEIS Section 4.2.1.

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.

Issue Number: PP-UT-VERNAL-08-0013a-59
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 NEP A 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 Vernal Field Office. [The predicted warmer, drier conditions will create fundamental change to the Vernal Field Office and BLM has simply ignored those coming changes, choosing instead to manage for the past, rather than for the future]

Issue Number: PP-UT-VERNAL-08-0013a-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:

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

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 Environmental Protection Agency (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.

Potential Supplemental Draft

Issue Number: PP-UT-VERNAL-08-0013a-66

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)(I) 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.

Issue Number: PP-UT-VERNAL-08-0013a-68

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 Vernal 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.

Summary

Information on climate change is significant new information. The public has not had the opportunity to comment on this information. The BLM must issue a supplemental DEIS.

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 reevaluate 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 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 (e.g. change in temperature or ambient atmospheric concentration), (2) the FEIS addresses climate and drought issues adequately, given the information available at the time such analyses were conducted, (3) the newest information available does not indicate that the climate and drought analyses are inadequate for the purposes of making a reasoned choice among the alternatives, and (4) new information will be assessed at the implementation level, 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 significant new information that would trigger further NEPA analysis by the BLM.

Cultural Resources

Class III Inventory

Issue Number: PP-UT-VERNAL-08-0013b-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:

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.

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 action. In preparing the PRMP/FEIS, the BLM used the best available information to form the basis for the cultural resources analysis. This baseline data is a result of Sections 106 and 110 inventories of the area and represents the volume of information available. Based on the BLM's professional knowledge and experience the BLM determined that sufficient information was available on the nature and extent of the direct, indirect, and cumulative effects associated with the alternatives to form the basis of the analysis. In addition, substantive comments received concerning cultural resources were considered and addressed, as appropriate. Any potential surface disturbing activities based on

future proposals will require compliance with Section 106 and site-specific NEPA documentation.

The BLM will comply with its Section 106 responsibilities as directed by the NHPA regulations and BLM Washington Office (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 Effects (APE) and compliance with Section 106 prior to designation. Class III inventory of the APE and compliance with Section 106 will also be required prior to identifying new locations proposed as staging areas or similar areas of concentrated OHV use.

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

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

Fish, Wildlife, Plants, Special Status Species

Issue Number: PP-UT-VERNAL-08-0014-20

Organization: Western Watersheds Projects, 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.

Response

When taking action to implement the Proposed Plan, the BLM will, “in accordance with Executive Order 13186, incorporate conservation measures for the protection of migratory birds, as outlined in the Utah Partners-In-Flight Avian Conservation Strategy and other scientific information, into all surface-disturbing activities.” (See page 2-93 of the PRMP/FEIS). The PRMP/EIS is also in compliance with BLM IM 2008-50 Migratory Bird Treaty Act – Interim Management Guidance. The impacts of livestock grazing on migratory birds were judged to be minimal through adherence to the *Standards for Rangeland Health and Guidelines for Grazing Management for BLM Lands in Utah*.

Special Status Species

Issue Number: PP-UT-VERNAL-08-0013c-134
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 response to comments, BLM reveals that it fails to grasp and meet its Endangered Species Act obligations. For example, response LR21 states, “All leases granted after the establishment of the ESA, CW A, CAA, and other federal legislation are subject to the requirements of these laws and regulations.” However, these laws actually apply to all leases regardless of their date of issue. The Endangered Species Act trumps existing rights. BLM’s flawed interpretation of the Act’s reach may have resulted in the agency’s failure to impose necessary restrictions like No Surface Occupancy stipulations throughout the range of a listed species because BLM mistakenly assumed that these could only affect more recent leases.

Issue Number: PP-UT-VERNAL-08-0013c-135
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 response SS47 BLM asserts that it must balance the requirements of FLPMA and the Endangered Species Act, and suggests that endangered species conservation must accommodate resource extraction: the agency is “trying to resolve resource conflict (TES species vs. oil and gas development).” Again, BLM fails to understand that endangered species must be conserved, and that in their habitats oil and gas development must be modified so that jeopardy and adverse modification of critical habitat do not occur, and the agency does not contribute to the need to list other species under the Act through its oil and gas program.

Issue Number: PP-UT-VERNAL-08-0014-65
Organization: Western Watersheds Projects, 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

Summary

The BLM erroneously alleges that existing leases are not subject to the ESA, and that ESA requirements must be balanced with FLPMA mandates.

Response

The Protester is correct that the language cited in the response to comments is misleading. The requirements of the ESA, CWA, and CAA must be met whether or not leases pre-date the acts. The BLM must meet the requirements for protection of threatened and endangered species, not “[try] to resolve resource conflicts.” This is indicated more clearly in other portions of the comment responses cited: “However, the BLM has always reserved and will continue to reserve the right to implement management actions when unacceptable or unintended adverse effects relative to existing federal law are identified, regardless of lease stipulations,” and “The alternatives analyzed provide a range of development opportunities and this EIS will disclose how much development can be allowed while still meeting the requirements of FLPMA and ESA.” The BLM has noted this change in the errata, Section E in the ROD.

Analysis of the impacts of livestock grazing on special status species is found in the PRMP/FEIS in Section 4.17.1.2. The BLM has completed Section 7 consultation with the US Fish and Wildlife Service, and has received a Biological Opinion which concludes that implementation of the plan will not be likely to jeopardize the continued existence of any listed species, including the listed species cited in the protest.

Habitat Connectivity

Issue Number: PP-UT-VERNAL-08-0013c-119

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 states, "The RMP is at the landscape level, and therefore a more detailed review of individual species is out of the scope of analysis for this RMP." BLM Response to Comments on the Supplemental EIS, Sorted by Commenter at 208. However, in order to comply with the requirements of NEP A to conduct a thorough analysis of the direct, indirect and cumulative impacts of the management alternatives, BLM must thoroughly analyze the specific impacts of habitat fragmentation on affected species and provide a comparison of the management alternatives. Only by thoroughly analyzing reasonably foreseeable future impacts can BLM take protective measures to preserve habitat.

Response

Among the many protective measures in the PRMP/FEIS designed to protect habitat, and thereby promote habitat connectivity, are no surface occupancy or seasonal restrictions on various surface-disturbing activities including oil and gas leasing, prioritization of vegetation treatments to enhance habitat, limitation of OHV use to designated routes, and right-of-way avoidance areas. The BLM is satisfied that the appropriate level of analysis has been conducted to adequately disclose the potential impacts of the proposed management.

Restrictions on Oil and Gas Development

Issue Number: PP-UT-VERNAL-08-0005-30

Organization: Independent Petroleum Association of Mountain States

Protester: Kathleen M. Sgamma

Issue Excerpt Text:

Prohibiting any above-ground structures is de facto NSO, and a two-mile buffer is excessive and differs greatly from other BLM land use plans throughout the Intermountain West.

Issue Number: PP-UT-VERNAL-08-0005-34

Organization: Independent Petroleum Association of Mountain States

Protester: Kathleen M. Sgamma

Issue Excerpt Text:

Appendix K (mule deer migration corridors) specifies an NSO stipulation from April 15 to May 31 within McCook and Monument Ridge. However, Section 4.21.2.6.2.1 of the PRNIP /FEIS cites a

reference by Irby et al. (1987) in which the authors state that their study was unable to detect adverse impacts to mule deer from low intensity oil and gas activities. The PRNIP /FEIS also cites Karpowitz (1984), who speculates that avoidance from oil and gas activities may have occurred during his study. These references do not provide data strong enough to support the proposed NSO stipulation in deer migration corridors or the restrictive 10% surface disturbance stipulation.

Issue Number: PP-UT-Vernal-08-0009-13

Organization: Questar Explorations and Production Company

Protester: J Paul Matheny

Issue Excerpt Text:

The specification of a year-round two mile buffer with no above-ground permanent structures is tantamount to NSO, was not analyzed, and is overly excessive.

Summary

The specification of a year-round two-mile buffer with no above-ground permanent structures is tantamount to NSO, was not analyzed, and is overly excessive.

References cited do not provide data strong enough to support the proposed NSO stipulation in deer migration corridors or the restrictive 10% surface disturbance stipulation.

Response

The BLM grants this protest. The section of the Greater Sage Grouse stipulation (page K-49 of the PRMP/FEIS) which states, "no permanent facilities or structures would be allowed within two miles when possible" should have been a Controlled Surface Use (CSU) stipulation rather than NSO. The BLM grants this protest. This will be changed in Appendix K of the Approved RMP and identified as a minor clarification in the ROD since the prescription will remain the same. The consideration of what permanent facilities and structures may or may not be allowed within 2 miles of an active lek will be identified during the specific project onsite, on a case-by-case basis. This consideration depends on the activity of the lek, the distance of the project to the lek, the topography between the project and the lek, and any other circumstances that may be observed during the onsite.

The Protester misstates the issue of the stipulation referred to in Appendix K, page K-39 of the Vernal Proposed RMP/FEIS concerning deer migration corridors. The stipulation is a Timing Limitation (TL) and not a No Surface Occupancy (NSO) stipulation. In addition, the TL stipulation can be excepted as identified in Appendix K, page K-39: "if either the resource values

change or the lessee/operator demonstrates to BLM's satisfaction that adverse impacts can be mitigated."

As migration routes are necessary for transitioning between ranges (Watkins et al. 2007), protection of migration corridors is critical for herd health. Flexibility in movement across [migratory] ranges can be ultimately reflected in the survival and productivity of deer populations and likely enhances their ability to recover from population declines (Watkins et al. 2007). Watkins also indicates that migratory routes are needed for deer to transition from summer to winter range and energy development activities may create barriers preventing migration and use of remaining habitats. Therefore, the TL stipulation for the Monument and McCook Ridge Deer Migration Corridor of the Vernal RMP/EIS is justified for the protection of migrating mule deer.

The following references will be added to the ROD/Approved RMP: Watkins, B. E., C.J. Bishop, E. J. Bergman, A. Bronson, B. Hale, B. F. Wakeling, L. H. Carpenter, and D. W. Lutz. 2007. Habitat Guidelines for Mule Deer: Colorado Plateau Shrubland and Forest Ecoregion. Mule Deer Working Group, Western Association of Fish and Wildlife Agencies.

Appendix K, page K-37 of the Vernal Field Office PRMP/FEIS states: "Within crucial deer winter range, no more than 10% of such habitat would be subject to surface disturbance and remain un-reclaimed at any given time." Please note that this is not a "No Surface Occupancy" stipulation but is a "Controlled Surface Use" stipulation that can be excepted if either the resource values change or the lessee/operator demonstrates to BLM's satisfaction that impacts can be mitigated." Ten percent of the crucial deer winter range is approximately the same amount of acres as when the 560 acres of unreclaimed land for each township is totaled.

Oil and gas reservoirs are not limited in extent by surface acres but are bounded by subsurface geologic and engineering parameters.

The utilization of 10% of the crucial deer winter range will allow flexibility for additional disturbance over 560 acres in a township and afford reasonable development of the subsurface reservoir. Areas with limited mineral potential will not have surface disturbance.

Well pad development according to Sawyer (2005 and 2006) does impact habitat usage until the land is rehabilitated. Limiting the amount of disturbance occurring at any time mitigates the impact of development on wintering deer. Such a limitation (measured as a percent of unreclaimed surface disturbance within a crucial winter range) allows for reasonable accommodations for development of the mineral deposits.

The following references will be added to the ROD/Approved RMP: Sawyer, H., R. Nielson, D. Strickland, and L. McDonald. 2005. 2005 Annual Report. Sublette Mule Deer Study (Phase II): Long-term monitoring plan to assess potential impacts of energy development on mule deer in the Pinedale Anticline Project Area. Western Ecosystems Technology, Inc. Cheyenne, WY. Sawyer, H., R. M. Nielson, F. Lindzey, and L. L. McDonald. 2006. Winter Habitat Selection of Mule Deer Before and During Development of a Natural Gas Field. *Journal of Wildlife Management*. 70(2): 396-403.

Leasable Minerals ***Reasonably Foreseeable Development Scenario***

Issue Number: PP-UT-VERNAL-08-0013b-9

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 Vernal PRMP bases its analysis of oil and gas impacts in the planning area on the mistaken assumption that well density will not exceed one well per 160 acres. See BLM Response to Draft Comments, sorted by Resources, at 383. 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 increase in well density. See *id.* BLM has recently evaluated numerous projects in the Vernal planning area that would implement 40-acre spacing while completing rejecting full scale directional analysis. See, e.g., Kerr-McGee's Bonanza Area Environmental Assessment, Draft, BLM EA No. UT-080-2006-240 (implementing 40-acre spacing and not including a full analysis of directional drilling); Resource Development Group Uinta Basin Natural Gas Project, Final Environmental Impact Statement, UT-080-2003-0300V (May 2006) (failing to analyze a directional drilling alternative and stating that some areas would be developed on a 40-acre spacing pattern). As a result of this improper assumption the Vernal 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.

Response

The 160-acre spacing used for estimation of impacts refers to surface locations, not wellbores. Since multiple wells can be drilled from a single surface location using modern drilling technology, fields can be down-spaced with little additional surface footprint. The need for this will be determined at the site-specific level for future development proposals.

The RFD is in fact based on historic data as the Commenter suggested, but also considered projected economic trends and advances in technology. As a planning and analysis tool, the RFD predicts new development as well as continued production from existing fields. Of course, the BLM recognizes that there will be a greater degree of predictive uncertainty associated with estimates of new discoveries. The BLM used the best available data in the preparation of the RFD, including BLM experience, production information, new permitting, geologic information, and economic data. This information was gathered from BLM experts, industry professionals, the Energy Policy and Conservation Act (EPCA) Oil and Gas Inventory Report, the Utah Division of Oil, Gas, and Mining, and the Utah Geological Survey. The RFD was prepared in compliance with Washington Office Instruction Memorandum 2004-89.

Requirement for Analysis of Restrictions under the Energy Policy and Conservation Act

Issue Number: PP-UT-VERNAL-08-0004-12

Protester: Brooke S. Bell

Issue Excerpt Text:

Under the Energy Policy and Conservation Act (EPCA), BLM is required to identify the nature and extent of any restrictions to oil and gas development.

BLM has issued internal guidance implementing the requirements of EPCA that requires BLM to review all lease stipulations to ensure they are the least restrictive necessary to accomplish the desired resource protection. See Instruction Memorandum 2003-233 "Integration of the Energy Policy and Conservation Act Inventory Results into the Land Planning Process". The BLM has not conducted this analysis in this instance.

Issue Number: PP-UT-Vernal-08-0011-9
Organization: Uintah County Commission

Issue Excerpt Text:

Finally, the RMP fails to conform to the 2000 amendments to the Energy Policy and Conservation Act (EPCA), 42 U.S.C. §6217, because it fails to classify VRM Class II as major constraint to oil and gas development. Proposed RMP at 4-29-30. Under the President's implementing National Energy Policy and BLM direction, consideration must be given to the least restrictive constraint necessary to meet the resource protection objective, and impediments not necessary to accomplish desired protection should be modified or dropped through the planning process. BLM 1M 2003-233.

Summary

The BLM has failed to conduct the analysis required by guidance implementing the Energy Policy and Conservation Act (EPCA) that lease stipulations are the least restrictive necessary to accomplish the desired resource protection. The PRMP/FEIS fails to classify VRM Class II as a Major restraint.

Response

The identification of the extent of restrictions by EPCA category is found in the PRMP/FEIS at page 2-38. All restrictions are the least restrictive necessary to achieve the desired resource protection outcomes (see Section 2.3.4). The effects of these decisions on oil and gas development are detailed in Section 4.14.3.2. The BLM has complied with all requirements of the EPCA. A VRM Class II management classification does not preclude oil and gas development and is, therefore, by definition not a major constraint. In order to manage oil and gas development to the VRM Class II standard, it may be necessary to modify or relocate facilities, or consider other visual mitigation measures. This is determined through site-specific analysis conducted during the permit review and approval stage. See also response under "Visual Resource Management Class II Determination"

Recognition of Valid Existing Rights

Issue Number: PP-UT-Vernal-08-0009-3
Organization: Questar Explorations and Production Company
Protester: J Paul Matheny

Issue Excerpt Text:

. Clarification of Status of Certain Sections: In the PRMP, all or portions of the following sections appear to be designated as areas closed to leasing. Questar wishes to point out that these sections are already leased and subject to valid existing rights as noted below: Section 14 of 15 South, 21 East; Sections 28 and 33 of 15 South, 22 East. The ROD should recognize the existence of these valid existing rights.

Response

As stated in page 1-18 of the PRMP/FEIS, "All decisions made in the RMP and subsequent implementation decisions would be subject to valid, existing rights." Valid, existing leases held

by the protester will remain in effect, under current terms and conditions, for the primary term of the lease so long as held by production in paying quantities.

Development of Oil Shale/Tar Sands

Issue Number: PP-UT-Vernal-08-0011-17

Organization: Uintah County Commission

Issue Excerpt Text:

FE IS fails to analyze and disclose impacts to the development of oil shale and tar sands. Of particular concern is the White River Non- WSA lands with wilderness characteristics. The document leaves open several important questions regarding the possibility of oil shale development occurring in this area. BLM has expressed an opinion that Oil Shale development could take place under this area with hard rock mining operations. An NSO (No Surface Occupancy) designation would, in effect, prevent such development as adequate ventilation for such an underground operation would not be possible under the NSO designation. Additionally, it is not clear but appears that since the area is proposed to be closed to oil and gas leasing, it would also be closed to leasing of oil shale. This is a critical issue as this document fails to analyze the occurrence and impacts of special and other designations on oil shale. The Programmatic EIS written to identify areas available for application and leasing of oil shale overlays the proposed Non-WSA with wilderness characteristic designations. Decisions made in the Oil Shale Tar Sands Programmatic EIS would prevent the leasing of oil shale in this area because of decisions made in this document that would preclude this area from such a development. Again, we would like to emphasize that decisions made in this document were made without analysis or disclosure of the existence of oil shale resources in these areas and without disclosure of impacts of such designations on oil shale resources. Uintah County previously commented on this issue when we reviewed the Supplemental Alternative E Draft and our concerns were not addressed.

Response

As explained on page 1-22 of the PRMP/FEIS, the Proposed Plan makes no decisions with respect to oil shale or tar sands. Accordingly, no analysis of potential impacts was included in the PRMP/FEIS. The Vernal RMP is subject to the decisions made in the approved Programmatic Oil Shale/Tar Sands EIS and Proposed RMP Amendments.

Livestock Grazing

Issue Number: PP-UT-VERNAL-08-0003-12

Organization: Vermillion Ranch Limited Partnership

Issue Excerpt Text:

The RMP also conflicts with the grazing rules to the extent that the RMP would unilaterally amend a grazing permit without monitoring data or other information. 43 C.F.R. §4130.2-1 (changes in grazing use). Dictating changes in the seasons of use from the RMP also violates the requirement that BLM coordinate, consult and cooperate with individual permittees before amending an allotment management plan. 43 U.S.C. § 1 752(d); 43 C.F.R. §4110.3-2. Public comment on the RMP falls far

short of "consultation, cooperation, and coordination."

Issue Number: PP-UT-VERNAL-08-0003-14

Organization: Vermillion Ranch Limited Partnership

Issue Excerpt Text:

The Proposed RMP is inconsistent with BLM policy because it permits and encourages the reduction of livestock grazing when Wyoming BLM's Standards for Healthy Rangelands are not being met, regardless of cause. BLM policy requires that managers address the other causal factors, such as wildlife, when an allotment does not meet or maintain standards, yet the proposed RMP provides no such direction. FEIS

at 2-93-2-96,4-559-4-597. If there are other causal factors and livestock grazing is not a significant factor in the failure to meet, maintain, or make substantial progress towards meeting rangeland health standards, the reduction of livestock grazing is not authorized. BLM Manual H-4180-1, III-15, ,r3.

Issue Number: PP-UT-VERNAL-08-0003-38
Organization: Vermillion Ranch Limited Partnership

Issue Excerpt Text:

Contrary to BLM's statement that the exact locations of rangeland projects and treatments are presently unknown, FEIS at 4-467, VRLP has planned range improvements that are critical to the effective management of its livestock operation. These projects were planned jointly with the BLM and in some cases, the Utah Division of Wildlife Resources. In many cases, the exact location of these projects has been discussed with BLM in meetings. The proposed RMP must consider the impacts on VRLP's livestock operation if these range improvements were not allowed to proceed. VRLP also has planned vegetation treatments with BLM, and the proposed RMP needs to consider the impacts to VRLP from prohibiting such treatments. In addition, VRLP would be prohibited from accessing existing range improvements by motor vehicle in order to repair and maintain them, FEIS at 2-39 and BLM needs to identify the affected range improvements and potential impacts to VRLP's livestock operation.

Issue Number: PP-UT-VERNAL-08-0003-4
Organization: Vermillion Ranch Limited

Summary

The PRMP/FEIS improperly changes season-of-use and utilization, which should be done in an Allotment Management Plan (AMP). There are no monitoring data presented to support this decision; the adjudication is over fifty years old. Other causal factors are not considered. Required coordination and consultation with the permittee has not taken place. Planned and known range projects and treatments will be precluded.

Response

The BLM acknowledges that the setting of specific seasons-of-use is an implementation decision. The PRMP sets out seasons-of-use that will be implemented if allotment conditions warranted. The PRMP provides for flexibility in implementing the stated seasons-of-use when on page 2-32 it calls for developing "management plans and/or grazing agreements for livestock allotments to allow flexibility in grazing management, which may include consolidation of

Partnership

Issue Excerpt Text:

1. The Federal Land Policy and Management Act (FLPMA) and the grazing rules provide that the grazing permit and the allotment management plan (AMP) are to set forth the seasons of use. 43 U.S.C. § 1 752(d); 43 C.F.R. §§4100.0-5, 4120.2, 4130.3-2. The BLM Planning Handbook does not provide for the setting of grazing permit seasons of use. H -1601-1 reI. 1693. The Vernal RMP establishes the seasons of use for each allotment, without regard to the specific grazing system or operation. The RMP should be revised to make the season of use assignments a guideline or the Record of Decision (ROD) needs to state that permittees may alter the seasons of use as part of a grazing system or AMP.

Issue Number: PP-UT-VERNAL-08-0013c-126
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 lists the amount of grazing to be allowed under this plan and the utilization standard to apply. PRMP at 2-5. BLM admits that this is based largely on adjudication completed nearly fifty years ago. There is no analysis in this plan that shows that this is consistent with (a) current carrying capacity of the land (2) will allow the recovery of lands that need it. This decision, unsupported by data and analysis, is arbitrary.

allotments, changes in seasons of use ...”. Grazing systems and planned seasons-of-use, as referred to in the comment, are in compliance with the this provision of the PRMP and will provide for flexible seasons-of-use if allotment evaluations show these conditions to be accurate the PRMP provides for a wide range of seasons-of-use in any zone.

On page 2-22, the RMP states that “Monitoring would be used to determine the amount of forage available for livestock, wildlife, and wild horses”, and that “Any adjustment in forage assignments to either livestock or wildlife would be based on analysis of monitoring data, including long-term vegetation trend, actual use, climate, and utilization.” This is in compliance with BLM policy and will be done in the implementation phase of the planning process. The PRMP proposes the allocation of 138,402 Animal Unit Months (AUMs) for livestock use which is 7,759 AUMs less than the No Action alternative. This change in AUMs is not the result of amendment of grazing permits without monitoring data but rather allocations between resources uses as provided for in the PRMP.

The PRMP addresses both potential increases and decreases based on monitoring data beginning on page 2-23. The PRMP actually discourages the reduction of livestock until after “all other management options have been exhausted” (Page 2-22). It further indicates that reductions will be made when “it is determined that rangeland standards are not being met” and then only to the “species or grazing animal shown to be causing the problem”. As a result, livestock grazing will not be decreased if Standards are met or livestock are not a causal factor in not meeting rangeland health standards and this will only occur after evaluation of monitoring of base allocations and their evaluation.

Starting on page 2-23 of the PRMP/FEIS, general criteria are provided which direct the BLM on how to allocate increases or necessary decreases of forage based on the evaluation of monitoring data and rangeland health standards. Based on the causal factors for the non-attainment of Standards or the ability for specific species to benefit from increased forage, the PRMP provides general direction as to how to allocate additional forage or reductions that may be necessary. This is an allocation process that is appropriate in a land use plan. In some circumstances minimum levels of wildlife use are provided for acknowledging the BLM will manage for these species and a minimum number of AUMs is needed to provide for viable population.

Table 2.1.6 gives direction for balancing competing uses of the forage on the BLM allotments within the Vernal Planning Area (VPA) and provides for multiple uses of the public lands in conformance with laws and regulations.

Although specific range improvement projects may have been discussed with the protestant and many other permittees within the VPA, this information is much too specific to be analyzed in a general planning document such as this RMP. The RMP gives general guidance for the management of public lands, and projects such as these will be analyzed and in site specific NEPA documents prior to implementation.

The amount of use provided for in the PRMP for the most part reflects the current level of authorized use. This is because the BLM relies on this level of use to continue its grazing management program, and then monitors and assesses range conditions to determine if

adjustments are necessary. Although the adjudication process 50 years ago did set levels of use on BLM lands, these levels have been continually adjusted, as monitoring indicated and uses of the BLM lands changed. Largely through the renewal of grazing permits, the BLM is continually assessing the carrying capacity of the BLM lands, and the plan sets a level of 50% use as an indicator of proper utilization, and if objectives of this plan are being met in the long term, unless otherwise specified, in site specific management plans. This is consistent with BLM policy.

Recreation and Visitor Services

Assessment of Special Recreation Management Area Impacts

Issue Number: PP-UT-VERNAL-08-0013b-24

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 conduct a thorough analysis of impacts from its designation of SRMAs BLM is in violation of NEPA for not evaluating all reasonable direct, indirect, and cumulative environmental impacts from its designation of SRMAs. The agency focuses almost exclusively on the benefits of leaving areas open for ORV use, while simultaneously underestimating the impacts of motorized recreation. BLM fails to take a "hard look" at the environmental implications of their SRMA designations as required by NEPA. The agency does recognize certain consequences of ORV use in general; the likelihood of soil compaction leading to surface runoff and site specific reduction of forage material for livestock were among the most highlighted. However, the agency's evaluation of these impacts was only superficial. Concerning SRMAs in particular, there is no site-specific analysis of these impacts and the extent to which they would occur and adversely affect other recreational users, wildlife, or the quality of the habitat itself. In fact, the agency makes no mention of how exactly to curb impacts on resource values. The PRMP simply states that "[i]mplementation of a continuous monitoring program and subsequent adaptive management strategies would also reduce indirect impacts of OHV use, such as the degradation of water quality, soil quality, and wildlife habitat." PRMP at 4-309. BLM must provide concrete evidence supporting their proposed land management plan.

Summary

The PRMP/FEIS fails to analyze the direct, indirect, and cumulative impacts of the designation of SRMAs.

Response

The adequacy of the PRMP/FEIS's analysis of OHV impacts is addressed in the response under "Close Examination of Baseline Data and Modeling". The BLM identifies in the Proposed Plan the general objectives for each SRMA and the recreation opportunities and settings the Plan will provide (see pages 2-47 through 51). The EIS's analysis includes an ample discussion of the general impacts from the activities that will occur in these areas. As committed to in the Proposed Plan, management for each SRMA will be considered further in an activity-level planning effort. Further NEPA review at the site-specific level will take place.

Allowable Uses within Special Recreation Management Areas

Issue Number: PP-UT-VERNAL-08-0013b-25

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:

Although SRMAs are designated to provide ample recreation opportunities for users of different types (motorized, equestrian, biking, hiking), the land management plan lacks balance in the designation of allowable activities within the SRMAs. Of the 133,560 acres proposed within seven SRMAs, a considerable majority is open to motorized recreation. Although not explicit in the management prescriptions for SRMAs, it appears from Map 33 {Travel/OHV Areas} that the only SRMAs that exclude ORV use in part are the White River and Browns Park SRMAs along with a very small portion of the Nine Mile SRMA. On the other hand, the Red Mountain-Dry Fork SRMA, which contains 24,259 acres, is designated specifically for motorized recreation and the Blue Mountain SRMA (42,729 acres) contains no closed ORV areas. This kind of planning is backwards; non-motorized recreation represents the majority within the Vernal Field Office, while motorized users are a much smaller constituency (consistently less than one quarter of all recreational use), but the SRMA's fail to reflect this reality in its recreation management decisions. PRMP at 3-53.

Response

By focusing only on areas within SRMAs "designated specifically for non-motorized recreation" (a term not used in the PRMP/FEIS), protester understates the opportunities for non-motorized use. In the Vernal planning area, 75,845 acres are closed to motorized use. Further, the White River SRMA (page 2-66 of the PRMP/FEIS) will be managed primarily for primitive recreational use and the portions of the Blue Mountain SRMA that contains non-WSA lands with wilderness characteristics will be managed for primitive recreation. Likewise, there are portions of the Red Mountain/Dry Fork Complex SRMA that provide opportunities for primitive recreation. See also page 4-321.

Special Recreation Management Area Designation and Management Prescriptions

Issue Number: PP-UT-VERNAL-08-0013b-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:

BLM has neglected to include detailed management prescriptions for both Pelican Lake SRMA and Red Mountain-Dry Fork SRMA in the Proposed RMP and Alternatives in Chapter 2. It is apparent from other sections (PRMP at 3-53, 4-309, Map 28, and Appendix N-3) that BLM intends to retain some of these existing SRMAs. However, there should be a description of what these units are being managed for and how the BLM intends to manage these areas along with the other five designated SRMAs in Table 2.1.14.

Issue Number: PP-UT-VERNAL-08-0013b-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:

For the Pelican Lake SRMA, BLM has failed to acknowledge why it is managing the area as an SRMA and what market the SRMA will be serving. Without more information, the public cannot provide substantive comments on its designation.

Issue Number: PP-UT-VERNAL-08-0013b-29

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 to the Red Mountain-Dry Fork SRMA, the area will be managed "to provide for maintenance and development of OHV or non-OHV trails." PRMP at Table 2.1.13. Without further explanation, the public does not know why this SRMA is necessary or the type of recreationist it will cater to - this lack of information leads to an inability for the public to adequately understand or comment on the SRMA's

use. H-1601-1 also makes clear that "[r]ecognition of singularly dominant activity-based recreation demand of and by itself (e.g., heavy off-highway vehicle use, river rafting, etc.), however great, generally constitutes insufficient rationale for the identification of an SRMA and the subsequent expenditure of major recreation program investments in facilities and/or visitor assistance." Appendix C, p. 16.

Summary

The PRMP/FEIS fails to provide the management prescriptions for, and the reasons for designation of, the Pelican Lake and Red Mountain-Dry Fork SRMAs.

Response

The Pelican Lake and Red Mountain-Dry Fork SRMAs were first delineated in the 1994 Diamond Mountain Resource Area Resource Management Plan and Record of Decision. The PRMP/FEIS (p. 2-44) carried the delineation forward under Management Common to the Proposed RMP and All Alternatives.

The following management prescriptions for the two SRMAs are found in the PRMP/FEIS, Table 2.1.13 Proposed RMP and Alternatives – Recreational Resources, page 2-44, Management Common to the Proposed RMP and All Alternatives:

- Continue to manage 1,014 acres at Pelican Lake as a Special Recreation Management Area (SRMA). The area will be open to oil and gas leasing subject to major constraints such as No Surface Occupancy (NSO) stipulations and closed to mineral materials sales.
- Manage 24,259 acres in Red Mountain-Dry Fork as a SRMA to provide for maintenance and development of OHV or non-OHV trails, minimal facilities necessary for human health and safety, watershed values, relict vegetation communities, and crucial deer and elk winter habitat. An activity plan for the SRMA will be developed to determine what areas are appropriate for day use only.

The SRMAs were delineated for the following reasons as found on page 3-53 of the PRMP/FEIS:

- Pelican Lake is heavily used and known state-wide for a boating and fishing area. The SRMA delineation will allow better management opportunities as the population in the Uinta Basin increases and the reputation of fishing at Pelican Lake also increases.
- The Red Mountain-Dry Fork is used by OHV recreationists, hunters, campers, bikers. It contains scenic viewpoints and rock art. The delineation will afford the development of an activity plan for non-motorized and motorized trail usage as well as protection of cultural and relict vegetation resources.

Travel Management

Assessment of Off-Highway Vehicle Impacts

Issue Number: PP-UT-VERNAL-08-0013b-54

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 Vernal 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.

Response

The impacts of OHV use and travel management decisions on other resources are detailed in the PRMP/FEIS in Chapter 4 in the discussion of impacts to each resource. These impacts are described at a level appropriate to a landscape-level document. See also response under “Close Examination of Baseline Data and Modeling”. The designations of routes are not a land use planning level decision and therefore, are not protestable.

Minimizing Conflicts between Users

Issue Number: PP-UT-VERNAL-08-0013b-17

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:

2. 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 CFR 8342(c). The PRMP fails to comply with this duty.

Issue Number: PP-UT-VERNAL-08-0013b-19

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:

3. BLM has failed to provide a reasonable range of alternatives under NEPA, BLM is in violation of NEP A for not providing a reasonable range of alternatives for which recreation management decisions would be made. In all of the alternatives provided, BLM does not analyze an alternative with more than twenty-three percent of the planning area closed to ORV use. Most alternatives, including the proposed, are around 3 to 4 percent closed. This is not a reasonable range of alternatives, especially for an area where most of the recreation is non-motorized. In discussing the range of alternatives provided for an RMP, one recent 9th Circuit case states: Limited ORV use is simply not identical to no ORV use. A limited designation, even with the possibility of closure, does not provide protection equivalent to a straightforward closure. . . the BLM must consider closures of significant portions of the land it manages, including, if found appropriate on remand, lands with wilderness characteristics.

Summary

The PRMP/FEIS fails to minimize conflicts between Off Road Vehicles (ORV) use and other uses. No alternative is considered, which will close more than 23% to ORV use.

Response

The regulation 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.” In delineating travel management areas, the BLM considered various resource conditions and needs, as well as the potential impacts to other resources and uses. By limiting OHV use to designated roads and trails in most areas of the planning area, and by closing some areas to OHV use, the BLM has minimized impacts while still providing an appropriate mix of uses of the public lands.

A range of alternatives for travel management areas has been provided. The range of alternatives for areas managed open, limited and closed to motorized use is described on pages 2-82 and 2-83 of the PRMP/FEIS, Table 2.1.22. The EIS’s alternatives for areas open to motorized vehicle use range from 6,202 acres in the Proposed RMP to 787,859 acres in the No Action alternative; analysis of areas limited to designated routes ranges from 887,275 acres (the No Action alternative) to 1,659,901 acres (Alternative B), and; analysis of areas closed to motorized use ranges from 50,388 acres (Alternative D) to 392,818 acres (Alternative E). The range of alternatives considered is perhaps best illustrated in EIS-Figures 33 through 38 of the PRMP/FEIS.

The designations of routes are not a land use planning level decision and therefore, are not protestable.

Vegetative Communities ***Inventory of Riparian Areas***

Issue Number: PP-UT-VERNAL-08-0013b-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:

FLPMA, the ORV regulations, and the Utah Riparian Policy require BLM to protect and minimize impacts to riparian areas. However, the PRMP fails to include a list of perennial stream segments in the VFO and their associated functioning conditions (i.e. proper, at risk, or not in functioning condition), it merely states that there are 540 miles of perennial and intermittent streams in the VP A, and that based on preliminary inventory data (not disclosed in the PRMP), there are 295 miles in proper functioning condition, 133 miles functioning at risk, and 79 miles that are not in

properly functioning condition (these figures account for only 507 of the reported 540 miles of riparian area).

Issue Number: PP-UT-VERNAL-08-0013b-93

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 Vernal PRMP fails to provide much of the required information and analysis, and accordingly fails to reveal to the public the full impact of the Vernal Field Office's riparian resource management decisions. Further, BLM has made management decisions based on an old, outdated inventory. The PRMP states that BLM conducted some sort of

inventory in the early 1980s and that this data, perhaps in addition to other inventory processes, constitutes a "preliminary inventory." See, e.g., PRMP at 3-57, -58, -85, -86. The PRMP also confesses the obvious truth that "riparian conditions could have changed since the 1984 riparian/wetland assessment." Id. at 3-57. This is especially true given the drought conditions prevalent in the Vernal Field Office since 1984, and the clear trends towards a warmer, drier climate overall. Notwithstanding this admission that BLM has incomplete and outdated data, the Vernal PRMP uses the results of BLM's incomplete, outdated inventory in its decision making. The PRMP explains: "As identified in the preliminary riparian inventory there are 295 miles and 3,674 acres of riparian areas currently in proper functioning condition, 133 miles and 1,452 acres functioning at risk, and 79 miles and 1,213 acres that are not in properly functioning condition." Id. at 3-58. The PRMP repeats these statistics throughout its analysis, even though BLM clearly states that "[t]hese are preliminary numbers and they may change as the inventory is completed." Id. at 3-58. BLM's reliance on undeniably old, incomplete data when deciding how to manage these resources for the next several decades is arbitrary and capricious and fails to take the necessary "hard look" mandated by NEP A.

Issue Number: PP-UT-VERNAL-08-0013b-97

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:

An accurate inventory of riparian resources is important to identify riparian resources, their current health, and level of function, so that BLM and the public can fully understand the impacts of conflicting uses, such as OHV use and grazing. Without such information, it is hard to believe that even BLM understands how these conflicting uses impact each of the Vernal Field Office's riparian resources. The

PRMP should list the names of the riparian areas and their locations, provide a map of riparian areas, and other relevant information necessary for the reader to understand the relationship between a riparian area's category status and how it will be managed under the RMP. EIS Figure 5: Forage Assignment Localities and Riparian Inventory hardly provides sufficient information for the public to understand the location of riparian resources and how they will be managed. 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.

Issue Number: PP-UT-VERNAL-08-0013b-95

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 BLM's 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 Vernal Field Office, however, fails to utilize most of the opportunities before it in this RMP process to improve riparian areas. While the Vernal PRMP explains the benefits of protecting riparian areas, it fails to adequately impose such protections on riparian resources in the Vernal Field Office. See, e.g., PRMP at 3-57. Further, the PRMP repeatedly explains the serious damage' ORV use, grazing, and other interference inflict on riparian areas, but still allows such activities in many riparian areas. See, e.g., id. at 4-363, -623. 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."

Summary

The PRMP/FEIS does not comply with the Utah Riparian Policy, and other policy. There is no adequate inventory of riparian areas.

Response

The Utah Riparian Policy, UT 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 several years after the Vernal RMP Notice of Intent. Therefore, the Vernal RMP was considered to be an existing plan, and any noncompliance with the Utah Riparian Policy will be rectified by activity-level planning. Nevertheless, the Vernal RMP has substantially complied with the policy.

Properly-functioning riparian condition (PFC) is a goal of the plan and specific management prescriptions were formulated to achieve that goal. As stated in Section 3.12.5, not all of the lands in the planning area are currently in PFC. The PRMP identifies key riparian areas and their PFC class. See PRMP/FEIS at 2-52 and Figure 5. The PRMP/FEIS states that riparian areas will be give priority for acquisition. See PRMP/FEIS at 2-29, 2-52. On p2-31, the PRMP identifies land access easements across Native American lands near Bitter Creek, Willow Creek and south of Sweetwater Canyon. Lastly, the PRMP/FEIS identifies goals and objectives for riparian management listed on page 2-52, and monitoring of management direction will be included as an appendix to the Approved RMP. Additionally, the PRMP/FEIS identifies numerous riparian areas with outstanding qualities to be considered for special designation or management:

- Browns Park, Nine Mile Canyon, and Whiter River have riparian values and have been delineated as SRMA's (PRMP/FEIS at 2-48).
- Pariette Wetlands, Browns Park, Lower Green River Corridor, Nine Mile Canyon, and Red Creek Watershed have riparian values and have been designated ACECs. (Page 2-63).
- Lower Flaming Gorge and White River Areas have riparian values and are non-WSA lands with wilderness characteristics (PRMP/FEIS at 2-39).
- Upper Green River and Lower Green River are suitable Wild and Scenic River Segments that have riparian policy (PRMP/FEIS at 2-67).
- Other areas with riparian values that were nominated as ACECs, SRMAs, non-WSA lands with wilderness characteristics, and WSR nominations include: Desolation Canyon, Bitter Creek, Lower Bitter Creek, Hells Hole Canyon, Hideout Canyon, Sweetwater Canyon, Main Canyon, Argyle Canyon, Nine Mile Creek, Middle Green River, and Evacuation Creek.
- All areas are protected by the BLM State Riparian Policy and other restrictive prescriptions.

Visual Resource Management

Visual Resource Management Inventory Information

Issue Number: PP-UT-VERNAL-08-0013c-112
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:

Second, the PMRP does not indicate when the visual resource inventory on which BLM's visual resource management decisions are based was conducted. The PRMP states that "[t]he entire VP A has been visually inventoried and classified according to the VRM classification system." PRMP at 3-124. But the PRMP fails to provide any information about when this inventory took place. In its response to comments, BLM explains that "[a]n interdisciplinary team reviewed the existing VRM inventory to identify proposed VRM objectives, Classes I - IV, and how they relate to the management objectives for each alternative." BLM Response to Comments, sorted by Commenter, Form Letters & Government, at 273-74. Again, BLM failed to indicate when the "existing inventory" was conducted. BLM's omission about the date of the latest Visual Resources Inventory raises concerns about BLM's compliance with FLPMA and NEPA, and deprives the public of information necessary to fully understand BLM's VRM decisions. FLPMA requires BLM to maintain up-to-date inventories.

Issue Number: PP-UT-VERNAL-08-0013c-115

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

Issue Excerpt Text:

The most recent visual resource inventories for several BLM Field Offices, nationwide, date back to the 1970s. The Vernal Field Office must reveal in the PRMP process whether its inventory was also conducted several decades ago or whether it has been updated to reflect current, accurate conditions. Relying on an inventory conducted over three decades ago to make management decisions that will impact visual resources for the next several decades is arbitrary and capricious and violates FLPMA and NEPA. Much has changed since the 1970s. NEPA requires BLM to understand the consequences of the decisions it makes during the RMP process. BLM cannot possibly fully understand the consequences of its visual resource management decisions without knowing the current conditions of the Field Office's visual resources. If the inventory is outdated, BLM must conduct a new visual resources inventory to assess actual modern day conditions. Once BLM possesses such information, it can understand the real consequences of any future disturbance and can make new, informed visual resource management decisions.

Summary

The BLM does not disclose when the VRM inventory was conducted. If it dates from the 1970s, the BLM cannot base its decisions on an inventory that is 30 or more years old.

Response

A visual resource inventory and analysis for the Book Cliffs Resource Management Plan area was completed in 1979 and 1981. An inventory was conducted for the Diamond Mountain Resource Area Resource Management Plan in 1993. In 2001, during the development of the DRMP/DEIS of the Vernal Field Office Resource Management Plan and Environmental Statement, Visual Resources for the Diamond Resource Management Area (inventoried in 1979 and 1981) and the Book Cliffs Resource Management Area (inventoried in 1993) were both analyzed for their Visual Resource Class Objectives and combined for the entire Vernal Field Office.

After field review of the existing landscape conditions, management conformity with the current land use plan, and the relevance of the existing visual resource inventory, it was determined that the current visual resource inventory was satisfactory to make informed decisions during this RMP process. The current visual resource inventory represents the best available data for preparation of the PRMP/FEIS. Because the BLM manages for VRM objectives, VRM

classifications in the planning area have not changed to a significant degree that will affect the decisions in the plan.

Visual Resource Management Class II Determination

Issue Number: PP-UT-VERNAL-08-0003-21
Organization: Vermillion Ranch Limited Partnership

Issue Excerpt Text:

C. VRM II Classifications Must Be Modified Where They Conflict With Land Use Allocations¹. RMP Provisions Contradict Policy and IBLA Precedent. The proposed RMP more than doubles the public land in VRM Class II, from 113,686 acres to 231,911 acres, without taking into account the underlying land use allocation. FEIS 2-86, 4-539, Maps 12, 39. The overlay of Class II VRM management violates BLM policy direction which provides that "The approved VRM objectives shall result from, and conform with, the resource allocation decisions made in the RMP's." BLM Manual 8400.0-6A.2. The RMP does not remove lands under lease without visual resource stipulations, nor does the RMP disclose the impacts on grazing management, such as water projects and fences. BLM cannot enforce VRM Class II when it conflicts with the underlying resource allocation. Southern Utah Wilderness Alliance, 144 IBLA 70,85 (1998) citing DM 8410 V.B. The FEIS incorrectly assumes the VRM Class II will generally not affect livestock grazing or other public land uses. FEIS 4-514. This conclusion incorrectly assumes that construction of range projects does not involve surface disturbance or occupancy. Range projects require approval using a cooperative permit and involve the removal of vegetation and excavation of soil, if only to dig in fence posts, bury a pipeline or install a tank. Thus, the premise offered by BLM that VRM Class II has no effect on grazing is just plain wrong.

Issue Number: PP-UT-VERNAL-08-0003-5
Organization: Vermillion Ranch Limited Partnership

Issue Excerpt Text:

³ The proposed RMP more than doubles the public

land in VRM Class II, from 113,686 acres to 231,911 acres, without taking into account the underlying land use allocation. FEIS 2-86, 4-539. BLM policy, DM H-8410-1 - Visual Resource Inventory and IBLA precedent, Southern Utah Wilderness Alliance, 144 IBLA 79,85 (1998), require amendment of the VRM Class II allocations to exclude those areas where the land uses conflict with the application of VRM Class II restrictions. The Southern Utah Wilderness Alliance decision should guide the outcome, because BLM conceded that the lessee could not drill in a VRM Class II area and the judge held that the RMP classification was unenforceable. Similarly, experience in the Kemmerer Field Office has demonstrated that range improvement structures, such as troughs, water tanks, and fences will not be allowed due to visual restrictions for cultural resource protection.

Issue Number: PP-UT-Vernal-08-0011-5
Organization: Uintah County Commission

Issue Excerpt Text:

Of particular concern are the VRM Class II designations on the White River and the Upper Green River, areas that contain existing mineral leases, utility corridors containing pipelines and power lines, grazing allotments and other permitted activities. (These designations are also inconsistent with decisions made in this document.) A review of Figure 6 (map) Lands and Realty, demonstrates that there are transportation/utilities corridors crossing VRM Class II designations on Diamond Mountain, Upper Green River and the Lower Green River. This violates BLM policy direction which provides: "The approved VRM objectives shall result from, and conform with, resource allocation decisions made in the RMP's." BLM Manual 8400.0-6A.2. It appears that VRM objectives, as shown by the respective classes, are determined solely by the inventory without considering the underlying resource allocation decisions contrary to BLM direction.

Summary

The FEIS/PRMP improperly assigns VRM Class II without taking into account the underlying

land use allocation. The BLM improperly asserts that VRM Class II has no effect on other land uses, such as livestock grazing.

Response

The BLM took into account existing land uses in reaching the decisions related to visual resource management. Management for VRM Class II objectives does not preclude surface-disturbing activities. It may require project modification, relocation, or special design and mitigation features. This is determined on a site-specific basis, depending often on the visual effects to specific viewpoints. Experience in other areas and in other projects is irrelevant to any other situation.

Protester incorrectly asserts that the FEIS 4-514 "assumes the VRM Class II will generally not affect livestock grazing or other public land uses." The page cited describes the impacts of livestock grazing on visual resources, not vice-versa. It makes no statement regarding the effect of VRM on livestock grazing. Impacts from visual resource management decisions are projected to have minor or negligible impacts on livestock grazing except as they may impact other management decisions as outlined in Chapter 4 (PRMP/FEIS at 4-117).

Water

Baseline Information and Monitoring Data

Issue Number: PP-UT-VERNAL-08-0013c-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:

Because the Vernal 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.

Issue Number: PP-UT-VERNAL-08-0013c-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:

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. These results should then be compared to the CWA standards for protection of WQS, including TMDLs and anti-degradation standards. See, e.g., Exhibit F. Only in this way can BLM know whether it is complying with federal and state water quality standards, as FLPMA, and the Vernal PRMP, require.

Issue Number: PP-UT-VERNAL-08-0013c-17

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 CW A. 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 D.S.C. ?1712(c)(8).

Issue Number: PP-UT-VERNAL-08-0013c-20

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

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 Vernal PRMP will comply with federal and state water quality standards, as required by FLPMA and the BLM itself.

Issue Number: PP-UT-VERNAL-08-0013c-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:

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.

Summary

The PRMP/FEIS fails to present baseline information and to model the impacts of management decisions for water quality.

Response

Detailed baseline information on riparian condition is available in the Vernal Field Office, and is part of the administrative record. This information was summarized in Section 3.15.4 of the PRMP/FEIS. The BLM works cooperatively with the State of Utah Department of Environmental Quality (DEQ) to monitor water quality. The results of this water quality monitoring, along with other best available data, formed the basis for the discussion of existing water quality in Section 3.15.4.3. 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 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. See also response under "Close Examination of Baseline Data and Modeling".

Impact Analysis and the Need for Modeling

Issue Number: PP-UT-VERNAL-08-0013c-29

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. Because dust, engine fluids, run-off, and erosion can all contribute to exceedances of total dissolved and suspended solids counts, as well as increased salinity, it is vital that BLM determine the baseline water quality and quantitative levels of these contaminants, estimate the number of vehicles that will use the proposed designated routes, estimate the level of contaminants generated by that use, and then model those figures to understand the true impacts of fugitive

dust emissions, engine fluids, run-off, and erosion on water quality. 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.⁶⁰ In addition to analyzing the baseline water quality, BLM must continue to monitor water quality throughout the life of the RMP.

Response

The scope and nature of the specific proposed action drives what level of analysis must be done to comply with the requirements of NEPA. Resource Management Plans are used to evaluate broad policies and plans (not to authorize any site specific activity), and provide an analytical foundation for subsequent project-specific NEPA documents. The impacts to water quality as a result of the management decision in the PRMP/FEIS are analyzed at the appropriate level of detail for RMP-level decisions and are fully disclosed in Section 4.15. 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 appropriate, for site-specific analysis at the project-level.

Wild and Scenic Rivers

Wild and Scenic Rivers Eligibility Process

Issue Number: PP-UT-Vernal-08-0010-16

Organization: Utah Rivers Council

Protester: Mark Danenhauer

Issue Excerpt Text:

The ELM 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 diwments arid, records reveal no information on the evaluation of the suitability factors. The lack of any such records cause the BLM's suitability determinations, to be questioned. Therefore, the BLM acted arbitrarily and capriciously in its suitability determinations for all rivers in the Vernal Field Office;

Issue Number: PP-UT-Vernal-08-0010-19

Organization: Utah Rivers Council

Protester: Mark Danenhauer

Issue Excerpt Text:

It is absolutely unacceptable that the BLM provide the rationale regarding suitability as the BLM states it

will do above. . The BLM is stating that it will provide the rationale for its decision after the fact. This is unbelievably arbitrary and capricious. The BLM has not explained anywhere in the Draft RMP, PRMP, or any documentation in response to the FO IA 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. 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. This is completely and irrevocably arbitrary and capricious. Based on all documentation on record and the BLM's owns 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.

Issue Number: PP-UT-Vernal-08-0010-3

Organization: Utah Rivers Council

Protester: Mark Danenhauer

Issue Excerpt Text:

1. 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 Vernal Field Office in any documents, beginning with the January 2005 Draft RMP3, and now the PRMP. This failure to 'fully disclose or document information that the BLM used to make eligibility determinations for rivers in the Vernal Field Office did not allow the public to provide meaningful comments and therefore, violates, both the WSRA and NEPA. For example, in the Draft RMP the BLM found 89 river segments in the Field Office that were potentially eligible to become Wild and Scenic Rivers. The Draft RMP states, "All rivers that were nominated during the RMP scoping process, on National Rivers lists, and by local, state, BLM resource specialists, that were considered to be potentially eligible were inventoried."4 Then the Draft RMP goes on to list 89 potentially eligible and inventoried segments., Only 9 of the 89 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 80 river2 Bureau of Land Management Vernal Field Office. Draft Resource Management Plan and Environmental Impact Statement. January 2005. 3 Bureau of Land Management Vernal Field Office. Draft Resource Management Plan and Environmental Impact Statement. January 2005. 4 Bureau of Land Management Vernal Field Office. Draft Resource Management Plan and Environmental Impact Statement. January 2005. Page C -6.2 segments on a river by river basis. . 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 80 rivers that were identified as potentially eligible. 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.

Issue Number: PP-UT-Vernal-08-0010-30

Organization: Utah Rivers Council

Protester: Mark Danenhauer

Issue Excerpt Text:

The BLM's Recommendation that Nine Mile Creek is Not Suitable in the Proposed RMP is Arbitrary and Capricious The BLM's recommendation that both segments of Nine Mile Creek are not suitable for inclusion in the NWSRS in the Proposed RMP contradicts all documentation in the PRMP and, therefore is arbitrary and capricious. This finding completely contradicts all of the documentation for each suitability factor in Table 5. 'Suitability Considerations by Eligible River Segment'.12I will not go into great detail here listing all' of the information that tends towards a positive suitability finding for Nine Mile Creek here, but incorporate the information in Appendix C, Table 5 on Nine Mile Creek, segments A and B. However, I will include a few of the remarks hereto highlight how amazing this river is and how all evidence points towards a positive suitability finding: "The creek is integral to this world class area. . .""Failure to include this river segment in the NWSRS could result in deterioration of these values, especially if mineral development occurs.""Failure of Congress to include this river segment in the NWSRS could result in degradation of the values for which the river was determined eligible.. , " C "If this segment is not designated into the NWSRS, its free-flowing nature and scenic outstandingly remarkable values could be at risk. . . "Regarding other land use prescriptions that are being considered in the PRMP,". . even if adopted, these management prescriptions are subject to change with revised land use plans. Therefore, the protection they afford is subject to change."14The only bit of information included in the table that may lead to a not-suitable finding is opposition by state and local governments, local and state agencies, water users, and municipalities. However, this is the same language that is listed for many of the other river segments, including those that are recommended as suitable in the preferred alternative. As this shows, every piece of information in Table 5 on Nine Mile Creek (both segments) leads towards a positive suitability finding and clearly states' that if not found suitable the identified values of the river would be lost. This means that the BLM's finding that Nine Mile Creek is not suitable in the Proposed RMP appears to be based on something other than what is presented in Table 5 of Appendix C. Therefore, the BLM Vernal Field Office's recommendation that Nine Mile Creek is not suitable is arbitrary and capricious.

Issue Number: PP-UT-Vernal-08-0010-37

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.

Issue Number: PP-UT-Vernal-08-0010-40

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.

Issue Number: PP-UT-Vernal-08-0010-41

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, April 25, 2005. "Nowhere in the draft RMP does the BLM Vernal Field Office 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.'" The BLM responded to this concern from the Council in the PRMP, "The WSR suitability appendix has been expanded to address the suitability factors in more detail. However, although the factors are clearly discussed for each eligible river segment, there is no 'rejecting segments as unsuitable' in this appendix or elsewhere in the RMP/EIS. The actual decision regarding suitability and the rationale for that decision will be made in the record of decision for the RMP/EIS (emphasis added)."19 . Unfortunately, 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.

Summary

The BLM does not provide adequate justification or support for its determinations of eligibility or suitability. In particular, for Nine Mile Creek, the only rationale provided for a non-suitability finding is local opposition. However, this is the same language that is listed for many of the other river segments, including those that are recommended as suitable in the preferred alternative. The BLM may not fail to disclose its rationale until the Record of Decision.

Response

The BLM's rationale for all eligibility determinations is detailed in the Eligibility Report. The rationale for the final decisions will be detailed in the Record of Decision. 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. The rationale for the final decisions will be detailed in the ROD for the Vernal RMP in compliance with BLM-M-8351 section .33(b) (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 in ascertaining the eligibility

or suitability of river segments in the Vernal planning area are within the discretion of the BLM and are not arbitrary and capricious.

During the analysis of the determination of eligibility and suitability for the Nine Mile Creek river segment in the PRMP/FEIS, the intrusions (livestock grazing, oil and gas exploration activity, irrigated fields, homes, corrals, fences, roads, and buried natural gas pipeline) that exist along Segment A were determined not to be suitable for congressional designation (see page Appendix C-27). In addition, State and local governments are unsupportive of congressional designation of this stream segment.

The analysis of eligibility and suitability for Segment B of Nine Mile Creek identified the existence of intrusions (livestock grazing, oil and gas exploration activity, irrigated fields, roads, and a road crossing the creek). None of the 6.5 miles of shoreline in this segment are BLM administered and only 19% of the surface in the stream corridor is BLM administered. Segment B, as mentioned in the PRMP/FEIS, Appendix C-29, was determined not to be suitable for congressional designation. State and local governments are unsupportive of congressional designation of this stream, which the BLM properly included in its decision-making.

Designation of Wild and Scenic River Segments

Issue Number: PP-UT-VERNAL-08-0013c-68

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 by failing to recommend river segments that otherwise qualify for inclusion in the NWSRS simply because the segments are supposedly protected by other laws, regulations, or designations. See 16 U.S.C. 1275(a); PRMP at Appendix C13. The PRMP states that "other means of protection" such as ACEC designation, VRM Class I or II management prescriptions, oil and gas leasing stipulations, and areas closed to oil and gas leasing will help protect Argyle Creek, Bitter Creek, Middle Green River, Segments A and B of Nine Mile Creek, and Segments A, B, and C. of the White River. PRMP at Appendix C-13, C-15, C-23, C-28, C-30, C-33, C-35, C-38. However, BLM also admits that the protections these prescriptions afford are "temporary" and "subject to change." PRMP at Appendix C-13, C-15, C-23, C-28, C-30, C-33, C-35, C-37. Because ACEC and other prescriptions do not offer permanent protection of rivers' outstandingly remarkable values, the fact that the majority of the eligible river segments fall within Proposed ACECs

is irrelevant for determining whether to recommend a segment for suitability. See DRMP at Draft EIS - Figure 24. By failing to recommend segments that otherwise meet the suitability criteria, BLM allows for the potential degradation of these rivers and their outstandingly remarkable values. Thus, BLM's failure to recommend these otherwise-suitable sections defeats the purpose of the WSRA, which is to protect rivers and their outstandingly remarkable values. 16 U.S.C. 1271, 1272, 1276(d).

Issue Number: PP-UT-VERNAL-08-0013c-70

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 and other management prescriptions do not fully protect the eligible river segments and all of their outstandingly remarkable values. As discussed elsewhere in this protest (see, e.g., Water Quality section, Riparian section, and Travel Management section), designated routes and off-road vehicle travel on these routes negatively impact water quality and riparian values, as well as the outstandingly remarkable values of eligible rivers. Therefore, BLM's reliance on other management prescriptions,

such as VRMs, ACECs, oil and gas leasing closures and stipulations, to protect rivers' outstandingly remarkable values violates the very purpose of the WSRA which is to protect rivers and their outstandingly remarkable values. 16 U.S.C. ?? 1271, 1272.

Issue Number: PP-UT-VERNAL-08-0013c-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:

E. 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 D.S.C. §1275(a)(1)(ii). BLM admits that all of the eligible stream segments, i.e. Argyle Creek, Bitter Creek, Evacuation Creek, Middle Green River, Segments A and B of Nine Mile Creek, and Segments A, B, and C of the White River are at risk of development that would threaten their free-flowing nature and thereby render them unsuitable for inclusion in the NWSRS. PRMP at Appendix C-13, C-15, C-17, C-23, C-28, C-30, C-33, C-35, C-37. In particular, Segments A, B, and C of the White River face imminent damage from the potential development of a dam that would destroy the river's tree-flowing nature and render it unsuitable for inclusion in the NWSRS. PRMP at Appendix C-33, C-35, C-37. BLM's failure to recommend Segments A, B, and C of the White River as suitable violates the WSRA. 16 U.S.C. 1275(a)(1)(ii). Precisely because the tree-flowing nature of these eligible stream segments are at greater risk, BLM must

recommend these segments as suitable in order to protect their outstandingly remarkable values. 16 U.S.C. 1275(a)(1)(ii).

Issue Number: PP-UT-VERNAL-08-0013c-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:

F. BLM's Failure to Give Priority to River Segments that Have the Greatest Proportion of Private Land Violates the WSRA The WSRA requires the Secretaries of the Interior and Agriculture to prioritize the suitability designation for rivers that run through private land. 16 U.S.C. 1275(a)(I)(ii). The Act states that federal agencies "shall give priority to those rivers. . . which possess the greatest proportion' of private lands within their areas." 16 U.S.C. 1275(a). Nonetheless, BLM has de prioritized the designation of rivers that run through private lands. For example, among the reasons BLM offered for not recommending Argyle Creek was the significant amount (60%) private land in the area. PRMP at Appendix 12- to -13. This reasoning violates the WSRA's priority requirements for private lands and Argyle Creek should be designated suitable. 16 U.S.C. 1275(a). Likewise, BLM indicated that, in part because 62% of the land along Evacuation Creek is private, BLM would not recommend Evacuation Creek as suitable. PRMP at C-16 to -17. Again, this reasoning violates the WSRA's priority requirements for private lands and Evacuation Creek should be designated suitable. 16 U.S.C. 1275(a). BLM cannot use the presence of private land as a justification to decline appropriate management of rivers with wild and scenic values. Instead, BLM must obey the mandates of the WSRA and prioritize the suitability designations and classifications of river segments that run through private land.

Summary

The BLM inappropriately relied on other management prescriptions to protect outstandingly remarkable values, while admitting that the prescriptions can change at any time. The PRMP fails to give priority to designation of segments that are at the highest risk of development, or with the highest proportion of private land.

Response

As stated in BLM Manual 8351.33c, "During the formulation of RMP/EIS alternatives,

management of all public lands, including river areas and corridors, is addressed. At least one alternative analyzed in detail shall provide for designation of those eligible river segments (being studied in the RMP/EIS) in accordance with the tentative classifications which have been made. Another alternative shall provide for no designation. The No-Action Alternative, i.e., a suitability determination is not made, should provide for on-going management, including continuation of protective management of eligible segments. Additional alternatives may be formulated for any combination of designations and/or classifications.” According to the WSR and the 8351 Manual there is no requirement to make each eligible river suitable. Appendix 13 of PRMP/FEIS details the process (as outlined by the 8351 Manual) used to determine which river segments the BLM recommends as suitable.

Rationale supporting suitability determinations or eligible river segments studied in the RMP/EIS is included in the ROD for the RMP.

The Eight Wild and Scenic River Act Factors

Issue Number: PP-UT-Vernal-08-0010-11

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 Vernal Field Office's jurisdiction is arbitrary because they consider factors beyond the eight enumerated in the WSR. For example, the BLM considers, "Manageability of the river if designated, and other means of protecting values."¹¹

Issue Number: PP-UT-Vernal-08-0010-21

Organization: Utah Rivers Council

Protester: Mark Danenhauer

Issue Excerpt Text:

c. 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 WSR 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 WSR into an amalgam of subjective criteria that offers cover for all decisions 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 WSR to preserve the Nation's outstanding rivers from the threat of development. In fact, the plain language of section 4 (a) of the WSR, the legislative history, the 1982 Guidelines, and express policy goals of the WSR suggest that some threat of future development does not, and should not, render a river 'unsuitable.'¹²

Issue Number: PP-UT-Vernal-08-0010-22

Organization: Utah Rivers Council

Protester: Mark Danenhauer

Issue Excerpt Text:

b. In the WSR, Congress enumerates a suitability factor that only considers the interest of the State in helping to preserve and administer suitable rivers. The BLM again inappropriately and unlawfully expands the scope of suitability factors to include the Willingness of other governments to participate and those government's opinions on designation. Specifically, 916 U.S.C. § 1275.10 16 U.S.C. § 1275 (a).¹¹ Vernal Field Office Proposed Resource Management Plan and Final Environmental Impact Statement. Appendix C, page C - 12.9as it evaluates the "interest of federal, public, state, tribal, local or other public entity in designation or non-designation, including administration sharing", the BLM uses local, state agency, and water users' opposition to designation to support its non-suitability

determinations. Again, the BLM acts arbitrarily and in direct conflict with suitability factors clearly articulated in the WSRA. The WSRA is a national piece of legislation. As it applies to federally managed lands, the opinions of all United States citizens should be afforded equal consideration.

Issue Number: PP-UT-Vernal-08-0010-29

Organization: Utah Rivers Council

Protester: Mark Danenhauer

Issue Excerpt Text:

The BLM Acted Arbitrarily and Capriciously by Finding River Segments Not Suitable Due to Land Ownership Considerations The BLM acted arbitrarily and capriciously by finding river segments not-suitable due to land ownership considerations, specifically river segments with less than 60 percent of the land in the corridor owned by the federal government.13 RR. Rep. No. 94-1264 (1976) at 2170.11. While it is true that land ownership, specifically the percent of land owned by the federal agency is a factor to consider when determining the suitability or non-suitability of river segments it should not be the determinative factor. This must be taken into consideration along with other factors. It appears that the BLM applies a blanket approach to the suitability or non-suitability of river segments based on whether or not the BLM owns 60 percent or more of and in the river corridor. BLMManual8351 does not include any, specific language about such a blanket approach suitability based on land ownership. 'However, the two river segments that the BLM Vernal Field Office suitable both contain over 60 percent federal land ownership (Upper Green River 67% and Lower Green River 77%). The FOIA to the BLM Vernal Field Office did not reveal any documentation supporting a blanket approach to suitability based on landownership. However, lack of such' documentation does not eliminate the existence or use of such, especially given the lack of any documentation on the evaluation of the suitability factors. The following is a list of river segments that the BLM found not-suitable in the PRMP, along with the percent of land owned by the federal government: Middle Green River ~.31% federal Nine Mile Creek A -66% federal Nine Mile Creek B - 19% federal White River A - 41 % federal White River B ~ 99.6% federal White River C- 56% federal Argyle Creek~ 32% federal Bitter Creek ~65% federal Evacuation Creek -,32% federal Only three of the above river segments possess more than 60 percent federal land. However, other considerations exist which may have caused them to be considered not-suitable. When more documentation on the BLM's suitability

evaluation and decisions comes to light, the BLM may not base any of its non-suitability determinations on the fact that 60 percent of the land must be under federal ownership.

Issue Number: PP-UT-Vernal-08-0010-31

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 Vernal Field Office should not find any river not suitable simply because the river is located in an area that has some administrative or congressional protection other than Wild and Scenic River designation. 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.14 Vernal Field Office Proposed Resource Management Plan and Final Environmental Impact Statement. Appendix C, pages C - 27, 28, 29, and 30.13Designating 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, section7 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. 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 acided 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., Additionally, the Act itself includes some language incase a river is designated that is located Within a Wilderness area. Section 1 O(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.⁶

Issue Number: PP-UT-Vernal-08-0010-8

Organization: Utah Rivers Council

Protester: Mark Danenhauer

Issue Excerpt Text:

3. The BLM acted arbitrarily, and in violation of the

WSRA, because it considered factors beyond the 8 enumerated in the WSRA. Specifically, the BLM lists for consideration two inappropriate and arbitrary factors: a) Manageability of the river if designated and other means of protecting values; and b) Interest of a federal, public, state, tribal, local, or other public entity in designation or nondesignation, including administration sharing.

Summary

The BLM inappropriately considered factors other than the eight specified in the Wild and Scenic Rivers Act in reaching its eligibility and suitability determinations. These include: manageability, management plans of other agencies, local opposition, land ownership, and development proposals.

Response

The BLM is in full compliance with BLM Manual 8351. According to BLM Manual 8351, the BLM should consider among other factors “Federal, public, State, tribal, local, or other interests in designation or non-designation of the river, including the extent to which the administration of the river, including the costs thereof, may be shared by State, local, or other agencies and individuals.” 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 BLM’s consideration of specific factors (detailed in Appendix C of the PRMP/FEIS) in ascertaining the eligibility or suitability of river segments in the Vernal planning area is within the discretion of the BLM and are not arbitrary and capricious.

Changed Wild and Scenic River Act Classifications

Issue Number: PP-UT-VERNAL-08-0013c-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:

The PRMP does not clearly present the reasoning and the changes between the DRMP and the PRMP. For example, the DRMP lists the White River as one segment and gives it a nonsensical classification of both wild and scenic,⁶⁴ while the PRMP divides the White River into Segments A, B, and C with Segment B classified as wild, and Segments A and C classified as scenic. DRMP at Appendix C-II, Table 3; PRMP at Appendix C64 The WSRA and the BLM Manual require that each segment have a separate classification as either wild, scenic, or recreational, not two classifications. 16 U.S.C. 1273(b); BLM Manual 8351.3 1 (C).1508, Table 3. In the PRMP, BLM variously refers to these segments as Segments 1, 2, and 3, instead of A, B, and C. See, e.g., PRMP at Response to Comments, Sorted by Resource at 535-36. The BLM should clarify its classification scheme and refer to each segment by only one name. The BLM Manual requires that BLM divides rivers into segments before it evaluates the eligibility of each segment, and thus segmentation should not change between the DRMP and the PRMP. BLM Manual 8351.24, 8351.31. BLM’s segmentation process is confusing, and inadequately disclosed in the PRMP.

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, "Whenever an eligible river segment has been tentatively classified, e.g., as wild, other appropriate alternatives may provide for designation at another classification level (scenic or recreational)." The DRMP on page 2-57 clearly identifies two separate tentatively classified segments of the White River in Alternative A (Preferred Alternative). The first segment is described as "...Section 11 of T10S, R24E, to Asphalt Wash." This segment has a tentative classification of Scenic. The second segment of the White River is "...between Asphalt Wash to where the river leaves Section 18 of T10S, R23E." This segment has a tentative classification of Wild. Alternative C also clearly denotes three separate segments listed by numbers (1) through (3).

Wilderness Characteristics ***Consideration of Small Parcels***

Issue Number: PP-UT-VERNAL-08-0013c-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:

SUWA provided new information for Badlands Cliffs, Red Mountain, Unita Mountain areas, but it appears the VFO completely failed to address this new wilderness character information as there is no acknowledgement within the Vernal PRMP that BLM assessed or inventoried these areas for their wilderness values. See SUWA DRMP Comments Attachment F and SUWA Supplemental DRMP comments. BLM's Response to Comments fails to acknowledge SUWA's new information for these wilderness character areas and/or identify these areas as retaining wilderness characteristics. "Other wilderness character areas contiguous with Forest Service, National Park Service or Wyoming BLM lands for which SUW A submitted new information (Goslin Mountain, Red Creek Badlands, Split Mountain Benches, and Stone Bridge) were arbitrarily determined by VFO as not possessing a wilderness resource due to VFO's flawed interpretation of the Wilderness Act. BLM must revisit each of these proposed wilderness units and consider whether standing alone they have the requisite attributes to be wilderness character areas of less than 5,000 acres and whether together with adjacent public lands - administratively endorsed or not - they constitute 5,000 acres of wilderness quality lands, and appropriately identify these wilderness characteristics as required by 43 U.S.C. 1711(a).

Response

As stated in the PRMP/FEIS at page 3-44, "Non-WSA lands with wilderness characteristics are areas having 5,000 acres, or areas less than 5,000 acres that are contiguous to designated wilderness, WSAs, or other lands administratively endorsed for wilderness; or in accordance with the Wilderness Act's language, areas 'of sufficient size as to make practicable its preservation and use in an unimpaired condition.' These are areas in a natural or undisturbed condition and provide outstanding opportunities for solitude or primitive forms of recreation (non-motorized and non-mechanized activities in undeveloped settings). The BLM used the same criteria for determining wilderness characteristics as in the 1979 wilderness inventory. The 5,000 acre value was helpful to the BLM in making preliminary judgments, but it was not considered a limiting factor." That criterion, however, was not a conclusive, deciding factor.

Inventory of Lands with Wilderness Characteristics

Issue Number: PP-UT-Vernal-08-0011-12

Organization: Uintah County Commission

Issue Excerpt Text:

BLM Errors in its Identification of Non-WSA Lands with Alleged Wilderness Characteristics The establishment of wilderness character areas or "small 'w' areas" assumes that BLM can identify these areas and manage their alleged wilderness character pursuant to Section 202 of FLPMA. 43 U.S.C. § 1712. The recent decision by the Wyoming federal court setting aside the Forest Service roadless conservation rule demonstrates that BLM's premise is false.

Issue Number: PP-UT-Vernal-08-0011-14

Organization: Uintah County Commission

Issue Excerpt Text:

The same reasoning applies to BLM's wilderness management proposed in the RMP. BLM's planning authority granted in Section 202 does not include wilderness management. There is no authority to identify small 'w' wilderness areas in the planning rules, or the planning handbook. FLPMA delegated to BLM authority to conduct one wilderness study and to make recommendations. 43 U.S.C. § 1782. Section 202 of FLPMA also does not mention the word wilderness, and the definition of multiple use in FLPMA omits the word wilderness as well. Taken together, BLM has no authority to manage areas as small 'w' wilderness areas and the District Court decision applies with as much or greater force to the Vernal RMP. The de facto wilderness management areas exceed the authority granted to BLM in FLPMA or the Wilderness Act and are unlawful. The Cold Spring Mountain, Mountain Home and Lower Flaming Gorge non-WSA areas do not meet Wilderness Act criteria of naturalness, or outstanding opportunities for solitude or primitive and unconfined types of recreation. Some segments, such as the one within the Cold Spring Mountain non- WSA area, also do not meet the 5,000 roadless acre size criteria. 16 U.S.C. § 1131(c).¹These three non-WSA areas are, in fact, trammled by miles of roads and trails and reflect the blatant imprint of man's work, including fences, water developments, irrigation diversions and ditches, stock ponds and reservoirs, telephone and power lines, existing oil and gas wells, and old well locations. The major construction of the interstate Kanda pipeline can be seen from all three non- WSA

areas, as well as a phosphate pipeline and other natural gas pipelines. There is also a huge gas storage and collection facility within the Clay Basin allotment visible from the Mountain Home and Cold Spring Mountain non- WSA areas. This lighted 24-hour operated facility is visible day and night, and the compressor emits the pervasive, unmistakable odor of industrial development. BLM's analyses of solitude in the wilderness characteristics worksheets also completely fails to take into account the Taylor Flats subdivision contiguous to the Lower Flaming Gorge non- WSA area, and the major recreation facilities nearby on the Green River. There are two campgrounds near the non- WSA lands that have toilet facilities, fire pits, and motorized traffic. There is also an interpretative recreation center that brings in traffic with related noise incompatible with solitude and primitive recreation. The FEIS only refers to "minimal recreation facilities" as consistent with wilderness criteria. Supplement at 2-10. The FEIS also does not address the light impacts from the¹ The proposed protection of these non-WSA lands is inconsistent with Uintah County's general land use plan and the State of Utah's policy and plan for managing public lands as set forth in Utah Code § 63-38d-401(6), (7) and (8). 43 U.S.C. § 1712(c)(9) (land use plans shall be consistent with state and local plans to the maximum extent possible).⁴Taylor Flats subdivision or the Town of Manila, the latter of which affect the Cold Spring Mountain and Mountain Home non- WSA areas. The Cold Spring Mountain non- WSA area even has an active airstrip. See BLM Cold Spring Mountain Wilderness Characteristics Review (2007). Both the residential and recreation activities bring motorized traffic and related noise that are incompatible with wilderness management. Further, there is no mention of the traffic related impacts to alleged outstanding opportunities for solitude or outstanding opportunities for unconfined recreation (wilderness values) as a result of US Highway 191, a major highway visible and audible from the Mountain Home and Cold Spring Mountain non- WSA areas. In this regard, there is currently a proposed paved, two lane road over the top of the Mountain Home non- WSA area that BLM also failed to consider. .~Moreover, due to the fact that 49% of the Mountain Home non- WSA area has been leased for oil and gas development with surface rights (a valid existing right), BLM anticipates a 4,524 acre direct loss of natural characteristics and reduction in quality of the opportunities for solitude

and primitive and unconfined recreation due to sights and sounds of oil and gas development. Supplement 4-174; BLM Mountain Home Wilderness Characteristics Review (2007) (the total area being affected is 64%). The FEIS admits, therefore, that the area cannot be managed in the future to preserve its alleged wilderness character. It is well recognized that operations conducted pursuant to a lease will impair the suitability of an area for preservation as wilderness. See Solicitor's Opinion, 86 LD. 89, 114 (1976). In addition, neither the Supplement nor the wilderness characteristics review worksheets rationally explain how the findings of wilderness values that total "wilderness character" can be satisfied when the same non- WSA areas were rejected and dropped from further wilderness consideration by BLM in 1979. With regard to the Mountain Home inventory unit, BLM concluded that man's influence was noticeable in the north and south areas of the unit, and that the unit did not provide for outstanding opportunities for solitude or primitive or unconfined type of recreation. Utah BLM Initial Inventory Proposals, p.1 04 (April 1979). With regard to Lower Flaming Gorge, formerly known as the Diamond Mountain Inventory Unit, BLM concluded that the area is broken and irregular in shape, bounded and intersected by privately-owned lands, and that man's impact is substantially noticeable in the northern part of the unit. Thus, the land form and the privately-owned flat-bottomed canyons that break up the unit restrict the opportunities for solitude and primitive or unconfined type of recreation. Id. 2 This intermingled land pattern exists in all three non- WSA areas, and BLM simply could not effectively manage these areas to manage or preserve the alleged wilderness character. These areas also feature permanent structures related to ranching, such as irrigation facilities for the meadows, and fences. BLM's 1979 Initial Inventory and 1980 Intensive Inventory do not show the majority of the Cold Spring Mountain non- WSA area as even qualifying for initial wilderness inventory. The record does not show that these developments and intrusions have disappeared. In most cases, there are more, rather than less, permanent structures and evidence of development. Instead, the FEIS does not employ its own definition of wilderness when finding there was wilderness character. We find evidence supporting this conclusion where BLM's own wilderness characteristics review worksheets do not correctly apply wilderness criteria to these non-WSA areas. BLM consistently looked to the existence of "opportunities" for solitude, and primitive and unconfined recreation, as opposed to outstanding opportunities for solitude and outstanding

opportunities for primitive and unconfined recreation. 16 U.S.C. §1131(c), BLM Handbook H1601-1 at App. C, p. 12; 2005 DRMP/DEIS at GL-18.

Issue Number: PP-UT-Vernal-08-0011-15

Organization: Uintah County Commission

Issue Excerpt Text:

The public was never provided the opportunity to participate in or rebut BLM's 1999 Utah Wilderness Re-inventory Report, or BLM's internal review of the "new information" submitted by SUWA and UWC. BLM assured the U.S. Tenth Circuit Court of Appeals that if it later decided to consider revising land use plans to change the management of lands included in the inventory, full public participation rights would be afforded. *State of Utah et al. v. Babbitt et al.*, 137 F.3d 1193, 1209 (10th Cir. 1998). The court specifically held that a claim to set aside a land use plan revision would lie if public participation was denied; including a challenge to the results of the inventory if the results are utilized in proposing a revision to a land use plan. *Id.* Moreover, while NEP A does not require courts to resolve disagreements, BLM must consider all relevant factors and provide a reasonable analysis and disclosure of the evidence before it. *Salmon River Concerned Citizens v. Robertson*, 32 F.3d 1346 (9th Cir. 1994). BLM, therefore, must now objectively consider and evaluate the public's input disputing the wilderness characteristics of these non- WSA areas. To not do so would be arbitrary and capricious, as many of the WIA re-inventory units were originally found to lack wilderness character by BLM. 46 Fed. Reg. 15086 (1981). BLM must also consider the effects of R.S. 2477 rights-of-way on the suitability of these areas to be managed for their alleged wilderness character.

Issue Number: PP-UT-VERNAL-08-0013c-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:

Throughout the PRMP process, SUW A has submitted significant new wilderness resource information documenting wilderness characteristics that are present but remain unidentified by the VFO. BLM has improperly and illegally ignored this resource information.

Issue Number: PP-UT-VERNAL-08-0013c-94
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 consider SUWA's new information was 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)

Summary

The BLM relied on flawed inventory data for non-WSA lands with wilderness characteristics. The BLM ignored information submitted by the Southern Utah Wilderness Alliance (SUWA) and Daggett County.

Response

The BLM relied on the best available data in determining the parcels possessing wilderness characteristics. This process is adequately detailed in the PRMP/FEIS at pages 3-44 to 3-48. As noted on page 3-1 and 3-2 of the October 2007 Supplemental EIS to the DRMP/DEIS, "In addition to the lands found to have wilderness characteristics in the 1999 inventory, other lands in the [Vernal planning area] have been proposed for wilderness as a part of legislation before Congress (America's Red Rocks Wilderness Act). A BLM interdisciplinary team evaluated a variety of sources of information, including information provided by the public about these areas, their on-the-ground knowledge of these areas, information in case files and field notes/files, master title plats, aerial photos, GIS data layers, and field inspections, and the team determined that all or parts of these areas have wilderness characteristics." The BLM fully considered all information submitted during the process, including that submitted by Daggett County and SUWA.

Authority to Manage Lands for Wilderness Characteristics

Issue Number: PP-UT-VERNAL-08-0003-27
Organization: Vermillion Ranch Limited Partnership

Issue Excerpt Text:

Furthermore, the FEIS does not conform to law because BLM misinterprets decisions of the United States District of Court for the District of Utah, establishes an unviable alternative which applies unlawful de facto WSA-type management prescriptions in violation of its 2003 Settlement Agreement with the State of Utah et al., and incorrectly states that livestock grazing is consistent with WSA-type management. The establishment of wilderness character areas or "small w' areas"

assumes that BLM can identify these areas and management their alleged wilderness character pursuant to Section 202 of FLPMA. 43 U.S.C. §1712. The recent decision by the Wyoming federal court setting aside the Forest Service roadless conservation rule demonstrates that BLM's premise is false.

Issue Number: PP-UT-VERNAL-08-0003-28
Organization: Vermillion Ranch Limited Partnership

Issue Excerpt Text:

The same reasoning [Wyoming court opinion] applies to BLM's wilderness management proposed in the RMP. BLM's planning authority granted in

Section 202 does not include wilderness management. There is no authority to identify small 'w' wilderness areas in the planning rules, or the planning handbook. FLPMA delegated to BLM authority to conduct one wilderness study and to make recommendations. 43 U.S.C. § 1782. Section 202 of FLPMA also does not mention the word wilderness, and the definition of multiple use in FLPMA omits the word wilderness as well. Taken together, BLM has no authority to manage areas as small 'w' wilderness areas and the District Court decision applies with as much or greater force to the Vernal RMP. The de facto wilderness management areas exceed the authority granted to BLM in FLPMA or the Wilderness Act and are unlawful.

Issue Number: PP-UT-VERNAL-08-0003-31
Organization: Vermillion Ranch Limited Partnership

Issue Excerpt Text:

Thus, to the extent the proposed RMP undertakes the necessary analysis to determine what "the environmental effects of leasing and development will be to specific wilderness values," BLM is in compliance with Judge Kimball's decision. ¹d. Nowhere, however, did the court suggest that BLM must add protective WSA-type management to these areas. Rather, in doing so, FEIS violates the terms of BLM's 2003 Settlement Agreement in State of Utah v. Norton, 2:96-CV-0870, 2006 WL 211798 (D. Utah 2006) (appeal pending), and is not a viable alternative.

Issue Number: PP-UT-VERNAL-08-0003-33
Organization: Vermillion Ranch Limited Partnership

Issue Excerpt Text:

Under the Settlement, not only may BLM not create §202 WSAs, it may not "treat public lands. . . as WSAs" through its land use planning process. The foregoing management prescriptions impose IMP-level management and unlawfully "treat" the non-WSA lands with alleged wilderness characteristics as de facto WSAs. The proposed RMP's protection of the non-WSA areas as if they were WSAs, therefore, violates the Settlement and the proper interpretation of FLPMA agreed to by BLM. As the Supreme Court has emphasized, NEPA does not obligate an agency to examine actions or effects of actions that are beyond the agency's authority. Dept. of Transport. v. Public Citizen, 541 U.S. 752 (2004). Thus, the de facto WSA designation of these areas is not an alternative available to BLM and cannot be

considered an option in BLM's land use planning. This does not preclude BLM from developing the FEIS to provide a detailed evaluation and analysis of the impacts of its management decisions on wilderness values.

Issue Number: PP-UT-VERNAL-08-0003-42
Organization: Vermillion Ranch Limited Partnership

Issue Excerpt Text:

5. BLM Errs in its Identification of Non-WSA Lands with Wilderness Characteristics As further supported by Daggett County's field notes and photographs submitted with its comments to the Vernal Field Office, the Cold Spring Mountain, Mountain Home and Lower Flaming Gorge non- WSA areas do not meet Wilderness Act criteria of naturalness, or outstanding opportunities for solitude or primitive and unconfined types of recreation. Some segments such the 5 Neither the IM nor BLM's Land Use Planning Handbook have the force and effect of law and cannot provide a stand alone justification for FEIS, which must be supported by a rational, lawful basis. See Fallini et al., 162 IBLA 10, 36, 44 (2004). BLM is bound by the terms if the Settlement. Page 15 of 20 one within the Cold Spring Mountain non-WSA area also do not meet the 5,000 roadless acre size criteria. 16 U.S.C. §1131(c). These three non-WSA areas are, in fact, trammled by miles of roads and trails and marred by the blatant imprint of man's work, including fences, water developments, irrigation diversions and ditches, stock ponds and reservoirs, telephone and power lines, existing oil and gas wells, and old well locations. The major construction of the interstate Kanda pipeline can be seen from all three non- WSA areas, as well as a phosphate pipeline and other natural gas pipelines. There is also a huge gas storage and collection facility within the Clay Basin allotment visible from the Mountain Home and Cold Spring Mountain non-WSA areas. This lighted 24-hour operated facility is visible day and night, and the compressor emits the pervasive, unmistakable odor of industrial development. Daggett County is, in fact, paving the road through the Clay Basin allotment. BLM's analyses of solitude in the wilderness characteristics worksheets also completely fail to take into account the Taylor Flats subdivision contiguous to the Lower Flaming Gorge non- WSA area, and the major recreation facility nearby on the Green River. BLM only considers "minimal recreation facilities" as consistent with wilderness criteria. Supplement at 2-10. BLM also do not address the sight and sound impacts from the Town of Manila which affect the

Cold Spring Mountain and Mountain Home non-WSA areas. The Cold Spring Mountain non-WSA area even has an active airstrip. See BLM Cold Spring Mountain Wilderness Characteristics Review (2007). Further, there is no mention of the traffic related impacts to alleged wilderness values as a result of US Highway 191, a major highway visible from the Mountain Home and Cold Spring Mountain non-WSA areas. In this regard, there is currently a proposed paved, two lane road over the top of the Mountain Home non-WSA area that BLM also failed to consider. Moreover, due to the fact that 49% of the Mountain Home non-WSA area has been leased for oil and gas activity (a valid existing right), BLM anticipates a 4,524 acre direct loss of natural characteristics and reduction in quality of the opportunities for solitude and primitive and unconfined 6 FEIS' s protection of these non - WSA lands is inconsistent with Daggett County's general land use plan and the State of Utah's policy and plan for managing public lands as set forth in Utah Code § 63-38d-401(6), (7) and (8). 43 U.S.C. §1712(c)(9) (land use plans shall be consistent with state and local plans to the maximum extent possible). Page 16 of 20 recreation due to sights and sounds of oil and gas development. Supplement 4-174; BLM Mountain Home Wilderness Characteristics Review (2007) (the total area being affected is 64%). By BLM's own admission, therefore, the area cannot be managed in the future to preserve its alleged wilderness character. It is well recognized that operations conducted pursuant to a lease will impair the suitability of an area for preservation as wilderness. See Solicitor's Opinion, 86 J.D. 89, 114 (1976). In addition, neither the Supplement nor the wilderness characteristics review worksheets rationally explain how wilderness criteria is satisfied when the same non-WSA areas were rejected and dropped from further wilderness consideration by BLM in 1979. With regard to the Mountain Home inventory unit, BLM concluded that man's influence was noticeable in the north and south areas of the unit, and that the unit did not provide for outstanding opportunities for solitude or a primitive or unconfined type of recreation. Utah BLM Initial Inventory Proposals, p.1 04 (April 1979). With regard to Lower Flaming Gorge, formerly known as the Diamond Mountain Inventory Unit, BLM concluded that the area is broken and irregular in shape, bounded and intersected by privately-owned lands,

and that man's impact is substantially noticeable in the northern part of the unit. Thus, the land form and the privately-owned flat-bottomed canyons that break up the unit restrict the opportunities for solitude and primitive or unconfined type of recreation. Id. This intermingled land pattern exists in all three non-WSA areas, and BLM simply could not effectively manage these areas to preserve the alleged wilderness character.

Issue Number: PP-UT-VERNAL-08-0005-17

Organization: Independent Petroleum Association of Mountain States

Protester: Kathleen M. Sgamma

Issue Excerpt Text:

By managing non-WSA lands solely to preserve wilderness characteristics, the BLM is violating its settlement agreement with the State of Utah. To justify this management, the BLM states that the "settlement agreement does not affect BLM's authority for managing public lands." Vernal PRMP Response to Comments at 274. Many of these eleven 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 PRMP process. 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.

Summary

The BLM lacks the authority to manage lands for the protection of wilderness characteristics. Such management violates the Settlement Agreement with the state of Utah.

Response

As noted in the response to comments for the Supplement to the DRMP/DEIS, the BLM has long acknowledged that FLPMA Section 603 (43 U.S.C. §1782) requiring a one-time wilderness review has expired. All current inventory of public lands is authorized by FLPMA Section 201 (43 U.S.C. §1711). The Tenth Circuit, in August 2008, declined to find that the BLM was prohibited from protecting lands it determined to have wilderness characteristics in a manner substantially similar to the manner in which such lands are protected as WSAs.

The BLM's authority for managing lands to protect or enhance wilderness characteristics is derived directly from FLPMA Section 202 (43 U.S.C. §1712). This section of 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" (FLPMA, Section 202(c)(2) (43 U.S.C. §1712(c)(2))). Further, FLPMA makes it clear that the term "multiple use" means that not every use is appropriate for every acre of public land, and that the Secretary can "make the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use..." (FLPMA, Section 103(c) (43 U.S.C. §1702(c))) The FLPMA intended for the Secretary of the Interior to use land use planning as a mechanism for allocating resource use, including wilderness character management, amongst the various resources in a way that provides uses for current and future generations.

Wilderness Study Areas***Inventory of Wilderness Study Areas***

Issue Number: PP-UT-VERNAL-08-0014-40

Organization: Western Watersheds Projects, Inc.

Protester: John G. Carter

Issue Excerpt Text:

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

Summary

Lack of wilderness inventory not only violates FLPMA and its regulations, but it also violates NEPA's policy of full public disclosure of the significant environmental impacts, affected environment, reasonable alternatives, and changed circumstances.

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 FLPMA Section 202 (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." (FLPMA, Section 202(c)(2) (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. . . ." (FLPMA, Section 103(c) (43 U.S.C. §1702(c))). The FLPMA intended for the Secretary of the Interior to use land use planning as a mechanism for allocating resource use, including wilderness character management, amongst the various resources in a way that provides uses for current and future generations. The BLM has long acknowledged that FLPMA Section 603 (43 U.S.C. §1782) requiring a one-time wilderness review has expired. All current inventory of public lands is authorized by FLPMA Section 201 (43 U.S.C. §1711). 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.