



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

**Colorado River Valley Field
Office and Grand Junction
Field Office Proposed
Resource Management Plan
and Final Supplemental
Environmental Impact
Statement**

September 9, 2024

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Acronyms

Term	Definition
ACEC	Area of Critical Environmental Concern
BLM	Bureau of Land Management
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CRV	Colorado River Valley
CSU	controlled surface use
EA	Environmental Assessment
EIS	Environmental Impact Statement
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
FLPMA	Federal Land Policy and Management Act
FO	Field Office
FSEIS	Final Supplemental Environmental Impact Statement
GHG	greenhouse gas
GJ	Grand Junction
LWC	lands with wilderness characteristics
NEPA	National Environmental Policy Act
NHT	National Historic Trail
NPS	National Park Service
NSO	no surface occupancy
NT	national trail
NTS	National Trails System
NTSA	National Trails System Act
OSNHT	Old Spanish National Historic Trail
PRMP	Proposed Resource Management Plan
RMP	Resource Management Plan
RMPA	Resource Management Plan Amendment
ROD	Record of Decision
ROW	right-of-way
SEIS	Supplemental Environmental Impact Statement
U.S.C.	U.S. Code
UUD	unnecessary or undue degradation

Introduction

The Bureau of Land Management (BLM) Colorado State Office released the Colorado River Valley (CRV) Field Office (FO) and Grand Junction (GJ) FO Proposed Resource Management Plan (PRMP) and Final Supplemental Environmental Impact Statement (FSEIS) on June 21, 2024. The BLM received four unique 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 four letters were complete and timely, and were from parties who had standing to protest. One letter was not intended to be a protest letter and is not considered further in this report. Three of the protest letters contained valid protest issues. The BLM documents the responses to the valid protest issues in this protest resolution report. The protest decision is 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 CRV and GJ FOs PRMP/FSEIS were necessary. The decision was sent to the protesting parties by certified mail, return receipt requested. Consistent with the BLM Delegation of Authority Manual (MS-1203 Delegation of Authority), 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)).

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-CRV-EIS-24-01	Keeley Meehan	Colorado Wildlands Project	Denied
	Peter Hart	Wilderness Workshop	
	Matt Sandler	Rocky Mountain Wild	
	Kara Matsumoto	Conservation Lands Foundation	
	Scott Miller	The Wilderness Society	
	Vera Smith	Defenders of Wildlife	
	Luke Schafer	Conservation Colorado	
	--	Great Old Broads for Wilderness	
PP-CO-CRV-EIS-24-02	Morgan O’Grady	Western Environmental Law	Denied
	Allison N. Henderson	Center for Biological Diversity	
	Sherry Schenk	Great Old Broads for Wilderness	
	Matt Sandler	Rocky Mountain Wild	
	Jackie Feinberg	Sierra Club	
	Emily Hornback	Western Colorado Alliance	
	Delaney Rudy	Western Watersheds Project	
	Peter Hart	Wilderness Workshop	
PP-CO-CRV-EIS-24-03	Carolyn Gleason	U.S. Environmental Protection Agency	This letter was not intended to be a protest letter and is not addressed further in this report.
	Melissa McCoy	U.S. Environmental Protection Agency	
PP-CO-CRV-EIS-24-04	Chandra Rosenthal	Public Employees for Environmental Responsibility	Denied
	John Hiscock	--	

ACEC Designation

Colorado Wildlands Project, Wilderness Workshop, Rocky Mountain Wild, Conservation Lands Foundation, The Wilderness Society, Defenders of Wildlife, Conservation Colorado, Great Old Broads for Wilderness

Keeley Meehan, Peter Hart, Matt Sandler, Kara Matsumoto, Scott Miller, Vera Smith, Luke Schafer

Issue Excerpt Text: BLM failed to comply with FLPMA’s direction to prioritize the protection of ACECs by leaving designated areas open to oil and gas development. FLPMA requires the BLM to “give priority” to the designation and protection of ACECs, which are areas of public lands that contain outstanding ecological, cultural, natural, or other values.⁴⁶ Given that oil and gas development poses a direct threat to the relevant and important values that make areas suitable for designation, BLM should close all designated ACECs within the planning area to future development.

Summary:

Protestors stated that the BLM violated the Federal Land Policy and Management Act’s (FLPMA) mandate to “give priority” to the designation and protection of Areas of Critical Environmental Concern (ACEC) by proposing to leave areas within ACECs open to oil and gas development.

Response:

ACECs are defined in FLPMA Section 103(a) as areas “within the BLM lands where special management attention is required to protect and prevent irreparable damage to important historical, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards” (43 U.S. Code [U.S.C.] 1702(a)). Section 202(c)(3) of FLPMA states that the BLM will give priority to the designation and protection of ACECs in the development and revision of land use plans. ACECs differ from other special designations in that designation does not automatically prohibit or restrict other uses in the area. Special management attention is designed specifically to protect the relevant and important values of the ACEC. These values can vary from area to area. In an approved plan, the BLM identifies all designated ACECs and provides the management direction necessary to protect the relevant and important values for each of the designated ACECs. As such, the special management is unique to the designated ACEC to account for the protection of the values in the designated area. The BLM has the discretion to make decisions that account for tradeoffs, including tradeoffs between protecting the relevant and important values identified in a potential ACEC and allowing for other values, resources, or resource uses within the planning area. ACECs can be open to oil and gas development subject to specific management guidelines and restrictions to balance resource extraction with conservation efforts. Through the land use planning process, the BLM may close areas within ACECs to future oil and gas leasing to protect resources and to communicate management priorities concerning which areas should be the focus of oil and gas development.

During this planning process, the BLM considered the designation of new ACECs, and expansion of existing ACECs, in the alternatives in the CRV and GJ FOs PRMP/FSEIS to provide special management attention to important historical, cultural, or scenic values; fish and wildlife resources; or other natural systems or processes; or to protect life and safety from natural hazards. Under the PRMP (Alternative G), consistent with the purpose and need, six ACECs in the CRV FO and ten ACECs in the GJ FO would be designated and closed to future fluid mineral leasing (CRV and GJ FOs PRMP/FSEIS pp. 3-187 through 3-188). Furthermore, the PRMP (Alternative G) would retain

existing ACECs closed to fluid mineral leasing and close other existing ACECs to future fluid mineral leasing (CRV and GJ FOs PRMP/FSEIS pp. 2-6 through 2-8). Under the PRMP, two existing ACECs in the CRV FO and three existing ACECs in the GJ FO would be open to future mineral leasing (CRV and GJ FOs PRMP/FSEIS pp. 3-188 and 2-15). Within the ACECs open to future fluid mineral leasing, no surface occupancy (NSO) and controlled surface use stipulations are also applied to other uses to prevent disturbance that could damage the relevant and important values within the proposed ACECs. Additional information regarding oil and gas stipulations as related to ACECs under the PRMP (Alternative G) is outlined in Section 2.2.6. of the CRV and GJ FOs PRMP/FSEIS.

More information on specific ACECs, their site-specific management considerations, and how closing them to future oil and gas leasing would affect ecological and cultural resources is included in Section 3.7.2 of the CRV and GJ FOs PRMP/FSEIS (pp. 3-179 through 3-189).

During the planning process, the BLM considered areas nominated for ACEC designation and areas currently designated for revision and redesignation. Under the Proposed Alternative, certain areas that are proposed for designation as ACECs would be closed to fluid mineral leasing; other areas proposed for designation would incorporate site-specific management considerations including surface-use stipulations to protect the relevant and important values of the particular area. The BLM has complied with FLPMA's direction to give priority to the designation and protection of ACECs in the development and revision of land use plans. Accordingly, this protest issue is denied.

FLPMA Violation: Unnecessary or Undue Degradation

Western Environmental Law, Center for Biological Diversity, Great Old Broads for Wilderness, Rocky Mountain Wild, Sierra Club, Western Colorado Alliance, Western Watersheds Project, Wilderness Workshop

Morgan O'Grady, Allison Henderson, Sherry Schenk, Matt Sandler, Jackie Feinberg, Emily Hornback, Delaney Rudy, Peter Hart

Issue Excerpt Text: Contrary to climate science, the proposed alternative shows a continued focus on mineral development at the expense of both environment and climate, ignoring BLM's statutory duty under the Federal Land Policy and Management Act (FLPMA) to not impair public lands and to avoid unnecessary or undue degradation (UUD).

Western Environmental Law, Center for Biological Diversity, Great Old Broads for Wilderness, Rocky Mountain Wild, Sierra Club, Western Colorado Alliance, Western Watersheds Project, Wilderness Workshop

Morgan O'Grady, Allison Henderson, Sherry Schenk, Matt Sandler, Jackie Feinberg, Emily Hornback, Delaney Rudy, Peter Hart

Issue Excerpt Text: As discussed in Conservations Groups' Draft-EIS comments, FLPMA provides a substantive mandate to manage public lands in a manner that protects air and atmospheric values, as well as other environmental and ecological values. 43 U.S.C. § 1701 et seq. BLM may not elevate the development of oil and gas resources above other critical resource values in the planning area as it has done with the selected alternative and proposed RMPA; to the contrary, conservation of other critical resource values should be at least coequal with mineral development, and-given the dire state of the climate crisis and land conservation efforts as well as BLM's decades-long practice of favoring extractive development over conservation-should in reality be further elevated. As Conservation Groups further detailed, FLPMA's mandates include a "multiple use and sustained yield" management directive and a directive to avoid "unnecessary or undue degradation" of public lands. FLPMA also requires BLM to "take any action necessary to prevent unnecessary or undue degradation" of public lands, 43 U.S.C. § 1732(b), a protective

mandate that applies to BLM planning decisions such as these RMPs. See *Utah Shared Access Alliance v. Carpenter*, 463 F.3d 1125, 1136 (10th Cir. 2006).

***Western Environmental Law, Center for Biological Diversity, Great Old Broads for Wilderness, Rocky Mountain Wild, Sierra Club, Western Colorado Alliance, Western Watersheds Project, Wilderness Workshop
Morgan O’Grady, Allison Henderson, Sherry Schenk, Matt Sandler, Jackie Feinberg, Emily Hornback, Delaney Rudy, Peter Hart***

Issue Excerpt Text: Here, the inquiry is whether the agency has taken sufficient measures to prevent degradation unnecessary to, or undue in proportion to, the development the proposed action permits, see *Theodore Roosevelt Conservation Partnership v. Salazar*, 661 F.3d 66, 76 (D.C. Cir. 2011), and it is clear that BLM has not done so in this Final SEIS. BLM does define UUD. Final SEIS at 3-36 (“Undue and unnecessary degradation means the impacts are greater than those that would normally be expected from an activity being accomplished in compliance with current standards and regulations and based on sound practices, including use of the best reasonably available technology.”). However, BLM does not provide any information about what measures it will take to prevent UUD, aside from undenied stipulations. And BLM does not address how recently promulgated federal rules addressing BLM’s substantive duty to prevent UUD will be implemented or how it will prevent UUD. Such an approach is woefully insufficient under FLPMA’s mitigation hierarchy, which directs BLM to avoid, minimize, and mitigate harms associated with oil and gas development. Accordingly, BLM’s failure to detail how it will prevent UUD violates BLM’s substantive obligations under FLPMA.

Summary:

Protestors stated that the BLM violated FLPMA’s mandate to “avoid unnecessary or undue degradation” by continuing to allow and prioritize mineral development within the CRV FO and GJ FO, by increasing the levels of oil and gas development under the PRMP, and by not proposing management actions that protect air and atmospheric values, as well as other environmental and ecological values.

Response:

Section 302(a) of FLPMA directs the BLM to manage public lands on the basis of multiple use and sustained yield, unless otherwise provided by law (43 U.S.C. 1732(a)). Section 103(c) of FLPMA defines “multiple use” as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people. FLPMA’s multiple-use principle does not require that all uses be allowed on all areas of the public lands. Rather, the BLM has wide latitude to allocate the public lands to particular uses, and to employ the mechanism of land use allocation to protect for certain resource values, or, conversely, develop some resource values to the detriment of others.

Section 302(b) of FLPMA requires that “in managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.”

It is BLM policy, as derived from various laws, including the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181 et seq.) and FLPMA (43 U.S.C. 1701 et seq.), to encourage development of mineral resources to meet national, regional, and local needs. The action alternatives were designed to fulfill the purpose of and need for the CRV and GJ FOs PRMP/FSEIS (outlined in Section 1.2, *Purpose and Need*), meet the BLM’s multiple-use mandate in FLPMA (43 U.S.C. 1732(a)), and

achieve the BLM’s mission to sustain the health, diversity, and productivity of public lands for the use and enjoyment of present and future generations. Additionally, Congress recognized that through the BLM’s multiple-use mandate, there would be conflicting uses and impacts on the public land.

The BLM has accounted for air quality and climate impacts in the CRV and GJ FOs PRMP/FSEIS through a reasoned methodology whereby direct, indirect, and cumulative greenhouse gas (GHG) emissions are disclosed for each alternative, consistent with the Council on Environmental Quality’s (CEQ) Draft National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions (84 *Federal Register* 30097), which states, “A projection of a proposed action’s direct and reasonably foreseeable indirect GHG emissions may be used as a proxy for assessing potential climate effects.” Cumulative impacts have been updated in the FSEIS to disclose GHG emissions at additional scales. As described in Section 3.5.1 of the FSEIS, closures to oil and gas development would have a local-scale impact and potentially reduce new Federal oil and gas development. Federal oil and gas–related GHG emissions associated with the scenario with the highest projected level of future oil and gas production and new development would likely result in minimal global impacts; for any alternative with lower levels of future Federal oil and gas activity (and emissions), global impacts would be further insignificant. It was concluded that for all alternatives, new BLM Federal oil and gas in the two field offices would have little impact on future global GHG emissions levels and climate change, and the existing stringent Colorado Department of Public Health and Environment regulations leave very few feasible upstream oil and gas emissions to control.

The CRV and GJ FOs PRMP/FSEIS provides for the balanced management of the public lands in the planning area. In developing CRV and GJ FOs PRMP/FSEIS, the BLM fully complied with its planning regulations (43 CFR Part 1610), the requirements of the National Environmental Policy Act (NEPA), and other statutes, regulations, and Executive Orders related to environmental quality. The CRV and GJ FOs PRMP/FSEIS identifies appropriate land use planning decisions, including allowable uses, management actions, and other mitigation measures that prevent the unnecessary or undue degradation of public lands. Resource Management Plans (RMP) do not approve any site-specific actions or authorizations allowing the use of public lands. Authorization or approval of a site-specific use of the public lands for a project would occur after future decision-making consistent with applicable laws, including appropriate site-specific environmental review under NEPA and in conformance with the approved RMP.

Because the CRV and GJ FOs PRMP/FSEIS would not authorize any uses of the public lands, and the alternatives evaluated in the FSEIS comply with all applicable statutes, regulations, and policy, the PRMP will not result in “unnecessary or undue degradation of the lands” under Section 302(b) of FLPMA. Accordingly, this protest issue is denied.

Lands with Wilderness Characteristics Designation and Management

Colorado Wildlands Project, Wilderness Workshop, Rocky Mountain Wild, Conservation Lands Foundation, The Wilderness Society, Defenders of Wildlife, Conservation Colorado, Great Old Broads for Wilderness

Keeley Meehan, Peter Hart, Matt Sandler, Kara Matsumoto, Scott Miller, Vera Smith, Luke Schafer

Issue Excerpt Text: Consistently prioritizing future oil and gas development within high potential areas over protection of natural resources is inconsistent with FLPMA’s multiple use mandate. LWC are a critical part of the agency’s balancing under FLPMA and “wilderness characteristics are a value which, under the FLPMA, the Bureau has the continuing authority to manage...”²¹ Moreover, BLM’s failure to protect high-value LWC and to leave land unavailable for oil and gas development frustrates BLM’s ability to comply with FLPMA’s mandatory duty to prevent “unnecessary or undue degradation” in the future, should those lands be leased and developed.

Colorado Wildlands Project, Wilderness Workshop, Rocky Mountain Wild, Conservation Lands Foundation, The Wilderness Society, Defenders of Wildlife, Conservation Colorado, Great Old Broads for Wilderness

Keeley Meehan, Peter Hart, Matt Sandler, Kara Matsumoto, Scott Miller, Vera Smith, Luke Schafer

Issue Excerpt Text: We appreciate the work that went into the SEIS to date, including updating many LWC inventories to better comply with Manual 6310. The Final SEIS indicates BLM is actively working to complete these inventories, though it appears the agency has not updated all of them. As it stands, BLM has failed to appropriately respond to certain citizens' inventory submissions in the Colorado River Valley and Grand Junction Field Offices, dating back to 2013.⁴⁵ These inventories include Hogback East, Horse Creek, and Lucky Gulch in the Colorado River Valley Field Office, and numerous inventories in the Grand Junction Field Office (e.g., Spring Canyon, Spink Canyon, Bangs Canyon, Maverick, Cone Mountain, Lumsden). If the BLM's LWC inventory update cannot be completed and incorporated into this planning process prior to the signing of the ROD, BLM should include language committing to updating the LWC inventory within one year of the signing of the ROD, and commit to defer any surface disturbing activities or leasing in any wilderness inventory unit until the inventory is updated according to guidance in BLM Manual 6310. This language would provide the public necessary assurance that BLM will update required wilderness inventories in a timely manner and ensure that wilderness qualities are not lost prior to the agency completing the inventory process.

Summary:

Protestors stated that the BLM violated FLPMA's multiple-use mandate by prioritizing future oil and gas development within high potential areas over protection of natural resources, such as lands with wilderness characteristics (LWC). Protestors further stated that the BLM violates FLPMA's mandate to avoid "unnecessary or undue degradation" by failing to protect LWCs and failing to restrict oil and gas development on designated lands. Protestors stated that the BLM has not complied with Manual 6301, as all LWC inventories have not been completed prior to the publication of the CRV and GJ FOs PRMP/FSEIS.

Response:

Section 102(a)(7) of FLPMA declares that it is the policy of the United States that management of the public lands be on the basis of "multiple use" and "sustained yield." Section 103(c) of FLPMA defines "multiple use" as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people. FLPMA makes it clear that the term "multiple use" means that not every use is appropriate for every acre of public land, and that the Secretary can "make the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use" (FLPMA, Section 103(c)). Furthermore, FLPMA directs that the public lands be managed in a manner "that, where appropriate, will preserve and protect certain public lands in their natural condition" (FLPMA, Section 102(a)). FLPMA authorizes the Secretary of the Interior to use land use planning as a mechanism for allocating resource use, including wilderness character management, amongst the various resources in a way that provides for current and future generations.

Section 302(b) of FLPMA requires that "in managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands" as defined at 43 CFR 3809.5. The CRV and GJ FOs PRMP/FSEIS identifies

appropriate allowable uses, management actions, and other mitigation measures that prevent the unnecessary or undue degradation of public lands. It does not authorize any use of the public lands, much less any that would result in unnecessary or undue degradation. Because the CRV and GJ FOs PRMP/FSEIS would not authorize any uses of the public lands, and the alternatives evaluated in the FSEIS comply with all applicable statutes, regulations, and policy, the availability of future oil and gas development within high potential areas will not result in “unnecessary or undue degradation of the lands” under Section 302(b) of FLPMA.

The BLM protects wilderness resources with a range of prescriptions under Section 202 of FLPMA, which gives the Secretary of the Interior authority to manage public lands for multiple use and sustained yield. LWCs may be managed under a non-impairment standard, managed with wilderness characteristics as a priority over other resources, or managed to emphasize other multiple uses while applying restrictions to minimize impacts on wilderness characteristics.

The CRV and GJ FOs PRMP/FSEIS presents a range of alternatives that include several management prescriptions to protect wilderness resources on BLM-managed public lands throughout the planning area. The BLM has wide latitude to allocate the public lands to particular uses and to employ the mechanism of land use allocation to protect for certain resource values, or, conversely, develop some resource values to the detriment of others, short of unnecessary or undue degradation. Through the land use planning process, the BLM evaluates and chooses an appropriate balance of resource uses, which involves tradeoffs between competing uses. Section 3.5.10 in the CRV and GJ FOs PRMP/FSEIS provides a discussion about potential impacts on LWCs from the management prescriptions under each alternative, including oil and gas development. All alternatives allow some level of all uses present in the planning area, in a manner that is consistent with applicable statutes, regulations, and BLM policy. As such, the CRV and GJ FOs PRMP/FSEIS satisfies FLPMA’s multiple-use policy and will not result in “unnecessary or undue degradation of the lands” under Section 302(b) of FLPMA.

Section 201(a) of FLPMA requires the BLM to “prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values,” including wilderness resources, 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 requires 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.” BLM Manual 6301 was placed into abeyance by BLM Instruction Manual 2011-154, which directs BLM offices to continue to conduct and maintain inventories regarding the presence or absence of wilderness characteristics. However, per Instruction Manual 2011-154, “the BLM will determine when it is necessary to update its wilderness characteristics inventory.” The BLM’s wilderness characteristics inventory process does not require that the BLM must conduct a completely new inventory and disregard the inventory information that it already has for a particular area when preparing a land use plan (BLM Manual Section 6310.06.B).

The BLM has continued to update the LWC inventories in the applicable FOs. As part of the Supplemental Environmental Impact Statement (SEIS) planning effort, the CRV FO and GJ FO are working to complete wilderness characteristics inventories for the entire planning area to ensure decisions to manage wilderness resources are made with the most current data. The BLM described the inventory information it used for LWCs in Section 3.5.10 of the CRV and GJ FOs PRMP/FSEIS. Although some unit inventories were yet to be finalized prior to the publication of the CRV and GJ FOs PRMP/FSEIS, completed wilderness characteristics inventory information will be incorporated in the Record of Decision (ROD) (CRV and GJ FOs PRMP/FSEIS p. 3-132).

As required by FLPMA, the BLM relied on its current inventory of the public lands, to the extent it was available, in developing the CRV and GJ FOs PRMP/FSEIS, and will complete a current and

comprehensive wilderness characteristics inventory prior to publication of the ROD. Also, as detailed above, the CRV and GJ FOs PRMP/FSEIS satisfies FLPMA's multiple-use policy and will not result in "unnecessary or undue degradation of the lands" under Section 302(b) of FLPMA. Accordingly, this protest issue is denied.

NEPA: Cumulative Effects

Western Environmental Law, Center for Biological Diversity, Great Old Broads for Wilderness, Rocky Mountain Wild, Sierra Club, Western Colorado Alliance, Western Watersheds Project, Wilderness Workshop

Morgan O'Grady, Allison Henderson, Sherry Schenk, Matt Sandler, Jackie Feinberg, Emily Hornback, Delaney Rudy, Peter Hart

Issue Excerpt Text: At a minimum, BLM must analyze and disclose the climate and non-climate public health impacts of downstream use of fossil fuels from these RMPs, which is has not adequately done in the Final SEIS. NEPA requires BLM to analyze foreseeable indirect effects, 40 C.F.R. § 1508.1(g)(2), and this provides BLM with the independent obligation to analyze non-climate, public health effects of these RMPs, including non-climate public health effects of foreseeable downstream end-use of fossil fuels. Here, BLM has failed to analyze public health effects of downstream end-use of fossil fuels, climate or otherwise.

Summary:

Protestors stated that the BLM violated NEPA by failing to analyze the non-climate public health effects of foreseeable downstream end use of fossil fuels in the CRV and GJ FOs PRMP/FSEIS.

Response:

The BLM must discuss the cumulative effects of the proposed action and the alternatives when preparing an EIS (BLM Handbook H-1790-1, Section 6.8.3). The CEQ regulations define cumulative effects as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions" (40 CFR 1508.1).

The BLM has complied fully with the requirements of NEPA and prepared a cumulative impact analysis based on the broad nature and scope of the proposed land management options under consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past, present, and reasonably foreseeable (not highly speculative) Federal and non-Federal actions. The cumulative impacts sections of the CRV and GJ FOs PRMP/FSEIS (Sections 3.5.1 through 3.9.1) identify all actions that were considered in the cumulative impacts analysis and provide a basis for the cumulative impacts analysis for each affected resource.

The BLM identifies, discloses, and analyzes potential impacts on public health in FSEIS Section 3.9.1, *Public Health and Safety*, including the impacts from transport of sediments and chemical pollutants to surface waters and impacts on the public from noise and light pollution, periodically heavy truck traffic on access roads, and fugitive dust emissions. In Section 3.5.1, *Air Resources and Climate*, a discussion of potential direct, indirect, and cumulative impacts from oil and gas development is provided, including downstream impacts, which is estimated by multiplying the projected 2022 through 2050 production levels of oil and gas with emissions factors for combustion

established by the U.S. Environmental Protection Agency (EPA) (CRV and GJ FOs PRMP/FSEIS pp. 3-10 through 3-37).

Section 3.5.1 of the CRV and GJ FOs PRMP/FSEIS has been updated with data, information, and results from the BLM's latest Regional Air Quality Modeling Study to provide additional detail and discussion to identify disadvantaged areas for ozone and particulate matter using EPA's EJScreen indices (CRV and GJ FOs PRMP/FSEIS p. 3-32). Geographic information system data were used with disproportionately affected community data layers along with Regional Modeling Study data to create information specifically describing how existing and future projected oil and gas could affect disproportionately affected communities in the CRV FO and GJ FO and nearby areas (CRV and GJ FOs PRMP/FSEIS pp. 3-35 through 3-36).

As the BLM detailed in the response to comments on the Draft SEIS in Appendix F of the CRV and GJ FOs PRMP/FSEIS, other emissions data were added to the PRMP/FSEIS from the BLM's 2023 Regional Air Quality Modeling Survey, which shows maximum modeled cumulative ozone 8-hour concentrations and contributions from new Federal oil and gas in the two Colorado source groups to all areas in Colorado including Class I areas as well as contributions to future cumulative ozone concentrations associated with all other source groups modeled including new tribal and total non-Federal oil and gas emissions sources (CRV and GJ FOs PRMP/FSEIS p. F-20). Updated information in Section 3.5.1 also addresses air toxics cancer risk due to cumulative oil and gas development operations.

Project-specific NEPA analysis including emissions inventories would be developed for any future proposed projects when details about a proposed action are known, including exact physical location, prior to making a decision approving or authorizing the project. The site-specific analysis for future proposed projects would include refined project-level air quality and related values analyses and consider environmental justice and any local disadvantaged communities, as appropriate. Project-specific mitigation could also be required based on details for a proposed action.

The BLM's analysis took into account the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. The information presented in the CRV and GJ FOs PRMP/FSEIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM adequately analyzed cumulative climate public health effects of foreseeable downstream end use of fossil fuels in the CRV and GJ FOs PRMP/FSEIS. Accordingly, this protest is denied.

NEPA: Environmental Justice

***Western Environmental Law, Center for Biological Diversity, Great Old Broads for Wilderness, Rocky Mountain Wild, Sierra Club, Western Colorado Alliance, Western Watersheds Project, Wilderness Workshop
Morgan O'Grady, Allison Henderson, Sherry Schenk, Matt Sandler, Jackie Feinberg, Emily Hornback, Delaney Rudy, Peter Hart***

Issue Excerpt Text: BLM also failed to take a hard look at environmental justice, either in relation to health or in its own right. Although BLM identifies "populations for environmental justice considerations," 3-239, 3- 240, and discusses general categories of potential environmental justice impacts associated with various project alternatives, it continues to defer a thorough analysis, or discussion of mitigation measures, to later stages and site-specific analyses. See, e.g., FSEIS at 3-242. The intent of NEPA is for agencies to study the impact of their actions on the environment before the action is taken. See *Conner v. Burford*, 848 F.2d 1441, 1452 (9th Cir. 1988) (NEPA requires that agencies prepare an EIS before there is "any irreversible and irretrievable commitment

of resources”); see also *Upper Pecos Ass’n v. Stans*, 500 F.2d 17 (10th Cir. 1974) (concluding that “consideration of environmental factors should come in the early stages of program and project formulation”). BLM may not defer this analysis to a later stage.

Summary:

Protestors stated that the BLM violated NEPA’s “hard-look” mandate by deferring a thorough analysis and discussion of mitigation measures related to impacts on environmental justice populations to later stages and site-specific analyses. Protestors noted that this violates NEPA’s directive to develop an EIS before there is “any irreversible and irretrievable commitment of resources.”

Response:

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 CRV and GJ FOs PRMP/FSEIS. 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 implementation-level decisions, 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.

Section 3.9.3, *Environmental Justice*, takes a hard look at the potential effects associated with environmental justice for Alternatives E, F, and G as well as cumulative impacts. This section incorporates by reference the methods, assumptions, and impacts for Alternatives A, B, C, and D described in the 2014 and 2015 PRMPs/Final EISs. Additionally, Section 3.5.1 contains details on disadvantaged areas for ozone and particulate matter using EPA’s EJScreen indices and emissions data from the BLM’s 2023 Regional Air Quality Modeling Survey (CRV and GJ FOs PRMP/FSEIS p. 3-32). This section also includes analysis of air toxics cancer risk from cumulative oil and gas development.

Specific effects on environmental justice populations cannot be determined at this planning stage due to a lack of site-specific information; specifically, projects have not been located or described in detail. Future individual projects implemented under the PRMP must comply with NEPA and will identify and analyze what, if any, disproportionate adverse impacts could be on environmental justice populations based on the available site-specific information including location and specific information about the proposed action. Project-specific mitigation could also be required based on details for a proposed action.

The PRMP/FSEIS analysis complies with CEQ guidance, Executive Order 12898, and BLM policy, ensuring proposed actions do not disproportionately affect environmental justice populations. The BLM also used tools outlined in environmental justice guidance documents, such as the BLM IM 2022-59 Addendum and EPA’s EJScreen, to identify environmental justice populations.

The BLM complied with NEPA's requirements to analyze the environmental effects related to environmental justice in the CRV and GJ FOs PRMP/FSEIS. Accordingly, this protest is denied.

NEPA: Oil and Gas Leasing

Colorado Wildlands Project, Wilderness Workshop, Rocky Mountain Wild, Conservation Lands Foundation, The Wilderness Society, Defenders of Wildlife, Conservation Colorado, Great Old Broads for Wilderness

Keeley Meehan, Peter Hart, Matt Sandler, Kara Matsumoto, Scott Miller, Vera Smith, Luke Schafer

Issue Excerpt Text: Questions and concerns, as well as detailed information, related to the validity of more than 30,000 acres of oil and gas leases in the South Shale Ridge Area were raised at scoping and again in response to the Draft SEIS.[33] Information has come to light more recently confirming that rental payments have not been made on the South Shale Ridge leases as required by law, and that those leases properly terminated years ago.[34] Rather than taking a hard look at this information, however, BLM ignored it and presumed that the leases were valid. The agency's failure to even consider the validity of these leases violates NEPA's hard look mandate.

Colorado Wildlands Project, Wilderness Workshop, Rocky Mountain Wild, Conservation Lands Foundation, The Wilderness Society, Defenders of Wildlife, Conservation Colorado, Great Old Broads for Wilderness

Keeley Meehan, Peter Hart, Matt Sandler, Kara Matsumoto, Scott Miller, Vera Smith, Luke Schafer

Issue Excerpt Text: BLM should require the existing South Shale Ridge leases to be NSO. Even if the South Shale Ridge leases were not void, BLM should have taken the opportunity to ensure any future development would not impair other values such as wilderness and endangered species. When Judge Krieger set aside the South Shale Ridge lease sale EA, she identified two discrete violations of NEPA and the ESA that needed to be resolved. The NEPA violation related to BLM's failure to address why it had removed a NSO alternative from the EA, aside from concluding without support that "directional drilling was technically and economically infeasible".³⁸ While BLM has made any future leasing of the South Shale Ridge LWC NSO - and seemingly acknowledging that it is technically and economically feasible - it has failed to take the opportunity to require NSO as a condition of approval on any future discretionary decisions relating to the 16 leases as raised in comments on the Draft SEIS.³⁹ Judge Krieger found NSO to be "a potentially appealing middle-ground compromise between the absolutism of the outright leasing and no action alternatives."⁴⁰ Given the lengthy history of these enjoined leases, the ever expanding wilderness inventory in the South Shale Ridge, and presence of multiple endangered species, BLM's failure to even address this issue in the SEIS is arbitrary and capricious.

Summary:

Protestors stated that the BLM violated NEPA's "hard-look" mandate by failing to consider the validity of 30,000 acres of oil and gas leases in the South Shale Ridge Area. Protestors also stated that the BLM violated NEPA by failing to consider the existing South Shale Ridge leases to be managed as NSO.

Response:

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 CRV and GJ FOs PRMP/FSEIS. 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.

The level of analysis in the CRV and GJ FOs PRMP/FSEIS demonstrates that the BLM has taken a “hard look” at the impacts on oil and gas leasing and other resources. The BLM analyzed the potential effects associated with energy and minerals in Section 3.6.2 (CRV and GJ FOs PRMP/FSEIS pp. 3-148 through 3-173) as well as LWCs including South Shale Ridge in Section 3.5.10 (CRV and GJ FOs PRMP/FSEIS pp. 3-131 through 3-143). The PRMP/FSEIS outlines a range of alternatives incorporating management strategies to protect wilderness characteristics on BLM-managed public lands in the planning area. Under the PRMP (Alternative G), proposed management for the South Shale Ridge is to designate the areas as an ACEC and include management direction to protect the relevant and important values of the area. While the BLM is not proposing to close this area to leasing in Alternative G (CRV and GJ FOs PRMP/FSEIS pp. 2-15 and 2-16), the BLM would prioritize other uses in the South Shale Ridge area, and there would be restrictions to minimize impacts on its wilderness characteristics including an NSO stipulation for the ACEC (CRV and GJ FOs PRMP/FSEIS p. 3-188).

The BLM complied with NEPA’s requirement to take a hard look and analyze the environmental consequences from oil and gas leasing in the South Shale Ridge Area in the CRV and GJ FOs PRMP/FSEIS. Accordingly, this protest is denied.

NEPA: Range of Alternatives

***Western Environmental Law, Center for Biological Diversity, Great Old Broads for Wilderness, Rocky Mountain Wild, Sierra Club, Western Colorado Alliance, Western Watersheds Project, Wilderness Workshop
Morgan O’Grady, Allison Henderson, Sherry Schenk, Matt Sandler, Jackie Feinberg, Emily Hornback, Delaney Rudy, Peter Hart***

Issue Excerpt Text: BLM’s failure to consider a no-new-leasing alternative is arbitrary and capricious, and violates NEPA.

Summary:

Protestors stated that the BLM violated NEPA by failing to consider a no new leasing alternative.

Response:

When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives and, for alternatives eliminated from detailed study, to briefly discuss the reasons for their having been eliminated (40 CFR 1502.14(a)). When there are potentially a very 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).

Agencies may dismiss an alternative from detailed analysis and must briefly discuss the reasons for having done so (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 considered but eliminated from detailed analysis some alternatives suggested throughout the scoping and public comment periods that proposed exclusive use or maximum development, production, or protection of one resource at the expense of other resources or resource uses. Rationale for the dismissal of suggested alternatives are outlined in Table 2.5-1 and Table 2.3-2 (CRV and GJ FOs PRMP/FSEIS pp. 2-21 through 2-25). The BLM documented the reason for dismissing an alternative that would eliminate "no new leasing" in Chapter 2, *Alternatives*, of the CRV and GJ FOs PRMP/FSEIS under Section 2.5, which states that "a no-leasing alternative would be very similar to Alternative F, which would close 95 percent of the decision area to future fluid mineral leasing. Much of the high-potential area currently has existing leases that would not be affected by decisions stemming from this SEIS" (CRV and GJ FOs PRMP/FSEIS pp. 2-21).

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.

Consistent with 40 CFR 1502.14, the BLM properly considered and dismissed an alternative that would eliminate "no new leasing" from detailed analysis in the CRV and GJ FOs PRMP/FSEIS. Accordingly, this protest is denied.

Old Spanish National Historic Trail Management

Public Employees for Environmental Responsibility

Chandra Rosenthal, John Hiscock

Issue Excerpt Text: The Old Spanish National Historic Trail protections in SEIS Preferred Alternative G fail to comply with the requirements of the National Trails System Act (NTSA), 16 U.S.C. §§ 1241 et seq. (1968).

Public Employees for Environmental Responsibility

Chandra Rosenthal, John Hiscock

Issue Excerpt Text: The NTSA specifically addresses what uses and developments are allowed along Trail corridors of NTs on federal public lands. The Act directs the following: National scenic or national historic trails may contain campsites, shelters, and related-public-use facilities. Other uses along the trail, which will not substantially interfere with the nature and purposes of the trail, may be permitted by the Secretary charged with the administration of the trail. Reasonable efforts shall be made to provide sufficient access opportunities to such trails and, to the extent practicable, efforts shall be made to avoid activities incompatible with the purposes for which such trails were established. 16 USC§1246(c) (emphasis added). This is a statutory directive, not a grant of

discretionary authority. Oil and gas leasing should not be allowed within the trail corridor, the viewshed, or the buffer, as this will interfere with the nature and purposes of the Trail. It is certainly “practicable” to forego the issuance of discretionary oil and gas leases on federal lands within Trail management corridors.

Public Employees for Environmental Responsibility
Chandra Rosenthal, John Hiscock

Issue Excerpt Text: BLM’s selected buffer of 50 meters without a trail inventory has no explained basis and is an arbitrary and capricious decision. In fact, BLM did recommend using the default 5-mile buffer in Alternative C and Alternative F. However, BLM gives no reason it was not used in the preferred Alternative G. The SEIS states: Under Alternative C, management of the Old Spanish National Historic Trail would continue as described under Alternative A. In addition, an NSO stipulation prohibiting surface occupancy and surface-disturbing activities within a 0.5-mile buffer of the Old Spanish National Historic Trail would be in place. A CSU stipulation would be applied within 5 miles of either side of the Old Spanish National Historic Trail. Combined, these stipulations would provide the most protection from surface-disturbing activities among Alternatives A, B, C, and D.” (Emphasis added) SEIS at pp. 3-198-199. Under Alternative F, BLM concluded that the complete width, including the width of a protective corridor either set at the default width of 5 miles either side of the NT centerline, or to be determined through a Manual 6280 inventory would be excluded from fluid mineral leasing. We protest the currently selected 50-meter buffer and request that BLM apply the 5-mile buffer on either side of the OSNHT centerline, for Alternative G.

Public Employees for Environmental Responsibility
Chandra Rosenthal, John Hiscock

Issue Excerpt Text: Additionally, the NTSA limits motorized vehicle use in Trail Corridors. The Act states, “ Other uses along the historic trails and the Continental Divide National Scenic Trail, which will not substantially interfere with the nature and purposes of the trail, and which, at the time of designation, are allowed by administrative regulations, including the use of motorized vehicles, shall be permitted by the Secretary charged with administration of the trail.” Id. Therefore, the only permissible use of motorized vehicles on federal lands along NHTs must have: (1) pre-existed the enactment of the subject NHT; (2) been administratively authorized; and (3) not interfere with the nature and purposes of the Trail. Any federal “administrative” allowance should certainly be analyzed and documented in federal agency land use management plans and specific plans such as BLM’s travel management plans. Oil and gas exploration and development activities routinely involve the use of motorized vehicles, normally conflict with, and interfere with the nature and purposes of Historic Trails and should, therefore, be prohibited in this case, from the Old Spanish corridor.

Public Employees for Environmental Responsibility
Chandra Rosenthal, John Hiscock

Issue Excerpt Text: Chapter 5 indicates that land management actions are subject to law and the policy manual provisions prior to updating land management plans. Also, the NPS in its SEIS comments, noted that the inventory should be done prior to the lease plans. BLM notes National Park Service’s preference for trail inventory to be completed along the Trail however, BLM simply kicks the can down the road. While inventory work has been completed along segments of the trail within the Grand Junction Field Office, future inventory in accordance with BLM Manual 6280-1 is required. Additional discussion has been included in section 3.7.4 to explain that additional site-specific NEPA analysis would be conducted prior to authorizing any implementation actions which may impact the Old Spanish NHT and the BLM has the authority to require mitigation to avoid or minimize impacts during that site-specific NEPA evaluation. There is no indication that BLM

performed any NT inventory or analytically used any such unreferenced inventory data to propose and establish a justifiable Trail Management Corridor in accordance with Manual 6280.

Public Employees for Environmental Responsibility
Chandra Rosenthal, John Hiscock

Issue Excerpt Text: According to NEPA, federal agencies must assess the environmental effects of their proposed actions, including direct, indirect, and cumulative impacts. This is part of the broader requirement to take a “hard look” at the environmental consequences of their actions. Overall, NEPA mandates that cumulative impacts be an integral part of the environmental review process to ensure that the potential environmental consequences of proposed actions are comprehensively evaluated and understood. 40 CFR § 1508.7, 40 CFR § 1502.16, 40 CFR § 1508.25 BLM’s consideration of cumulative impacts as stated in the SEIS is insufficient: Cumulative Impacts Past, present, and reasonably foreseeable actions with the potential to have cumulative impacts on national trails include continued oil and gas development, ROW location, and, most importantly, increasing recreation and visitor use in the region, which put additional pressure on trails. Management of the Old Spanish National Historic Trail is conducted in coordination with the National Park Service and local nonfederal partners. Management direction provided for in planning and strategy documents has the potential to decrease the potential for degradation and assist in the preservation of natural, cultural, and historic trail resources. As BLM continues to inventory resources along the Old Spanish National Historic Trail in accordance with Technical Reference 6280-1, additional mitigation measures may be added to projects proposed along the trail corridor. Any such measures would be applied on a project-level basis during subsequent NEPA review. SEIS, p. 3-201

Summary:

Protestors stated that the Old Spanish National Historic Trail (OSNHT) protections in the PRMP/FSEIS (Alternative G) fail to comply with the requirements of the National Trails System Act (NTSA), 16 U.S.C. 1241 et seq. (1968), and the BLM’s selected buffer of 50 meters without a trail inventory has not explained the basis for the proposed buffer distance, thereby making use of the 50-meter buffer an arbitrary and capricious decision.

Protestors further stated that the BLM violated the NTSA’s limitations on motorized vehicle use in trail corridors by authorizing oil and gas development within the OSNHT corridor, as these operations routinely require motorized vehicle access.

In addition, protestors stated that the BLM violated NEPA and the directives in Manual 6280, as the BLM did not conduct a comprehensive and complete trails inventory or analytically use any such unreferenced inventory data to propose and establish a justifiable Trail Management Corridor. Protestors also stated that the BLM violated NEPA at 40 CFR 1508.7, 40 CFR 1502.16, and 40 CFR 1508.25 by failing to adequately evaluate direct, indirect, and cumulative impacts on the OSNHT from the management actions proposed under the PRMP/FSEIS.

Response:

The NTSA, 16 U.S.C. 1241–1251, as amended, promotes the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas, and historic resources of the United States; provides the means for attaining these objectives by instituting a National Trails System (NTS); prescribes the methods and standards for adding NTS components; and encourages partner involvement in the planning, development, operation, maintenance, and, where appropriate, operation and maintenance of NTS components. NTSA 16 U.S.C. 1244(a)(23) protects the OSNHT, which extends approximately 2,700 miles from Santa Fe, New Mexico to Los Angeles, California.

NTSA 16 U.S.C. 1246 grants the Secretary of the Interior the administration and management of the OSNHT.

NTSA 16 U.S.C. 1246(c) states that “the use of motorized vehicles by the general public along any national scenic trail shall be prohibited and nothing in this Act shall be construed as authorizing the use of motorized vehicles within the natural and historical areas of the national park system, the national wildlife refuge system, the national wilderness preservation system where they are presently prohibited or on other Federal lands where trails are designated as being closed to such use by the appropriate Secretary: *Provided*, That the Secretary charged with the administration of such trail shall establish regulations which shall authorize the use of motorized vehicles when, in his judgment, such vehicles are necessary to meet emergencies or to enable adjacent landowners or land users to have reasonable access to their lands or timber rights...” (p. 28 NTSA Amended 2019).

In this planning effort, the BLM is making land use planning decisions that do not authorize site-specific implementation actions. The BLM will undertake additional decision-making, including appropriate environmental review pursuant to NEPA, prior to authorizing or approving an action that may affect the OSNHT, including development of oil and gas resources. Specifically, as part of the process to receive a permit to drill, oil and gas project proponents must submit detailed plans of development that include specific information, such as the location of roads, traffic, and pipelines. As such, a more quantitative and site-specific analysis would be completed by the BLM when considering whether to grant a permit to drill.

Furthermore, the BLM analyzed a full range of alternatives regarding a buffer for fluid mineral leasing around the OSNHT, which can be found in Section 3.7.4 of the CRV and GJ FOs PRMP/FSEIS (pp. 3-197 through 3-201). Under Alternative A there would be no special restrictions for fluid mineral leasing surrounding the trail. Alternatives B, D, E, and G include a 50-meter buffer NSO stipulation prohibiting surface occupancy and surface-disturbing activities around the OSNHT. Alternative C includes a 0.5-mile buffer NSO stipulation and a 5-mile controlled surface use stipulation on either side of the OSNHT. Alternative F closes the area where the OSNHT exists to fluid mineral leasing. As such, the BLM developed a reasonable range of alternatives, all of which meet the purpose and need of the CRV and GJ FOs PRMP/FSEIS and allowed for some level of support, protection, or use of all resources in the planning area. Based on the BLM’s assessment of each alternative’s impacts on the sensitive resources in the planning area, the BLM selected Alternative G as the PRMP, which draws from a combination of components from the various alternatives previously analyzed.

Neither the NTSA nor BLM national trails policy requires the BLM to identify specific limitations or specific allowable discretionary uses on national trails at the land use planning level. RMPs are designed to guide and control future management actions and the development of subsequent, more detailed and limited scope plans for resources and uses (43 CFR 1601.0-2). Per BLM Manual 6280, allocation of a National Trail Management Corridor must be “of sufficient width to encompass National Trail resources, qualities, values, and associated settings and the primary use or uses that are present or to be restored.” The BLM determined that 50 meters on either side of the trail was a sufficient width to encompass the OSNHT resources, qualities, values, and associated settings and the primary use or uses of the trail.

As noted in CRV and GJ FOs PRMP/FSEIS Section 3.7.4, “ongoing inventory work is still required in accordance with BLM Technical Reference 6280-1: National Scenic and Historic Trails Inventory, Assessment, and Monitoring. Additional site-specific NEPA analysis is required prior to authorizing any future implementation actions which may impact the [OSNHT]. Additionally, BLM has the authority to require mitigation to avoid or minimize impacts to National Historic Trails during that site-specific NEPA evaluation” (CRV and GJ FOs PRMP/FSEIS p. 3-197). Site-specific NEPA analysis is required prior to authorizing any future implementation actions that may affect the

OSNHT. Additionally, the BLM has the authority to require mitigation to avoid or minimize impacts on National Historic Trails during that site-specific NEPA evaluation.

Protestors note various violations to directives within the NEPA and BLM Manuals (40 CFR 1508.7, 40 CFR 1502.16, 40 CFR 1508.25) in relation to the impact of the proposed actions on the OSNHT. CEQ regulations require an assessment of cumulative impacts as an integral part of a NEPA document. Direct, indirect, and cumulative impacts on the OSNHT, under the PRMP, are discussed in Section 3.7.4 (pp. 3-198 through 3-201) of the CRV and GJ FOs PRMP/FSEIS. As stated in 40 CFR 1502.16, the BLM must identify, as part of the environmental consequences discussion in an EIS, any irreversible or irretrievable commitments of resources that would be involved in the proposed action or reasonable alternatives, should they be implemented. Section 3.7.4 forms the scientific and analytic basis for the comparisons between the alternatives proposed in the CRV and GJ FOs PRMP/FSEIS, as they relate to National Trails. Noting again that ongoing inventory work will still be required under existing laws and regulations (CRV and GJ FOs PRMP/FSEIS p. 3-197), the BLM provided a summary of the affected environment as it relates to decisions for the SEIS throughout Section 3.7.4 as well as the direct, indirect, and cumulative impacts (CRV and GJ FOs PRMP/FSEIS pp. 3-197 through 3-201).

In addition, the methods and assumptions used in the analysis of environmental consequences are outlined in Section 3.4 (CRV and GJ FOs PRMP/FSEIS pp. 3-4 and 3-5) and address the protestors' note in relation to 40 CFR 1508.25, which discusses the scope of an EIS and directs agencies to consider three types of actions, three types of alternatives, and three types of impacts. The CRV and GJ FOs PRMP/FSEIS is an SEIS and was written in response to a United States District Court, District of Colorado, opinion and order (1:16-cv-01822-LTB) regarding the CRV FO RMP ROD and a subsequent settlement agreement. As such, the specific purpose of the document is to broaden the range of alternatives in the 2015 CRV FO and GJ FO Approved RMPs with respect to the lands that are allocated as open or closed for oil and gas leasing. The purpose is also to provide additional air quality analysis for the fluid mineral management alternatives considered in the 2014 CRV FO Final EIS, the 2015 GJ FO Final EIS, and the SEIS (CRV and GJ FOs PRMP/FSEIS p. 1-1). Additional analyses are outside the scope of this document.

The BLM complied with regulations within the NTSA specific to management of the OSNHT in the CRV and GJ FOs PRMP/FSEIS and fulfilled its statutory requirements under NEPA. Accordingly, this protest issue is denied.

Supplemental EIS

***Western Environmental Law, Center for Biological Diversity, Great Old Broads for Wilderness, Rocky Mountain Wild, Sierra Club, Western Colorado Alliance, Western Watersheds Project, Wilderness Workshop
Morgan O'Grady, Allison Henderson, Sherry Schenk, Matt Sandler, Jackie Feinberg, Emily Hornback, Delaney Rudy, Peter Hart***

Issue Excerpt Text: First, Alternative G is unsupported by the record. Although an agency may 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, 40 C.F.R. § 1502.9(d). Here, in introducing Alternative G as the proposed alternative only in the FSEIS, BLM undermines a core purpose of NEPA.

*Western Environmental Law, Center for Biological Diversity, Great Old Broads for Wilderness, Rocky Mountain Wild, Sierra Club, Western Colorado Alliance, Western Watersheds Project, Wilderness Workshop
Morgan O’Grady, Allison Henderson, Sherry Schenk, Matt Sandler, Jackie Feinberg, Emily Hornback, Delaney Rudy, Peter Hart*

Issue Excerpt Text: Although BLM states that it draws from existing alternatives in creating Alternative G, Final SEIS at ES-3, the ultimate result is an alternative that is less protective than Alternatives E and F, suggesting the alternative is not qualitatively within the spectrum of alternatives that were considered in the supplemental NEPA process. See *Russell Country Sportsmen v. U.S. Forest Serv.*, 668 F.3d 1037, 1048 (9th Cir. 2011). In developing the new, modified Alternative G internally, after the majority of the public participation periods had passed, and after the opportunity for public comment to influence the agency’s final decision had elapsed, BLM unlawfully subverts this process.

Summary:

Protestors stated that the BLM violated NEPA by introducing Alternative G as the proposed alternative in the FSEIS. This new alternative should be considered “substantial changes that are relevant to environmental concerns” and is not qualitatively within the spectrum of alternatives that were considered in the supplemental NEPA process, thus requiring the BLM complete an SEIS for Alternative G under 40 CFR 1502.9(d).

Response:

NEPA requires agencies to prepare supplements to either a Draft or Final EIS if the agency makes substantial changes to the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)). “Substantial changes” are those 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). An SEIS 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 in the EIS (BLM Handbook H-1790-1, p. 29).

The BLM made no substantial changes to the CRV and GJ FOs PRMP/FSEIS compared to the Draft SEIS/RMP Amendment that are relevant to environmental concerns. Alternative G, which is the proposed revision, includes a combination of components from across the range of alternatives presented in the Draft SEIS. The management actions proposed under Alternative G are described in Section 2.2.6 of the CRV and GJ FOs PRMP/FSEIS (pp. 2-5 through 2-9). Additionally, a comparison of alternatives is provided in Section 2.3 (pp. 2-9 through 2-19). This comparison supports the conclusion that the management actions proposed under Alternative G are within the spectrum of alternatives previously analyzed in the Draft RMP/SEIS.

The BLM has appropriately determined that there are no new significant circumstances or information relevant to environmental concerns proposed in the CRV and GJ FOs PRMP/FSEIS, or its impacts. Therefore, the BLM has complied with NEPA. Accordingly, this protest issue is denied.

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