



***Bureau of Land Management
Director's Summary Protest Resolution
Report***

**Browns Canyon National
Monument Proposed
Resource Management Plan
and Final Environmental
Impact Statement (PRMP and
FEIS)**

June 19, 2020

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Acronyms

ACECs	areas of critical environmental concern
AHRA	Arkansas Headwaters Recreation Area
BCNM	Browns Canyon National Monument
BLM	Bureau of Land Management
BMPs	best management practices
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CML	Cooperative Management Lands
CPW	Colorado Parks and Wildlife
EIS	Environmental Impact Study
FAA	Federal Aviation Administration
FEIS	Final Environmental Impact Statement
FLPMA	Federal Land Policy and Management Act of 1976
LWC	Lands with Wilderness Characteristics
MMP	Monument Management Plan
MZ	Management Zone
NCA	National Conservation Area
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NLCS	National Landscape Conservation System
OPLMA	Omnibus Public Land Management Act
PRMP	Proposed Resource Management Plan
R&I	Relevant and Important
ROD	Record of Decision
ROVs	resources, objects, and values
U.S.C.	U.S. Code
UAS	Unmanned Aircraft Systems
WSA	Wilderness Study Areas

Protesting Party Index

Letter Number	Protester	Organization	Determination
PP-CO-BrownsCanyon-20-001	Alison McCormick		Dismissed – Incomplete
PP-CO-BrownsCanyon-20-002	Arthur Buono		Dismissed – Incomplete
PP-CO-BrownsCanyon-20-003 PP-CO-BrownsCanyon-20-005	Dr. Peg Rooney	Arkansas Valley Audubon Society	Dismissed – Comments Only Dismissed – Incomplete
PP-CO-BrownsCanyon-20-004	Michael Smith		Dismissed – Incomplete
PP-CO-BrownsCanyon-20-006 PP-CO-BrownsCanyon-20-007 PP-CO-BrownsCanyon-20-008	Kenneth McMurry	McMurry Land & Livestock	Dismissed – Incomplete
PP-CO-BrownsCanyon-20-009	Lyndon Berry		Dismissed – Incomplete
PP-CO-BrownsCanyon-20-010	Kent Wood Terri Lukas		Dismissed – Comments Only
PP-CO-BrownsCanyon-20-011† PP-CO-BrownsCanyon-20-012* PP-CO-BrownsCanyon-20-013*	Katie Meehan	The Wilderness Society	Denied – Issues and Comments
PP-CO-BrownsCanyon-20-014	Jeanne Younghaus		Dismissed – Incomplete
PP-CO-BrownsCanyon-20-015 PP-CO-BrownsCanyon-20-016* PP-CO-BrownsCanyon-20-017* PP-CO-BrownsCanyon-20-018* PP-CO-BrownsCanyon-20-019*	Patrick McKay		Denied – Issues and Comments

* Indicates supporting documents submitted in addition to protest letter.

† This letter had multiple signatories in addition to Katie Meehan with The Wilderness Society. They included, Reed Dils with Friends of Browns Canyon, Daly Edmunds with Audubon Rockies, Nada Culver with National Audubon Society, Alison Gallensky with Rocky Mountain Wild, Karimah Schoenhut with Sierra Club, John Sztukowski with Wild Connections, and Chris Kupp with WildEarth Guardians.

FLPMA – Areas of Critical Environmental Concern

The Wilderness Society et al.

Katie Meehan

Issue Excerpt Text: The agencies’ proposed action attempts to cover proper management for the ACEC while simultaneously removing this additional layer of protection by committing to developing “implementation-level plans, impact avoidance, mitigation measures, and BMPs” to protect and enhance the values the ACEC was designated to protect. *Id.* at 19. Instead of relying on these additional, discretionary measures to ensure the ACEC’s relevant and important values are protected, BLM should follow its own guidance and maintain overlapping special designations for this important landscape. Browns Canyon ACEC remains of critical importance to be managed for protection and enhancement of its relevant and important values.

The Wilderness Society et al.

Katie Meehan

Issue Excerpt Text: To meet FLPMA’s statutory requirement of prioritizing the designation and protection of ACECs, BLM must apply special management to protect the values identified for the ACECs and designate new ACECs as necessary. Layering protective designations is consistent with applicable law and policy and failing to do so because of NCA designation violates BLM’s statutory obligation.

Summary:

The Bureau of Land Management (BLM) has violated the Federal Land Policy and Management Act of 1976 (FLPMA) by failing to give priority to the designation and protection of areas of critical environmental concern (ACECs). The Browns Canyon National Monument Proposed Resource Management Plan/Final Environmental Impact Statement (BCNM PRMP/FEIS) (BLM and U.S. Forest Service [USFS] 2020) fails to adequately protect relevance and importance criteria by committing to implementation-level plans, impact avoidance, mitigation measures, and best management practices (BMPs).

Response:

BLM policy does not require that a potential ACEC’s Relevant and Important (R&I) values be protected to the same level or degree in all plan alternatives: “[t]he management prescription for a potential ACEC may vary across alternatives from no special management attention to intensive special management attention” (BLM Manual § 1613.22.B). The BLM must carry forward all potential ACECs as recommended for designation in at least one alternative (BLM Manual Section 1613.22B). The BLM has full discretion in the selection of ACECs for the various alternatives. A comparison of estimated effects and trade-offs associated with the alternative leads to development and selection of the PRMP Amendment/FEIS (BLM Manual 1613.33.E). However, there is no statutory or regulatory requirement that the BLM designate any or all ACECs identified or considered during the planning process.

BLM Manual Sections 1613.50 and 1613.51 provide additional guidance regarding the relationship of ACECs with other special designations that provide for additional resource protections, such as the *December 2019 Protest Resolution Report for Bears Ears National Monument Proposed Monument Management Plan (MMP)/FEIS* designated Wilderness, National Historic/Scenic Trails, National Wild and Scenic Rivers, National Recreation Areas, and National Conservation areas. A potential ACEC may be contained within or overlap one of the above designations, provided that the ACEC designation is necessary to protect a resource or value. If, however, the management attention

provided under the special designation is adequate to protect a resource or value, the BLM policy is clear that it is not necessary or appropriate to designate it as an ACEC. An ACEC must require special management attention unique to the relevant and important values identified to be designated (BLM Manual § 1613.33E).

The BCNM PRMP/FEIS analyzed a range of alternatives for the management of potential ACECs and special management attention that would fully protect R&I values of the potential BCNM ACEC. The BLM has discretion to designate all, some, or none of the potential ACECs that are evaluated during a planning process; there is no requirement that the agency carry forward potential ACECs (see BLM Manual § 1613.33.E).

Regionally significant scenic, wildlife, flora, cultural and historic values in the Browns Canyon ACEC have been managed to protect their R&I ACEC values by BLM since 1996. Appendix H, *Updated Evaluation of Relevance and Importance Criteria*, of the BCNM PRMP/FEIS describes the Browns Canyon ACEC R&I values, including habitat for bighorn sheep, golden eagle, and nesting raptors; sensitive archeological resources; high potential of unrecorded cultural resources; traditional tribal religious sites; Arkansas River Gold Medal fisheries; and populations of special status plant species (Arkansas canyon stickleaf [*Nuttallia densa*]). A summary comparison of the Browns Canyon ACEC R&I values evaluation (BCNM PRMP/FEIS, Appendix H) and the resources, objects, and values (ROVs) identified in the Presidential Proclamation 9232 is presented in Table 3.2-1 (BCNM PRMP/FEIS, p. 62). For example, Presidential Proclamation 9232 ROVs for significant historic, cultural, or scenic values include ROVs 1, 4, 5, 11, and 12. ROVs 1, 2, 3, 6, 8, and 9 are comparable to natural process or system (sensitive plant and animal species) R&I values (BCNM PRMP/FEIS, pp. 62–63). The comparison shows that the R&I values for the Browns Canyon ACEC were incorporated and expanded on in Presidential Proclamation 9232, Establishment of the Browns Canyon National Monument. Proclamation 9232 requires that monument ROVs be protected for the benefit of all Americans. Therefore, protection of R&I values under Proclamation 9232 is substantially equivalent to, if not greater than, protection under the administrative ACEC designation (BCNM PRMP/FEIS, pp. 62–63). Further, protection for equivalent R&I values through Presidential Proclamation 9232 applies to the entire BCNM instead of to the smaller ACEC. As a result, the impacts on ACEC resource values, specifically R&I values, would be similar for all of the alternatives (BCNM PRMP/FEIS, p. 62). In developing management of special designations under the BCNM PRMP/FEIS, the BLM and USFS created goals/desired conditions to sustain and protect values of the BCNM to maintain long-term sustainability of the area's special characteristics and values for which the area was originally designated (BCNM PRMP/FEIS, Goal/Desired Condition SD1, p. 15). Specifically, Objective SD1.4, *Browns Canyon ACEC*, was developed to protect and prevent irreparable damage to the important and relevant fauna, scenic, and cultural values for which the BCNM ACEC was originally designated in 1995 (BCNM PRMP/FEIS, p. 15).

The BLM and USFS adequately considered the protection of relevant and important values in the BCNM PRMP/FEIS. Accordingly, this protest is denied.

NEPA – Best Available Information – Cultural Resources

The Wilderness Society et al.

Katie Meehan

Issue Excerpt Text: The agencies also fail to meet the baseline assessment requirement provided by NEPA in 40 C.F.R. § 1502.15, which requires agencies to “describe the environment of the areas to be affected or created by the alternatives under consideration.” As stated in *Half Moon Bay Fisherman’s Marketing Ass’n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988), the Ninth Circuit determined “without establishing...baseline conditions...there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA.” To date, only 3.6% of the monument has been surveyed for archaeological resources and 34 sites have been identified. See Proposed RMP p.73. BLM has potentially violated NEPA through a failure to collect an accurate baseline assessment of cultural resources. Certain sites such as petroglyph or pictographs as well as standing structures such as an old cabin, are a magnet for bullets. People like to shoot at targets, and they don’t necessarily restrict themselves to the targets they bring with them. The agencies must appropriately analyze that these resources are at risk, particularly in locations near trails, recreation sites, and roads. Without an accurate inventory of cultural resources within the monument, it is impossible to thoroughly analyze and articulate the potential impacts of agency actions, specifically target shooting.

Summary:

The BCNM PRMP/FEIS (BLM and USFS 2020) failed to use the best available information when it relied on existing cultural resources survey coverage of the BCNM to conduct its analysis of impacts on cultural resources.

Response:

The Council on Environmental Quality’s (CEQ) regulations for implementing the National Environmental Policy Act (NEPA) require that agencies use “high quality information” (40 Code of Federal Regulations [CFR] 1500.1(b)). Similarly, NEPA regulations require the BLM to “ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24).

The BLM NEPA Handbook also directs the BLM to “use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55). Under the BLM’s guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

The CEQ’s NEPA regulations require the BLM and USFS to obtain information if, among other qualifications, “the overall cost of obtaining it is not exorbitant” (40 CFR 1502.22). The National Historic Preservation Act (NHPA) Section 106 regulations require an agency make a “reasonable and good faith effort” to carry out appropriate identification efforts (36 CFR 800.4(b)(1)). The NHPA also commits the BCNM to performing surveys in advance of undertakings. The BCNM PRMP/FEIS does not alter NHPA requirements.

The BLM has developed an inventory process to assist in managing cultural resources in accordance with the NHPA. The BLM has established three classes of inventory for cultural resources; Class III is the most intensive. The preparation of an RMP revision or amendment does not require a Class III inventory:

the scope and scale of cultural resource identification are much more general and less intensive for land use planning than for processing site-specific use proposals. Instead of new, on-the-ground inventory (i.e., Class III Inventory), the appropriate level of identification for land use planning is a regional overview [i.e., Class I inventory] (BLM Handbook H-1601-1, p. C-8).

A regional overview includes, “(1) a compilation and analysis of reasonably available cultural resource data and literature, (2) a management-oriented synthesis of the resulting information that includes priorities and a strategy for accomplishing needed inventory (see Manual Section 8110)” (BLM Handbook H-1601-1, p. C-8). The USFS *Heritage Program Management Handbook* provides guidance to use existing cultural resource site information during plan development and amendment processes; field surveys are potentially necessary only if site specific decisions are included in plan amendments (USFS Handbook 2309.12, p. 10).

The BLM and USFS considered the best available scientific information for cultural resources in the development of the BCNM PRMP/FEIS, including sites defined during archaeological surveys and supporting documentation placing known cultural resources in a historical context (BLM and USFS 2018). Section 2.1.13 of the Planning Assessment (BLM and USFS 2018) provides additional information about best available scientific information, limitations, conditions, and trends for cultural resources in the analysis area. A cultural resources Class I Regional Overview was completed for the entirety of the BLM Royal Gorge Field Office in 2017, which also included the BCNM (Greubel et al. 2017). The Planning Assessment acknowledges the Greubel et al. 2017 cultural resources inventory as best available scientific information (BLM and USFS 2018, p. 153) and the BCNM PRMP/FEIS relies, in part, on information provided by this cultural resource inventory (BCNM PRMP/FEIS, p. 73).

The BLM/USFS will conduct appropriate site-specific environmental analysis and implement ROV protections for all surface disturbing implementation activities and decisions as projects are defined following the Proposed Plan/Record of Decision (ROD) (BCNM PRMP/FEIS, p. 15, Record 100). The site-specific environmental analysis will provide opportunities to identify and mitigate potential impacts associated with future implementation projects and will provide appropriate opportunities for the public to participate. Refer to BCNM PRMP/FEIS Section 1.3.2, *Planning Criteria*, which notes that the planning criteria are the constraints or ground rules that guide and direct the development and implementation of the RMPs.

The BCNM PRMP will be implemented using adaptive management processes, under which decisions, plans, and proposed activities can be adjusted as results from management actions become better understood. The BLM and USFS use evaluations to review implementation of the RMP at several levels to see whether management goals and objectives are being met and determine whether management direction is sound. The BLM and USFS evaluate management actions to determine whether they are consistent with thresholds established for the achievement of the objectives. If they are not, the evaluation identifies the reasons. Historic properties that are subject to ongoing threats will be monitored using a variety of standards as outlined on page K-10 of the BCNM PRMP/FEIS.

The BLM and USFS relied on high-quality information and the best available data in preparation of the BCNM PRMP/FEIS and have adequately characterized the area of potential effects for cultural resources and considered how the planning decisions could affect those resources. Thus, the agencies have complied with NEPA’s requirement to analyze the environmental consequences to cultural resources. Accordingly, this protest is denied.

NEPA – Lands with Wilderness Characteristics

The Wilderness Society et al.

Katie Meehan

Issue Excerpt Text: BLM maintains discretion to set management actions for LWCs that it is managing for the protection of those wilderness characteristics as a priority over other multiple uses. However, despite including appropriate language in its management objectives to acknowledge the agency’s obligation, the Proposed RMP arbitrarily determines that none of the lands with wilderness quality within the monument should be managed for protection of their wilderness characteristics. In short, the Proposed RMP fails to adequately consider the importance of managing these areas for their wilderness values.

Summary:

The BLM and USFS arbitrarily determined that none of the lands with wilderness quality should be managed for the protection of their wilderness characteristics and failed to adequately consider the importance of managing these areas for their wilderness values.

Response:

BLM Manual 6320 requires that the BLM evaluate lands with wilderness characteristics (LWCs) through the land use planning process, but recognizes that the evaluation may result in several outcomes, including, but not limited to: 1) emphasizing other multiple uses as a priority over protecting wilderness characteristics; 2) emphasizing other multiple uses while applying management restrictions (conditions of use, mitigation measures) to reduce impacts to wilderness characteristics; 3) the protection of wilderness characteristics as a priority over other multiple uses.

The BLM is not required to lump all possible “multiple uses” (such as recreation) together in one single category, and then weigh that collective use against management of wilderness characteristics.

Consistent with the FLPMA and other applicable authorities, the BLM considers the wilderness characteristics of public lands when undertaking land use planning. The BLM uses the land use planning process to determine how to manage LWCs as part of the BLM’s multiple-use mandate. The BLM considers a full range of alternatives for such lands when conducting land use planning. The BLM analyzes the effects of 1) plan alternatives on LWCs; and 2) management of LWCs on other resources and resource uses (BLM Manual 6320). However, there is no affirmative requirement for the BLM to protect lands for their wilderness characteristics.

The BLM identified two inventory units in the BCNM that meet the criteria outlined in BLM Manual 6310 for LWCs (Conducting Wilderness Characteristics Inventory of BLM Lands): Railroad Gulch and Browns Canyon North-Ruby Mountain (BCNM PRMP/FEIS, Table 3.6-1, p. 79). The USFS also completed a Wilderness Inventory Suitability Determination in preparation of the BCNM PRMP/FEIS (see BCNM PRMP/FEIS, Appendix M, *Final USFS Wilderness Inventory Suitability Determination*). This inventory determined that the USFS lands within the BCNM are suitable for and should be included in an evaluation within the context of development of a revised *Forest Plan for the Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands* (BCNM PRMP/FEIS, p. M-5). The Aspen Ridge Roadless Area would be managed to protect sources of drinking water, important fish and wildlife habitat, and semi-primitive or primitive recreation areas that include both motorized and nonmotorized recreation opportunities in a manner that protects and maintains the social and ecological characteristics that proved the basis for wilderness recommendation (BCNM PRMP/FEIS, SD1.3, p. 15).

The BLM and USFS developed a reasonable range of alternatives that respond to the purpose of and need for the BCNM RMP, including providing for the proper care and management of ROVs in areas inventoried and found to possess wilderness characteristics. Wilderness characteristics are not an ROV (see BCNM PRMP/FEIS, Appendix E: Laws, Regulations, Policies, Guidance, and Monument Resources, Objects, and Values). The range of alternatives considered in the FEIS included Alternative B, which would protect and maintain the inventoried lands with wilderness characteristics in Railroad Gulch and Browns Canyon North-Ruby Mountain through management decisions that would eliminate allowable uses that can affect their naturalness, opportunities for solitude and unconfined recreation, and other supplemental values. While the BCNM PRMP would not specifically directly protect LWCs, proper care and management of ROVs in these same areas is likely to also protect wilderness characteristics (BCNM PRMP, Table 2.3-4, pp. 22–23). Section 3.6.3 of the BCNM PRMP/FEIS (pp. 80–82) provides an analysis of specific inventoried wilderness characteristics and other ROVs present that could be impacted under each of the alternatives. Although not managed for wilderness characteristics, the Browns Canyon North–Ruby Mountain and Railroad Gulch inventory units would be managed for monument ROVs consistent with Monument – River East Management Zone (MZ) (Primitive) and Railroad Gulch MZ (Primitive to Backcountry), respectively. Management for these recreation settings would reduce effects to naturalness, opportunities for solitude and supplemental values in each unit (BCNM PRMP/FEIS, p. 82).

The BLM and USFS adequately analyzed impacts on LWCs in the BCNM PRMP/FEIS. Accordingly, this protest is denied.

National Monument – Consistency with Presidential Proclamation 9232, FLPMA and Omnibus Land Management Act

The Wilderness Society et al.

Katie Meehan

Issue Excerpt Text: As mentioned above, the monument was designated with the explicit purpose of protecting and preserving the natural and cultural resources present throughout the landscape. Accordingly, the standard approach to multiple-use management does not apply to the monument, and any effort to adopt such a management approach to the detriment of its cultural and natural values would be in violation of the proclamation and the mandates of FLPMA and the Omnibus Public Land Management Act of 2009.

The Wilderness Society et al.

Katie Meehan

Issue Excerpt Text: As highlighted further throughout this section, the Proposed RMP continues to prioritize multiple uses. Because this approach fails to properly care for the monument’s objects and cultural, ecological, and scientific values and fails to fulfill BLM’s obligation to administer the NLCS as part of an integral landscape, it is not a valid management scheme.

The Wilderness Society et al.

Katie Meehan

Issue Excerpt Text: Here, the agencies failed to meet their obligations under the Antiquities Act and Proclamation 9232, as described in further detail throughout the protest. The Proposed RMP fails to recognize that the monument has special status and that impacts of authorized activities, including widespread dispersed target shooting, must be analyzed with the protection of monument objects upfront. As such, the agency’s actions are arbitrary and capricious and must be revisited.

Summary:

The BCNM PRMP/FEIS (BLM and USFS 2020) fails to provide for the proper care and management of monument objects as required by Presidential Proclamation 9232 and the Omnibus Public Land Management Act (OPLMA) of 2009 by applying a multiple-use management approach to the BCNM.

Response:

The BLM and USFS developed the Proposed RMP based on the proper care and management of the Monument’s objects and values. Land use plans for a National Monument must analyze and consider measures to ensure that National Monument objects and values are conserved, protected, and restored (BLM Manual Section 6220.1.6.G.4). Through the land use planning process, the BLM identifies specific and measurable goals and objectives for each object and value (BLM Manual Section 6220.1.6.G.4.a.). The BCNM PRMP/FEIS establishes the designated area and plan components, including a standard, specifically for the purpose of managing the National Forest System lands in the BCNM. This addresses 36 CFR 219.10(b)(vi), which requires “appropriate management of other designated areas or recommended designated areas in the plan area, including research natural areas.”

FLPMA, as amended, governs the management of public lands by the BLM and, in certain circumstances, the USFS. FLPMA provides that the BLM “shall manage the public lands under principles of multiple use and sustained yield...except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law” (43 U.S. Code [U.S.C.] 1732(a)). The designation of the BCNM by Proclamation 9232 reserved the lands to protect the Monument’s objects and values and directed the BLM and

USFS to provide for the care and management through compliance with applicable legal authority, such as the FLPMA and the OPLMA.

Established by Congress in the OPLMA (Section 2002 of Pub. L. 111-11), National Landscape Conservation System (NLCS) lands are a permanent system of public lands conservation with the stated purpose to “conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations” (16 U.S.C. 7202(a)). As defined by the OPLMA, the NLCS is composed of a number of different Presidential and Congressional designations, including National Monuments, National Conservation Areas, Wilderness Study Areas, and designated wilderness, among others (16 U.S.C. 7202(b)). Each of these designations includes an array of different management requirements for the BLM, recognizing that the OPLMA directs the BLM to manage each component of the NLCS in accordance with any applicable law relating to that specific component of the system and in a manner that protects the values for which the area was designated (16 U.S.C. 7202(c)). Furthermore, the OPLMA states that nothing in Section 2002 enhances, diminishes, or modifies any law or proclamation under which a NLCS component is established or managed, including the FLPMA (16 U.S.C. 7202(d)). The BCNM was designated under the Antiquities Act; therefore, under the OPLMA, the BLM is required to manage the BCNM to provide for the care and management of the Monument objects and values identified in Proclamation 9232. Although the more general language in the OPLMA relating to the purpose of the NLCS provides a number of goals for the management of all system components, the more specific management language makes it clear that the BLM’s management responsibilities are not enhanced beyond the requirements of the Antiquities Act, designating proclamations, and FLPMA.

To meet the planning criteria, all action alternatives must be compatible with the protection and restoration of the Monument objects and values outlined in Presidential Proclamation 9232. In completing the BCNM PRMP/FEIS, the BLM and USFS relied on high-quality information, as required by the CEQ implementing regulations (40 CFR 1500.1(b); 40 CFR 1502.24) and the *BLM Land Use Planning Handbook* (BLM Handbook H-1790-1, p. 55), from a large number of sources to ensure that the agency used the best available science to fully analyze the impacts of plan decisions on the objects and values present in the BCNM. As a result of that analysis, the agency determined that all action alternatives presented in the BCNM PRMP/FEIS provide for the protection and restoration of Monument objects and values as required by Proclamation 9232.

The BLM and USFS developed a reasonable range of alternatives for considering the appropriate management goals, objectives, and actions under each action alternative with the purpose of protecting Monument resources, objects, and values (BCNM PRMP/FEIS, pp. 11–12). These alternatives also provide for a range of multiple uses to the extent that they are consistent with the protection of Monument objects and values. Although Proclamation 9232 provides for a number of management requirements, including the overarching requirement to provide for protection and restoration of Monument objects and values, in some circumstances the Proclamation lacked specific management direction to the agency. In the absence of such direction, the BLM and USFS have discretion in making management decisions consistent with the overarching purpose. For example, the Proclamation does not provide specific direction regarding night skies and natural soundscapes; however, the BLM and USFS includes a range of actions within the alternatives to address this issue as both night skies and natural soundscapes contribute to protecting and restoring other Monument resources, objects, and values (BCNM PRMP/FEIS § 2.3.6, pp. 26–27; § 3.8, pp. 94–99) See the *NEPA – Impact Analysis – Recreational Target Shooting* section below for the response specifically related to widespread recreational target shooting.

In making management decisions for the BCNM, the BLM and USFS properly sought to protect Monument resources, objects and values while allowing the public to enjoy use the lands and

resources in a manner consistent with that protection. Accordingly, this protest is denied consistent with FLMPA.

Secretary Order 3376 and Electric Bicycles

The Wilderness Society et al.

Katie Meehan

Issue Excerpt Text: The Proposed RMP cites to BLM’s plans to modify existing travel regulations according to Secretarial Order 3376. See Proposed RMP p. 5. BLM improperly predetermines that “[o]nce these regulations are in place, the BCNM RMP would allow for Class 1 and 2 ebikes to travel on both motorized and mechanized trails.” Id.; see also Id. at 124-125. Secretarial Order 3376 has not yet been implemented and cannot lawfully be implemented absent, among other things, full notice and comment rulemaking. It is currently far from certain that Secretarial Order 3376 or the policy articulated in BLM’s proposed rule can be lawfully implemented.

The Wilderness Society et al.

Katie Meehan

Issue Excerpt Text: We remain concerned of BLM’s oversight of allowing such use within the monument while the proposed rulemaking process is ongoing and existing travel regulations remain. This is the case for e-bike use on Colorado Parks and Wildlife-leased lands on the western side of the Arkansas River, specifically on the Seidel’s Suckhole trail. See Proposed RMP p. 114. BLM cannot lawfully allow for use of e-bikes on non-motorized trails unless and until the policy articulated in Secretarial Order 3376 is lawfully and fully implemented. A contrary approach threatens to unlawfully establish a motorized use. Such an approach is particularly concerning within a national monument.

The Wilderness Society et al.

Katie Meehan

Issue Excerpt Text: Until the proposed rule is lawfully and fully implemented, we request the Proposed RMP’s pre-decisional language related to e-bike use on non-motorized trails is removed prior to signing the Record of Decision.

Summary:

The BCNM PRMP/FEIS (BLM 2020) improperly applies travel-management modifications to allow the use of electric bicycles (e-bikes) on non-motorized trails because Secretarial Order 3376 has not yet been fully implemented.

Response:

In accordance with Secretarial Order 3376 (Department of the Interior [DOI] 2019), the BLM is in the process of amending the its off-road vehicle regulations in order to add a definition that identifies e-bikes (Class 1, 2, and 3) as non-motorized, which would give the BLM the authority to determine whether and where e-bikes may be operated on public lands that are closed to motorized use. The comment period on the regulations closed on June 9, 2020. Anticipating the finalization of the e-bike rule, the PRMP would allow for Class 1 and 2 e-bikes to travel on both motorized and mechanized trails designated on BLM-administered lands in the BCNM if the final regulation includes the proposed definition. Until such time, or until public-involved site-specific travel-management planning is completed, e-bike use on BLM administered lands is limited to designated motorized trails (BCNM PRMP/FEIS p. 5 and Table 2.3-10, Record 328, p. 40).

Under Colorado Parks and Wildlife (CPW) policy, as it applies to State Park lands, Class 1 and 2 e-bikes are managed like other non-motorized recreation opportunities, whereas Class 3 e-bikes are only to be allowed on roadways and designated bike lanes. CPW policy applies within the Arkansas Headwaters Recreation Area (AHRA) Cooperative Management Lands (CML), including the Recreation and Public Purpose (R&PP) leased lands (e.g., AHRA-managed sites) and non-R&PP leased lands (BCNM PRMP/FEIS p.5).

The only designated mechanized trail on BLM-administered land in BCNM is within the Monument – River West Management Zone (approximately 1 mile from Hecla Junction to the Seidel’s Suck Hole). Should the current regulations be modified to define e-bikes as non-motorized, e-bikes would be allowed on this trail, and their use would increase the potential for degrading habitat and disturbing wildlife (BCNM PRMP/FEIS p. 114). If new mechanized routes are proposed during plan implementation of site-specific travel-management planning, BLM, USFS, and CPW would consider the effects of e-bikes on recreation and wildlife through site-specific NEPA consistent with their respective agency policies. Accordingly, this protest is denied.

NEPA – Impact Analysis – Recreational Target Shooting

The Wilderness Society et al.

Katie Meehan

Issue Excerpt Text: The Proposed RMP notes that Chaffee County and CPW cooperatively manage a shooting range not far from the monument’s boundaries off Highway 285. The agencies state “[t]here is not currently concentrated target shooting within the monument and concentrated target shooting is expected to occur primarily in this facility.” See Proposed RMP p.119. BLM points to the lack of current use of target shooting on monument lands - and assumes that as such, leaving the area available for this use is not problematic. However, the lack of a concentrated amount of a specific use within an area is not sufficient reasoning for the agency to disregard the limited benefits and multitude of risks associated with that use. In this instance, the agencies must be proactive in analyzing the risks associated with target shooting when developing a management plan.

The Wilderness Society et al.

Katie Meehan

Issue Excerpt Text: The Proposed RMP gives very brief mention that visitor safety and monument resources, objects, and values are likely to be negatively impacted due to target shooting, but there is no actual analysis as to the extent of these impacts. The plan notes that “heavily used areas would experience adverse impacts on wildlife due to increased levels of noise...as well as exposure to hazardous metals that accumulate” and that Alternative B, prohibiting target shooting throughout the monument, “would have the greatest beneficial impact to human health and safety.” Id. at 113 and 52. However, the Proposed RMP fails to actually analyze the impacts that widespread recreational target shooting would have on the monument’s visitors as well as the resources, objects, and values it was designated to protect.

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Katie Meehan

Issue Excerpt Text: The agencies’ decision to close only 1,030 acres to dispersed recreational target shooting ignores these risks and irreversible effects. Under the proposed action, the most frequently visited locations, including the middle portion of the network of frequently used, non-motorized and non-mechanized trails for quiet recreation is left open. Id., Vol. 2, Map 22. This threatens visitor safety, negatively impacts wildlife, and threatens other monument resources, objects, and values. Unless and until the agency prepares a comprehensive and accurate target shooting analysis demonstrating why target shooting will not negatively impact these values, allowing target shooting within the monument is an arbitrary decision that is in violation of FLPMA and the monument proclamation.

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Katie Meehan

Issue Excerpt Text: BLM and the USFS fail to manage for the protection and preservation of its natural, cultural, historic, and scientific values and instead allows for widespread target shooting, a use that is likely to negatively impact monument resources, objects, and values. The Proposed RMP lacks meaningful analysis and reasoning to support the decision to allow for widespread target shooting.

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Katie Meehan

Issue Excerpt Text: The monument was created to protect a variety of resources, objects, and values, including cultural sites, soundscapes, wildlife, and recreation opportunities described in Proclamation 9232. BLM’s mandate is to manage the area primarily for this purpose. In sum, BLM’s decision to open the monument to target shooting without adequate analysis is arbitrary, and in

violation of FLPMA, the Administrative Procedure Act, Proclamation 9232, Secretarial Order 3308, IM 2009-215, and the BLM 15-Year Strategy for the National Landscape Conservation System. Perhaps more importantly, if BLM decides to disregard its laws, policies and science, the agency will be moving toward a troubling precedent that prioritizes potentially harmful uses above conservation and protection.

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Katie Meehan

Issue Excerpt Text: BLM’s current analysis in the Proposed RMP fails to consider any of the potential negative impacts from opening portions of the monument to target shooting. As such, the agencies’ decision to allow widespread dispersed recreational target shooting throughout the monument is arbitrary and capricious and in violation of NEPA.

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Katie Meehan

Issue Excerpt Text: As highlighted earlier in our protest, BLM and USFS fail to adequately consider impacts to allowing widespread dispersed recreational target shooting throughout the monument. Prior to opening the monument to target shooting, BLM must conduct a thorough analysis using the best available science to analyze impacts to monument resources, objects, and values. This includes, but is not limited to, taking a hard look at impacts to public safety, noise, disturbance of wildlife, contamination of soil, destruction of cultural and ecological values, and wildfire risks.

Summary:

The BLM and USFS failed to adequately analyze the impacts of recreational target shooting on monument resources, objects, and values.

Response:

The effects analysis must demonstrate that the BLM took a “hard look” at the impacts of the action (BLM NEPA Handbook, H-1790-1, 6.8.1.2, *Analyzing Effects*). The CEQ regulations specify that the environmental information made available to public officials and citizens before decisions are made must be of “high quality” (40 CFR 1500.1(b)). A “hard look” is a reasoned analysis containing quantitative or detailed qualitative information. (BLM NEPA Handbook, H-1790-1, 6.8.1.2 *Analyzing Effects*). The BLM must use information of high quality and scientific integrity in its NEPA analysis, including information provided as part of the public involvement (40 CFR 1500.1(b) and 1502.24). NEPA documents are to be analytic, rather than encyclopedic (40 CFR 1500.4(b) and 1502.2(a)).

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the BCNM PRMP/FEIS.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

As the decisions under consideration by the BLM are programmatic in nature and generally would not directly result in on-the-ground actions, the scope of the analysis was conducted at a regional, programmatic level. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Although the BCNM PRMP/FEIS analyzed a range of alternatives that would prohibit recreational dispersed target shooting in the BCNM to varying degrees, none of the action alternatives would open up the monument to widespread recreational target shooting. The BLM acknowledges that under current management (the No Action Alternative), target shooting is allowed within the boundary of the National Monument (Record 306 of the BCNM PRMP/FEIS, p. 34). Discharge of firearms is prohibited in and within 150 yards of all developed recreation sites and areas per 43 CFR 8365.2-5(a) and 36 CFR 261.10(d). State and local laws and ordinances regarding the use of firearms or other weapons also apply per 43 CFR 8365.1-7(c) (BCNM PRMP/FEIS, p. 34). The BCNM PRMP/FEIS acknowledges the potential impacts from recreational target shooting on natural soundscapes (p. 99), wildlife (p. 113), and recreation (p. 121). The analysis of impacts appropriately assumes that, based on current use patterns, concentrated target shooting is not likely to occur within the BCNM, nor is it identified as a threat to monument objects and values; instead, it is expected to occur at the cooperatively managed Chaffee County and CPW shooting range located outside on the BCNM on U.S. Highway 285 between Salida and Buena Vista (BCNM PRMP/FEIS, p. 119). The BLM and USFS would monitor visitor use patterns and trends annually as part of plan monitoring (BCNM PRMP/FEIS Appendix K), Recreation Management Information System updates, and the Forest Monitoring Plan, respectively, to minimize unauthorized impacts (e.g. damage to resources and facilities, impacts to monument ROVs) from recreational target shooting (BCNM PRMP/FEIS, p. K-9, -10, and -13).

The BLM and USFS complied with NEPA’s requirement to analyze the environmental consequences BCNM resources in the BCNM PRMP/FEIS. Accordingly, this protest is denied.

Unmanned Drones – Consistency with Federal Aviation Administration Regulations

Patrick McKay Individual

Issue Excerpt Text: Where other land management agencies, including municipal park departments, have tried to prohibit overflight of parks by UAS operated from outside park property, courts have ruled such provisions invalid and preempted by the FAA’s exclusive jurisdiction over the flight of aircraft in US airspace. See *Singer v. City of Newton*, 284 F. Supp. 3d 125 - Dist. Court, D. Massachusetts 2017. While the BLM and USFS have full jurisdiction to restrict the operation of unmanned aircraft from lands within Brown’s Canyon National Monument, they do not have authority to restrict UAS operations above it. As currently written, a UAS operator flying from private land or federal or state lands fully outside the Browns Canyon National Monument would be prohibited from flying over the Arkansas River corridor, even if this flight was fully in compliance with all FAA regulations. This prohibition infringes on the FAA’s exclusive jurisdiction over US airspace and is invalid.

Patrick McKay Individual

Issue Excerpt Text: To the extent that the Browns Canyon National Monument Management Plan purports to restrict the operation of UAS flown above the land or waters of the Monument rather than from them, the BLM and USFS lack the requisite authority to do so. Only the Federal Aviation Administration (FAA) has the authority to regulate airspace or where an aircraft (which includes

unmanned aircraft) may be flown. Land management agencies such as the BLM, USFS, or National Park Service only have the authority to regulate the actions of unmanned aircraft operators who are physically present on land controlled by the agency. As such, land management agencies can only regulate takeoffs and landings of unmanned aircraft that occur on their property, and not overflight by unmanned aircraft that are operated from private or public lands outside of their jurisdiction.

Summary:

The BCNM PRMP/FEIS (BLM 2020) improperly applies management restricting the operation of unmanned aircraft above the BCNM and infringes on the Federal Aviation Administration’s (FAA) jurisdiction over U.S. airspace.

Response:

The BCNM PRMP/FEIS acknowledges that users of Unmanned Aircraft Systems (UASs) are required to adhere to all FAA regulations and Colorado statutes regulating drone use (14 CFR Part 107; Code of Colorado Regulations 406-0, Article IV) at all times and regardless of location (BCNM PRMP/FEIS, p. 5). Record 353 (UASs) of the BCNM PRMP/FEIS (p. 44) prohibits casual use landing and takeoff of UASs in the following areas of the BCNM:

- BLM Wilderness Study Areas (WSAs)
- Developed recreation areas
- CPW owned/leased lands and above the river corridor within the AHRA, except as authorized by an AHRA Special Activity Agreement/Permit or BLM/ USFS authorization

Use of UASs for administrative use, permitted use, safety, or special activity use would be analyzed on a case-by-case basis. The Lands and Realty Environmental Consequences section reflects this management action, which does not specifically prohibit the use of UASs in airspace above the BCNM (BCNM PRMP/FEIS, pp. 132–133). In accordance with CPW regulations (Chapter P-7, Article I, #708 Special Activities Requiring Permits), the use of drones is a restricted activity prohibited without advance written approval on a case-by-case basis by the Park Manager. Therefore, the BCNM PRMP/FEIS does not improperly restrict the use of unmanned aircraft above the BCNM. Accordingly, this protest is denied.

References

- Bureau of Land Management (BLM) and U.S. Forest Service (USFS). 2020. *Browns Canyon National Monument Proposed Resource Management Plan and Final Environmental Impact Statement*. BLM Royal Gorge Field Office and U.S. Forest Service Pike and San Isabel National Forests. April. Available: <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=102756>. Accessed May 27, 2020.
- . 2018. *Browns Canyon National Monument Management Plan – Environmental Impact Statement Planning Assessment*. February. Available: https://eplanning.blm.gov/epl-front-office/projects/lup/69924/144353/177911/BLM-BCNM-MP-EIS-FINAL_PLANNING_ASSESSMENT_clean_wAppendices_180221.pdf. Accessed May 28, 2020.
- Department of Interior (DOI). 2019. Secretarial Order No. 3376 – Increasing Recreational Opportunities through the use of Electric Bikes. August. Available: https://www.doi.gov/sites/doi.gov/files/elips/documents/so_3376_-_increasing_recreational_opportunities_through_the_use_of_electric_bikes_-508_0.pdf. Accessed May 28, 2020.
- Greubel, R. A., J. E. Pfertsh, C. A. Reed, M. J. Prouty, S. A. Millward, J. Omvig, J. Mullen, M. J. Landt, and J. C. Horn. 2017. *Synthetic Cultural Resource Overview of the Bureau of Land Management’s Royal Gorge Field Office, Eastern Colorado*. Cañon City, CO: U.S. Department of the Interior, Bureau of Land Management.