



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

**Proposed Eastern Colorado
Resource Management Plan
and Environmental Impact
Statement**

November 2023

This page intentionally left blank.

Contents

Acronyms	ii
Introduction	1
Protesting Party Index	2
Air Quality – Clean Air Act	3
Geography of Fluid Mineral Leasing Closures	9
Range of Alternatives – No Leasing Alternative.....	10
Range of Alternatives – New Alternative.....	15
Wild and Scenic Rivers	16

Acronyms

Term	Definition
AQRV	air quality–related value
BLM	Bureau of Land Management
CAA	Clean Air Act
CARMMS	Colorado Air Resources Management Modeling Study
CARPP	Comprehensive Air Resource Protection Protocol
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
DEIS	draft environmental impact statement
DM/NFR	Denver Metro/North Front Range
ECFO	Eastern Colorado Field Office
ECRMP	Eastern Colorado Resource Management Plan
EIS	Environmental Impact Statement
FEIS	Final Environmental Impact Statement
FLPMA	Federal Land Policy and Management Act
GHG	greenhouse gas
IPCC	Intergovernmental Panel on Climate Change
NAA	non-attainment area
NAAQS	National Ambient Air Quality Standards
National System	National Wild and Scenic Rivers System
NEPA	National Environmental Policy Act
NO_x	nitrogen oxides
NSR	new source review
ORV	outstandingly remarkable value
PRMP	Proposed Eastern Colorado Resource Management Plan
RFD	reasonably foreseeable development
RMNP	Rocky Mountain National Park
RMP	resource management plan
SEIS	supplemental environmental impact statement
SIP	state implementation plan
U.S.C.	U.S. Code
VOC	volatile organic compound
WSR	Wild and Scenic River
WSRA	Wild and Scenic Rivers Act

Introduction

The Bureau of Land Management (BLM) Royal George Field Office released the Proposed Eastern Colorado Resource Management Plan (PRMP) and Environmental Impact Statement (EIS) on July 8, 2023. The BLM received five protest letter submissions during the subsequent 30-day protest period.

The planning regulations at 43 Code of Federal Regulations (CFR) 1610.5-2 outline the requirements for filing a valid protest. The BLM evaluated all protest letters to determine which protest letters were complete and timely, and which persons have standing to protest. All five unique letters received met these criteria. No letters were dismissed from consideration due to lack of standing. Four of the letters had valid protest issues. The BLM documented the response to the valid protest issues in this protest resolution report. The protest decision was recorded in writing along with the reasons for the decision in this protest resolution report.

After careful review of the report by the BLM's Assistant Director for Resources and Planning, the Assistant Director concluded that the BLM Colorado State Director followed the applicable laws, regulations, and policies and considered all relevant resource information and public input. The Assistant Director addressed the protests and issued a Protest Resolution Report to protesting parties and posted the report on the BLM's website; no changes to the Eastern Colorado PRMP/EIS were necessary. The decision was sent to the protesting parties by certified mail, return receipt requested. Resolution of protests is delegated to the BLM Assistant Director for Resources and Planning, whose decision on the protest is the final decision of the U.S. Department of the Interior (43 CFR 1610.5-2(b)) consistent with the BLM Delegation of Authority Manual (MS-1203 Delegation of Authority).

The report is divided into sections each with a topic heading, excerpts from individual protest letters, a summary statement of the issues or concerns raised by the protesting parties, and the BLM's response to the protests.

Protesting Party Index

Letter Number	Protester	Organization	Determination
PP-CO-EC-EIS-23-01	Pauline Adams	Citizens for Huerfano County	Denied
	Sandy Borthick	Citizens for Huerfano County	Denied
	Jeff Bridges	Citizens for Huerfano County	Denied
	Joe Edes	Citizens for Huerfano County	Denied
	Keli (Stephanie) Kringel	Citizens for Huerfano County	Denied
	Amos Mace	Citizens for Huerfano County	Denied
PP-CO-EC-EIS-23-02	Robin Cooley	Earthjustice	Denied
	Tom Delehanty	Earthjustice	Denied
	Caitlin Miller	Earthjustice	Denied
	Tracy Coppola	National Parks Conservation Association	Denied
	Jim Ramey	The Wilderness Society	Denied
	James Mowdy	The Wilderness Society	Denied
PP-CO-EC-EIS-23-03	Jeremy Nichols	WildEarth Guardians	Denied
	Allison Henderson	Center for Biological Diversity	Denied
PP-CO-EC-EIS-23-04	Melissa McCoy	U.S. Environmental Protection Agency Region 8	Dismissed. Per communication from the U.S. Environmental Protection Agency, this letter was not intended to be a protest letter and is not considered further in this report.
PP-CO-EC-EIS-23-05	Kestrel Kunz	American Whitewater	Denied

Air Quality – Clean Air Act

The Wilderness Society and Earthjustice

James Mowdy and Caitlin Miller

Issue Excerpt Text: Under the Clean Air Act, federal agencies must not “engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to a [state implementation plan (SIP) designed to ensure compliance with the National Ambient Air Quality Standards (NAAQS)].”⁹¹ An action conforms to a state implementation plan if it does not “cause or contribute to any new violation of any standard in any area; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard [or any required interim emission reductions or other milestones in any area.]”⁹² BLM’s own CARMMS analysis shows that, under any of the oil and gas development scenarios considered (low, medium, or high), projected federal oil and gas development contributes to ozone violations in the NAA.⁹³ Indeed, BLM concedes that oil and gas development will increase the severity of existing ozone NAAQS violations in the DM/NFR.⁹⁴ Even so, BLM refuses to conduct a federal conformity analysis for the ECRMP. In fact, at every stage of the development process-RMP, leasing, and permitting-BLM offers excuses for why a conformity analysis is unnecessary under the General Conformity Rule. As a result, BLM refuses to mitigate its contributions to the ozone pollution problem in the NAA,⁹⁵ defeating the purpose of the Clean Air Act’s conformity analysis.

The Wilderness Society and Earthjustice

James Mowdy and Caitlin Miller

Issue Excerpt Text: In the final ECRMP, BLM’s primary argument is that a conformity analysis is not required because future emissions are not “reasonably foreseeable.”⁹⁶ Although BLM recognizes that it has modeled projected emissions under the ECRMP through CARMMS, it claims that the CARMMS modeling is not sufficient for a conformity analysis because such an analysis “can result in specific regulatory consequences (e.g., potential commitments by the state air regulatory agency to revise the SIP to include the federal emissions).”⁹⁷ But that is the point. BLM is using the General Conformity Rule to avoid any specific regulatory consequences for its contributions to ozone NAAQS violations in the NAA. BLM’s CARMMS modeling is based on the 2018 RFD in the ECRMP planning area, and the data show that per-year emissions from new federal oil and gas development far exceed the relevant emissions threshold under every alternative.⁹⁸ Moreover, the modeling shows that these emissions will make the nonattainment problem worse. BLM must address these emissions through a conformity analysis.⁹⁹ Rather than broadly considering the impacts of all federal oil and gas development projected for the planning area, BLM claims that it will conduct the analysis later.¹⁰⁰ In doing so, however, BLM avoids looking at the total impacts of oil and gas development in the planning area. Moreover, as history has shown, BLM never completes the required analysis. In recent lease sales, BLM relies on numerous rationales for why a conformity analysis is not required, including claiming that the emissions still are not reasonably foreseeable.¹⁰¹ And when BLM gets to the permitting stage and project-specific emissions estimates are available, BLM either ignores conformity altogether or finds that the expected emissions fall below the thresholds for a conformity analysis set forth in the General Conformity Rule.¹⁰² Through this shell game, BLM defeats the letter and purpose of the conformity requirement.

The Wilderness Society and Earthjustice

James Mowdy and Caitlin Miller

Issue Excerpt Text: Additionally, BLM ignores the fact that the State of Colorado also is failing to account for the cumulative impacts of oil and gas development. In the final ECRMP, BLM recognizes that stationary oil and gas sources that undergo minor source permitting by the State are exempt from the general conformity requirements based on the assumption that this equipment “would already be

analyzed for their potential impacts on ozone pollution.”¹⁰³ This includes significant emission sources, such as tanks, separators, and dehydration units. But BLM fails to acknowledge that, pursuant to its modeling guidance, the State does not conduct ozone modeling for minor sources.¹⁰⁴ However, as BLM’s own modeling demonstrates, even if an individual well or well pad’s emissions would be relatively small, the collective impact from cumulative BLM-permitted development under the ECRMP contributes to nonattainment. These collective impacts are never considered by the State or BLM.

The Wilderness Society and Earthjustice
James Mowdy and Caitlin Miller

Issue Excerpt Text: Nor can BLM point to any proposed mitigation to claim it has met its FLPMA obligation.¹²³ First, BLM explicitly states that no mitigation is required through the RMP: “Based on the information presented in this air quality . . . impacts section, no additional emissions mitigation beyond that required by state and federal regulations is warranted at this time.”¹²⁴ Thus, to the extent BLM claims it provided for compliance with the NAAQS by requiring mitigation in the RMP, its analysis is, at the very least, internally inconsistent and therefore arbitrary.¹²⁵ Second, BLM’s paltry references to mitigation in the RMP through measures like lease notices and conditions of approval are not sufficient to satisfy its FLPMA obligation and, in any case, are illusory. BLM merely states that it will conduct more analysis at future project-level stages and potentially require mitigation as needed at that time.¹²⁶ But analysis is not mitigation. And vague promises to address mitigation at some unspecified time in the future also are not actual mitigation. The closest that BLM comes to addressing mitigation measures in the RMP is in its references to the Comprehensive Air Resource Protection Protocol (CARPP).¹²⁷ Even still, BLM makes only passing references to CARPP. The agency does not explain what measures from CARPP apply here, how BLM would apply those measures to the impacts identified in the FEIS, or whether those measures would be effective at mitigating impacts from additional ozone pollution caused by BLM-permitted development.

The Wilderness Society and Earthjustice
James Mowdy and Caitlin Miller

Issue Excerpt Text: BLM also cannot kick its obligation to provide for compliance down the road to the project specific stage.¹³³ Congress specifically imposed that requirement on BLM at the “development and revision of land use plan[]” stage-i.e., the RMP stage.¹³⁴ The RMP stage is also the appropriate time to address compliance with air quality regulations, like the ozone NAAQS. As explained in CARPP, “[a]ppropriate air resources protection requires the BLM to manage its authorized activities and actions at broad spatial and temporal scales.”¹³⁵ The RMP stage provides the best “broad spatial and temporal scale” for just such action. Nor can BLM skirt its FLPMA obligation by pointing to other agencies or statutes. Congress specifically imposed the requirement to provide for compliance with the NAAQS on BLM under FLPMA.¹³⁶ BLM’s obligations under that statute are separate and apart from any obligations that it, the State, or EPA may have under the Clean Air Act. Otherwise, FLPMA’s requirement to provide for compliance with federal and state air quality laws would be superfluous.¹³⁷ Furthermore, BLM is well aware that the Clean Air Act’s conformity provision does not account for or result in mitigation for emissions from oil and gas sources that are individually relatively small but collectively significant, as discussed above. As a result, BLM’s compliance with its independent FLPMA obligation is even more critical. But BLM has not met its legal requirement to provide for compliance with the NAAQS, violating FLPMA.

The Wilderness Society and Earthjustice
James Mowdy and Caitlin Miller

Issue Excerpt Text: Even though BLM admits that projected future oil and gas development will contribute to ozone formation at RMNP, the agency concludes that ozone pollution impacts to the Park would be insignificant because they would be “well below the applicable PSD increments.”²¹⁶

BLM similarly concludes that nitrogen deposition resulting from future development is “less than the high CARMMS scenario [so] none of the alternatives are expected to have a significant impact on deposition at any Class I or sensitive Class II area.”²¹⁷ However, BLM ignores that RMNP lies within the boundaries of the ozone NAA and already has severe nitrogen deposition problems. As a result, BLM fails to take a hard look at the air quality and AQRV impacts of BLM-permitted development on RMNP, in violation of NEPA.

The Wilderness Society and Earthjustice
James Mowdy and Caitlin Miller

Issue Excerpt Text: Nor can BLM kick its analysis of impacts on RMNP down the road to the project-specific approval stage for the same reasons discussed above. NEPA’s effectiveness depends on ensuring that the requisite analysis takes place “at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.”²²⁷ As explained above, the RMP stage is the appropriate stage to assess air quality and AQRV impacts and identify potential mitigation measures to address those impacts given the cumulative nature of air pollution. BLM also relies on an RFD and predicts the air pollution that would result from BLM-permitted development under the ECRMP. Consequently, those emissions are reasonably foreseeable, and BLM must analyze their impacts on RMNP.²²⁸ Moreover, as noted above, BLM generally fails to do this analysis at the project-specific approval stage.

Center for Biological Diversity and WildEarth Guardians
Allison Henderson and Jeremy Nichols

Issue Excerpt Text: Although BLM acknowledges that all GHGs contribute incrementally to the climate change phenomenon, BLM persists in comparing the estimated emissions associated with the proposed action to the total global, national, state, and other categories of GHG emissions to support its conclusion that GHG emissions from the proposed action don’t really matter one way or the other. See, e.g., FEIS at 2-2. BLM’s attempt to minimize the estimated GHG emissions from the proposed actions in this way, by swamping those emissions in larger aggregations of emissions, is precisely how the 2016 CEQ GHG Guidance and 2023 Interim CEQ Guidance directed federal agencies not to limit assessments of the significance of GHG emissions. 10 Federal Courts, including, most recently, the Tenth Circuit, agree. See, e.g., *Diné CARE v. Haaland*, 59 F.4th at 1043-1044; see also *350 Montana v. Haaland*, 50 F.4th 1254, 1266-1267 (9th Cir. 2022). This method of analysis doesn’t reveal anything beyond the nature of the climate change challenge itself.

Center for Biological Diversity and WildEarth Guardians
Allison Henderson and Jeremy Nichols

Issue Excerpt Text: It is unclear why the BLM did not analyze and assess the impacts of increased air pollution from oil and gas development to public health. The BLM may believe that so long as ambient air quality is in compliance with ambient air quality standards, that public health is protected. However, there are no ambient air quality standards for a number of very harmful air pollutants, including individual hazardous air pollutants like benzene. The BLM may also believe that public health impacts related to air pollution are not reasonably foreseeable. However, the BLM was not only able to project emissions associated with the proposed RMP, but in its 2012 reasonably foreseeable development scenario for oil and gas and the 2018 addendum to the reasonably foreseeable development scenario, the agency was able to project future oil and gas development and identify specific oil and gas development potential throughout the RMP area. The BLM clearly has sufficient information to analyze and assess public health impacts associated with air pollution from oil and gas development in the RMP area. The agency’s failure to analyze and assess these impacts violates NEPA.

***Center for Biological Diversity and WildEarth Guardians
Allison Henderson and Jeremy Nichols***

Issue Excerpt Text: Here, despite BLM’s arguments to the contrary, all of the criteria triggering the need to complete a conformity analysis are met. Ozone levels continue to exceed federal standards by wide margins, making any pollution from BLM lands and minerals a clear contribution to exceedances and a delay to timely attainment.¹⁰⁴ What’s more, BLM’s approval of the RMP will result in additional emissions of ozone precursors which will add to existing pollution. Under the proposed RMP, emissions of VOCs and NO_x associated with reasonably foreseeable oil and gas development are both projected to increase. Under the proposed RMP, emissions of VOCs from federal oil and gas development are projected to be 1,681 tons per year and emissions of NO_x are projected to be 401 tons per year. As noted above, indirect emissions are defined as those emissions that are 1) caused by the federal action, 2) originate in the same nonattainment area, 3) but may occur later in time or distance, 4) are reasonably foreseeable, and 5) which the Federal agency can practically control and will maintain control over. 40 C.F.R. § 93.152. Here, all of these criteria are met.

***Center for Biological Diversity and WildEarth Guardians
Allison Henderson and Jeremy Nichols***

Issue Excerpt Text: Finally, BLM hints that certain emissions sources will be subject to exemption under the New Source Review provision. See FEIS at B-18. But, BLM misreads this narrow section which exempts only “[t]he portion of an action that includes major or minor new or modified stationary sources that require a permit under the new source review (NSR) program (Section 110(a)(2)(c) and Section 173 of the Act) or the prevention of significant deterioration program (title I, part C of the Act).” 40 C.F.R. § 93.153(d)(1). This exemption does not cover nonstationary sources such as drill rigs, fugitive emissions, well completion emissions, workover emissions, and well blowdowns—all of which are significant sources of emissions. BLM cannot prematurely assume that application of this provision will bring levels below de minimis levels. BLM has an obligation under the Clean Air Act to complete a conformity analysis before authorizing the proposed RMP. Unfortunately, BLM continues to fail to do so here, despite having all the necessary information before it. BLM’s inaction cannot stand and as a result, the agency is required to postpone any approval of its RMP unless and until it completes the required conformity analysis.

Summary:

The BLM’s analysis of air quality across alternatives is inadequate and in violation of the Clean Air Act (CAA), the National Environmental Policy Act (NEPA), and the Federal Land Policy and Management Act (FLPMA). FLPMA regulations require that each land use authorization comply with Federal and State air quality standards set under the CAA. The BLM calculated oil and gas emissions that could increase the severity of existing ozone NAAQS and nitrogen critical load violations in violation of the CAA and FLPMA. The BLM also violates the CAA’s General Conformity Rule by refusing to conduct a Federal conformity analysis. Moreover, the BLM failed to consider public health impacts, cumulative impacts, impacts on public lands such as Rocky Mountain National Park, and mitigation measures for these impacts in violation of NEPA. Furthermore, the BLM violated the 2016 Council on Environmental Quality (CEQ) Greenhouse Gas (GHG) Guidance and 2023 Interim CEQ Guidance, which directed Federal agencies not to limit assessments of the significance of GHG emissions.

Response:

FLPMA requires that when preparing land use plans, the BLM must “provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementations plans,” such as the CAA (FLPMA Section 202(c)(8)). The State of Colorado and the United States Environmental Protection Agency have primacy with regard to implementation of the CAA. Under the CAA, the State of Colorado and the United States Environmental Protection Agency regulate the emission of air pollutants to protect air quality.

The Eastern Colorado PRMP/EIS does not actually authorize any on-the-ground action that would result in emissions of air pollutants. All future Federal actions in conformance with the management in the Eastern Colorado PRMP/EIS would be subject to additional analysis of possible air effects before approval. When a project is proposed with potential air quality impacts, the BLM would conduct a site-specific analysis. Per 40 CFR 93.153(b), if the net increase in reasonably foreseeable direct and indirect emissions exceeds any of the established thresholds, a formal conformity determination would be required. No development of a new or modified source of air pollutants would be allowed to proceed unless it could be demonstrated that the proposed source or facility will not prevent attainment or maintenance of any State or Federal ambient air quality standard.

The BLM analyzed the potential impacts on air quality from reasonably foreseeable actions under the Eastern Colorado PRMP/EIS. As stated in 40 CFR 93.153(c), the conformity determination requirements do not apply to Federal actions that would result in no emission increase or an increase in emissions that is clearly *de minimis*, or where the emissions are not reasonably foreseeable. Reasonably foreseeable emissions are “projected future direct and indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known, and the emissions are quantifiable as described and documented by the Federal agency based on its own information and after reviewing any information presented to the Federal agency” (40 CFR 93.152). While the BLM makes general estimates of potential emissions resulting from future activities in the planning area in order to compare alternatives and assess significance for NEPA purposes, those estimates reflect considerable uncertainty (Eastern Colorado PRMP/EIS, Appendix B, pp. B-68–B-74). The locations, timing, and amounts of indirect emissions that may result in the future if parcels are leased and developed cannot be determined with sufficient precision to support a conformity determination at this time, and therefore there are no reasonably foreseeable projected direct or indirect emissions. For these reasons, the management alternatives considered in the Eastern Colorado PRMP/EIS do not require additional analysis at this time.

The Eastern Colorado PRMP/EIS relied on the *Colorado Air Resources Management Modeling Study* (CARMMS) for emission data (inventories), predicted future pollutant concentrations, and other air quality-related values for oil and gas activities (Eastern Colorado PRMP/EIS, Appendix B, p. B-16). The CARMMS platform represents the state-of-the-science basis for estimating potential air resource impacts and the emission comparison approach provides a sound basis for comparing current air quality emissions with those expected to be produced from future actions anticipated under the Eastern Colorado PRMP/EIS. This approach was selected because of uncertainties about the number, nature, and specific location of future sources and activities. Based on this analysis, the BLM does not expect emissions related to future Federal actions anticipated under the Eastern Colorado PRMP/EIS to prevent attainment or maintenance of any State or Federal ambient air quality standard.

For assessing cumulative impacts on GHGs, the Eastern Colorado PRMP/EIS relied on the decision scope emissions as a proxy for describing the modeled climate impacts associated with various global emission scenarios. Proxy emissions are estimated by projecting all of the reasonably foreseeable direct and indirect GHGs associated with the CARMMS scenarios (low and high) forward to two specific future years. This approach was adopted specifically because there are currently no climate analysis tools or techniques that lend themselves to describing any actual climate or earth system

response (such as changes to sea level, average surface temperatures, or regional precipitation rates) that would be attributable to the quantized emissions associated with any single action, decision, or scope (Eastern Colorado PRMP/EIS, Appendix B, p. B-84). The percentage of global average temperature change resulting from the total quantity of carbon dioxide equivalent emissions was also calculated using the Model for the Assessment of Greenhouse Gas Induced Climate Change. The global climate change model has been used extensively by the Intergovernmental Panel on Climate Change (IPCC) for key scientific publications, including the Global Warming of 1.5°C Special Report (Eastern Colorado PRMP/EIS, Appendix B, p. B-88). These approaches represent the state-of-the-science basis for estimating potential climate impacts. Moreover, emissions specific to oil and gas development are overestimates when compared to emissions for the IPCC scenario used, because they do not account for the additional legislation, regulation, and policy measures that would be needed to align with the IPCC expectation. Additionally, the potential Federal GHG emissions are calculated assuming that all produced oil and gas is combusted. The reality is that about 7 percent of fossil fuels are consumed for non-combustion use in the U.S. (Eastern Colorado PRMP/EIS, Appendix B, p. B-73).

Additionally, NEPA requires the BLM to include a discussion of measures that may mitigate adverse environmental impacts (40 CFR 1502.14(f), 40 CFR 1502.16(h)). Potential forms of mitigation include: (1) avoiding the impact altogether by not taking a certain action or parts of an action; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or (5) compensating for the impact by replacing or providing substitute resources or environments (40 CFR 1508.20).

The Eastern Colorado PRMP/EIS analyzes and adopts mitigation measures that avoid some potential future impacts altogether by closing public lands to certain uses, and minimizes other potential future impacts by restricting certain uses on the public lands. At the resource management plan (RMP) level, it is not always appropriate to analyze specific mitigation measures that rectify impacts, reduce impacts over time, or compensate for impacts, because the approval of an RMP does not directly result in any on-the-ground impacts. However, Appendix C of the Eastern Colorado PRMP/EIS discusses mitigation, best management practices and design criteria, standard operating procedures, adaptive management, reclamation, and monitoring procedures the BLM will follow to meet both specific program direction and overall management goals. Monitoring plans specific to air quality NAAQS and air quality-related values are provided in Tables C.3 and C.4 (Eastern Colorado PRMP/EIS, Appendix C, pp. C-15–C-16). Monitoring plans for mineral resources are also provided in Section C.7.18 (Eastern Colorado PRMP/EIS, Appendix C, pp. C-53–C-56). Appendix G of the Eastern Colorado PRMP/EIS also discusses specific restrictions applicable to fluid mineral leasing. The BLM would also look at all appropriate mitigation measures during the decision-making process for future site-specific actions in the planning area.

If parcels are leased and developed in the future, an important concern would be impacts from oil and gas development on air quality and human health. It is likely there would be project design features such as equipment sets, tanks, separators, compression engines, pump jacks, dehydration units, and others that will require a new source review or permit by the Colorado Department of Public Health and Environment prior to construction. Greater than 80 percent of emissions occur with midstream and end-use (downstream) sources, over which the BLM has no direct authority; local, State, and other non-BLM Federal agencies have jurisdiction over these emissions sources. Local, State, and other Federal agencies may also have authority over upstream oil and gas emissions sources. Additional mitigation measures may be identified through project-specific analysis of new proposals. The BLM may require stipulations as conditions of lease issuance (43 CFR 3101.1-3) and the BLM

may further require conditions of approval before issuing Applications for Permit to Drill (43 CFR 3101.1-2).

The approval of the Eastern Colorado PRMP/EIS does not violate the CAA or FLPMA and the analysis relied on high-quality information and the best available data. In compliance with NEPA, the Eastern Colorado PRMP/EIS also includes a discussion of measures that may mitigate adverse environmental impacts to the extent appropriate for an RMP. Accordingly, this protest is denied.

Geography of Fluid Mineral Leasing Closures

Citizens for Huerfano County

Pauline Adams

Issue Excerpt Text: The area closed to fluid mineral leasing in the ECRMP is missing places where (BLM-administered federal minerals and) “dikes of the Spanish Peaks area” are. This is visible in the storymap on the planning site Fluid Minerals Leasing Management layer “Closed to Fluid Minerals Leasing” category, compared to either (a) the dikes visible on the geological maps that we provided (AT1_B, AT2_A, AT2_B included in my scoping comments (AT1) and 2019 draft comments (AT2)) or (b) the map we supplied to define the dikes of the Spanish peaks area (AT10A-AT10B submitted for the record with AT2, AT2 p.7) Attachment #11 has a few examples (AT11). The need to define/map the dikes of the Spanish Peaks area was raised (AT2 “Need to define ‘the Spanish Peaks area’, AT2 p.11, AT4 p.2, AT6 p.1) as was the issue with the maps being incorrect (AT2 figs B.3-4). The “polygon” used by BLM for the Dikes of the Spanish Peaks Area (AT12A-AT12B) missed dike areas that are in the submitted geologic maps, even the area where the most trouble occurred in our county (River Ridge) (AT1 pp.17-22, AT6). No hydrogeological study has been done (requested in AT1- AT6, AT8), nor has BLM done a NEPA analysis on the issue (AT2, AT4, AT6). The polygon for the dikes of the Spanish Peaks area should be corrected/updated to match the given geologic maps and published as part of the ECRMP, consistent with Water AU-8’s wording and as per prior requests. We recommend using AT10b for this polygon (the proposed ECRMP’s “Evaluation of Potential ACECs Relevance and Importance Criteria FINAL”, p.22) which was based on the geologic maps (AT1_B, AT2_A, AT2_B, AT10A). Alternatively, we propose AT13 be used, the white lines of which extend the magenta-delineated polygon in AT12B to better include dikes in the area, and ask that if AT13 is used, you also include the areas within AT10b (1) north of AT13 (Huerfano Park) and (2) south of AT13 (Las Animas) (modify rather than discard if necessary). For dike areas that you do not include in the closure, we request another safeguard, such as a lease notice or stipulation, be applied to prevent leasing within hydraulic fracture reach of the fractured areas surrounding dikes without proper analysis to protect water.

Summary:

The BLM failed to accurately identify and include the full “dikes of the Spanish Peaks area” in the designated area closed to fluid mineral leasing in the Eastern Colorado PRMP/EIS, as evidenced by discrepancies between the BLM’s mapping and the provided geological maps. Also, the BLM has not conducted a hydrogeological study of the area, which has previously been suggested by commenters.

Response:

Section 201(a) of FLPMA directs that the BLM “prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values” and that “this inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values.”

Section 202(c)(4) of FLPMA directs that “in the development and revision of land use plans, the Secretary shall...rely, to the extent it is available, on the inventory of the public lands, their resources, and other values.” The BLM solicited inventory data from the public during pre-planning, public scoping, preliminary alternatives development, and after the release of the Eastern Colorado Draft RMP/EIS and considered all publicly submitted data during preparation of the Eastern Colorado PRMP/EIS (pp. 1–7), including data submitted for the dikes of the Spanish Peaks area. The public had the opportunity to comment on inventory data, to the extent that it was incorporated into the Eastern Colorado PRMP/EIS.

The BLM added text to the Eastern Colorado PRMP/EIS to clarify that the dikes of the Spanish Peaks area includes Mount Mestas and Silver Mountain (Eastern Colorado PRMP/EIS, Appendix A, p. A-17). Map K.13, Fluid Mineral Leasing Restrictions – Alternative D (Eastern Colorado PRMP/EIS, Appendix K, p. K-13), shows areas with fluid mineral leasing restrictions within the planning area on a geographic map. The dikes of the Spanish Peaks area would be closed to new fluid mineral leasing under the Eastern Colorado PRMP/EIS.

Conducting a hydrogeological study is outside the scope of the Eastern Colorado PRMP/EIS process. If a development proposal is submitted, site-specific analysis may require this type of study depending on the type of proposed development. The analysis in the Eastern Colorado PRMP/EIS provides sufficient detail to inform the decision-maker of the reasonable effects anticipated from planning for future development.

Therefore, the BLM adequately relied on inventory data during the planning process and appropriately considered public input and inventory data during the process. Accordingly, this protest is denied.

Range of Alternatives – No Leasing Alternative

Center for Biological Diversity and WildEarth Guardians Allison Henderson and Jeremy Nichols

Issue Excerpt Text: The United States committed in 2021 to reduce the nation’s greenhouse gas emissions 50-52% by 2030.¹² President Biden also has recognized the need for action, stating that the “United States and the world face a profound climate crisis. We have a narrow moment to pursue action . . . in order to avoid the most catastrophic impacts of that crisis.” Exec. Order No. 14008, Tackling the Climate Crisis at Home and Abroad, 86 Fed. Reg. 7,619, 7,619 (Jan. 27, 2021). Yet with this proposed RMP and the FEIS, BLM is continuing with business as usual when it comes to fossil fuel development on federal lands. The “no leasing” alternative is the only viable option that remains to BLM on both scientific and legal grounds, which requires the agency to avoid unnecessary or undue degradation in its management of public lands. 43 U.S.C § 1732(b).

Center for Biological Diversity and WildEarth Guardians Allison Henderson and Jeremy Nichols

Issue Excerpt Text: BLM’s rationale for not analyzing a no leasing alternative is arbitrary in light of the climate crisis and it violates NEPA. BLM argues: Greenhouse gas ///(GHG)/// emissions and associated climate change impacts were considered as a potential resource conflict; however, ///the BLM’s analysis for the RMP suggests that potential GHG emissions for the alternative with the largest level of foreseeable new federal oil and gas development and production would result in almost negligible climate change impacts at national and global scales. Therefore, the full- closure/// alternatives would have substantially similar impacts to ///greenhouse gas emissions/// as those analyzed in detail. FEIS at 2-2. And: [G]iven the minimal contribution of federal mineral development to the overall impact of fluid mineral development across the planning area, an

alternative closing federal minerals throughout the entire planning area to new leasing would have a substantially similar effect on resources and uses analyzed under the action alternatives and, therefore, does not necessitate analysis of a separate alternative. FEIS at 2-3. Here, BLM’s failure to analyze a no-leasing alternative, which is itself a NEPA violation, is arbitrarily predicated on BLM’s failure to analyze the incremental contribution that more fossil fuel leasing will have on climate change, another NEPA violation.

Center for Biological Diversity and WildEarth Guardians

Allison Henderson and Jeremy Nichols

Issue Excerpt Text: The second factor in considering the reasonableness of alternatives is judged by the RMP’s purpose and need. BLM states “Closing the entire planning area to new fluid mineral leasing would be ineffective in meeting the BLM’s purpose and need as specified by the planning criteria for the RMP, specifically, facilitating oil and gas development and production in a manner that allows for environmentally sound exploration, development, and operations.” FEIS at 2-2. BLM cannot permissibly define the “purpose and need” of its plan revision so narrowly as to exclude not only a no-leasing alternative. Under FLPMA, BLM cannot structure a purpose and need that takes expanded fossil fuel leasing and development in the planning area as a foregone conclusion. Rather, the central purpose is to “provide broad-scale direction” in light of “current resource conditions, changes in circumstances . . . and new or revised national-level policy.” See *New Mexico ex rel. Richardson*, 565 F.3d at 710-11. The FEIS, by considering only action alternatives that continue to make federal fossil fuels in the planning area available for leasing fundamentally fails to meet BLM’s obligation to consider a reasonable range of alternatives.

Center for Biological Diversity and WildEarth Guardians

Allison Henderson and Jeremy Nichols

Issue Excerpt Text: Because of the clear scientific consensus that continued development of oil and gas resources is incompatible with a livable climate, BLM must, in order to comply with FLPMA, undertake an SEIS and therein analyze and select an alternative that prohibits new fossil fuel leasing and phases out production in timelines consistent with emissions curves necessary to avoid 1.5 C warming. Avoidance of GHG emissions to the greatest extent possible is required to satisfy BLM’s obligation to prevent unnecessary or undue degradation under FLPMA.

Center for Biological Diversity and WildEarth Guardians

Allison Henderson and Jeremy Nichols

Issue Excerpt Text: In addition, BLM must, to comply with the mandates of FLPMA, choose an alternative that does not cause undue degradation of water resources, both groundwater and surface water, likely to occur as a result of additional oil and gas development. FLPMA’s broad policy directives support this approach. For instance, FLPMA calls on BLM to manage public lands “in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values.”¹¹⁴ It also directs BLM to receive “fair market value” for the use of public lands.¹¹⁵ “Fair market value” is not defined in FLPMA, but BLM’s economic valuation handbook and previous working groups convened by the Department of the Interior indicate that “economic, environmental, and social considerations [should be considered] in determining the value of federal lands-including option value.”¹¹⁶ Because climate change, and thus all emissions of GHGs, create costs to be borne by society at large and by the BLM in particular in adapting its lands to the changing climate, the “fair market value” of oil and gas extraction activities should take carbon costs into consideration.

The Wilderness Society and Earthjustice

James Mowdy and Caitlin Miller

Issue Excerpt Text: Closing the NAA to new oil and gas leasing or providing for net-zero precursor emissions are consistent with: (1) FLPMA’s mandate to “provide for compliance” with the NAAQS, and (2) FLPMA’s “multiple use” mandate. These proposed alternatives preserve BLM’s ability to further develop federal oil and gas resources while addressing conflicts with air quality for areas already in ozone nonattainment, something that none of the other alternatives that BLM considered attempt to do. First, these alternatives are consistent with BLM’s statutory mandate to “provide for compliance” under FLPMA because they address the impact that projected future ozone formation from BLM-permitted oil and gas development would have on nonattainment with the ozone NAAQS.¹⁴⁷ As discussed above, BLM has failed to even address compliance with the NAAQS under any of its existing alternatives.¹⁴⁸ Second, the alternatives similarly further BLM’s “multiple-use” mandate under FLPMA because they fall well within BLM’s discretion in striking the appropriate balance between fluid mineral extraction and environmental protection.

The Wilderness Society and Earthjustice
James Mowdy and Caitlin Miller

Issue Excerpt Text: However, BLM does not provide any explanation for its failure to consider an alternative that would close the NAA to new oil and gas leasing. Nor does BLM consider any alternative that would reduce or eliminate its contributions to the ozone pollution problem in the NAA, such as a net-zero stipulation...Both proposed alternatives are practical because: (1) they still allow leasing and development in the planning area while addressing the resource conflict with air quality; and (2) the RMP is the most appropriate decision point for implementing these air quality protections. Closing the NAA to new oil and gas leasing would leave some of the planning area open to new development and the existing leases in the NAA unchanged. Alternatively, implementing a net-zero emissions stipulation for developers would allow for continued leasing in the NAA itself, while ensuring the protection of air quality in the NAA.

The Wilderness Society and Earthjustice
James Mowdy and Caitlin Miller

Issue Excerpt Text: FLPMA’s multiple-use mandate required BLM to consider a no-new-leasing and/or net-zero GHG alternative. The mandate requires, among other things, that BLM take “into account the long-term needs of future generations”; ensure that “public lands be managed in a manner that will protect the quality of . . . ecological, environmental, air and atmospheric, water resource values”; and ensure “harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment.”¹⁶¹ As described above, the effects of climate change are antithetical to these statutory duties.¹⁶² BLM was therefore required to consider avenues for reducing the severity of those effects.¹⁶³ Prohibiting new oil and gas leases and/or requiring net-zero GHG emissions would help accomplish that need by meaningfully reducing-on a percentage basis if not absolute basis- federally attributable GHG emissions. Such a reduction would help account for the long-term needs of the planning area, help protect the quality of ecological and other resources, and help prevent permanent impairment of the land and environment. BLM’s statutory duties under FLPMA therefore required consideration of these alternatives.

The Wilderness Society and Earthjustice
James Mowdy and Caitlin Miller

Issue Excerpt Text: An agency’s decision to reject a reasonable alternative must, like any agency decision, be rational, and rationally explained.¹⁷² BLM’s explanations here for declining to consider these reasonable alternatives were irrational. Regarding the net-zero proposal, BLM did not so much as mention the concept in the FEIS, much less explain why it did not consider it.¹⁷³ That wholesale omission renders the FEIS arbitrary and capricious.¹⁷⁴ Regarding the no-new-leasing proposal, BLM “considered but [did] not analyze[] in detail” an alternative closing all fluid minerals to new

leasing.¹⁷⁵ Its rationale for not considering that alternative in detail was that “potential GHG emissions for the alternative with the largest level of foreseeable new federal oil and gas development and production would result in almost negligible climate change impacts at national and global scales. Therefore, the full-closure alternatives would have substantially similar impacts to greenhouse gas emissions as those analyzed in detail.”¹⁷⁶ That rationale violates NEPA.

Summary:

The Eastern Colorado PRMP/EIS failed to consider alternatives that close the entire planning area to new fluid mineral leasing or provide for net-zero GHG emissions, thereby neglecting its obligation to consider a reasonable range of alternatives under NEPA and its multiple-use and sustained-yield mandate under FLPMA. By not considering these alternatives or providing adequate explanation, the BLM failed to adequately compare air quality emissions resulting from potential future fossil fuel leasing and development across different alternatives in the Eastern Colorado PRMP/EIS, omitting a comprehensive analysis of GHG emissions and the potential impacts on air quality and climate change.

Response:

When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives and, for alternatives that were eliminated from detailed study, to briefly discuss the reasons for their elimination (40 CFR 1502.14(a)). When there are potentially a large number of alternatives, the BLM may only analyze a reasonable number to cover the full spectrum of alternatives (BLM Handbook H-1790-1, Section 6.6.1, quoting Question 1b, CEQ, Forty Most Asked Questions Concerning CEQ’s NEPA Regulations, March 23, 1981).

The BLM must analyze a reasonable range of alternatives, but not every possible alternative to a proposed action. “In determining the alternatives to be considered, the emphasis is on what is ‘reasonable’...Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable” (BLM NEPA Handbook, H-1790-1, at p. 50, citing Question 2a, CEQ, Forty Most Asked Questions Concerning CEQ’s NEPA Regulations, March 23, 1981; see also 40 C.F.R. Section 1502.14).

Agencies are allowed to dismiss an alternative from detailed analysis (40 CFR 1502.14). The agency must briefly discuss the reasons for having dismissed the alternative from detailed analysis (40 CFR 1502.14). An alternative may be eliminated from detailed study if it is determined not to meet the proposed action’s purpose and need; it is determined to be unreasonable given the BLM mandates, policies, and programs; it is substantially similar in design to an alternative that is analyzed; its implementation is speculative or remote; or it is technically or economically infeasible (BLM Handbook, H-1790-1, Section 6.6.3).

The BLM did not consider some alternatives that proposed exclusive use or maximum development, production, or protection of one resource at the expense of other resources or resource uses. The BLM documented reasons for dismissing these alternatives in Sections 2.1.2 and 2.1.4 of the Eastern Colorado PRMP/EIS (pp. 2-1–2-5). As noted in Sections 2.1.2 and 2.1.4 of the Eastern Colorado PRMP/EIS (pp. 2-1–2-5), the BLM considered two alternatives related to closing all lands to oil and gas leasing: one that would close public lands in the planning area to new leasing of Federal fluid minerals and one that would close Federal coal mineral estate in the planning area to new leasing. As explained in the Eastern Colorado PRMP/EIS, closing the entire planning area to new fluid mineral leasing would not meet the BLM’s purpose and need. Moreover, given the minimal contribution of Federal mineral development across the planning area, an alternative closing Federal minerals throughout the entire planning area to new leasing would have a substantially similar effect on resources and uses analyzed under the action alternatives. These alternatives would be contrary to the

BLM’s mission and policies, including FLPMA, the National Mining and Minerals Act of 1970, and the BLM Land Use Planning Handbook 1601-1, which dictate management of public lands for multiple uses and encourage energy development.

FLPMA mandates the BLM to manage the public lands on the basis of multiple use and sustained yield. In addition, resource conditions did not warrant planning area-wide prohibition of any particular use. Alternatives eliminating existing uses, where resource conditions did not justify such measures, are not reasonable. Each alternative considered allowed for some level of support, protection, or use of all resources in the planning area. In some instances, the alternatives analyzed in detail did include various considerations for eliminating or maximizing individual resource values or uses in specific areas where conflicts existed.

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 Eastern Colorado PRMP/EIS. 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.

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan-level decisions. As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decisions or actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling), 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.

As described in Section 2.1.2 (Eastern Colorado PRMP/EIS pp. 2-2–2-3), GHG emissions and associated climate change impacts were considered as a potential resource conflict for all alternatives, including those that were dismissed. However, no resource conflicts were identified that could only be resolved by closing the entire planning area to fluid mineral or coal leasing. The BLM’s analysis in Appendix B, Sections B.2.18.2.7 through B.2.18.2.9, of the Eastern Colorado PRMP/EIS (pp. B-41–B-53) indicates that potential GHG emissions under all alternatives analyzed would result in almost negligible climate change impacts at national and global scales. National and global climate change modeling conducted specifically for the Eastern Colorado PRMP/EIS alternative with the highest level of projected potential oil and gas- and coal-related GHG emissions indicates that climate change impacts across any possible range of alternatives would have similar minimal impacts. Therefore, an alternative closing the planning area to new oil and gas leasing or requiring net-zero emissions would have substantially similar impacts on national and global GHG emissions levels as the alternatives analyzed in detail.

Consistent with 40 CFR 1502.14, the BLM properly dismissed an alternative in the Eastern Colorado PRMP/EIS that would eliminate all new fluid mineral leasing and analyzed an adequate range of alternatives. Additionally, the BLM complied with NEPA’s requirement to analyze the environmental consequences to air quality and impacts from GHG emissions under all alternatives carried forward in the Eastern Colorado PRMP/EIS. Accordingly, this protest is denied.

Range of Alternatives – New Alternative

Center for Biological Diversity and WildEarth Guardians

Allison Henderson and Jeremy Nichols

Issue Excerpt Text: In the FEIS, BLM includes for the first time what is effectively, given many substantial changes since the DEIS, a new alternative, Alternative D. While an agency can modify a proposed action in light of public comments, 40 C.F.R. § 1503.4(a), a supplemental EIS is required if BLM makes substantial changes that are relevant to environmental concerns, as it has in adopting the new Alternative D, 40 C.F.R. § 1502.9(c). Therefore, BLM must prepare a supplemental EIS. In introducing the new Alternative D as the Preferred Alternative only in the FEIS, BLM undermines the purpose of NEPA. While NEPA focuses on disclosure of impacts, the statute has an “‘action-forcing’ purpose in two important respects. It ensures that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts; it also guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decision-making process and the implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989) (internal citations omitted). In developing the new, highly modified Alternative D internally, after the ordinary opportunity for the public to consider and comment on the agency’s proposal, BLM unlawfully subverts this process.

Center for Biological Diversity and WildEarth Guardians

Allison Henderson and Jeremy Nichols

Issue Excerpt Text: The FEIS Alternative D does not present mere tweaks or minor improvements to the DEIS Alternative D that were developed in response to comments, but rather makes major changes to land use allocations for which the public was starved an opportunity to review and comment. The new Alternative D is directly contrary, for example, to thousands of comments BLM received proposing to close all federal fossil fuels to new leasing owing to the growing urgency of the climate crisis and the incompatibility of new leasing with the U.S. and international goal of 1.5 C warming. While Alternative D closes some newly protected areas and, otherwise, those fossil fuel deposits with low or no potential for actual development, it still leaves all other higher potential fossil fuels available for leasing and development; the public was starved of an opportunity to evaluate and comment on said alternative. While Conservation Groups may agree with many of the substantive changes made from DEIS to FEIS Alternative D, that does negate BLM’s duty to administer NEPA in a way that affords all of the public, including those who may be adversely impacted by said changes, a fair opportunity to engage proposed actions, as set forth in law and regulation.

Summary:

The BLM failed to adhere to NEPA guidelines by introducing a modified Alternative D as the Preferred Alternative in the Eastern Colorado PRMP/EIS without developing a supplemental EIS, and thereby did not provide a fair opportunity for the public to review and comment on the substantial changes to the alternative.

Response:

NEPA requires agencies to prepare supplements to either a draft or final EIS if the agency makes substantial changes to the PRMP that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the PRMP or its impacts (40 CFR 1502.9(c)). “Substantial changes” in the PRMP relevant to environmental concerns are changes that would result in significant effects outside the range of

effects analyzed in the draft or final EIS (BLM Handbook H-1790-1, p. 29). A supplemental EIS may also be required when a new alternative is added that is outside the spectrum of alternatives already analyzed and not a variation of an alternative, or a combination of alternatives already analyzed (BLM Handbook H-1790-1, p. 29).

Section 2.3 of the Eastern Colorado PRMP/EIS (pp. 2-6–2-7) details the changes made to Alternative D in the Eastern Colorado PRMP/EIS. Rather than developing a completely new alternative, the Proposed Alternative D in the Eastern Colorado PRMP/EIS was modified and developed from the Preferred Alternative (Alternative D) in the Draft RMP/EIS. In response to comments on the Draft RMP/EIS and policy concerns surrounding fluid mineral leasing and development, the oil and gas portion of the Eastern Colorado PRMP/EIS was formulated for further analysis in the Eastern Colorado PRMP/EIS. The impacts associated with an alternative that would close BLM-administered surface lands with low, very low, or no oil and gas potential, as well as all Federal fluid mineral estate that has no oil and gas potential (regardless of surface ownership), to future leasing are substantially similar to those of alternatives considered and analyzed in the Draft RMP/EIS, primarily because the resource is scarce in these areas and unlikely to be extensively developed.

Other notable changes in Alternative D decisions between the Draft RMP/EIS and PRMP/EIS relate to special management areas, coal, and lands available for disposal. A similar combination of special management areas was considered in the Draft RMP/EIS under Alternatives B and D with minimal to no special management under Alternative C. Table 2.1 on page 2-8 of the Eastern Colorado PRMP/EIS identifies these areas for Alternatives A through C, and shows changes between Alternative D in the Draft RMP/EIS and Alternative D in the Eastern Colorado PRMP/EIS. These were all considered in at least one of the alternatives in the Draft RMP/EIS. Coal management in the Eastern Colorado PRMP/EIS reflects the management decisions of Alternative B in the Draft RMP/EIS, under which areas that have low potential and quality would not be available for lease. The final notable change is the inclusion of lands identified as available for potential disposal in the Eastern Colorado PRMP/EIS. This would allow for flexibility in management of small, scattered parcels with little public value.

As such, the BLM made no substantial changes that are relevant to environmental concerns in the Eastern Colorado PRMP/EIS. The BLM has determined that there are no new significant circumstances or information relevant to environmental concerns bearing on the Eastern Colorado PRMP or its impacts. Therefore, the BLM is not required to prepare a supplemental EIS and, accordingly, this protest is denied.

Wild and Scenic Rivers

American Whitewater Kestrel Kunz

Issue Excerpt Text: Importantly, BLM is authorized and mandated to determine the suitability or unsuitability only of study rivers determined by Congress to be potential Wild and Scenic Rivers. BLM is not authorized or mandated to determine the suitability or unsuitability of rivers found to be eligible by the BLM under Section 2(b) of the WSRA. Stripping river segments of their previously determined eligibility status and associated interim protections undermines the fundamental direction and purpose of the Wild and Scenic Rivers Act. Eligibility criteria solely includes free-flowing character and the presence of ORVs, whereas suitability addresses additional and more temporal aspects (e.g., political context and land ownership). If the current political atmosphere does not support a suitability determination, that does not mean that the river segment has lost its free-flowing characteristics or ORVs that it was determined eligible for. The political atmosphere has the potential to shift in favor of designation and when it does, those eligible river segments should be available for

reconsideration. The claims in the Suitability Report on pages 13-14 that section 5.d.1 of the WSRA allows for suitability determinations in BLM planning processes and that rivers found unsuitable must be dropped from interim protection are capricious and false.

***American Whitewater
Kestrel Kunz***

Issue Excerpt Text: Additionally, the process used by the ECFO in the current Suitability Report is contradictory to its own efforts. According to the Suitability Report on page vii, the 1996 Resource Management Plan identified Eightmile Creek as eligible and subsequently as unsuitable. Despite that finding, the ECFO determined Eightmile Creek as suitable in the current Suitability Report “based upon new information available to the BLM”. This statement is logical and aligned with our previous reasoning that suitability analyses are just a snapshot in time. However, it was fortuitous but not guaranteed that Eightmile Creek’s free-flowing character and ORVs were not seriously degraded over the 27 years that the creek was stripped of its eligibility protections. The current proposed RMP and FEIS would release 14 river segments from all interim protections afforded to eligible Wild and Scenic Rivers. So what will happen next time when the BLM receives new information on these rivers in 5, 10, or even 20 years that indicates these segments are worthy of Wild and Scenic River designation? Will it be too late to protect them for future generations? The risk is real and the consequences are in direct conflict with the Wild and Scenic Rivers Act.

***American Whitewater
Kestrel Kunz***

Issue Excerpt Text: The determination listed in the Suitability Report reasons that because Grape Creek is fully appropriated it can not be managed as a Wild and Scenic River and that a federal reserved water right “may be at odds” with existing water rights users, however the following sentence says that a federal water right “would have little effect” on protecting flows in Grape Creek.⁵ As correctly stated on numerous pages of the Report, a federal reserved water right would be junior to any existing water rights in Colorado and in an already over appropriated system it is unlikely that new water rights will be adjudicated. It is also true that federal reserved water rights are not a required component of Wild and Scenic River designations, especially if there are more effective tools available at the state level. A similar case exists on the Arkansas River, where in the same Report, the BLM determined multiple segments of the Arkansas River to be suitable and encouraged the exploration of state tools to help protect flows in the river. It is illogical and inconsistent to apply different reasoning to Grape Creek. Arguably, the existing water rights and cooperative measures on the Arkansas are more complex than on Grape Creek and both are deserving of protections under the Wild and Scenic Rivers Act.

Summary:

The Suitability Report prepared for the Eastern Colorado PRMP/EIS is contradictory in that rivers previously determined to be not suitable for inclusion in the National Wild and Scenic Rivers System (National System), such as Eightmile Creek, are now classified as suitable for Wild and Scenic River (WSR) designation. Commenters expressed concern that river segments now found unsuitable could similarly be classified as suitable in the future but may experience degradation, as they are now being released from interim protections. Additionally, the Eastern Colorado PRMP/EIS overlooked the exploration of State tools to help protect flows in Grape Creek, erroneously removing the river from consideration as being suitable for protection as a WSR. These constitute violations of the Wild and Scenic Rivers Act of 1968.

Response:

Section 4(a) of the Wild and Scenic Rivers Act of 1968 proclaims that the Secretary of the Interior and the Secretary of Agriculture study and submit reports to the President on the suitability or non-suitability of rivers for addition to the National Wild and Scenic Rivers System (16 U.S. Code [U.S.C.] 1275). The Secretary of the Interior and the Secretary of Agriculture are directed to give priority to rivers “(i) with respect to which there is the greatest likelihood of developments which, if undertaken, would render the rivers unsuitable for inclusion in the national wild and scenic rivers system, and (ii) which possess the greatest proportion of private lands within their areas” (16 U.S.C. 1275). Furthermore, Section 5(d)(1) of the Wild and Scenic Rivers Act requests that all Federal agencies consider WSRs during “planning for the use and development of water and related land resources” (16 U.S.C. 1276). As a result, the BLM Land Use Planning Handbook directs the following determination for land use plan decisions: “assess all eligible river segments and determine which are suitable or non-suitable per Section 5(d)(1) of the Wild and Scenic Rivers Act of 1968, as amended” (BLM Handbook H-1601-1, Appendix C, p. 27).

Policy Manual 6400 – *Wild and Scenic Rivers – Policy and Program Direction for Identification, Evaluation, Planning, and Management (Public)* (BLM Manual Section 6400) outlines the BLM’s policy for eligible and suitable rivers. The policy requires managing their free-flowing condition, water quality, tentative classification, and any outstandingly remarkable values to ensure a decision on suitability can be made for eligible rivers; or, in the case of suitable rivers, until Congress designates the river or releases it for other uses (BLM Manual Section 6400.3.5). During the “eligibility analysis,” all BLM stream segments were evaluated for free-flowing status and outstandingly remarkable values. Streams that were found to be in free-flowing condition and possess one or more outstandingly remarkable values were found to be “eligible” for potential designation as a WSR. During the land use planning process, the BLM assesses all eligible river segments and determines which are suitable or non-suitable for inclusion in the National System (BLM Handbook H-1601-1, Appendix C, p. 27).

Within the Eastern Colorado PRMP/EIS planning area, the BLM determined Eightmile Creek as eligible for inclusion in the National System based on an outstandingly remarkable value (Wild & Scenic River Suitability Report, Section 1.5.2, p. 6). In reviewing the suitability of Eightmile Creek, the BLM concluded that “achievement of permanent, long-term protection could occur without significant conflict with existing and future uses, and concludes that this stream is suitable for inclusion in the National System” (Wild & Scenic River Suitability Report, Section 3.2.8.2, p. 108). Although the 1996 RMP determined that Eightmile Creek was eligible but not suitable for designation, a waterbody’s free-flowing condition, water quality, tentative classification, and outstandingly remarkable values can change significantly over the course of approximately 27 years. The river’s condition during the 1996 review did not lend itself to a suitability determination by the BLM, but current conditions support inclusion in the National System.

Three segments of Grape Creek were determined to be eligible for review under the Wild and Scenic Rivers Act and none were identified as suitable for inclusion in the National System (Wild & Scenic River Suitability Report, Section 1.5.2, pp. 115–137). Eligibility and suitability determinations are made based upon best available science and knowledge. The Suitability Report encouraged the exploration of State tools to help protect flows in the Arkansas River; however, local governments have not indicated an interest in sharing the management of Grape Creek, nor have they indicated an interest in modifying local land use controls to ensure consistency with WSR management objectives (Wild & Scenic River Suitability Report, Section 3.2.10.2, p. 122). The BLM provides the recommendation for eligible and suitable rivers to be included in the National System, but the actual classification and designation of a river segment as part of the National System is determined by Congress (Wild & Scenic River Suitability Report, Section 1.5.2, p. 6).

In the Eastern Colorado PRMP/EIS, the BLM identified all segments eligible for inclusion in the National System and determined which of those eligible segments are suitable for inclusion in the National System. The Eastern Colorado PRMP/EIS adequately protects suitable segments, as required by BLM Manual Section 6400.3.5. Protections for suitable segments are described in the Wild & Scenic River Suitability Report supplementing the Eastern Colorado PRMP/EIS.

The Eastern Colorado PRMP/EIS appropriately protects eligible and suitable segments. Accordingly, this protest is denied.