



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

**Grand Staircase-Escalante  
National Monument and Kanab-  
Escalante Planning Area Proposed  
Resource Management Plans and  
Final Environmental Impact  
Statement**

January 24, 2020



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## Acronyms

ACEC	area of critical environmental concern
AMS	Analysis of the Management Situation
APE	area of potential effects
BLM	United States Department of the Interior, Bureau of Land Management
BMPs	best management practices
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
EIS	environmental impact statement
ERMA	extensive recreation management area
ESA	Endangered Species Act of 1973
FACA	Federal Advisory Committee Act
FLPMA	Federal Land Policy and Management Act of 1976
GHG	greenhouse gas emissions
GSENM	Grand Staircase-Escalante National Monument
KEPA	Kanab-Escalante Planning Area
MLA	Mineral Leasing Act of 1920
NAAQS	National Ambient Air Quality Standards
NEPA	National Environmental Policy Act of 1969
NHPA	National Historic Preservation Act of 1966
NLCS	National Landscape Conservation System
NO <sub>x</sub>	nitrogen oxides
NPS	National Park Service
NRA	National Recreation Area
NRHP	National Register of Historic Places
NTMC	National Trail Management Corridor
NTSA	National Trails System Act
OHV	off-highway vehicle
OPLMA	Omnibus Public Land Management Act of 2009
OSNHT	Old Spanish National Historic Trail
RAC	Resource Advisory Council
RMA	recreation management area
RMP	resource management plan
RMZ	Recreation Management Zone
ROD	record of decision
ROW	right-of-way
R&VS	Recreation and Visitor Services
SHPO	State Historic Preservation Officer
SITLA	School and Institutional Trust Lands Administration
SRMA	special recreation management area
U.S.C.	United States Code
USFWS	United States Department of the Interior, Fish and Wildlife Service
USLEA	Utah Schools and Land Exchange Act of 1998
VRM	visual resource management
WSA	Wilderness Study Area

## Protesting Party Index

Protester	Organization	Determination
Abdo, Mike	N/A	Dismissed – Comments Only
Adman, Eric	N/A	Dismissed – Comments Only
Adolphson, Matt	N/A	Dismissed – Comments Only
AJ	N/A	Dismissed – Comments Only
Alinprandini, Guark	N/A	Dismissed – Comments Only
Alinprandini, Jennifer	N/A	Dismissed – Comments Only
Allbright, Galloway	N/A	Dismissed – Comments Only
Allen, Kevin	N/A	Dismissed – Comments Only
Anonymous	N/A	Dismissed – Comments Only
Aragon, Eduardo	N/A	Dismissed – Comments Only
Aspras, Jimmy	N/A	Dismissed – Comments Only
Astill, Forest	N/A	Dismissed – Comments Only
Athalye, Lana	N/A	Dismissed – Comments Only
Aurelia, Charles	N/A	Dismissed – Comments Only
Avery, Natalie	N/A	Dismissed – Comments Only
Babson, Barbara	N/A	Dismissed – Comments Only
Bagley, Andie	N/A	Dismissed – Comments Only
Bagley, Jake	N/A	Dismissed – Comments Only
Bailey, C.	N/A	Dismissed – Comments Only
Ballard, Brian	N/A	Dismissed – Comments Only
Barbour, Jesse	N/A	Dismissed – Comments Only
Barkan, Tessa	N/A	Dismissed – Comments Only
Barksdale, Caleb	N/A	Dismissed – Comments Only
Bateman, Blair	N/A	Dismissed – Comments Only
Bates, Bryan	N/A	Dismissed – Comments Only
Baugh, Dustin	N/A	Dismissed – Comments Only
Bearer, Andrew	N/A	Dismissed – Comments Only
Beck, Keith	N/A	Dismissed – Comments Only
Beck-Sordi, Kelly	N/A	Dismissed – Comments Only
Behrens, Matthew	N/A	Dismissed – Comments Only
Bernhardt, Barbara	N/A	Dismissed – Comments Only
Bethers, Annette	N/A	Dismissed – Comments Only
Bevilacqua, Judith	N/A	Dismissed – Comments Only
Bigney, Catherine	N/A	Dismissed – Comments Only
Birkhead, Meredith	N/A	Dismissed – Comments Only
Bishop, Gillian	N/A	Dismissed – Comments Only
Bjarne Broste, Anders	N/A	Dismissed – Comments Only
Bollermann, Teresa	N/A	Dismissed – Comments Only
Bonebrake, Kathleen	N/A	Dismissed – Comments Only
Bones, Marcus	N/A	Dismissed – Comments Only
Borlik, Torrence	N/A	Dismissed – Comments Only
Bourne, Heidi	N/A	Dismissed – Comments Only
Bradley, Rachel	N/A	Dismissed – Comments Only
Bremner, Brian	Garfield County	Dismissed – Comments Only

Briggs, Errin	N/A	Dismissed – Comments Only
Bright, Michelle	N/A	Dismissed – Comments Only
Brister, Bob	N/A	Dismissed – Comments Only
Brittner, Lynn	Old Spanish Trail Association	Denied – Issues and Comments
Brooks, Robert	N/A	Dismissed – Comments Only
Brooks, Scotts	N/A	Dismissed – Comments Only
Brown, Elizabeth	N/A	Dismissed – Comments Only
Brugger, J	N/A	Denied – Issues and Comments
Brunvand, Amy	N/A	Dismissed – Comments Only
Burke, Barbara	N/A	Dismissed – Comments Only
Burnside, Thomas	N/A	Dismissed – Comments Only
Byrne, Denis	N/A	Dismissed – Comments Only
Cabrera, Natalie	N/A	Dismissed – Comments Only
Calihman, Adam	N/A	Dismissed – Comments Only
Carbajal, Julia	N/A	Dismissed – Comments Only
Carel, Teresa	N/A	Dismissed – Comments Only
Carr, Zachary	N/A	Dismissed – Comments Only
Carrick, Keith	N/A	Dismissed – Comments Only
Carroll, Peter	N/A	Dismissed – Comments Only
Carter, Kristal	N/A	Dismissed – Comments Only
Case, Julie	N/A	Dismissed – Comments Only
Cash, Michael	N/A	Dismissed – Comments Only
Cassady, Robert	N/A	Dismissed – Comments Only
Chesnut, Tami	N/A	Dismissed – Comments Only
Clarke, Kathleen	State of Utah – Office of the Governor	Remanded in part; Denied in part – Issues and Comments
Cleave, Bobbie	N/A	Dismissed – Comments Only
Coley, Lissy	N/A	Dismissed – Comments Only
Collier, Michael	N/A	Dismissed – Comments Only
Collis, Robert	N/A	Dismissed – Comments Only
Connelly, Sally	N/A	Dismissed – Comments Only
Contreras, Luis	N/A	Dismissed – Comments Only
Cook, Kimberly	N/A	Dismissed – Comments Only
Cook, Terrence	N/A	Dismissed – Comments Only
Cooke, Allen R.	N/A	Dismissed – Comments Only
Cooper, Arlin Jacob	N/A	Dismissed – Comments Only
Cooper, E	N/A	Dismissed – Comments Only
Coronella, Michael	N/A	Dismissed – Comments Only
Cozad, Susan	N/A	Dismissed – Comments Only
Craig, Laurie	N/A	Dismissed – Comments Only
Cramer, Zachary	N/A	Dismissed – Comments Only
Crouch, Michael	N/A	Dismissed – Comments Only
Davenport, Savanna	N/A	Dismissed – Comments Only
Davidson, Nancy	N/A	Dismissed – Comments Only
Davis, George; Davis, Sara Nell	N/A	Dismissed – Comments Only

Davis, Jayson	N/A	Dismissed – Comments Only
DeeAnn, Tracy	N/A	Dismissed – Comments Only
De Rooy, Sylvia	N/A	Dismissed – Comments Only
De Souza, Diane	N/A	Dismissed – Comments Only
DiMarco, Jerry	N/A	Dismissed – Comments Only
Disinger, Jim	N/A	Dismissed – Comments Only
Ditto, Madeleine	N/A	Dismissed – Comments Only
Dominesey, Katherine	N/A	Dismissed – Comments Only
Dos Santos, Diego	N/A	Dismissed – Comments Only
Dowling, Tim	N/A	Dismissed – Comments Only
Dunkley, Shawn	N/A	Dismissed – Comments Only
Eakins, John	N/A	Dismissed – Comments Only
Eakins, Loren	N/A	Dismissed – Comments Only
Eaton, Jeffrey	N/A	Dismissed – Comments Only
Eaton, Marietta	N/A	Dismissed – Comments Only
Edwards, Jeff	N/A	Dismissed – Comments Only
Egan, Veronica	N/A	Dismissed – Comments Only
Elkins, Ann	N/A	Dismissed – Comments Only
Ellen Thomas, Chelsea	N/A	Dismissed – Comments Only
Elzey, Mark	N/A	Dismissed – Comments Only
Engel, Alex	N/A	Dismissed – Comments Only
Enz Lill, Nancy	N/A	Dismissed – Comments Only
Erickson, Dustin	N/A	Dismissed – Comments Only
Evans, Zak	N/A	Dismissed – Comments Only
Evenden, Angela	N/A	Dismissed – Comments Only
Faben, Aline	N/A	Dismissed – Comments Only
Fecteau, Richard	N/A	Dismissed – Comments Only
Feingold, Max	N/A	Dismissed – Comments Only
Felt, Martha	N/A	Dismissed – Comments Only
Felt, Taylor	N/A	Dismissed – Comments Only
Fertig, Laura	N/A	Denied – Issues and Comments
Fiebig, Michael	American Rivers	Dismissed – Comments Only
Fields, Corie	N/A	Dismissed – Comments Only
Filgo, Shelly B.	N/A	Dismissed – Comments Only
Fisher, Jared	N/A	Dismissed – Comments Only
Flower, David	N/A	Dismissed – Comments Only
Flynn, Charles	N/A	Dismissed – Comments Only
Fowler, Kelcy	N/A	Dismissed – Comments Only
Friedman, Robin	N/A	Dismissed – Comments Only
Gabel-Richards, Elan	N/A	Dismissed – Comments Only
Gaines Quammen, Betsy	N/A	Dismissed – Comments Only
Gale, Vicki	N/A	Dismissed – Comments Only
Gant, Andy	Kane County Commission	Denied – Issues and Comments
Gardner, Helen	N/A	Dismissed – Comments Only



Gardner, Whitney	N/A	Dismissed – Comments Only
Gellert, Sally	N/A	Dismissed – Comments Only
Gentes, Zoe	N/A	Dismissed – Comments Only
Genzardi, Michele	N/A	Dismissed – Comments Only
Geraty, Charles	N/A	Dismissed – Comments Only
Gillespie, Janice	N/A	Dismissed – Comments Only
Glosser, Hannah	N/A	Dismissed – Comments Only
Goad, Amanda	N/A	Dismissed – Comments Only
Godbe, Stephen	N/A	Dismissed – Comments Only
Goldsberry, Amber	N/A	Dismissed – Comments Only
Gooding, Judith	N/A	Dismissed – Comments Only
Grammar, Mark	N/A	Dismissed – Comments Only
Greene, Mary	National Wildlife Federation	Denied – Issues and Comments
Greig, Karen	N/A	Dismissed – Comments Only
Grossman, Maurena	N/A	Dismissed – Comments Only
Grossman, Nancy	N/A	Dismissed – Comments Only
Haffner, Nancy	N/A	Dismissed – Comments Only
Hall, Laura	N/A	Dismissed – Comments Only
Halpern, Harvey	N/A	Dismissed – Comments Only
Hanceford, Phil; Marienfeld, Kya; Schoenhut, Karimah; O'Brien, Mary; Welp, Laura; Krupp, Chris; Beam, Ryan; Walker, Joro; Polly, David P.; Berry, Scott; Crumbo, Kim; MacNulty, Cory; Werner, Gary; Murray, Danielle; Smith, Vera; Buccino, Sharon; Silbert, Shelley <sup>1</sup>	The Wilderness Society; Southern Utah Wilderness Alliance; Sierra Club; Grand Canyon Trust; Western Watersheds Project; WildEarth Guardians; Center for Biological Diversity; Western Resource Advocates; Society of Vertebrate Paleontology; Grand Staircase Escalante Partners; Wildlands Network; National Parks Conservation Association; Partnership for the National Trails System; Conservation Lands Foundation; Defenders of Wildlife; Natural Resources Defense Council; Great Old Broads for Wilderness	Denied – Issues and Comments
Hansen, Rose	N/A	Dismissed – Comments Only
Hanson, Eric	N/A	Dismissed – Comments Only
Hardebeck, Larry	N/A	Dismissed – Comments Only
Harrison, Molly	N/A	Dismissed – Comments Only
Hart, Donna	N/A	Dismissed – Comments Only
Harvey, David	N/A	Dismissed – Comments Only
Harwood, John	N/A	Dismissed – Comments Only
Haslam, Kathryn	N/A	Dismissed – Comments Only
Hauptman, Heather	N/A	Dismissed – Comments Only
Heet, Karen	N/A	Dismissed – Comments Only

Hendrickson, Diane	N/A	Dismissed – Comments Only
Hensel, David	N/A	Dismissed – Comments Only
Hickenlooper, Matthew	N/A	Dismissed – Comments Only
Hillsinger, William C.	N/A	Dismissed – Comments Only
Hiscock, John <sup>2</sup>	N/A	Denied – Issues and Comments
Hjelle, Kristin	N/A	Dismissed – Comments Only
Holah, Jenny	N/A	Dismissed – Comments Only
Holland, Michael	N/A	Dismissed – Comments Only
Holt, Erin	N/A	Dismissed – Comments Only
Holtzman, Rosalind	N/A	Dismissed – Comments Only
Honer-Orton, M.	N/A	Dismissed – Comments Only
Howland, Doug	N/A	Dismissed – Comments Only
Howland, John	N/A	Dismissed – Comments Only
Huffman, James	N/A	Dismissed – Comments Only
Hurst, Brendan	N/A	Dismissed – Comments Only
Israel, Marlene	N/A	Dismissed – Comments Only
Jaeger, Lindsay	N/A	Dismissed – Comments Only
Janezic Pregitzer, Bianka	N/A	Dismissed – Comments Only
Jensen, Jerold L.	N/A	Dismissed – Comments Only
Johnson, David	N/A	Dismissed – Comments Only
Johnson, Jane	N/A	Dismissed – Comments Only
Johnson, Lucinda	N/A	Dismissed – Comments Only
Jolley, Brian	N/A	Dismissed – Comments Only
Jones, Debbie	N/A	Dismissed – Comments Only
Jump, Thomas R.	N/A	Dismissed – Comments Only
K, Brent	N/A	Dismissed – Comments Only
Kazmierczak, Pam	N/A	Dismissed – Comments Only
Kearsley, Lisa	N/A	Dismissed – Comments Only
Kelly, Phillip	N/A	Dismissed – Comments Only
Kelling, Slade	N/A	Dismissed – Comments Only
Kent, Patricia	N/A	Dismissed – Comments Only
Keshet-Fowler, Cedar H.	N/A	Dismissed – Comments Only
Kimball, Emily	N/A	Dismissed – Comments Only
Kimes, Pam	N/A	Dismissed – Comments Only
Klearman, Jacob	N/A	Dismissed – Comments Only
Klearman, Saphira	N/A	Dismissed – Comments Only
Konoske, Brian	N/A	Dismissed – Comments Only
Korane, Ken	N/A	Dismissed – Comments Only
Kuntz, Jon	N/A	Dismissed – Comments Only
Kuo, Hope	N/A	Dismissed – Comments Only
Kwok, Kristine	N/A	Dismissed – Comments Only
Kyes, Cedar	N/A	Dismissed – Comments Only
La Motte, Isabelle	N/A	Dismissed – Comments Only
Landres, Peter	N/A	Dismissed – Comments Only

Larsen, Brody	N/A	Dismissed – Comments Only
Larsen, Rick	N/A	Dismissed – Comments Only
Leibow, Christopher	N/A	Dismissed – Comments Only
Lewi, Drew	N/A	Dismissed – Comments Only
Liebich, Samuel	N/A	Dismissed – Comments Only
Lindsay, David	Coalition for American Heritage	Dismissed – Comments Only
Lish, Christopher	N/A	Dismissed – Comments Only
Long, Maria	N/A	Dismissed – Comments Only
Lorenz, Molly	N/A	Dismissed – Comments Only
Love, Charlene	N/A	Dismissed – Comments Only
Lowe, Nicola	N/A	Dismissed – Comments Only
Lowry, Deborah	N/A	Dismissed – Comments Only
Lyda, Sarah	N/A	Dismissed – Comments Only
Lynch, Thomas	N/A	Dismissed – Comments Only
Mager, Nancy	N/A	Dismissed – Comments Only
Maher, Thomas	N/A	Dismissed – Comments Only
Mandelbaum, Rachel	N/A	Dismissed – Comments Only
Mangan, Katherine	N/A	Dismissed – Comments Only
Marienfeld, Kya	N/A	Dismissed – Comments Only
Marjenhoff, Shannon	N/A	Dismissed – Comments Only
Markham, Ty	N/A	Dismissed – Comments Only
Marshall, John	N/A	Dismissed – Comments Only
Martin, Randy	N/A	Dismissed – Comments Only
Martinek, Donna	N/A	Dismissed – Comments Only
Mason, Dorothy	N/A	Dismissed – Comments Only
Mazik, Kim	N/A	Dismissed – Comments Only
McCloy, Marjorie	N/A	Dismissed – Comments Only
McDermott, Ryan	N/A	Dismissed – Comments Only
McFadden, Douglas	McFadden Archaeological Consulting	Dismissed – Comments Only
McIntyre, Mary	N/A	Dismissed – Comments Only
McJames, Kevin	N/A	Dismissed – Comments Only
McKennon, Ed	N/A	Dismissed – Comments Only
Mellitz, Michael	N/A	Dismissed – Comments Only
Melville, Kiersten	N/A	Dismissed – Comments Only
Mendonca, Ada	N/A	Dismissed – Comments Only
Meyer, Barbara	N/A	Dismissed – Comments Only
Meyer, John	N/A	Dismissed – Comments Only
Mills, Travis H.	N/A	Dismissed – Comments Only
Millar, Suzanne	N/A	Dismissed – Comments Only
Miller, Howard	N/A	Dismissed – Comments Only
Misicko, Martin	N/A	Dismissed – Comments Only
Mitchell, Heidi	N/A	Dismissed – Comments Only
Monus, Brittney	N/A	Dismissed – Comments Only
Moore, Jeff	N/A	Dismissed – Comments Only
Moriarty, Kathleen	N/A	Dismissed – Comments Only
Moritsch, Barbara	N/A	Dismissed – Comments Only
Morris, Donna	N/A	Dismissed – Comments Only

M.S.	N/A	Dismissed – Comments Only
Murphy, Donna	N/A	Dismissed – Comments Only
Murphy, Shane	N/A	Dismissed – Comments Only
Muzik, Crystal	N/A	Dismissed – Comments Only
Myers, Robert	N/A	Dismissed – Comments Only
Nalven, Katy	N/A	Dismissed – Comments Only
Nanninga, Derek	N/A	Dismissed – Comments Only
Nanninga, James	N/A	Dismissed – Comments Only
Nanninga, Roxanne	N/A	Dismissed – Comments Only
Naples, Michelle	N/A	Dismissed – Comments Only
Neagle, Mary	N/A	Dismissed – Comments Only
Neal, Caitlin	N/A	Dismissed – Comments Only
Negash, Meron	N/A	Dismissed – Comments Only
Nichols, Emily	N/A	Dismissed – Comments Only
Nirgiotis, Ted	N/A	Dismissed – Comments Only
Noel, Mike	Kane County Water Conservancy District	Remanded in part; Denied in part – Issues and Comments
Nudelman, Jean	N/A	Dismissed – Comments Only
O’Grady, Claudia	N/A	Dismissed – Comments Only
Oliver, Matthew	N/A	Dismissed – Comments Only
Olsen, Amanda	N/A	Dismissed – Comments Only
O’Malley, Daniel	N/A	Dismissed – Comments Only
Opperthausen, Paula	N/A	Dismissed – Comments Only
Orvis, Bryan G.	N/A	Dismissed – Comments Only
Paietta, Rachel	N/A	Dismissed – Comments Only
Paklaian, Jonathan	N/A	Dismissed – Comments Only
Parentice, Nina	N/A	Dismissed – Comments Only
Patterson, Brandon	N/A	Dismissed – Comments Only
Pennington, Jennifer	N/A	Dismissed – Comments Only
Perlotto, Sarah	N/A	Dismissed – Comments Only
Peters, Michaelle	N/A	Dismissed – Comments Only
Pieper, Annette	N/A	Dismissed – Comments Only
Pisaneschi, David	N/A	Dismissed – Comments Only
Pliner, Julie	N/A	Dismissed – Comments Only
Poe, Noel	N/A	Denied – Issues and Comments
Prather, Erica	N/A	Dismissed – Comments Only
Price, Marilyn	N/A	Dismissed – Comments Only
Purser, Kara	N/A	Dismissed – Comments Only
Ramais, Christopher	N/A	Dismissed – Comments Only
Ramirez, Daniel	N/A	Dismissed – Comments Only
Ranke, Erika	N/A	Dismissed – Comments Only
Ranney, Wayne	N/A	Dismissed – Comments Only
Ransom, Dan	N/A	Dismissed – Comments Only
Ratner, Jonathan	Western Watersheds Project	Denied – Issues and Comments

Rechtsteinet, Dherrer	N/A	Dismissed – Comments Only
Refsnider, Kurt; Boyle, Kaitlyn	Bikepacking Roots	Dismissed – Comments Only
Reilly, Melissa	N/A	Dismissed – Comments Only
Robinson, Nancy D.	N/A	Dismissed – Comments Only
Rodin, David W.	N/A	Dismissed – Comments Only
Roff, Judith	N/A	Dismissed – Comments Only
Rogers, Andrea	N/A	Dismissed – Comments Only
Rosenbaum, Robert D.;	National Parks Conservation Association	Denied – Issues and Comments
Norwinski, Evelina J.; Hayes, Dina M.		
Roth, Peter	N/A	Dismissed – Comments Only
Sadler, Christa	N/A	Dismissed – Comments Only
Scheer, David	N/A	Dismissed – Comments Only
Schiowitz, Julie	N/A	Dismissed – Comments Only
Schloch, Susan	N/A	Dismissed – Comments Only
Schmahl, Matthew	N/A	Dismissed – Comments Only
Schneider, Ann	N/A	Dismissed – Comments Only
Schultz, Leah	N/A	Dismissed – Comments Only
Schuster, Samantha	N/A	Dismissed – Comments Only
Schwarz, Robert	N/A	Dismissed – Comments Only
Scofield, Joan	N/A	Dismissed – Comments Only
Scopatz, Shane	N/A	Dismissed – Comments Only
Senear, Elizabeth	N/A	Dismissed – Comments Only
Shaw, Vicki; Shaw, Chuck	N/A	Dismissed – Comments Only
Shelton, Carolyn	N/A	Dismissed – Comments Only
Shults, JoAnn	N/A	Dismissed – Comments Only
Sitz, Teresa	N/A	Dismissed – Comments Only
Sjogren, Morgan	N/A	Dismissed – Comments Only
Smith, Allen	N/A	Dismissed – Comments Only
Smith, Butch	N/A	Dismissed – Comments Only
Smith, Russell	N/A	Dismissed – Comments Only
Smith, Wendy	N/A	Dismissed – Comments Only
Snow, Heather	N/A	Dismissed – Comments Only
Soliday, Jordan	N/A	Dismissed – Comments Only
Sowinski, Mark	N/A	Dismissed – Comments Only
Spalding, Blake	N/A	Dismissed – Comments Only
Sutter, Leslie	N/A	Dismissed – Comments Only
Stadler, Patrick	N/A	Dismissed – Comments Only
St. Andre, Nathan	N/A	Dismissed – Comments Only
Stewart, Claire	N/A	Dismissed – Comments Only
Stice, Linda	N/A	Dismissed – Comments Only
Strickland, Gerry	N/A	Dismissed – Comments Only
Strickland, Zachary	N/A	Dismissed – Comments Only
Strobel, Philip	US Environmental Protection Agency Region 8	Dismissed – Comments Only

Sutter, Leslie	N/A	Dismissed – Comments Only
Swindle, Jeffrey	N/A	Dismissed – Comments Only
Swonger, Molly	N/A	Dismissed – Comments Only
Taylor, Chris	N/A	Dismissed – Comments Only
Taylor, Josh	N/A	Dismissed – Comments Only
Tennant, Rob	N/A	Dismissed – Comments Only
Terrell, Aliss	N/A	Dismissed – Comments Only
Terriquez, Erika	N/A	Dismissed – Comments Only
Terry, Karen	N/A	Dismissed – Comments Only
Timpson, Tara	N/A	Dismissed – Comments Only
Thompson, James R.	N/A	Dismissed – Comments Only
Thompson, Ronald W.	Washington County Water Conservancy District	Remanded in part; Denied in part – Issues and Comments
Thorneburg, Amber	N/A	Dismissed – Comments Only
Tiede, Liz	N/A	Dismissed – Comments Only
Topping, David	N/A	Dismissed – Comments Only
Torres, Branden	N/A	Dismissed – Comments Only
Trimble, Stephen	N/A	Dismissed – Comments Only
Trout, John	N/A	Dismissed – Comments Only
Uberuaga, David	N/A	Dismissed – Comments Only
Urpani, Katherine	N/A	Dismissed – Comments Only
Van den Broeke, Travis	N/A	Dismissed – Comments Only
Vanfrank, Megan	N/A	Dismissed – Comments Only
Wade, Ian	N/A	Dismissed – Comments Only
Wade, Lawrence	N/A	Dismissed – Comments Only
Wald, David	N/A	Dismissed – Comments Only
Walker, Elizabeth	N/A	Dismissed – Comments Only
Walls, Margaret	N/A	Dismissed – Comments Only
Wallace, Christine	N/A	Dismissed – Comments Only
Wallentine, Craig	N/A	Dismissed – Comments Only
Waltman, Robert	N/A	Dismissed – Comments Only
Ward, Alison	N/A	Dismissed – Comments Only
Watson, Marc	N/A	Dismissed – Comments Only
Webster, Carly	N/A	Dismissed – Comments Only
Webster, Martha	N/A	Dismissed – Comments Only
Wedekind, Jane	N/A	Dismissed – Comments Only
Weise, Rhonda	N/A	Dismissed – Comments Only
Weller, Lynn	N/A	Dismissed – Comments Only
Wessler, Erik	N/A	Dismissed – Comments Only
Widdison, Renae	N/A	Dismissed – Comments Only
Wilcox, Cathy L.	N/A	Dismissed – Comments Only
Williams, Jonathan	NOLS	Denied – Issues and Comments
Williams, Kent	Utah Rock Art Research Association	Dismissed – Comments Only
Williams, Mary	N/A	Dismissed – Comments Only
Williams, Star	N/A	Dismissed – Comments Only
Wilson, Crispin	N/A	Dismissed – Comments Only

Wolcott, Michael	N/A	Dismissed – Comments Only
Wolfer, John	N/A	Dismissed – Comments Only
Wolverton, W.	N/A	Dismissed – Comments Only
Woodward, Katie	N/A	Dismissed – Comments Only
Wren, Vicki	N/A	Dismissed – Comments Only
Wyers, Giselle	N/A	Dismissed – Comments Only
Yeagar, Mark	N/A	Dismissed – Comments Only
Yoder, Suzanne	N/A	Dismissed – Comments Only
Zeta, Gwendolyn	N/A	Dismissed – Comments Only

<sup>1</sup> This letter was cosigned by multiple parties. In this report, it is referenced as *The Wilderness Society et al.*

<sup>2</sup> This protestor submitted different protest letters during each protest period, both of which were found to have different valid protest issues raised, but is only listed once in this table.

In addition to the protests received from those listed in the above table, the United States Department of the Interior, Bureau of Land Management (BLM) received an additional 15,629 “form” protest letters during the protest period, initiated from the Natural Resources Defense Council. The BLM evaluated each of these form protest letters, including those presenting slight variations of the original version. The BLM determined that these form protest letters received were incomplete since they do not provide full mailing addresses (43 Code of Federal Regulations [CFR] 1610.5-2(a)(2)(i)), and do not raise any valid protest issues (43 CFR 1610.5-2(a)(2)(ii),(iii),(v)). Accordingly, these protest letters were dismissed. Additionally, the BLM received one petition, from the Sierra Club, containing 8,155 signatures.

## NEPA – Baseline

*The Wilderness Society et al.*

*Phil Hanceford et al.*

**Issue Excerpt Text:** Importantly, 40 C.F.R § 1502.15 requires agencies to “describe the environment of the areas to be affected or created by the alternatives under consideration.” Establishment of baseline conditions is a requirement of NEPA. In *Half Moon Bay Fisherman’s Marketing Ass’n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988), the Ninth Circuit states that “without establishing . . . baseline conditions . . . there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA.” The court further held that “[t]he concept of a baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives is critical to the NEPA process,” BLM has failed to establish baseline conditions sufficient to permit analysis of environmental impacts.

**Summary:** The BLM has violated the National Environmental Policy Act (NEPA) by failing to establish baseline conditions sufficient to permit analysis of environmental impacts in the Proposed Resource Management Plans/Final Environmental Impact Statement (Proposed RMPs/Final EIS).

**Response:** The Council on Environmental Quality’s (CEQ) regulations implementing the NEPA require that agencies use “high quality information” (40 CFR § 1500.1(b)). These regulations require the BLM to “ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR § 1502.24).

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

Baseline data provide the necessary basis to make informed land use plan-level decisions. 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 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 BLM used the best available baseline data for all resources in the preparation of the analysis contained in the Proposed RMPs/Final EIS. In particular, the BLM committed to the collection of baseline data for all biological, physical, cultural, and social sciences within the Grand Staircase-Escalante National Monument (GSENM) and the Kanab-Escalante Planning Area (KEPA) and will continue to collect baseline data during the life of the RMPs(Proposed RMPs/Final EIS, p. 2-6). More detailed information on existing conditions within the Planning Area is also included in the GSENM and KEPA Analysis of the Management Situation (AMS). The Proposed RMPs/Final EIS



refers to the AMS when describing baseline conditions (affected environments) in Chapter 3 of the Proposed RMPs/Final EIS.

In both the EIS and the AMS, the BLM has summarized and incorporated baseline information into its analysis of the proposed action and, where appropriate, has presented indicators to further describe current conditions and potential impacts. Further, where public comment identified the need for additional data collection, the BLM undertook such collection as appropriate. For example, in 2018 and 2019, the BLM updated its lands with wilderness characteristics inventory in response to comments asserting that its inventory was out of date (Proposed RMPs/Final EIS, p. 3-39). In certain cases, however, due to a lack of quantitative or location-specific data, some impacts can be discussed only in qualitative terms, which the BLM has noted and described in its analysis. Such data, along with information derived from ongoing engagement with the Tribes, consulting parties, and other cooperating agencies, will be collected and analyzed as part of subsequent project- or implementation-level NEPA processes before any ground disturbing activity is authorized.

Accordingly, the BLM has compiled the best available baseline data for this planning effort consistent with the requirements of NEPA. Where deficiencies in this data exist, the BLM has identified potential effects in qualitative terms, and taken steps to expand baseline data for future site-specific analysis.

For the reasons stated above, the BLM has adequately relied on the best available baseline data for the impacts analysis in the Proposed RMPs/Final EIS. Accordingly, this protest is denied.

## **NEPA – Best Available Science**

### ***National Wildlife Federation***

#### ***Mary Greene***

**Issue Excerpt Text:** Deferring analysis and identification of wildlife corridors ignores the information made available to BLM during the comment period. Analysis and mapping of wildlife corridors is feasible at this programmatic stage, contradicting BLM’s assertion that it has conducted its analysis using the best information available.

### ***The Wilderness Society et al.***

#### ***Phil Hanceford et al.***

**Issue Excerpt Text:** Chaining is a controversial method with a body of research casting doubt on the efficacy of this method, as we documented in our comments on the DEIS.... The Proposed Plans fail to address the well-known, long-term resource damage and unintended consequences that chaining has inadvertently caused in the past. Without this, the agencies cannot claim that they used the “best available existing data” to discuss impacts. FEIS at 3-2.

### ***The Wilderness Society et al.***

#### ***Phil Hanceford et al.***

**Issue Excerpt Text:** While the AMS mentions Bowker 2006 and Miller 2008 and acknowledges that biocrust should be present throughout the monument, it does not disclose that these studies show a significantly reduced cover of biological soil crust monument-wide. Instead, the proposed plan now asserts that biocrusts are “ubiquitous.” AMS at 57. The Proposed Plans do not

adequately consider these findings in their analysis of the impacts of the alternatives on biological soil crust, nor do they present their own data contradicting them. Failure to include this information, which is the best available science, excludes a large body of evidence necessary to properly analyze the impacts of alternatives (especially Alternative B) on this Monument Object and come to a reasoned choice among management alternatives. If this information had been included in the analysis, BLM may have chosen a more protective alternative. Thus, BLM’s analysis was arbitrary and capricious.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** The failure to fully consider the conclusions of the October 2018 IPCC report not only violates NEPA by failing to fully disclose the impacts of the alternatives, but also means that BLM is choosing an alternative without having adequately considered the urgent need for action identified by the October 2018 IPCC report, and thereby violating its mandates under FLPMA and the Administrative Procedure Act to engage in rational decision-making.

**Summary:** The BLM has violated NEPA by failing to use the best available information when analyzing the impacts of management actions in the Proposed RMPs/Final EIS on:

- wildlife corridors in the Planning Area
- vegetation from chaining methods
- biological soil crust and
- air resources

**Response:** The CEQ’s regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)). These regulations require the BLM to “ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24).

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

The BLM used the best available baseline data for all resources in the preparation of the analysis contained in the Proposed RMPs/Final EIS. In developing the Proposed RMPs/Final EIS, the BLM partnered with various agencies to review the best available information and incorporate the management implications of that information into this EIS. Additionally, the BLM reviewed the relevant baseline data received from commenters during the commenting period, and incorporated this new baseline data as appropriate into various Chapter 3 resource sections of the Proposed RMPs/Final EIS (Proposed RMPs/Final EIS, Appendix W, p. W-26). The BLM places great import on the best available information, including new scientific studies and government reports that indicate a potential change in assumptions or conditions related to a land use planning effort.

As the Proposed RMPs/Final EIS emphasized in its response to public comments on the Draft RMPs/EIS, land use plan-level analyses for programmatic (i.e., non-implementation) decisions are typically broad and qualitative rather than quantitative or focused on site-specific actions (Proposed RMPs/Final EIS, Appendix W, p. W-100). The BLM specifically points out that this broad and qualitative type of analysis was used in the analyses for soils (Proposed RMPs/Final EIS, p. 3-54), vegetation and forestry management (Proposed RMPs/Final EIS, p. 3-62 and p. 88), and air resources (Proposed RMPs/Final EIS, p. 3-11 - 3-12) in the Proposed RMPs/Final EIS. As indicated in the BLM's Land Use Planning Handbook, H-1601-1, "A land use planning-level decision is broad in scope and, therefore, does not require an exhaustive gathering and monitoring of baseline data or site-specific analysis of potential impacts." RMP-level analysis addresses impacts from RMP-level decisions, which are decisions set forth to achieve the goals and objectives of a specific program area within the RMPs. The BLM will conduct appropriate site-specific environmental analysis for plans and activities that implement the management direction that was identified in the Proposed RMPs/Final EIS. The site-specific environmental analysis will provide opportunities to identify and mitigate potential impacts associated with future projects, and will provide appropriate opportunities for the public to participate.

Regarding the analysis of impacts on wildlife corridors in the Planning Area specifically, the BLM identified a migration corridor along Highway 89 that is used by Mule Deer Herd Unit 27 in the Proposed RMPs/Final EIS (Proposed RMPs/Final EIS, p. 3-25). The BLM included management and a BMP for a seasonal timing limitation for this mule deer migration corridor in the Proposed RMPs/Final EIS. This mule deer migration corridor was also added to Map 3 (Big Game). The BLM has committed to working with Utah Division of Wildlife Resources to identify corridors and provide protection for corridors as they are developed using approved management actions, mitigation measures, and best management practices (BMPs) (Proposed RMPs/Final EIS, Appendix W, p. W-40). Consequently, the Proposed RMPs/Final EIS adequately relied on best available data in its analysis of impacts on wildlife corridors in the Planning Area.

The BLM has adequately relied on high quality information and the best available data during the preparation of the Proposed RMPs/Final EIS. Accordingly, this protest is denied.

## **NEPA – Cumulative Effects**

### ***National Wildlife Federation***

#### ***Mary Greene***

**Issue Excerpt Text:** The FEIS even notes in its cumulative effects analysis that "mineral development projects are a reasonably foreseeable future action" that will "contribute to habitat degradation, loss, and fragmentation." However, the analysis stops there. This is in contravention of well-established case law, which holds that an agency's cumulative impact analysis must be more than perfunctory. BLM's failure to adequately discuss cumulative impacts of past, present, and future projects within GSENM and KEPA ignores the future effects of energy development throughout the planning area.

### ***The Wilderness Society et al.***

#### ***Phil Hanceford et al.***

**Issue Excerpt Text:** However, the agency did not determine the cumulative impacts of this mining and oil and gas development together with other sources of fugitive dust such as OHV

use. E.g. FEIS at 3-9 (stating “[l]ocal population centers and areas immediately surrounding surface disturbing activities are the most vulnerable to increased particulate matter concentrations, likely attributable to fugitive dust resulting from high traffic volumes and poor vegetative cover”; 3-14 (finding the “use of OHVs for recreational and other purposes could cause fugitive dust and vehicular exhaust emissions of particulate matter, CO, and NO<sub>x</sub>. An increase in OHV use could be accompanied by increased criteria pollutant emissions and increased levels of fugitive dust”).

Moreover, because PM<sub>2.5</sub> and PM<sub>10</sub> pollution adversely impact plants, BLM is obligated to ensure that levels of PM<sub>2.5</sub> and PM<sub>10</sub> in the Monument, the exchanged lands and lands adjacent to the exchanged lands do not harm the plants designated as Monument Objects. Yet, BLM does not undertake this analysis and fails to address the cumulative impacts of its management alternatives on emissions fugitive dust and on plant communities. The agency does not conduct far field analysis or otherwise undertake any review to quantify these cumulative impacts. As a result, the DMP is not adequate to serve as a basis for the management decisions BLM proposes to make or to inform BLM as it carries out its duty to safeguard Monument Objects.

**Summary:** The BLM has violated NEPA by failing to adequately discuss the cumulative impacts of potential future mineral and energy development projects throughout the Planning Area in the Proposed RMPs/Final EIS.

**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 (40 CFR § 1508.7) 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.”

The CEQ regulations state that the agencies must include in a cumulative effects analysis any reasonably foreseeable future actions within the geographic scope and the timeframe established for the analysis (40 CFR 1508.7). The BLM NEPA Handbook further explains that reasonably foreseeable future actions cannot be limited to only those that are approved or funded; but also, that the BLM is not required to speculate about future actions (BLM NEPA Handbook H-1790-1, p. 59). The BLM NEPA Handbook defines reasonably foreseeable future actions as actions “for which there are existing decisions, funding, formal proposals, or which are highly probable, based on known opportunities or trends.” (Id.).

The BLM has complied fully with the requirements of 40 CFR § 1508.7 and properly analyzed the cumulative impacts from potential future mineral and energy development in the Planning Area in the Proposed RMPs/Final EIS. A provision in the Consolidated Appropriations Act of 2019 (Public Law 116-6, Title IV, Section 408 of Division E) that prohibits the BLM from expending appropriated funds to conduct preleasing and leasing activities under the Mineral Leasing Act of 1920, as amended, in the Planning Area has been carried forward into the agency’s current appropriations. That prohibition applies to the KEPA lands and, as such, the BLM cannot move forward with coal or oil and gas leasing while this provision remains in annual appropriations statutes. While this provision does not limit the BLM’s ability to make planning-level decisions related to mineral leasing, it does impact the level of development that is reasonably foreseeable within the KEPA and therefore scope of the cumulative impacts analysis related to mineral

resources. In the cumulative impact analysis, the BLM considered the effects of the planning effort, when added to other past, present, and reasonably foreseeable (not highly speculative) federal and nonfederal actions. Appendix N identifies all actions that were considered in the cumulative impacts analysis. It provides a basis for the cumulative impacts analysis for each affected resource.

Specific to mineral development, the BLM provided a list of all past and present mineral development in Appendix N of the Proposed RMPs/Final EIS (Proposed RMPs/Final EIS, Appendix N, p. N-7), and developed a reasonably foreseeable development scenario for the KEPA lands (BLM Mineral Potential Report 2018). Reasonably foreseeable development scenarios serve as valuable sources of information to assist conducting cumulative effects analysis to identify the scope of mineral development that would be highly probable based on known opportunities or trends (BLM NEPA Handbook H-1790-1, p. 59).

The reasonably foreseeable development scenario for the KEPA lands indicates that there would be at most 10 producing oil and gas wells (and four exploratory wells) and a single coal mine within the timeframe established for the cumulative effects analysis, which is a lower, more limited outlook for mineral development compared to other regions in Utah (BLM Mineral Potential Report 2018). The BLM incorporated the reasonably foreseeable development scenario for the KEPA lands into the cumulative effects analysis as appropriate along with all other reasonably foreseeable future actions, including the cumulative effects conclusions reached for fish, wildlife, and special status species (p. 3-38). The sentence quoted by the protesting parties is a statement of one of the contributing actions for cumulative effects and is not the conclusion. The conclusion is presented by the BLM in the paragraph immediately following the excerpted text that summarizes the conclusion of all the impacts considered together, and states that all the alternatives would incrementally contribute to adverse cumulative effects on fish, wildlife, and special status species (Id.).

The analysis properly considered the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. As a result, the information presented in the Proposed RMPs/Final EIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM complied with NEPA's requirement to analyze the cumulative impacts from future mineral and energy development throughout the Planning Area in the Proposed RMPs/Final EIS. Accordingly, this protest is denied.

## **NEPA – Mitigation**

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** BLM has failed to identify and analyze mitigation measures to demonstrate how effective the mitigation will be. In general, BLM must ensure that NEPA compliance demonstrates how and why the proposed decisions avoid significant environmental impacts.

**Summary:** The BLM has violated NEPA by failing to adequately identify and analyze mitigation measures in the Proposed RMPs/Final EIS.

**Response:** The 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).”

Although an “EIS must discuss ‘mitigation’ in sufficient detail to ensure that environmental consequences have been fairly evaluated,” an EIS “need not present a mitigation plan that is ‘legally enforceable, funded or even in final form to comply with NEPA’s procedural requirements.’” *San Juan Citizens Alliance v. Stiles*, 654 F.3d 1038, 1053-54 (10th Cir. 2011) (citations omitted). “Detailed quantitative assessments of possible mitigation measures are generally necessary when a federal agency prepares an EIS to assess the impacts of a relatively contained, site-specific proposal,” but that level of detail is typically not appropriate when an EIS is prepared at a programmatic level. *Id.* at 1054.

The BLM has appropriately identified and relied upon mitigation measures in the Proposed RMPs/Final EIS. The protestor does not specifically identify the insufficiently identified or analyzed mitigation measures included in the Proposed RMPs/Final EIS other than generally stating that they are inadequate. As such, the BLM cannot specifically address any inadequacies and can only respond generally in kind.

Due to the programmatic nature of this EIS, detailed quantitative assessments of possible mitigation measures were not required or included in this EIS. However, several assumptions were made to facilitate the analysis of potential effects, including that the BLM will implement all applicable standard operating procedures, BMPs, mitigation measures, and adaptive management (Proposed RMPs/Final EIS, Appendix G [Best Management Practices] and Appendix I [Monitoring Strategy]) in order to avoid impacts to resources (Proposed RMPs/Final EIS, p. 3-2). The analysis in Chapter 3 of the Proposed RMPs/Final EIS incorporated these measures in its discussion of impacts on resources in the Planning Area.

Additionally, following the record of decision (ROD) for these RMPs, the BLM will employ monitoring and adaptive management to identify and address resource conflicts and impacts as described in Appendix I (Monitoring Strategy) and will consider specific implementation-level plans and projects (Proposed RMPs/Final EIS, p. 3-1).

The BLM has properly incorporated and adopted mitigation measures, BMPs, and monitoring strategies in order to ensure avoiding or offsetting impacts at the implementation level in compliance with NEPA. Accordingly, this protest is denied.

## **NEPA – Range of Alternatives**

### ***National Wildlife Federation***

#### ***Mary Greene***

**Issue Excerpt Text:** BLM’s failure to consider major corridors identified by NWF, as well as any other corridors that place-based science might identify, does not meet the National Environmental Policy Act (NEPA)’s mandate to analyze reasonable alternatives.

NEPA mandates that an agency must consider all reasonable alternatives. Even if an agency rejects practicable alternatives, it must explain why the rejected alternatives are unpersuasive. BLM failed to provide any explanation. Providing explanations on the administrative record is a crucial part of the public decision-making process in which BLM engages. Declining to recognize known wildlife corridors, while making a vague commitment to future coordination with state agencies, is not a sufficient explanation as required by NEPA.

### ***The Wilderness Society et al.***

#### ***Phil Hanceford et al.***

**Issue Excerpt Text:** BLM included some wildlife corridor provisions in Alternatives A and B. These however are considerably less robust than those provided in our scoping and DEIS comments. BLM’s failure to include our alternative in the range of alternatives or to explain why it was eliminated from more detailed study is a violation of NEPA.

### ***The Wilderness Society et al.***

#### ***Phil Hanceford et al.***

**Issue Excerpt Text:** As evidenced in further detail below, BLM has failed to “rigorously explore and objectively evaluate” those elements of particular alternatives (e.g., livestock grazing elements of Alternative B) that are environmentally protective, practical and feasible, including those elements protecting resources in the Monument as set forth in Proclamation No. 6920, 61 Fed. Reg. 50223 (Sept. 18, 1996) in order to compare them with the Proposed Plans (Alternative E). While Alternative B contains several livestock grazing features based in “Sustainable Grand Staircase-Escalante Alternative” submitted by TWS et al. during scoping. (e.g., seeding only of native species; conservative utilization; fencing out livestock from certain biological soil crusts, and 500,000 more livestock-free acres than Alternative E; see Section 2.3.12 at 2-28 to 2-37), BLM inserted non-protective elements that were not present in the Sustainable Grand Staircase-Escalante Alternative, for instance mineral leasing on 374,772 acres. FEIS at 2-37.

### ***The Wilderness Society et al.***

#### ***Phil Hanceford et al.***

**Issue Excerpt Text:** The Sustainable Alternative is unique among the other alternatives, feasible to implement, and would manage the Monument and KEPA in accordance with applicable laws and policies. Accordingly, BLM’s failure to fully analyze the Sustainable Alternative violated NEPA.

**Summary:** The BLM has violated NEPA by failing to consider a range of reasonable alternatives in the Proposed RMPs/Final EIS by not considering the major wildlife corridors identified by the National Wildlife Federation and other sources; not fully considering the Sustainable Grand Staircase-Escalante Alternative proposed by The Wilderness Society et al.; and not providing rationale for why certain alternatives were excluded.

**Response:** The BLM is required to include a discussion of a range of reasonable alternatives to the proposed action, alternatives which are technically and economically feasible and which meet the purpose and need. 42 U.S.C 4332(2)(C); 40 CFR § 1502.14; 40 CFR 1508.9(b); 43 CFR § 46.420(b). If the BLM considers alternatives during the EIS process but does not to analyze them in detail, the BLM must identify those alternatives and briefly explain why they were eliminated from detailed analysis (40 CFR 1502.14). The phrase “range of alternatives” includes all reasonable alternatives, which must be rigorously explored and objectively evaluated, as well as those other alternatives, which are eliminated from detailed study with a brief discussion of the reasons for eliminating them (BLM Handbook H-1790-I, Section 6.6.I quoting Question 1a, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981); see also 40 CFR § 1502.14.

No specific or minimum number of alternatives is required. 43 CFR § 46.310(b); 43 CFR § 46.415(b); *Native Ecosystems Council v. Forest Service*, 428 F.3d 1233, 1246 (9th Cir. 2005); *Biodiversity Conservation Alliance, et al.*, 183 IBLA 97, 124 (2013). A “rule of reason” standard guides the range of alternatives, and does not require the BLM to include or evaluate every conceivable possible alternative. *Dep’t of Transp. v. Public Citizen*, 541 U.S. 752, 767 (2004); *Vermont Yankee Corp. v. NRDC, Inc.*, 435 U.S. 519, 551 (1978); *Pac. Coast Fed’n of Fishermen’s Ass’ns. v. Blank*, 693 F.3d 1084, 1099 (9th Cir. 2012); *Headwaters, Inc. v. BLM*, 914 F.2d 1174, 1181 (9th Cir. 1990); *Southern Utah Wilderness Alliance*, 182 IBLA 377, 390-391 (2012). The BLM must analyze a range of reasonable 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’ rather than on whether the proponent or applicant likes or is itself capable of implementing an alternative. ‘Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.’” BLM NEPA Handbook, H-1790-I, at 50 (citing Question 2a, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981); see also 40 CFR § 1502.14. 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. What consists of a reasonable range depends on the nature of the proposal and the facts of the case (BLM Handbook H-1790-I, Section 6.6.I quoting Question 1b, CEQ, Forty Most Asked Questions Concerning CEQ’s NEPA Regulations, March 23, 1981).

The BLM considered a range of reasonable alternatives in the Proposed RMPs/Final EIS in accordance with NEPA. Because the range of alternatives depends on the nature and objectives of the proposed action and the facts of the case, the range of reasonable alternatives considered will be limited by such factors. In this instance, the BLM considered all issues related to the proposed action that were identified during scoping and created a range of reasonable alternatives responsive to those issues. The BLM also considered alternatives presented by the public during public review and comment periods and, where specific design components were consistent with the purpose and need for the project and were not already a part of an alternative being analyzed, included in the design of at least one alternative the measures requested or different measures resulting in the same outcome. Where alternative design components were not incorporated into an alternative analyzed, the BLM noted such in the Proposed RMPs/Final EIS (p. 2-699 to 2-72).



Accordingly, the range of alternatives considered in the Proposed RMPs/Final EIS was adequate pursuant to the requirements of NEPA. Aspects of proposed alternatives were either incorporated into the selected alternatives or rejected for their lack of feasibility or redundancy. The Proposed RMPs/Final EIS describes this rationale clearly in Section 2.4.7.

The BLM considered a range of reasonable alternatives that meet the purpose and need of the Proposed RMPs/Final EIS and address resource issues identified during the scoping period. Accordingly, this protest is denied.

## **NEPA – Alternatives Design – Lands with Wilderness Characteristics**

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** Despite this, and BLM's responsibility to articulate “a rational connection between the facts found and the choice made,” BLM has not explained its rationale in for determining that no identified wilderness-quality lands should be managed for the protection of wilderness values in the FEIS. ... Furthermore, BLM also completely fails to explain its rationale for specific management decisions regarding wilderness characteristics under any alternative.

BLM also fails to explain why the preferred alternative does not, at the very least, manage the 86 former Utah School and Institutional Trust Lands Administration (SITLA) sections completely surrounded by WSAs within the planning area for preservation of their wilderness character, when failing to manage these 54,450 acres for their wilderness character in fact threatens the wilderness values of the surrounding WSAs and their suitability for eventual designation as Wilderness.

**Summary:** The BLM has violated NEPA by failing to provide the rationale for management decisions regarding wilderness characteristics for Alternative E (the Proposed RMPs) or any alternative, including the decision to not manage the 86 former Utah School and Institutional Trust Lands Administration (SITLA) sections completely surrounded by Wilderness Study Areas (WSAs) within the planning area for preservation of their wilderness characteristics.

**Response:** The NEPA directs the BLM to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources . . .” (NEPA Sec 102(2)(E)). The range of alternatives explores alternative means of meeting the purpose and need for the action. (BLM NEPA Handbook Section 6.6.1). The BLM must analyze those alternatives necessary to permit a reasoned choice (40 CFR 1502.14).

BLM Manual 6320 provides for several potential outcomes for managing lands with wilderness characteristics, “including, but not limited to: 1) emphasizing other multiple uses as a priority over protecting wilderness characteristics; 2) emphasizing other multiple uses while applying management restrictions (conditions of use, mitigation measures) to reduce impacts to wilderness characteristics; and 3) the protection of wilderness characteristics as a priority over other multiple uses” (p. 3).

The BLM has appropriately followed NEPA in developing alternatives related to lands with wilderness characteristics. In developing alternatives, the BLM must identify a range that looks at different approaches responsive to the purpose and need to provide a reasoned choice. Neither NEPA nor any further established guidance or policy interpreting the application of NEPA requires the BLM to have or disclose “a rational connection between the facts found and the choice made” in the development of alternatives as protesters assert. Protesters mis-apply a judicial ruling which states that an agency’s decision is arbitrary and capricious if the decision has failed to articulate this rational connection (*Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43, 103 S. Ct. 2856, 2866, 77 L. Ed. 2d 443 (1983)). The BLM’s decision and rationale for its decision will be provided in the ROD consistent with the requirements of NEPA, its regulations, and applicable caselaw (40 CFR Section 1505.2).

Consistent with BLM Manual 6320, the BLM considered a number of factors in deciding whether to protect an area for its wilderness characteristics when developing its range of alternatives, including whether an area has wilderness characteristics to begin with; whether the area can be effectively managed to protect its wilderness characteristics; the extent to which other resource values and uses of lands with wilderness characteristics would be foregone or adversely affected if the wilderness characteristics are protected; and whether the area has been previously considered as a wilderness study area. The presence of wilderness characteristics in an area is only one of many factors that the agency considered in developing the range of alternatives for managing lands within the Planning Area that contain wilderness characteristics. The Proposed RMPs/Final EIS analyzes a range of reasonable alternatives for managing areas with wilderness characteristics (Section 2.3.4, Lands with Wilderness Characteristics), including the protection of wilderness characteristics as a priority over other multiple uses. Accordingly, the Proposed RMPs/Final EIS adequately followed the process required by the Federal Land Policy and Management Act (FLPMA), NEPA, and BLM Manual 6320 to consider whether to manage lands for protection of wilderness characteristics during the planning process.

The BLM has appropriately followed NEPA in developing alternatives related to lands with wilderness characteristics. Accordingly, this protest is denied.

## ***NEPA – Supplemental EIS***

### ***NOLS***

#### ***Jen Sall***

**Issue Excerpt Text:** Last, NOLS feels that the BLM erred in releasing a new fully developed alternative in the Final EIS without allowing public comment on that alternative. A Supplemental Draft EIS should have been published, with the requisite public comment period, to allow a vetting of the alternative as required by the National Environmental Policy Act (NEPA). While the new alternative demonstrates that public comment was internalized by the BLM from the Draft EIS and then implemented into the Final statement, the process of including the alternative was flawed.

#### ***The Wilderness Society et al.***

##### ***Phil Hanceford et al.***

**Issue Excerpt Text:** The FEIS states that “[f]ollowing publication of the Draft RMPs/EIS and based on input received from the public, BLM updated inventories for lands with wilderness

characteristics in the Planning Area, the results of which have been incorporated into these Proposed Plans/Final EIS.” FEIS at Appendix W, W-22. This significant new information was not released to the public on BLM’s eplanning website until September 12, 2019, more than half-way through this protest period. We have not been given meaningful opportunity to review these reports and submit proper comments or protest the information contained in these reports.

Moreover, the regulations implementing NEPA require a supplemental environmental statement when “[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9(c). The release of new information regarding BLM’s findings around 53,000 acres of potential lands with wilderness characteristics is significant. As evidenced by BLM’s own statements in the FEIS, the “public interest in BLM’s [lands with wilderness characteristics] inventory determinations has increased in the past 20 years and is expected to increase in the future.” FEIS at 3-39. Thus, BLM should provide a supplemental EIS in order to allow the public the opportunity to analyze and comment on this new inventory data.

**Summary:** The BLM has violated NEPA by failing to supplement the Draft RMPs/EIS because of the creation of Alternative E (the Proposed RMPs) and addition of the results from the updated inventories for lands with wilderness characteristics in the Planning Area.

**Response:** Federal agencies must prepare a supplement to a draft or final EIS if, after circulation of a draft or final EIS but prior to implementation of the Federal action:

- The agency makes substantial changes to the proposed action that are relevant to environmental concerns (40 CFR 1502.9(c)(1)(i));
- The agency adds a new alternative that is outside the spectrum of alternatives already analyzed (see Question 29b, CEQ Forty Most Asked Questions Concerning CEQ’s NEPA Regulations (March 23, 1981)); or
- There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its effects (40 CFR 1502.9(c)(1)(ii)).

If a new alternative is added after the circulation of a draft EIS, supplementation is not necessary if the new alternative lies within the spectrum of alternatives analyzed in the draft EIS or is a minor variation of an alternative analyzed in the draft EIS. In such circumstances, the new alternative may be added in the final EIS (BLM NEPA Handbook, H-1790-1, 5.3.2 When Supplementation is Not Appropriate).

The BLM has appropriately concluded that supplementation of the Proposed RMPs/Final EIS is not required. As stated in Section 1.8 of the Proposed RMPs/Final EIS, the BLM developed Alternative E (the Proposed RMPs) by combining elements of the alternatives analyzed in the Draft RMPs/EIS after considering public comments on the Draft RMPs/EIS and input from cooperating agencies, tribes, the Utah State Resource Advisory Council, and the BLM Interdisciplinary Team. Alternative E (the Proposed RMPs) is firmly within the spectrum of the alternatives considered in the Draft RMPs/EIS. Consequently, the BLM’s introduction of Alternative E (the Proposed RMPs) does not represent a substantial change from the Draft RMPs/EIS such that a supplemental EIS is required. While some aspects of this alternative may

differ from those found originally in the Draft RMPs/EIS, these changes are not considered outside of the range of effects already previously disclosed, nor can this alternative be considered outside of the spectrum of alternatives already analyzed.

Section 1.8 also acknowledges that the BLM “[m]ade refinements to the boundaries of lands managed for the protection of wilderness characteristics in Alternatives B and C based on updated lands with wilderness characteristics inventories that the BLM conducted after release of the Draft RMPs/EIS” (Proposed RMPs/Final EIS, p. 1-10). Specifically, the BLM updated lands with wilderness characteristics inventories on approximately 53,000 acres in 2019 (Proposed RMPs/Final EIS, p. 3-39; Map 5). These acres represent about 11 percent of the 482,000 total acres outside of existing WSAs identified as lands with wilderness characteristics within the Planning Area in the 1999 Utah Wilderness Inventory conducted by the BLM. The updated inventories for this percentage of lands with wilderness characteristics in the Planning Area is not considered a substantial change that would warrant a supplemental EIS. This change not being significant is demonstrated in that there were no substantive differences to the environmental effects discussed in section 3.4.2 of the Proposed RMPs/Final EIS despite this updated inventory.

As described above, between the Draft RMPs/EIS and Proposed RMPs/Final EIS, the BLM has not made substantial or significant changes that would require a supplemental EIS by adding Alternative E (the Proposed RMPs) or by adding the results from the updated inventories for lands with wilderness characteristics. Accordingly, this protest is denied.

## **NEPA – Response to Public Comments**

### **John Hiscock**

**Issue Excerpt Text:** Although, the BLM has stated that it “has updated the Proposed RMPs/Final EIS to provide responses to the comments included in those letters and to incorporate additional information and analysis as appropriate” I take exception with said statement and protest the BLM’s failure to adequately address my original comments. Those comments included legal statutory requirements and administrative policy requirements related to the NTSA. The failure to address these statutory and policy requirements pursuant to required NEPA process is a violation of NEPA, negates the RMP and EIS process to date and warrants a new and revised planning and environmental assessment process.

**Summary:** The BLM has violated NEPA by failing to adequately address public comments on the Draft RMPs/EIS, specifically those comments related to violations of the National Trails System Act (NTSA).

**Response:** The BLM is required to assess, consider, and respond to all substantive comments received (40 CFR 1503.4). Substantive comments are those that reveal new information, missing information, or flawed analysis that would substantially change conclusions (BLM Handbook H-1601-1, p. 23-24).

In compliance with NEPA, the BLM considered all public comments submitted on the Draft RMPs/EIS. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix W of the Proposed RMPs/Final EIS presents the BLM’s responses to all substantive comments.

The BLM summarized the issues raised by each comment letter and provided a meaningful response. The BLM's responses identified any modifications to the alternatives, improvements to the impacts analysis, or factual corrections made as a result of public comment. The BLM's responses also explained why certain public comments did not warrant further agency response.

As stated in the Proposed RMPs/Final EIS, the BLM updated the Proposed RMPs/Final EIS to provide responses to the comments included in the 148 unique comment letters that were not addressed in the Comment Analysis Report of the initial Proposed RMPs/Final EIS (Proposed RMPs/Final EIS, Errata Sheet). The BLM responded to the substantive comments in those letters, and incorporated additional information and analysis as appropriate into the Proposed RMPs/Final EIS.

See the *Other Laws – National Trails System Act* section of this protest report for the BLM's response to the protestors' specific points regarding violations of the NTSA.

The BLM complied with NEPA's requirement to respond to public comments. Accordingly, this protest is denied.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** In addition, relying on information and analysis in the yet to be produced Biological Opinion, without offering an opportunity for review and comment on the Biological Opinion, violates NEPA's requirements for public comment. Relying on a yet to be developed Biological Opinion cannot satisfy NEPA's requirement to provide the public with an opportunity for comment on the actual extent of the impacts that will occur under action alternatives. Cf. *San Luis & Delta-Mendota Water Auth. v. Jewell*, 747 F.3d 581, 649-650, 653 (9th Cir. 2014) (concluding that the implementation of a Biological Opinion was not exempt from NEPA requirements to prepare an EIS or EA and FONSI because “[w]e cannot say that Section 7 of the ESA renders NEPA ‘superfluous’ when the statutes evaluate different types of environmental impacts through processes that involve varying degrees of public participation.”); *Portland Audubon Soc’y v. Lujan*, 795 F. Supp. 1489, 1509 (D. Or. 1992) (explaining that ESA consultation cannot substitute for EIS preparation, even where the action agency also prepared an EA, because “The purpose of the Endangered Species Act and the purpose of NEPA are not the same. For example, there is no substitute in the Endangered Species Act for the public comment commanded by NEPA”).

**Summary:** The BLM violated NEPA's public comment requirements by relying on information and analysis in the yet to be produced Biological Opinion, without offering an opportunity for public review and comment on the Biological Opinion.

**Response:** 40 CFR § 1500.2(b) states that “Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.” In addition, 40 CFR § 1506.6(a) states that federal agencies shall “make diligent efforts to involve the public in preparing and implementing their NEPA procedures.”

The BLM has fully complied with the requirements of NEPA to provide for public comment opportunity on the Proposed RMPs/Final EIS. CEQ's regulations implementing NEPA require

public comment on the Draft RMPs/EIS. The public had the opportunity to comment on the DEIS, thereby satisfying the BLM's public comment requirements pursuant to NEPA. The protestor incorrectly asserts that public comment must be offered on Biological Opinions. While there is no requirement for this, the public was provided the opportunity to comment on the effects determinations used by the BLM to develop the Biological Assessment when it reviewed the Draft RMPs/EIS. While Alternative E (the Proposed RMPs) was not in the Draft RMPs/EIS, Alternative E is within the range of effects analyzed for the Draft RMPs/EIS's alternatives and, therefore, the scope of potential impacts to listed species from the range of decisions the BLM was considering was made available for public comment.

The BLM has also purported to use the EIS as a substitute for consultation. The BLM determined that the approval of the Proposed RMPs/Final EIS is likely to adversely affect listed species or critical habitat, and therefore has committed to formal consultation with the United States Department of the Interior, Fish and Wildlife Service (USFWS) on the BLM's proposed action, which is Alternative E (the Proposed RMPs). Following development of Alternative E identified in the Proposed RMPs/Final EIS, the BLM developed a Biological Assessment to meet the requirements of Section 7 of the Endangered Species Act (ESA). The BLM used the same information and biological data to prepare both the Biological Assessment and to analyze the environmental impacts on affected species in the EIS.

The BLM submitted the Biological Assessment to the USFWS, to request and initiate formal consultation with the USFWS as required under ESA Section 7(a)(2). Following USFWS review of the Biological Assessment, the USFWS prepared a Biological Opinion and provided it back to the BLM on November 1, 2019. The BLM will integrate information from the Biological Opinion into the ROD, as appropriate. The Biological Opinion is the formal opinion of the USFWS as to whether or not a federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. The conclusions regarding environmental effects in the Proposed RMPs/Final EIS are based on the environmental impacts determined based on the land use planning decisions included in the alternatives, and does not depend on any terms and conditions the USFWS may issue through a Biological Opinion. The referencing to the Biological Opinion in the analysis is to demonstrate that the BLM would not fail to incorporate any protective measures provided by the USFWS only.

In developing the Proposed RMPs/Final EIS, the BLM has fully complied with Section 7(a)(2) of the ESA as well as NEPA's public comment requirements. Accordingly, this protest is denied.

## **NEPA – Impacts Analysis – General**

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** BLM has generally failed to take a hard look at the impacts of decisions from this planning process. For example, the Proposed Plan does not evaluate the impact of alternatives on the protection of Monument objects within the KEPA. Because Proclamation 9682 could not lawfully remove protections for these Monument objects, the failure to specifically assess the impact of alternatives on the protection of those objects violates NEPA and FLPMA, and is inconsistent with Proclamation 6920. Further, BLM repeatedly acknowledges the arguably significant impacts of the action alternatives on Monument objects and resources in the KEPA yet

selects the Preferred Alternative. For instance, BLM acknowledges that opening lands in the KEPA to energy development is likely to impact visitor experiences and the recreation economy associated with the adjacent national parks, part of the so-called “Mighty Five” (see, e.g., FEIS at 3-121, 3-122), yet chooses to adopt Alternative D, which would maximize the lands opened to energy development and the corresponding impacts. These decisions violate NEPA’s hard look requirement as a textbook example of BLM being unable to “articulate a rational connection” between these impacts and the choices made in the Proposed Plans. See, *Baltimore Gas and Electric Co. v. Natural Resources Defense Council*, 462 U.S. 87 (1983).

**Summary:** The BLM violated the NEPA by failing to adequately analyze the direct, indirect, and cumulative impacts of the alternatives and failing to document the rationale for selecting Alternative E (the Proposed RMPs).

**Response:** NEPA regulations (40 CFR § 1502.15) direct that EIS data and analyses must be commensurate with the importance of the impact. 40 CFR § 1500.1(b) provides that NEPA document preparers must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail. The BLM is required to take a hard look at potential environmental impacts of adopting the Proposed RMPs/Final 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 NEPA 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 BLM met the requirements of the NEPA in developing Alternative E (the Proposed RMPs). The NEPA does not require federal agencies to select the alternative with the most protective measures possible. Rather, the NEPA requires federal agencies to analyze a range of reasonable alternatives and gives federal agencies the discretion to select an alternative that meets the purpose of and need for the proposed action. All alternatives considered in Proposed RMPs/Final EIS Section 2.1 provide an appropriate balance of uses in the Planning Area and meet the purpose of and need for the Proposed RMPs/Final EIS. The alternatives allow some level of all uses in the Planning Area in a manner that is consistent with applicable statutes, regulations, and BLM policy.

The BLM developed Alternative E as the Proposed RMPs, which provides for the proper care and management of GSENM objects and values and satisfies the purpose of and need for the GSENM land use plans, which is to provide “is to provide the allocation of resources and a comprehensive framework for the BLM’s management of the public lands within the separate Planning Areas pursuant to the multiple-use and sustained yield mandates of FLPMA, the requirements of the Antiquities Act, and the specific direction in Presidential Proclamation 6920, as modified by Presidential Proclamation 9682” (see Section 1.3 of the Proposed RMPs/Final EIS).

The BLM analyzed Alternative E (the Proposed RMPs) in the Proposed RMPs/Final EIS in an equal manner to the analysis conducted for the other action alternatives in the Draft RMPs/EIS. The analysis in the Proposed RMPs/Final EIS describes the direct, indirect, and cumulative impacts that could potentially result from the management decisions included in Alternative E (the Proposed

RMPs). This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Throughout the Proposed RMPs/Final EIS, the BLM thoroughly discuss and analyze the impacts of Alternative E (the Proposed RMPs) on resources and resource uses in the Planning Area. The BLM accounted for the relationship between Alternative E (the Proposed RMPs) and reasonably foreseeable actions. The level of detail of the NEPA analysis is sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM NEPA Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but must evaluate the reasonably foreseeable significant effects of the proposed action, as has be done. Therefore, the BLM properly analyzed the impacts of Alternative E (the Proposed RMPs) in the Proposed RMPs/Final EIS.

The identification of Alternative E (the Proposed RMPs) in the Proposed RMPs/Final EIS does not constitute decision for the selection of that alternative as the Approved RMPs in the ROD. The BLM land use planning regulations and policy do not require documenting a rationale for selecting an alternative as the Proposed RMPs. The BLM land use planning regulations and policy indicate that the identification and content of a proposed RMP alternative in the Final EIS is the discretion of the state director (43 CFR 1610.4-8). The requirement that federal agencies document the rationale for the selection of an alternative is found in the NEPA regulations, which require that the agencies include documentation in the ROD.

The BLM complied with the NEPA’s requirement to analyze the relevant impacts from Alternative E (the Proposed RMPs) in the Proposed RMPs/Final EIS. Additionally, the BLM did not violate the NEPA by not providing a rationale for the identification of Alternative E as the Proposed RMPs in the Proposed RMPs/Final EIS. Accordingly, this protest is denied.

### ***NEPA – Impacts Analysis – Air Resources***

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** BLM does not address nitrogen and sulfur deposition and so fails its NEPA obligations to take a hard look at air quality impacts.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** As the protesting organizations stated previously in their comments on the DEIS, see SUWA et al. at 167-168; Sierra Club et al. at 9-10, BLM has failed to disclose the full downstream and indirect emissions resulting from its decision to make lands available for oil and gas leasing.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** As the protesting organizations stated previously in their comments on the DEIS, see SUWA et al. at 168- 169; Sierra Club et al. at 10-32, BLM has failed to provide information necessary to gauge the magnitude of the individual and cumulative impact of its actions with regard to GHG emissions, climate change, and the need for urgent emission



reductions by 2030 to prevent the most disastrous impacts of climate change. The proffered total CO<sub>2</sub> equivalent emissions provided in the FEIS fail to provide an adequate proxy for an analysis of climate change impacts because they are presented without any scale or any information to assist the decision-maker and the public in understanding the magnitude of the project’s contribution to climate change. There is no assessment of how the proposed action, cumulatively with other similar actions being taken by BLM regionally or nation-wide, will cause impacts through climate change, or undermine attainment of the carbon budget and emissions reductions that are necessary to address climate change impacts.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** In light of the devastating impacts of climate change, both nationally and even at the planning level, where BLM concedes climate change may exacerbate both fire frequency and fire severity, and effects from invasive vegetation in the planning area, see FEIS at 3-61 to 3-62, 3-68, it is arbitrary and capricious for BLM to continue to open areas to new fossil fuel development without taking a hard look at the cumulative impact of those decisions on achieving the emissions reductions necessary to address climate change and avoid the more extreme scenarios for climate change.

**Summary:** The BLM has violated NEPA by failing to adequately analyze the direct, indirect, and cumulative impacts on air resources in the Proposed RMPs/Final EIS specific to:

- nitrogen and sulfur deposition.
- disclosure of the full downstream and indirect emissions resulting from making lands available for oil and gas leasing.
- providing information necessary to gauge the impacts of BLM’s actions regarding greenhouse gas emissions (GHG) and climate change.

**Response:** The BLM must make a comprehensive consideration of a proposed action, to evaluate different courses of action (take a “hard look” at the environmental consequences). *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976), n. 21; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). The agency may not rely on incorrect assumptions or data when analyzing effects. *Native Ecosystems Council v. U.S. Forest Service*, 418 F.3d 953, 964 (9th Cir. 2005). The BLM takes a “hard look” when the NEPA document contains a “reasonably thorough” discussion of an action’s environmental consequences, and the agency can make an informed decision about whether there are any significant environmental impacts. *Nat’l Parks and Conservation Ass’n. v. BLM*, 606 F.3d 1058, 1072 (9th Cir. 2010) (citing *State of California v. Block*, 690 F.3d 753, 761 (9th Cir. 1982)); *Biodiversity Conservation Alliance, et al.*, 171 IBLA 218, 226 (2007) (internal citations omitted).

The effects analysis must demonstrate that the BLM took a “hard look” at the impacts of the action (BLM NEPA Handbook, H-1790-1, 6.8.1.2, Analyzing Effects). The CEQ regulations specify that the environmental information made available to public officials and citizens before decisions are made must be of “high quality” (40 CFR 1500.1(b)).

A “hard look” is a reasoned analysis containing quantitative or detailed qualitative information. (BLM NEPA Handbook, H-1790-1, 6.8.1.2 Analyzing Effects). The BLM must use information of high quality and scientific integrity in its NEPA analysis, including information provided as part of the public involvement (40 CFR 1500.1(b) and 1502.24). The NEPA documents are to be analytic, rather than encyclopedic (40 CFR 1500.4(b) and 1502.2(a)). The 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 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 Proposed RMPs/Final 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.

Additionally, 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 (40 CFR § 1508.7) 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.”

The BLM has appropriately analyzed the impacts on air resources in the Proposed RMPs/Final EIS. The analysis in the Proposed RMPs/Final EIS focuses on the direct, indirect, and cumulative impacts to air resources that would result from implementation of the alternatives in the Proposed RMPs/Final EIS. This analysis identifies impacts that would result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The BLM considered the relationship between the proposed action and reasonably foreseeable actions related to air resources and climate change, including criteria pollutants and GHG emissions. This analysis can be found in Section 3.1 and Appendix M (Air Quality Support Document) of the Proposed RMPs/Final EIS, as well as Chapter 2 of the AMS (Section 2.2.1). Section 3.1 of the Proposed RMPs/Final EIS includes a discussion of the emissions-related impacts that could potentially occur under the range of alternatives. As noted in Section 3.1.2.1,

*After reviewing the emissions inventory, the BLM . . . decided to perform a near-field modeling analysis to better understand potential impacts on nearby communities and Class I areas. Far-field modeling was determined to not be necessary based on the emissions inventory and the speculative nature of development at the RMP stage. If development activity exceeds what was anticipated in the RFD and in this EIS, additional cumulative far-field modeling may be required. In addition, prior to project-specific approval, additional air quality analyses may be required to*

*comply with the NEPA, FLPMA, and/or other applicable laws and regulations (See page 3-11 of the Proposed RMPs/Final EIS).*

The emissions calculations were based on the best available data; air, visibility, and emission inventory procedures; and professional and scientific judgment (Proposed RMPs/Final EIS, p. 3-11). Assumptions were used when specific data or procedures were unavailable (Proposed RMPs/Final EIS, p. 3-12). The calculations used emissions factors that are accepted and recognized by State and Federal regulatory agencies and were calculated for the BLM's predicted maximum emissions scenario, as defined by the Mineral Potential Report (Proposed RMPs/Final EIS, p. 3-11).

The Proposed RMPs/Final EIS relies on these calculations to describe the direct, indirect, and cumulative impacts to air resources in the Planning Area (Proposed RMPs/Final EIS, p. 3-12 - 3-16). As noted, any impacts not included here were considered too speculative at this level of programmatic analysis; however, this does not preclude their consideration at later, implementation-level stages should such analysis be necessary to inform agency decision making or comply with NEPA (Proposed RMPs/Final EIS, p. 3-11).

As stated in the Proposed RMPs/Final EIS, far-field modeling was determined to not be necessary based on the emissions inventory and the speculative nature of development at the RMP stage. If development activity exceeds what was anticipated in the RFD and in the Final EIS, additional cumulative far-field modeling may be required. (Proposed RMPs/Final EIS, p. 3-11). Additionally, the Proposed RMPs/Final EIS points out that although there is a correlation between global concentrations of GHGs and climate change, it is not currently possible to link projected GHG emissions associated with any particular activity to specific environmental impacts at a specific site or location. Consequently, analyzing the impacts on climate change from the management actions listed in the Proposed RMPs/Final EIS would be too speculative. (Proposed RMPs/Final EIS, p. 3-12). Thus, the level of detail of the NEPA analysis is sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action, as it has done here.

The BLM has complied fully with the requirements of 40 CFR § 1508.7 to evaluate cumulative impacts on various resources. The BLM prepared a cumulative impact analysis based on the nature and scope of the proposed management options under consideration at the land use planning level. In the cumulative impact analysis, the BLM considered the effects of the planning effort, when added to other past, present, and reasonably foreseeable (not highly speculative) federal and nonfederal actions. The cumulative impacts section (Section 3.1.2.3) and Appendices M and N identify all actions that were considered in the cumulative impacts analysis.

The analysis considered 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 Proposed RMPs/Final EIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM complied with NEPA’s requirement to analyze the relevant direct, indirect, and cumulative impacts on air resources and climate change in the Proposed RMPs/Final EIS. Accordingly, this protest is denied.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** Despite this legal obligation [to safeguard Monument Objects, including those sensitive to air pollution], BLM acknowledges that its preferred alternative could cause or contribute to a violation of the 1-hour NO<sub>2</sub> NAAQS. FEIS at 3-13 (stating that “[u]nder Alternative D and E, air quality modeling indicates that development of the reasonably foreseeable mineral projects (BLM 2018b) could contribute to a short-term localized exceedance of the 1-hour NO<sub>2</sub> NAAQS”). The agency dismisses this impact, claiming that “[d]ue to the short duration of activities that would lead to this modeled exceedance of NO<sub>2</sub>” it is not likely that minerals development activities would result in a NAAQS violation,” FEIS at 3-13.

BLM’s reasoning is invalid. First, because the agency did not undertake far-field analysis, the agency cannot discount the possibility that there will be NAAQS violations caused by cumulative emissions. Second, the 1-hour NO<sub>2</sub> NAAQS is specifically intended to prevent short term spikes in concentrations of NO<sub>2</sub>. Therefore, the suggestion that activities of a short duration would not lead to NAAQS violations is unconvincing. As a result, BLM must acknowledge that Alternative E would result in unacceptable impacts on air quality and would impermissibly harm Monument Objects and other resource values, See also 3-15 (“Among the alternatives, Alternative D and E would increase contributions to cumulative emissions and associated air quality impacts more than the other alternatives.”).

**Summary:** The BLM has violated NEPA by failing to provide a convincing rationale for the conclusions reached in the EIS analysis of Alternative E (the Proposed RMPs) in the Proposed RMPs/Final EIS related to possible contributions to a violation of the 1-hour nitrogen oxides (NO<sub>2</sub>) National Ambient Air Quality Standards (NAAQS), which would in turn impermissibly harm Monument Objects and other resource values in violation of the Antiquities Act.

**Response:** See rule citations in “Response” section for *NEPA - Impacts Analysis - Air Resources*, above.

The level of analysis undertaken by the BLM to assess and disclose the potential impacts on air resources is commensurate with the regional, programmatic nature of the proposed action. The methodology undertaken by the BLM for this programmatic level of analysis was detailed in Appendix M (Air Quality Support Document) of the Draft and Final RMPs/EISs and summarized in Section 3.1.2.1 of the Proposed RMPs/Final EIS. As noted in these sections, the BLM contracted for an emissions inventory of potential emissions based on the reasonably foreseeable development scenario. After reviewing the emissions inventory, the BLM decided to perform a near-field modeling analysis to better understand potential impacts on nearby communities and Class I areas. Far-field modeling was determined to not be necessary based on the emissions inventory and the speculative nature of development at the RMP stage.

The BLM disclosed the results of the near-field modeling in Appendix M and in Section 3.1.2.1 of the Draft and Final RMPs/EISs. These results disclosed that:

*For all species and averaging times, with the exception of 1-hour NO<sub>2</sub>, the modeled concentration plus background are well below the NAAQS. Due to the short duration of activities, modeled exceedances are not likely to result in NAAQS violations of the 3-year average of the 98th percentile 1-hour [nitrogen oxides] [NO<sub>x</sub>] standard. The worst-case NO<sub>x</sub> emissions occur during the relatively short period of hydraulic fracturing, but potentially high 1-hour NO<sub>2</sub> concentrations are possible as shown in Table 18 and Table 19. These results are illustrated in spatial gridded values of the 98th percentile of the 1-hour daily maximum NO<sub>2</sub> concentrations averaged over 5 years near Bryce Canyon National Park (Figure 10) and near Escalante (Figure 11). NO<sub>x</sub> emissions are lower during drilling and the combination of maximum modeled 1-hour concentration is 147.4 µg/m<sup>3</sup> (Bryce Canyon) and 147.2 µg/m<sup>3</sup> (Escalante); as such, the combination with background shows that the highest 1-hour NO<sub>2</sub> background is just slightly greater than the 1-hour NO<sub>2</sub> standard. This occurs within 1 kilometer of the well site. During production, the NO<sub>x</sub> emissions are much lower and the modeled 1-hour NO<sub>2</sub> concentration is 98 and 87 µg/m<sup>3</sup>, respectively, which, when paired with highest 1-hour background concentration, is well below the NO<sub>2</sub> standard. (Proposed RMPs/Final EIS, Appendix M, p. M-52)*

As noted in the results, the conditions and locations in which exceedance of the 1-hour NO<sub>x</sub> standard would be exceeded were limited to certain types of development activities and certain distances from these activities. Because a NAAQS determination is based on 98th percentile of 1-hour daily maximum concentrations averaged over 3 years, the BLM determined that modeled exceedances are not likely to result in NAAQS violations of the 1-hour standard. However, the BLM also acknowledged that this is a programmatic-level analysis and that rates of development and conditions on the ground in the future may differ from the information used to model potential pollutant concentrations at this RMP stage. For this reason, Section 3.1.2.1 of the Proposed RMPs/Final EIS also states that if development activity exceeds what was anticipated in the RFD and in this EIS, additional cumulative far-field modeling may be required. In addition, prior to project-specific approval, additional air quality analyses may be required to comply with the NEPA, FLPMA, and/or other applicable laws and regulations (Proposed RMPs/Final EIS, p. 3-11).

Because it is difficult to predict future on the ground impacts with certainty at the programmatic RMP stage, the BLM included monitoring strategies in the Proposed RMPs/Final EIS requiring the BLM to monitor the indicators of air quality on a specified basis and committing the BLM to certain actions if these indicators are triggered (Proposed RMPs/Final EIS, Appendix I, Table I, measure M-1 - M-5). This adaptive management approach is commonly used by the BLM throughout the West to continually assess air quality and air quality related values associated with oil and gas development actions and to manage air resources in compliance with the FLPMA, Clean Air Act, and other laws and regulations.

For the reasons stated above, this protest is denied.

## **NEPA – Impacts Analysis – Cultural Resources**

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** The Proposed Plans analysis of potential impacts to cultural resources is generally vague and ambiguous and falls well short of NEPA’s mandate to conduct a searching analysis of potential direct and indirect and cumulative impacts to cultural resources. For instance, the Proposed Plans would open the 116-acre Little Desert OHV open area to cross-country OHV use. FEIS at 3-20. Rather than analyze the potential impacts of this decision on known cultural resources, the Proposed Plans simply note that a 2002 survey documented numerous archaeological sites within the Little Desert area and states that impacts to cultural resources in the Proposed Plans would be less than those under Alternative E which would have opened a larger area to cross-country OHV use. *Id.* Such cursory statements do not constitute a hard look at potential impacts to cultural resources.

BLM’s intention to create an activity-level cultural resource management plan and associated NEPA review does not obviate the need to take a hard look at the Proposed Plans’ impacts, particularly those that could occur before the cultural resource plan is completed. The Proposed Plans also fail to adequately analyze cumulative impacts to cultural resources.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** In summary, the agency’s vague and ambitious analysis of the Proposed Plans’ direct, indirect, and cumulative impacts to cultural resources failed to satisfy NEPA’s hard look mandate. BLM must thoroughly analyze impacts to cultural resources from OHV routes and open areas, ROW designations, vegetation management, mineral extraction, and recreation and visitation. BLM must also analyze the cumulative impacts of the Proposed Plans to cultural resources.

**Summary:** The BLM has violated NEPA by failing to adequately analyze the direct, indirect, and cumulative impacts on cultural resources in the Proposed RMPs/Final EIS.

**Response:** See rule citations in “Response” section for *NEPA - Impacts Analysis - Air Resources*.

The BLM has adequately analyzed the impacts on cultural resources in the Proposed RMPs/Final EIS. The analysis in the Proposed RMPs/Final EIS focuses on the direct, indirect, and cumulative impacts that would result from implementation of the alternatives in the Proposed RMPs/Final EIS. This analysis identifies impacts that would result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Section 3.2.2 of the Proposed RMPs/Final EIS discusses and analyzes the impacts of various proposed management actions on cultural resources in the Planning Area. For example, the BLM specifically addressed the impacts on cultural resources associated with off-highway vehicle (OHV) use (such as designating the Little Desert Recreation Management Zone (RMZ) as an OHV open area), stating that indirect impacts on cultural resources could result from the opening of areas to OHV use, which increases the potential for damage to or erosion effects on cultural sites (Proposed RMPs/Final EIS, p. 3-19). Additionally, the BLM pointed out that cross-country

OHV travel has the potential to damage exposed or shallowly buried cultural artifacts (Proposed RMPs/Final EIS, p. 3-20). However, the application of cultural resources BMPs identified in Appendix G, Best Management Practices, and the development of a cultural resources management plan under the action alternatives would assist in reducing the potential for direct and indirect adverse impacts on cultural resources. (Proposed RMPs/Final EIS, p. 3-21).

The BLM properly accounted for the relationship between the proposed action and reasonably foreseeable actions. Consequently, the level of detail of the NEPA analysis is sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action, as it has done here.

Additionally, the BLM would develop cultural RMPs in accordance with the standards of BLM Manual 8130 in order to address ways to reduce direct impacts and resolve potential conflicts from natural or human-caused deterioration or other resource uses (Proposed RMPs/Final EIS, p. 2-6). Such plans will also allocate cultural properties to use categories that correspond to defined management actions, including allocation for public use and interpretation. Further, the application of cultural resources BMPs identified in Appendix G (Best Management Practices) would assist in reducing the potential for direct and indirect adverse impacts on cultural resources (Proposed RMPs/Final EIS, Appendix G, p. G-3 - G-4).

Additionally, the BLM has complied fully with the requirements of 40 CFR § 1508.7 to evaluate cumulative impacts on cultural resources. The BLM prepared a cumulative impact analysis based on the nature and scope of the proposed management options under consideration at the land use planning level (Proposed RMPs/Final EIS, p. 3-23 - 3-24). In the cumulative impact analysis, the BLM considered the effects of the planning effort, when added to other past, present, and reasonably foreseeable (not highly speculative) federal and nonfederal actions (Proposed RMPs/Final EIS, p. 3-23 - 24). Section 3.2.2.3 and Appendix N identifies all actions that were considered in the cumulative impacts analysis. It provides a basis for the cumulative impacts analysis for each affected resource.

The analysis properly considered the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. As a result, the information presented in the Proposed RMPs/Final EIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM complied with NEPA's requirement to analyze the relevant direct, indirect, and cumulative impacts on cultural resources in the Proposed RMPs/Final EIS. Accordingly, this protest is denied.

## ***NEPA – Impacts Analysis – Fish, Wildlife, and Special Status Species***

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** NEPA requires that the agency adequately explain the Proposed Plans' direct, indirect, and cumulative effects as to species listed as threatened or endangered under the

Endangered Species Act (ESA) and their habitat, effects that here will plainly have significant impacts to the species. The FEIS fails to adequately explain these effects, thus violating NEPA’s hard look standard. The FEIS itself states “[d]ata are neither complete nor comprehensive regarding all special status species known to occur or regarding potential habitat that might exist.” See FEIS at 3-33.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** In conclusion, the agency fails to take a hard look at the foreseeable impacts the Proposed Plans might have on the important population of greater sage-grouse that occurs in the Planning area and has been determined to be of the highest conservation value. Given foreseeable harmful impacts to this species, BLM’s Proposed Plans fail to ensure the agency’s actions will not impair the conservation efforts it must promote under the agency’s Sensitive Species Policy.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

Issue Excerpt Text: Consequently, until the agency takes a hard look at and accounts for all of these negative impacts to [Mexican spotted owl, southwestern willow flycatcher, western yellow-billed cuckoo, California condor, Colorado pikeminnow, razorback sucker, humpback chub, Navajo sedge, Jones cycladenia, kodachrome bladderpod, Siler pincushion cactus, Welsh’s milkweed, Ute ladies’-tresses, and Utah prairie dog], and then addresses what will be done to prevent the potential harm to the [Mexican spotted owl, southwestern willow flycatcher, western yellow-billed cuckoo, California condor, Colorado pikeminnow, razorback sucker, humpback chub, Navajo sedge, Jones cycladenia, kodachrome bladderpod, Siler pincushion cactus, Welsh’s milkweed, Ute ladies’-tresses, and Utah prairie dog] and their habitat from Alternative E, it will be in violation of the ESA and NEPA.

**Summary:** The BLM has violated NEPA and ESA by failing to adequately analyze and prevent the direct, indirect, and cumulative impacts on the following special status species:

- Mexican spotted owl
- Southwestern willow flycatcher
- Western yellow-billed cuckoo
- California condor
- Endangered Colorado river fishes (Colorado pikeminnow, razorback sucker, humpback chub, bonytail chub)
- Navajo sedge
- Jones cycladenia
- Kodachrome bladderpod
- Siler pincushion cactus
- Welsh’s milkweed
- Ute ladies’-tresses



- Utah prairie dog
- Greater Sage-Grouse

**Rule:** See “Rule” for NEPA - Impacts Analysis - Air Resources.

Additionally, Section 7(a)(2) of the ESA requires federal agencies to ensure that their proposed actions will not be “likely to jeopardize the continued existence of any [listed] species or result in the destruction or adverse modification of the critical habitat of such species” (16 United States code [U.S.C.] § 1336[a][2]). If an agency determines through a biological assessment finding that a proposed action is likely to adversely affect listed species or designated critical habitat, formal, consultation is required (50 CFR § 402.14[a]).

The BLM has adequately analyzed the impacts on special status species in the Proposed RMPs/Final EIS. The analysis in the Proposed RMPs/Final EIS focuses on the direct, indirect, and cumulative impacts that would result from implementation of the alternatives in the Proposed RMPs/Final EIS. This analysis identifies impacts that would result in some level of change to the resources, regardless of whether that change is beneficial or adverse. While data may not be complete nor comprehensive regarding all special status species known to occur or regarding potential habitat that might exist, the best available data has been used to analyze potential impacts to fish and wildlife and special status species in Planning Area, and qualitative analysis has been included to describe other potential impacts (Proposed RMPs/Final EIS, p. 3-27; Appendix W, p. W-101).

Chapter 2 and Appendices 4 and 6 of the AMS identifies and describes the fish, wildlife, and special status species and their critical habitats present in the Planning Area (Chapter 2 of the AMS, Section 2.2.5, Fish and Wildlife, p. 39 – 47, Special Status Species [Threatened, Endangered, and Sensitive], p. 58 - 68; Appendix 4 of the AMS, Fish and Wildlife, p. 263 – 268; Appendix 6 of the AMS, Special Status Species, p. 307 - 314). Sections 3.3.2 and 3.3.3 of the Proposed RMPs/Final EIS discusses and analyzes the short- and long-term, direct, adverse and beneficial impacts of various proposed management actions on fish and wildlife and special status species. The Proposed RMPs/Final EIS includes mitigation and avoidance measures through such actions as the application of no surface occupancy stipulations with certain exceptions, modifications, and waivers; and avoidance areas for such land use authorizations as rights-of-ways (Proposed RMPs/Final EIS, p. 3-33). The Proposed RMPs/Final EIS also includes BMPs (Appendix G [Best Management Practices]) and monitoring strategies for biological resources (Appendix I [Monitoring Strategy]) to ensure proper care and management of fish and wildlife and special status species.

All action alternatives require application of appropriate BMPs for the protection of special status species as identified in Appendix G (Best Management Practices) as well as the committed conservation and protection measures for federally listed species in the Biological Opinion (Proposed RMPs/Final EIS, p. G-8 - G-15). Application of BMPs and committed conservation and protection measures would provide for the proper care and management of biological and ecological resource monument objects and their associated special status species (Proposed RMPs/Final EIS, p. 3-33 and 3-37). Also, in accordance with Section 7 of the ESA, during site-specific permitting the BLM would ensure that actions that are authorized, funded, or carried out

would not be likely to jeopardize the continued existence of a listed species or modify or destroy its designated critical habitat (Proposed RMPs/Final EIS, p. 3-37). The measures described above combined with ongoing consultation with the USFWS ensure proper care and management of fish and wildlife and special status species throughout the planning and implementation process (Proposed RMPs/Final EIS, p. 3-37). The Proposed RMPs/Final EIS states that consultation with the USFWS under Section 7 of the ESA would be undertaken for any actions that have the potential to affect federally listed species or their designated critical habitats. Under all alternatives, no decision would be approved or authorized on BLM-administered surface lands that would jeopardize the continued existence of special status species that are listed as threatened, endangered, proposed, or candidates for listing as threatened or endangered (Proposed RMPs/Final EIS, p. 3-28).

The BLM therefore has accounted for the relationship between the proposed action and reasonably foreseeable actions and incorporated measures in response to potential impacts to fish and wildlife and the special status species listed above. The level of detail of the NEPA analysis is sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action, as it has done here.

Additionally, the BLM has complied fully with the requirements of 40 CFR § 1508.7 to evaluate cumulative impacts on special status species resources. The BLM prepared a cumulative impact analysis based on the nature and scope of the proposed management options under consideration at the land use planning level (Proposed RMPs/Final EIS, p. 3-37 - 3-39). In the cumulative impact analysis, the BLM considered the effects of the planning effort, when added to other past, present, and reasonably foreseeable (not highly speculative) federal and nonfederal actions. Section 3.3.4 and Appendix N identifies all actions that were considered in the cumulative impacts analysis. It provides a basis for the cumulative impacts analysis for each affected resource.

The analysis properly considered the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. As a result, the information presented in the Proposed RMPs/Final EIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM complied with NEPA's requirement to analyze the relevant direct, indirect, and cumulative impacts on special status species in the Proposed RMPs/Final EIS. Accordingly, this protest is denied.

## **NEPA – Impacts Analysis – Paleontological Resources**

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** Overall, the assessment of impacts to paleontological resources in the final EIS is superficial and inadequate.

**Summary:** The BLM has violated NEPA by failing to adequately analyze the direct, indirect, and cumulative impacts on paleontological resources in the Proposed RMPs/Final EIS.

**Response:** See rule citations in “Response” section for *NEPA - Impacts Analysis - Air Resources*.

The BLM has adequately analyzed the impacts on paleontological resources in the Proposed RMPs/Final EIS. The analysis in the Proposed RMPs/Final EIS focuses on the direct, indirect, and cumulative impacts that would result from implementation of the alternatives in the Proposed RMPs/Final EIS. This analysis identifies impacts that would result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Section 3.5.2 of the Proposed RMPs/Final EIS discusses and analyzes the impacts of various proposed management actions on paleontological resources in the Planning Area. The BLM accounted for the relationship between the proposed action and reasonably foreseeable actions. The level of detail of the NEPA analysis is sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action, as it has done here.

Additionally, the BLM has complied fully with the requirements of 40 CFR § 1508.7 to evaluate cumulative impacts on paleontological resources. The BLM prepared a cumulative impact analysis based on the nature and scope of the proposed management options under consideration at the land use planning level (Proposed RMPs/Final EIS, p. 3-51 - 3-52). In the cumulative impact analysis, the BLM considered the effects of the planning effort, when added to other past, present, and reasonably foreseeable (not highly speculative) federal and nonfederal actions. Section 3.5.2.3 and Appendix N identifies all actions that were considered in the cumulative impacts analysis. It provides a basis for the cumulative impacts analysis for each affected resource.

The analysis properly considered the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. As a result, the information presented in the Proposed RMPs/Final EIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM complied with NEPA’s requirement to analyze the relevant direct, indirect, and cumulative impacts on paleontological resources in the Proposed RMPs/Final EIS. Accordingly, this protest is denied.

## ***NEPA – Impacts Analysis – Soil and Water Resources***

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** We protest the failures to comply with NEPA, 42 U.S.C. § 4321 *et seq.* and NLCS direction. Throughout the Proposed Plans/FEIS, BLM has failed to adequately address, analyze, and disclose the effects of planning activities on soils and biological crusts and how those effects will be mitigated. The effects of activities such as grazing, range improvements, mineral exploration and development, route maintenance and restoration, recreation, and other uses on biological soil crust and soil health under the Alternatives, especially Alternative E (the Proposed Plan), are not analyzed adequately and do not protect monument resources. Here the Proposed Plans have not accurately or consistently represented the proposed action, making any analysis

arbitrary and capricious. We protest the failure to include a comprehensive analysis of the proposed action on this basis.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** The Proposed Plans avoid analysis of the direct impacts of livestock grazing on biocrusts by saying that they are “highly variable and dependent on site characteristics and grazing practices.” FEIS at 3-55. BLM then indirectly acknowledges livestock impacts by saying that range improvements might allow better livestock distribution and minimize the effects of trampling and concentrated grazing on resources. FEIS at 3-56. However, these improvements will result in impacts of their own as they spread livestock to new areas, but no analysis of these new impacts was presented.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** The Proposed Plans also err in their analysis of the impacts on biocrusts from vegetation management actions on soils and biological soil crusts. FEIS at 3-61. They assert that restoration efforts will mitigate damage to these resources, but offer no evidence of successful restoration.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** We protest the Proposed Plans on the grounds that they have failed to “rigorously explore and objectively evaluate” (40 CFR § 1502.14) the comparative consequences of alternatives (e.g., Alternative B and E) for a Monument object, biological soil crusts. The agency admits that there will be impacts to soils and biological soil crusts from the vegetation removal and soil compaction associated with impacts such as livestock grazing, installation and maintenance of livestock grazing range improvements, vegetation treatments, OHV activity, recreation, and, on KEPA, mining. FEIS at 3-52, 3-56; AMS at 57.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** Moreover, in its analysis of the soil and water resource impacts of the various management alternatives on Monument objects, BLM impermissibly limits its review to biological crusts. FEIS at 3-58. As explained above, BLM identified multiple Monument objects relating to watershed and water resources and yet does not examine the adverse impacts of the various management alternatives on these Monument values. Thus, BLM has failed its obligations under NEPA, as well as its other legal duties addressed above.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** Yet, BLM does not acknowledge or address the connection between upstream activities and downstream watershed conditions and fails to consider protective management schemes for upstream and watershed-wide activities throughout the Planning Area although NEPA, 16 U.S.C. § 7202(a) and Secretarial Order 3308 require such analysis. As a result, the FEIS fails to take a hard look at the management scenarios on water resources and is necessarily inadequate.

***The Wilderness Society et al.***  
***Phil Hanceford et al.***

**Issue Excerpt Text:** In addition, BLM does not discuss the environmental consequences of the proposed management alternatives on water quality. The FEIS acknowledges that water quality in the Monuments is impaired. FEIS at 3-53 (and the referenced materials therein). Considerable stretches of rivers and streams have been designated as impaired pursuant to Utah Water Quality Standards. AMS at 90-91. Several of these waters are Monument Objects. Id. “TDS (i.e., salinity), temperature, total phosphorus, and benthic macroinvertebrate bioassessments are water quality problems in GSENM.” AMS at 92. Yet, BLM makes little or no effort to determine the extent to which its management is causing or contributing to this impairment or what the agency might do to restore water quality in these reaches and to protect Monument Objects or Congressionally identified values. AMS at 90; FEIS at 3-54 to 3-59.

Waters in several livestock grazing allotments are not meeting Rangeland Health Standard 4, which assesses water quality - a condition in several instances caused fully or in part by livestock grazing. AMS at 91-92. Yet, BLM makes little or no effort to determine the extent to which its management is causing or contributing to this impairment or what the agency might do to restore water quality in these reaches and safeguard Monument Objects or Congressionally identified values. AMS at 91-92; FEIS at 3-54 to 3-59.

Rather, BLM seems to suggest that because “based on limited data, these water quality problems are believed to be stable and are not worsening,” AMS at 92, the agency need not analyze the issue further. Similarly, BLM states “[a]ccording to the 303(d) report, the probable sources contributing to impairment are largely unknown” and essentially investigates no further. AMS at 90. The agency’s reasoning in unavailing and its failure to analyze the impacts of its management alternatives on already degraded water quality and existing high-quality water is unlawful.

First, Alternatives B, C, D and E all contemplate additional surface disturbing activities, including significant activity in the KEPA. BLM further concludes that Alternative A lacks the measures necessary to protect water resources. Therefore, BLM cannot assume that the degree to which waters in the Planning Area are impaired will remain stable. Likewise, the agency may not assume that existing high-quality waters will not be degraded. After all, the alternatives either anticipate that changes in management will result in increased adverse impacts on water resources or that the status quo will do so.

Second, BLM cannot base its decision making on limited data or belief . . . Therefore, BLM’s failure to determine the cause of water quality impairment in the Planning Area and to analyze the impact of the management alternatives water quality, including impair waters, is unreasonable.

Third, BLM admits that much or all of the KEPA will be open to mining and mineral leasing and yet does not address the impacts that these activities and its various management scenarios will have on water quality beyond surface disturbing activities. E.g. FEIS at 3-55 to 3-60. However, both mining and mineral leasing have the potential to contaminate ground and surface water through discharges of wastes, leaks, stormwater runoff and other means. Yet, the agency does not analyze this potential source of water pollution directly or cumulatively.

***The Wilderness Society et al.******Phil Hanceford et al.***

**Issue Excerpt Text:** Furthermore, BLM does not characterize the future needs of local communities, plants and wildlife for high quality water or how the management alternatives will impact these requirements. In other words, BLM does not attempt to quantify the actual impact that the various management scenarios will have on future water quality or to determine whether this impact is acceptable given their duty to protect Monument values and to comply with Utah Water Quality Standards. As a result, the Proposed Plans and their associated environmental analyses are not adequate.

***The Wilderness Society et al.******Phil Hanceford et al.***

**Issue Excerpt Text:** Likewise, BLM does not consider the impacts of its management alternatives within Monument watersheds and/or upstream of Monument waters on riparian corridors, watersheds, wetlands and water quality. As a result, the DMP and its associated environmental analysis are not adequate.

***The Wilderness Society et al.******Phil Hanceford et al.***

**Issue Excerpt Text:** BLM does not explain why a 0.5 buffer is sufficient to protect riparian and river corridors and fails to consider expanding this prohibition to flood plains. Key to safeguarding water quality and quantity and plant and animal species, as well as other watershed and wetland values, is managing activities upstream and elsewhere in the relevant watersheds. Yet, BLM does not acknowledge or address this connection and fails to consider protective management schemes for upstream and watershed-side activities. As a result, the FEIS is necessarily inadequate.

Utah Water Quality Standards and conservation science further confirm that to safeguard Monument water resource values it is necessary to ensure that upstream and watershed-wide conditions and activities are not degrading water quality and otherwise interfering with the protection of riparian zones, wetlands, water quality and water quality. Further, these water resource values also must also promote and fully support Monument wildlife and plants. Therefore, it is legally incumbent on BLM to assess the condition of upland and upstream water resource values and to derive and implement an alternative that ensures that upstream and watershed-wide management activities safeguard and do not harm Monument water resource values.

**Summary:** The BLM has violated NEPA by failing to:

- adequately address, analyze, and disclose the effects of planning activities on soils and biological crusts and how those effects will be mitigated
- analyze the direct impacts of activities such as livestock grazing, range improvements, vegetation management actions, mineral exploration and development, route maintenance and restoration, recreation, and other uses on biological soil crust and soil health under the action alternatives, especially Alternative E (the Proposed RMPs)
- adequately analyze impacts on watershed and water resources

- acknowledge or address the connection between upstream activities and downstream watershed conditions and fails to consider protective management schemes for upstream and watershed-wide activities throughout the Planning Area
- adequately analyze impacts on current and future water quality or the causes of water quality impairment
- fails to analyze the impacts within Planning Area watersheds and/or upstream of Planning Area waters on riparian corridors, watersheds, wetlands, and water quality
- assess the condition of upland and upstream water resource values
- does not explain why a 0.5-mile buffer is sufficient to protect riparian and river corridors and consider expanding this prohibition to floodplains
- consider protective management schemes for upstream and watershed-wide activities

**Response:** See rule citations in “Response” section for *NEPA - Impacts Analysis - Air Resources*.

The BLM has adequately analyzed the impacts on soil and water resources in the Proposed RMPs/Final EIS. The analysis in the Proposed RMPs/Final EIS focuses on the direct, indirect, and cumulative impacts that would result from implementation of the alternatives in the Proposed RMPs/Final EIS. This analysis identifies impacts that would result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Section 3.6.2 of the Proposed RMPs/Final EIS discusses and analyzes the impacts of various proposed management actions on soil and water resources in the Planning Area. The BLM accounted for the relationship between the proposed action and reasonably foreseeable actions. The level of detail of the NEPA analysis is sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action, as it has done here.

Additionally, the BLM has complied fully with the requirements of 40 CFR § 1508.7 to evaluate cumulative impacts from increased livestock grazing. The BLM prepared a cumulative impact analysis based on the nature and scope of the proposed management options under consideration at the land use planning level. In the cumulative impact analysis, the BLM considered the effects of the planning effort, when added to other past, present, and reasonably foreseeable (not highly speculative) federal and nonfederal actions. Section 3.6.2.3 and Appendix N identifies all actions that were considered in the cumulative impacts analysis. It provides a basis for the cumulative impacts analysis for each affected resource.

Regarding the protestor’s allegation that the BLM failed to assess the condition of upland and upstream water resource values, the BLM regularly conducts land health assessments, which evaluate the condition of upland and upstream water resource values. These assessments are sufficient for establishing baseline conditions against which to measure potential impacts of land use planning decisions. The BLM may use the results of these assessments to adjust grazing management or systems where necessary to improve land health. Consequently, the BLM has

met its obligation to assess the condition of upland and upstream water resource values in the Planning Area.

Regarding the protestor's allegation regarding the 0.5-mile buffer, it is unclear what 0.5-mile buffer the protestor is referring to. The BLM has inferred that the protestor is referring to the 0.25-mile buffer for southwestern willow flycatcher habitat. However, the BLM did not intend for the buffer to primarily protect all riparian corridors or water quality. Rather, the BLM intended for this buffer to apply primarily to suitable southwestern willow flycatcher habitat. However, the BLM did outline a variety of other protective measures in the Proposed RMPs/Final EIS to be used to protect water quality and resources in the Planning Area (Proposed RMPs/Final EIS, Appendix G, p. G-16).

Regarding the protestor's allegation relating to floodplain protection, again, it is unclear what 0.5-mile buffer the protestor is referring to. Floodplains in the Planning Area will continue to be managed in accordance with Executive Order 11988, as amended by Executive Order 12148 (Floodplain Management).

Lastly, regarding the protestor's allegation that the BLM failed to consider protective management schemes for upstream and watershed-wide activities, the BLM directs the protestor to Section 2.3.6.2, in which the BLM considered a range of alternatives for plan level decisions associated with water resource management. In this section, the BLM evaluated various alternatives that aim to protect and maintain all available water and natural flows in the Planning Area, to varying degrees. Consequently, the BLM has adequately considered protective management schemes for upstream and watershed-wide activities in the Proposed RMPs/Final EIS, and no further analysis is required.

The analysis properly considered the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. As a result, the information presented in the Proposed RMPs/Final EIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM complied with NEPA's requirement to analyze the relevant direct, indirect, and cumulative impacts from increased livestock grazing in the Proposed RMPs/Final EIS. Accordingly, this protest is denied.

## ***NEPA – Impacts Analysis – Vegetation and Fire and Fuels Management***

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** Throughout the FEIS, BLM has failed to adequately address, analyze, and disclose the effects of authorizing vegetation treatments on the planning area on issues such as the spread of exotics, removal of vegetation for habitat and forage for wildlife, promoting non-native vegetation, crushing of soils and biological soil crusts, and alteration of ecosystem processes. Here the FEIS has not accurately or consistently represented the proposed action, making any analysis arbitrary and capricious.



***The Wilderness Society et al.  
Phil Hanceford et al.***

**Issue Excerpt Text:** BLM’s analysis did not adequately address the balance of risks between wildfires and surface-disturbing vegetation treatments. Therefore, the analysis of the alternatives is flawed.

***The Wilderness Society et al.  
Phil Hanceford et al.***

**Issue Excerpt Text:** The Proposed Plans fail to address the well-known, long-term resource damage and unintended consequences that surface-disturbing vegetation treatments have inadvertently caused in the past. Monument objects are often incompatible with the high levels of surface disturbance and vegetation removal attendant in these treatments, and the long-term benefits assured by land managers often fail to materialize. The agencies have failed to take a hard look at these impacts, as the degree of uncertainty in treatment results and long-term impacts is not taken into enough account in the Proposed Plans.

**Summary:** The BLM has violated NEPA by failing to adequately address, analyze, and disclose the effects of authorizing vegetation treatments on the Planning Area in the Proposed RMPs/Final EIS, in particular the potential for increased risk of wildfire inadvertently caused by increased surface-disturbing vegetation treatments.

**Response:** See rule citations in “Response” section for *NEPA - Impacts Analysis - Air Resources*.

The BLM has adequately analyzed the impacts on soil and water resources in the Proposed RMPs/Final EIS. The analysis in the Proposed RMPs/Final EIS focuses on the direct, indirect, and cumulative impacts that would result implementation of the alternatives in the Proposed RMPs/Final EIS. This analysis identifies impacts that would result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Section 3.7.2 of the Proposed RMPs/Final EIS discusses and analyzes the impacts of various proposed management actions on vegetation and vegetation community health from implementation of the management alternatives in the planning are. As stated in the Proposed RMPs/Final EIS, impacts on vegetation would primarily result from the following impact mechanisms: surface disturbance and vegetation removal; spread of noxious weeds, invasive plant species, and pests and disease; and vegetation treatments (including prescribed fire) and habitat restoration activities.

Section 3.7.4 describes and analyzes the impacts of fire and fuels management of the Planning Area. This section notes that “fire can result in both adverse and beneficial effects on rangeland health, wildlife habitat quality and quantity, and plant community health. Impacts on other resources from fire management are addressed under the appropriate resource sections (Proposed RMPs/Final EIS, p. 3-69 - 3-72). Impacts related to surface disturbance and fire management can be found throughout the document. The most relevant discussion can be found in Section 3.6.2, which analyzes vegetation treatment and removal and its potential to cause surface disturbance.

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

Additionally, the BLM has complied fully with the requirements of 40 CFR § 1508.7 to evaluate cumulative impacts on vegetation and fire and fuels management. The BLM prepared a cumulative impact analysis based on the nature and scope of the proposed management options under consideration at the land use planning level. In the cumulative impact analysis, the BLM considered the effects of the planning effort, when added to other past, present, and reasonably foreseeable (not highly speculative) federal and nonfederal actions. Section 3.7.2.3 and Appendix N identifies all actions that were considered in the cumulative impacts analysis. It provides a basis for the cumulative impacts analysis for each affected resource.

The analysis properly considered the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. As a result, the information presented in the Proposed RMPs/Final EIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM complied with NEPA's requirement to analyze the relevant direct, indirect, and cumulative impacts from authorizing vegetation treatments in the Proposed RMPs/Final EIS. Accordingly, this protest is denied.

## ***NEPA – Impacts Analysis – Livestock Grazing***

### ***Western Watersheds Project***

#### ***Jonathan Ratner***

**Issue Excerpt Text:** For instance, the EIS for the GMP predicted only minor impacts from grazing and trailing and assumed certain actions and planning would take place. Those assumptions were incorrect. The predictions made in previous NEPA processes, including the GSENM MMP, also need to be disclosed and analyzed because if the accuracy was not there, most likely you are making the same predictions in the current process and thus the current process again will be vitiated.

#### ***The Wilderness Society et al.***

##### ***Phil Hanceford et al.***

**Issue Excerpt Text:** But BLM failed to adequately analyze the direct, indirect, or cumulative impacts that the Proposed Plans' increased grazing will have on soils, biocrusts, water quality, lands with wilderness characteristics, wildlife, vegetation, greenhouse gas emissions, or cultural resources.

#### ***The Wilderness Society et al.***

##### ***Phil Hanceford et al.***

**Issue Excerpt Text:** Yet here again, without analyzing how livestock grazing adversely impacts soils, soil function, and biological soil crusts on allotments that extend into Glen Canyon, BLM

has no rational basis to conclude that livestock management actions could prevent or minimize such impacts.

The FEIS's analysis of the cumulative impacts of past activities, including past grazing, combined with the anticipated direct and indirect effects of allowing increased grazing, is also deficient.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** But BLM failed to analyze, or even mention, the potential adverse effects on soils, water quality, or riparian and wildlife habitat from reopening these very same allotments along the Escalante River.

The agency also failed to adequately analyze the direct, indirect, and cumulative impacts of Alternatives A, B, C, and D, and compare those alternatives to the impacts of the Proposed Plans (Alternative E). See 40 C.F.R. § 1502.14(a) (agency must [r]igorously explore and objectively evaluate" the alternatives); id. § 1502.14(b) (agency must [d]evote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits); BLM Manual 6220, Section 1.6.G.4.d., 4.e.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** All told, BLM failed to quantitatively analyze the Proposed Plans' (Alternative E) - and each alternative's - direct, indirect, and cumulative impacts on soils and water quality from livestock grazing, failed to justify why such a quantitative analysis may not be appropriate, and failed to provide a detailed qualitative impacts analysis. See Klamath-Siskiyou Wildlands Ctr. , 387 F.3d at 993; BLM Manual 6220, Section 1.6.G.4.d., 4.e.

BLM likewise failed to analyze the Proposed Plans' direct, indirect, and cumulative impacts of grazing on lands with wilderness characteristics, wildlife, vegetation, greenhouse gas emissions, or cultural resources.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** Because BLM failed to provide a quantitative analysis of grazing impacts, a justification as to why quantitative assessment is possible, or a detailed qualitative assessment of livestock grazing's impacts under Alternative E (the Proposed Plans), and each alternative, the agency failed to satisfy NEPA's hard look mandate.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** The Proposed Plans, however, neither evidence BLM's awareness that it is changing position on grazing along the Escalante River nor offer any reasons for the change in policy, let alone any reasoned justification for reopening these areas to grazing. Fox Television Stations, Inc., 556 U.S. at 515-16. The FEIS provides no analysis of the environmental impacts of reintroducing livestock into these sensitive riparian areas. And it fails to address whether reintroducing livestock will undo the riparian, wildlife, and other improvements along the river.

The Proposed Plans therefore are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

### **Noel Poe**

**Issue Excerpt Text:** There is nothing that specifically states when or how the availability or unavailability for grazing will be decided in a future planning process, should be considered, has already been decided or is part of an Implementation Plan, etc. With the existing language in All. E R. # 2027, it sounds like the decision has been made to re-open grazing without adequate NEPA analysis. This is a major error that needs to be addressed by the Protest Office.

**Summary:** The BLM has violated NEPA by failing to adequately analyze the direct, indirect, and cumulative impacts from increased livestock grazing in the Planning Area, especially in the Glen Canyon area along the Escalante River. Additionally, the BLM has violated NEPA by failing to justify why a quantitative analysis of grazing impacts may not be appropriate, and fails to provide a detailed qualitative impacts analysis.

**Response:** See rule citations in “Response” section for *NEPA – Impacts Analysis – Air Resources*.

The BLM has adequately analyzed the impacts from increased livestock grazing in the Proposed RMPs/Final EIS. The analysis in the Proposed RMPs/Final EIS focuses on the direct, indirect, and cumulative impacts that would result from implementation of the alternatives in the Proposed RMPs/Final EIS. This analysis identifies impacts that would result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Section 3.12.2 of the Proposed RMPs/Final EIS discusses and analyzes the impacts of various proposed management actions on increased livestock grazing in the Planning Area. The BLM accounted for the relationship between the proposed action and reasonably foreseeable actions. The level of detail of the NEPA analysis is 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 analyzed the impacts of livestock grazing on vegetation, including riparian vegetation and communities, in Section 3.7.2 of the Proposed RMPs/Final EIS. Additionally, the BLM specifically analyzed the impacts of grazing along the Escalante River and in Glen Canyon in several places throughout the Proposed RMPs/Final EIS. For example, the BLM pointed out that the transport of *E. coli* from livestock grazing or human waste into water resources can result in human health and safety concerns when these water sources are used for drinking water, especially in backcountry situations (e.g., along the Escalante River). However, the BLM emphasized that under Alternatives D and E, the National Park Service (NPS), in coordination with the BLM, would take livestock management actions to prevent or minimize adverse impacts on soils, soil function, and biological soil crusts within allotments that extend into Glen Canyon National Recreation Area (NRA) (Proposed RMPs/Final EIS, p. 3-56). Additionally, the BLM emphasized that increased opportunities for public access, livestock grazing, and range improvement management on BLM-administered surface land may result in adverse impacts on lands managed by Glen Canyon NRA. This is because boundaries between the Planning Area and Glen Canyon NRA are often unsigned in remote portions of the Planning Area, which can lead to confusion by the public and permittees where BLM management is inconsistent or incompatible

with management of adjacent areas. This confusion may lead to inadvertent damage to vegetation cover and soils on NPS lands by recreationists and potential increases in inadvertent trespass by permittees using OHVs for administrative access to their allotments or inadvertently moving their livestock onto NPS lands that are unavailable for grazing (Proposed RMPs/Final EIS, p. 3-106).

The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action, as it has done here. Additionally, land use plan-level analyses for programmatic (i.e., non-implementation) decisions are typically broad and qualitative rather than quantitative or focused on site-specific actions (BLM Land Use Planning Handbook H-1601-1, Chapter II, A-B at 11-13 and Chapter IV, B at 29). As a result, because of the programmatic, broad-scale nature of the Proposed RMPs, the effects on livestock grazing are likewise generally described qualitatively, with acreages provided where appropriate to draw distinctions among the alternatives (Proposed RMPs/Final EIS, p. 3-98). This assessment is primarily qualitative because of the lack of detailed information that would result from project-level decisions, site-specific resource conditions, and other activities or projects (Proposed RMPs/Final EIS, Appendix N, p. N-1).

Additionally, the BLM has complied fully with the requirements of 40 CFR § 1508.7 to evaluate cumulative impacts from increased livestock grazing. The BLM prepared a cumulative impact analysis based on the nature and scope of the proposed management options under consideration at the land use planning level. In the cumulative impact analysis, the BLM considered the effects of the planning effort, when added to other past, present, and reasonably foreseeable (not highly speculative) federal and nonfederal actions. Section 3.12.2.3 and Appendix N identifies all actions that were considered in the cumulative impacts analysis. It provides a basis for the cumulative impacts analysis for each affected resource.

The analysis properly considered the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. As a result, the information presented in the Proposed RMPs/Final EIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM complied with NEPA's requirement to analyze the relevant direct, indirect, and cumulative impacts from increased livestock grazing in the Proposed RMPs/Final EIS. Accordingly, this protest is denied.

## ***NEPA – Impacts Analysis – Energy and Minerals***

### ***National Parks Conservation Association***

***Robert Rosenbaum et al.***

**Issue Excerpt Text:** The coal unsuitability analysis of the Kaiparowits coalfield failed to adequately address potential impacts from the proposed coal mine on the Glen Canyon visitor experience, air quality, dark night skies, natural soundscapes and particularly water quality and quantity.

**Summary:** The BLM has violated NEPA by failing to adequately analyze the potential impacts from proposed coal development on various resources in the Planning Area.

**Response:** See rule citations in “Response” section for *NEPA - Impacts Analysis - Air Resources*.

The BLM has adequately disclosed and analyzed the impacts from proposed coal development in the Planning Area in the Proposed RMPs/Final EIS. A provision in the Consolidated Appropriations Act of 2019 (Public Law 116-6, Title IV, Section 408 of Division E) that prohibits the BLM from expending appropriated funds to conduct preleasing and leasing activities under the Mineral Leasing Act of 1920, as amended, in the Planning Area has been carried forward into the agency’s current appropriations. That prohibition applies to the KEPA lands and, as such, the BLM cannot move forward with coal or oil and gas leasing while this provision remains in annual appropriations statutes. While this provision does not limit the BLM’s ability to make planning-level decisions related to mineral leasing, it does impact the level of development that is reasonably foreseeable within the KEPA and therefore the scope of the impacts analysis related to mineral resources. This analysis identifies impacts that would result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Coal development in KEPA is discussed in a number of locations in the document. First, Section 3.1.2 of the Proposed RMPs/Final EIS notes that such development would increase criteria pollutant emissions and also increase GHG emissions that could contribute to climate change. Second, Section 3.13.1 includes coal in its general discussion and analysis of mineral development in the Planning Area and refers to Section 3.1.2 and Maps 17 and 18 in the Mineral Potential Report for more information on the quality and amount of coals, past coal mines, and the occurrence and development potential of coals in KEPA. Section 3.13.2 not only discusses the potential impacts of coal development in the area under each alternative but also analyzes impacts from coal unsuitably criteria that close over 75,000 acres in the Planning Area to surface coal mining operations. Under each of these action alternatives, additional areas could be found not unsuitable or unsuitable for surface coal mining operations as a result of site-specific analysis.

In discussing the impacts of coal development in the Planning Area, the BLM accounted for the relationship between the proposed action and reasonably foreseeable actions. This includes potential constraints on such development in the Planning Area. The level of detail of the NEPA analysis is 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), especially given those constraints on coal development in the Planning Area. The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action, as it has done here.

Additionally, the BLM has complied fully with the requirements of 40 CFR § 1508.7 to evaluate cumulative impacts of proposed coal development in the Planning Area. The BLM prepared a cumulative impact analysis based on the nature and scope of the proposed management options under consideration at the land use planning level. In the cumulative impact analysis, the BLM considered the effects of the planning effort, when added to other past, present, and reasonably foreseeable (not highly speculative) federal and nonfederal actions. Section 3.13.2.3 and Appendix N identify all actions that were considered in the cumulative impacts analysis. It provides a basis for the cumulative impacts analysis for each affected resource.

The analysis properly considered the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis

performed and presented. As a result, the information presented in the Proposed RMPs/Final EIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM complied with NEPA’s requirement to analyze the relevant impacts from proposed coal development in the Planning Area. Accordingly, this protest is denied.

## ***NEPA – Impacts Analysis – Travel and Transportation Management***

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** As shown in more detail in the comments below, BLM fails to adequately evaluate impacts from OHV designations in the Proposed Plans. The agency downplays certain damage and conflicts from open area designations while finding only hardship of closing areas to OHV use. ...

The Proposed Plans also fail to provide a record and evidence as to how the minimization criteria were considered and applied when developing the range of alternatives as it pertains to OHV area designations.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** The FEIS does not adequately evaluate establishing open areas in light of BLM’s own policies on the issue. BLM Manual 1626 at .06(A)(2)(a)(I).

**Summary:** The BLM has violated NEPA and BLM policy by failing to adequately analyze and provide a record and evidence as to how the minimization criteria were considered and applied when developing the range of alternatives as it pertains to OHV area designations and in establishing the Little Desert open areas.

**Response:** NEPA (40 CFR § 1502.15) directs that data and analyses in an EIS must be commensurate with the importance of the impact. In 40 CFR § 1500.1(b) it directs that NEPA document preparers must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail. The BLM is required to take a hard look at potential environmental impacts of adopting the Proposed RMPs/Final 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.

Additionally, 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). CEQ regulations (40 CFR § 1508.7) 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.”

According to BLM Manual 1626 at .06(A)(2)(a)(l), “Open areas should, therefore, be designated to aid in the achievement of a specific recreational goal or objective. They will be limited to a size that can be effectively managed and geographically identifiable to offer a quality OHV opportunity for participants. BLM should not designate expansive open areas without a corresponding, and identified, BLM purpose supporting a user need or demand.”

The BLM has adequately disclosed and analyzed the impacts from proposed travel and transportation management in the Planning Area under the Proposed RMPs/Final EIS. The analysis in the Proposed RMPs/Final EIS focuses on the direct, indirect, and cumulative impacts that would result from implementation of the alternatives in the Proposed RMPs/Final EIS. This analysis identifies impacts that would result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

As noted in the Proposed RMPs/Final EIS in its discussion of OHV area designations, all public lands are required to have OHV area designations (43 CFR part 1600 and part 8342.1). Areas must be designated as open, limited, or closed to OHV travel. The BLM must document the consideration given in identifying the designation based on the protection of the resources of the public lands, the proportion of the safety of users, and minimizing conflicts among various uses consistent with criteria established at 43 CFR 8342.1. Section 3.15.2 of the Proposed RMPs/Final EIS specifically discusses and analyzes travel and transportation management in the Planning Area. Impacts on resources and resource use resulting from implementation of the transportation program are also discussed in the relevant resource sections of Chapter 3 of the Proposed RMPs/Final EIS.

In discussing the impacts travel and transportation management in the Planning Area, the BLM accounted for the relationship between the proposed action and reasonably foreseeable actions. This includes potential constraints on such OHV designations in the Planning Area. For example, the BLM drastically scaled down the size of the area designated as open for mechanized and OHV use in the Little Desert RMZ to 116 acres under Alternative E. The BLM did so to minimize conflicts with other resources. As stated in the Proposed RMPs/Final EIS, the smaller OHV open area under Alternative E would reduce potential impacts on archaeological sites in the Little Desert area compared to Alternative D (Proposed RMPs/Final EIS, p. 3-20). Additionally, the BLM scaled down this RMZ to keep within policy directives that open areas be limited to a size that can effectively be managed.

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

Additionally, the BLM has complied fully with the requirements of 40 CFR § 1508.7 to evaluate cumulative impacts of proposed travel and transportation management in the Planning Area. The BLM prepared a cumulative impact analysis based on the nature and scope of the proposed management options under consideration at the land use planning level. In the cumulative impact analysis, the BLM considered the effects of the planning effort, when added to other past, present, and reasonably foreseeable (not highly speculative) federal and nonfederal actions. Section



3.15.2.3 and Appendix N identify all actions that were considered in the cumulative impacts analysis. It provides a basis for the cumulative impacts analysis for each affected resource.

The analysis properly considered the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor as to the level of analysis performed and presented. As a result, the information presented in the Proposed RMPs/Final EIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM complied with NEPA’s requirement to analyze the relevant impacts from proposed travel and transportation management in the Planning Area. Accordingly, this protest is denied.

### **NEPA – Impacts Analysis – Wilderness Study Areas**

#### **J. Brugger**

**Issue Excerpt Text:** According to the Planning Criteria (Section 1.4, pg. 1-5), “existing Wilderness Study Areas will continue to be managed to prevent impairment and ensure continue suitability for designation as wilderness.” Since motor vehicles are not allowed in Wilderness Areas, allowing them in WSAs violates this criterion because OHVs will use and recreate old tracks that are disappearing and have disappeared due to lack of use but may still appear on old maps. This will decrease their suitability for designation as wilderness in the future. The State Director’s decision is wrong because allowing OHVs in WSAs violates this planning criterion.

#### **The Wilderness Society et al.**

#### **Phil Hanceford et al.**

**Issue Excerpt Text:** Under FLPMA and its implementing regulations, BLM must manage and protect Wilderness Study Areas (WSAs) to preserve wilderness characteristics so as not to impair the suitability of such areas for designation by Congress as a Wilderness. The FEIS’s proposed plan (Alt. E) does not meet these obligations. According to the FEIS, Alternative E would allow significant impairing actions within WSAs, including failing to manage WSAs as OHV closed areas or limited to routes designated as “open” in the current Travel Plan for the planning area.

According to the FEIS, Alternative E would “allow OHV use in WSAs on routes designated during the travel management planning process.” FEIS at 3-155. BLM’s assertion that it would “ensure that routes do not exceed the approximate conditions of impact on the wilderness characteristics that existed on October 21, 1976,” falls flat, and attempts to authorize BLM’s illegal impairment of WSAs. As explained in SUWA et al.’s comments on the DEIS, the designation of OHV and mechanical transport routes on primitive routes that existed prior to the original wilderness inventory and were available for OHV use prior to Monument designation in 1996 is *not consistent* with BLM’s obligations under FLPMA or Manual 6330. Although Manual 6330 provides a limited exception for motorized and mechanized transport uses in a WSA on primitive routes that existed prior to the original wilderness inventory, 6330 makes quite clear that, to be non-impairing, these routes must *also* not have otherwise been closed through BLM’s Travel Management Planning process. See BLM Manual 6330 at 1-27. Because the 2000 Monument Plan closed these routes or “ways” in WSAs within the planning area, BLM cannot attempt to re-open or re-establish them during subsequent travel planning without running afoul of its non-impairment obligations under FLPMA.

BLM should therefore remove this reference to consider new OHV and mechanical transport routes in the Proposed Plan, as it is illegal under FLPMA. BLM’s proposed plans also run afoul of the agency’s non-impairment obligations with respect to recreation and group sizes. According to the FEIS, the proposed plans would significantly increase group size limits to 25 in WSAs, with exceptions for even larger group sizes with extremely subjective manager discretion on a case-by-case basis. FEIS at 3-117. This would not protect wilderness characteristics such as solitude within WSAs in the planning area.

The proposed plans also violate FLPMA’s implementing regulations regarding WSA nonimpairment and vegetation manipulation. According to the FEIS, the proposed plan would allow the use of non-native species, which “could affect naturalness in the area depending on the type and extent of nonnative species and their possible spread.” FEIS at 3-155. As discussed in SUWA et al.’s DEIS comments, this directly contradicts Manual 6330’s instruction that “[e]stablishing non-native plants is an example of vegetation management that may impair and therefore may not be permitted within a WSA.” BLM Manual 6330 at 1-33. Allowing nonnative species for vegetation projects within WSAs will impair their naturalness and therefore violate BLM’s obligations under FLPMA. BLM must remove the possibility for use of nonnative species in the proposed plan.

**Summary:** The BLM failed to comply with FLPMA’s mandate to “manage and protect WSAs to preserve wilderness characteristics so as not to impair the suitability of such areas for designation by Congress as a Wilderness by:

- failing to manage WSAs as OHV closed areas or limited to routes designated as “open”
- significantly increasing group size limits to 25 in WSAs, with exceptions for larger group sizes and
- allowing the use of non-native species

**Response:** FLPMA 43 U.S.C. 1782, Section 603(c) states “[t]he Secretary shall continue to manage WSAs according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness, subject, however, to the continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was being conducted on October 21, 1976: Provided, That, in managing the public lands the Secretary shall by regulation or otherwise take any action required to prevent unnecessary or undue degradation of the lands and their resources or to afford environmental protection.”

Regarding motorized recreation in WSAs, BLM Manual 6330 (Management of BLM Wilderness Study Areas) states:

*Recreational use of motor vehicles or mechanical transport... may only be allowed when such use is consistent with all applicable laws and meets the non-impairment standard. The following are examples of motorized or mechanized transport uses that are not likely to impair an area’s suitability and therefore may be allowed in a WSA: ... B. on primitive routes (or “ways”) identified by the BLM as existing on October 21, 1976 (or prior to the designation date for Section 202*

WSAs not reported to Congress) if: I. identified in the original wilderness inventory; or II. if not identified as in I., having documented proof that the route existed at that time; and III. whether I. or II., the route was not otherwise closed through BLM's Travel Management Planning.

Regarding recreation in WSAs, BLM Manual 6330 (Management of BLM Wilderness Study Areas) states:

*The BLM will monitor the magnitude of all recreational activities in WSAs to ensure that such use will not impair the area's wilderness suitability. If monitoring indicates impairment is occurring the BLM will, as appropriate and subject to applicable law, take action to eliminate the impairing activity (e.g., adjust the time, location, or quantity of use, or prohibit that use in the impacted area). For example, an area may become more frequently used for camping, thereby causing broad physical impacts to soils or vegetation, or an area may become popular for mountain biking, and the resulting increase in use results in a loss of solitude. In either case, the BLM must take some action to address the impairment of wilderness characteristics. Care must be taken not to concentrate use by promoting a recreational activity that is normally allowable but at high use levels would cause impairment or create a conflict that may constrain Congress' ability to designate the area as wilderness. (p. 1-26).*

Regarding the use of non-native species in WSAs, BLM Manual 6330 states:

*Whenever possible, natural processes will be relied on to maintain native vegetation and to influence natural fluctuations in populations. Natural disturbance processes, including fire, insect outbreaks, and droughts, are important functions of the ecosystem. Manipulation of vegetation through management-ignited fire, chemical application, mechanical treatment, or human controlled biological means is allowed only where it meets the non-impairment standard or one of the exceptions. Exceptions that may pertain to vegetative treatment include emergencies, the protection or enhancement of wilderness characteristics, grandfathered uses, valid existing rights, and actions taken to recover a federally listed threatened, endangered, or candidate species. Establishing non-native plants is an example of vegetation management that may impair and therefore may not be permitted within a WSA. (p. 1-33).*

As stated in the Proposed RMPs/Final EIS, “[p]ursuant to the non-impairment mandate, the BLM will manage WSAs so as not to affect or impair the suitability of such areas for preservation as wilderness until Congress passes legislation to either designate them as part of the National Wilderness Preservation System or release them from further study or protection” (Proposed RMPs/Final EIS, p. 3-155). Additionally, the Proposed RMPs will manage WSAs under BLM Manual 6330, which contains various measures to help mitigate and minimize impacts on WSAs (Proposed RMPs/Final EIS, Appendix G, p. G-26). Further, various BMPs will be implemented as part of the Proposed RMPs so that impacts on WSAs from management actions in the Planning Area are mitigated or minimized to the extent possible. As a result, the Proposed RMPs/Final EIS ensures that WSAs will be managed in accordance with applicable laws, regulations, and policies to avoid impairment of wilderness characteristics.

Regarding OHV routes in WSAs, Presidential Proclamation 9682 provides that the Secretary may allow motorized and non-mechanized vehicle use within GSENM on routes in existence immediately before the issuance of Proclamation 6920. It is important to note that the Proposed

RMPs/Final EIS does not open any new OHV routes in WSAs; rather, the Proposed RMPs/Final EIS maintains the status quo for OHV access within WSAs. The BLM has determined that all of the alternatives in the Proposed RMPs/Final EIS would not result in unnecessary and undue degradation. The BLM is not aware that legal use of routes is resulting in unnecessary and undue degradation. If a route is causing unnecessary and undue degradation, it can be closed without a plan decision.

Aside from the limited number of potential route designations analyzed in Alternatives D and E, the consideration of route designations and route- or trail-specific proposals will be deferred until a future implementation-level travel management planning process and be done “consistent with the requirements of [BLM Manual 6330]” (Proposed RMPs/Final EIS, Appendix W, p. W-82). Protesters assert that BLM policy requires that the BLM cannot “re-open” a route that was closed by the 2000 Monument Plan. However, this mis-interprets what the BLM policy states. The only absolute in the BLM policy is that recreational motorized vehicle use “can only be allowed when such use is consistent with all applicable laws and meets the non-impairment standard.” It then provides examples of circumstances that that would likely not impair an area’s suitability as when primitive routes have existed prior to 1976 and the route was not otherwise closed through Travel Management Planning. This example does not preclude the BLM from allowing motorized recreation on a previously closed route; it does, however, require that the BLM document the evidence and analysis demonstrating that motorized use would still provide for the non-impairment standard. Regardless, none of the alternatives analyzed in the Proposed RMPs/Final EIS would open a route that is located in a WSA. The alternatives simply designated WSAs as OHV limited areas. As a result, until the BLM completes new travel management plans for the Planning Area, OHV use in limited areas will be confined to those routes that are designated as open in the 2000 RMP. As route-specific designations were not made, the protestor’s assertion that the BLM’s Proposed RMPs would “re-open” the routes is not correct. As a result, the BLM has complied with relevant laws, regulations, and policies regarding OHV route designations in WSAs in the Planning Area.

Regarding group sizes, the BLM analyzed the effects of increasing the group size limit (Proposed RMPs/Final EIS, p. 3-66 and 3-118). BLM Manual 6330 does not define group size limitations. Instead, such limitations should be considered with the BLM’s mandate “not to impair the suitability” of areas for designation as wilderness. As stated in the Proposed RMPs/Final EIS, pursuant to the non-impairment mandate, the BLM will manage WSAs so as not to affect or impair the suitability of such areas for preservation as wilderness until Congress passes legislation to either designate them as part of the National Wilderness Preservation System or release them from further study or protection (Proposed RMPs/Final EIS, p. 3-155). Therefore, because group size limits would not impair such suitability, and because the BLM disclosed the environmental effects of increasing the group size limit, the BLM has complied with relevant laws and policies regarding recreation in WSAs in the Planning Area.

Regarding the use of non-native species in WSAs in the Planning Area, the Proposed RMPs/Final EIS states that “Alternatives D and E would allow the use of nonnative species consistent with applicable BLM WSA policy” (Proposed RMPs/Final EIS, p. 3-156). As BLM Manual 6330 states, non-native species *may impair* wilderness characteristics, but are not certain to do so (emphasis added). Therefore, the use of non-native plants in WSAs in the Planning Area will not

automatically result in impairment to wilderness characteristics. The BLM will strive to ensure that use of non-native plants will not impair wilderness characteristics in WSAs by implementing various BMPs and following BLM Manual 6330 to mitigate and minimize impacts from the use of non-native plants. As a result, the BLM has complied with relevant laws, regulations, and policies regarding non-native plant use in WSAs in the Planning Area.

The BLM complied with all relevant laws, regulations, and policies regarding the management of WSAs in the development of the Proposed RMPs/Final EIS. Accordingly, this protest is denied.

## **NEPA – Impacts Analysis – Social and Economic Considerations**

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** BLM has failed to satisfy its legal obligation to accurately describe and analyze the social and economic impacts of the proposed Resource Management Plans on the communities of Kane and Garfield County in the EIS.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** As protestors' stated previously in comments on the DEIS, see *SUWA et al.* at 170; *Sierra Club et al.* 32, BLM has provided an unlawfully skewed analysis of the economic benefits of fossil fuel leasing. Though calculating the economic benefits of the mining and oil and gas extraction, see Appendix U at U-12 to U-15, the FEIS fails to ascertain the costs associated with the contribution to climate change resulting from its decision, and the economic benefits of avoiding carbon emissions. Consequently, the economic analysis is slanted and misrepresents the economic consequences of the proposed action. As discussed above, the FEIS fails to provide the information necessary to assess the magnitude of the negative consequences associated with the plan's contribution to climate change. The FEIS also fails to provide the information necessary to assess the economic benefits from the avoided emissions that would result from not opening the lands to leasing. Without adequate information to make such comparisons, the FEIS is skewed, inflating the benefits of fossil fuel extraction while obscuring its harms.

**Summary:** The BLM has violated NEPA by failing to adequately analyze the direct, indirect, and cumulative impacts on social and economic resources; in particular, the Proposed RMPs/Final EIS fails to assess the economic benefits from the avoided emissions that would result from not opening the lands to leasing.

**Response:** See rule citations in “Response” section for *NEPA - Impacts Analysis - Air Resources*.

The BLM has appropriately analyzed the impacts to social and economic resources in the Proposed RMPs/Final EIS. The analysis in the Proposed RMPs/Final EIS focuses on the direct, indirect, and cumulative impacts that would result from implementation of the alternatives in the Proposed RMPs/Final EIS. This analysis identifies impacts that would result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The BLM considered the relationship between the proposed action and reasonably foreseeable actions. This analysis can be found in Section 3.21 and Appendices T (Socioeconomic Baseline

Report) and U (Economic Assessment Report) of the Proposed RMPs/Final EIS, as well as Chapter 2 of the AMS. For each alternative, the Proposed RMPs/Final EIS describes the impacts on fossil fuel production, regional housing, regional income, tax revenues, local government expenditures, population, housing, community stability and connectiveness, quality of life, and other social and community services. The level of detail of the NEPA analysis is sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action, as it has done here.

The BLM has complied fully with the requirements of 40 CFR § 1508.7 to evaluate cumulative impacts on social and economic resources in Section 3.21.5.2. The BLM prepared a cumulative impact analysis based on the nature and scope of the proposed management options under consideration at the land use planning level. In the cumulative impact analysis, the BLM considered the effects of the planning effort, when added to other past, present, and reasonably foreseeable (not highly speculative) federal and nonfederal actions. The cumulative impacts section and Appendices T (Socioeconomic Baseline Report) and U (Economic Assessment Report) identify all actions that were considered in the cumulative impacts analysis.

The analysis considered 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 Proposed RMPs/Final EIS enables the decision-maker to make a reasoned choice among alternatives.

The BLM complied with NEPA's requirement to analyze the relevant direct, indirect, and cumulative impacts on social and economic resources in the Proposed RMPs/Final EIS. Accordingly, this protest is denied.

### ***NEPA – Impacts Analysis – SITLA Lands***

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** Moreover, BLM's failure to analyze how the Proposed Plans will impact the exchanged SITLA lands violates NEPA's hard look requirement.

**Summary:** The BLM has violated NEPA by failing to adequately analyze the impacts of management actions on the exchanged SITLA lands in the Planning Area.

**Response:** See rule citations in "Response" section for *NEPA - Impacts Analysis - Air Resources*.

The BLM has appropriately analyzed the impacts on SITLA lands in the Proposed RMPs/Final EIS. The analysis in the Proposed RMPs/Final EIS focuses on the potential impacts that would result from implementation of the alternatives in the Proposed RMPs/Final EIS. This analysis identifies impacts that would result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Section 3.4, 3.5, 3.11 of the Proposed RMPs/Final EIS discusses and analyzes the impacts of various proposed management actions on SITLA lands in the Planning Area (Proposed RMPs/Final EIS, p.

3-41, 3-43, and 3-94). The BLM accounted for the relationship between the proposed action and reasonably foreseeable actions. The level of detail of the NEPA analysis is sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action, as it has done here.

The BLM complied with NEPA’s requirement to analyze the relevant impacts on SITLA lands in the Proposed RMPs/Final EIS. Accordingly, this protest is denied.

## **NEPA – National Park Service Policies**

### **Western Watersheds Project**

#### **Jonathan Ratner**

**Issue Excerpt Text:** Of particular note above is the clear mandate, separate and independent of the prohibition on impairment, the mandate to conserve park resources and values. The above requires the NPS to “always seek ways to avoid, or to minimize to the greatest extent practicable, adverse impacts on park resources and values.” The NPS authorized actions must avoid or minimize to the greatest extent practicable all adverse impacts. Again, the EIS ignored these requirements and the RMP does nothing to comply with them.

### **Western Watersheds Project**

#### **Jonathan Ratner**

**Issue Excerpt Text:** A plain reading of the legislative history clearly shows that livestock grazing on GCNRA is not a “mandatory use” but an “authorized use” which the NPS may allow or disallow, but the NPS is only permitted to allow the use of livestock grazing “provided that the use will not cause impairment or unacceptable impacts.” The EIS and proposed MMP failed to discuss these policies or comply with them.

### **Western Watersheds Project**

#### **Jonathan Ratner**

**Issue Excerpt Text:** If any aspect of livestock grazing and trailing results in the above impacts, then they are “unacceptable impacts” and therefore the NPS must not allow the “uses that would cause unacceptable impacts.” Further, the RMP failed to provide requirements and limitations to disallow such impacts from occurring. This was not even contemplated in the EIS, let alone implemented in the RMP.

### **Western Watersheds Project**

#### **Jonathan Ratner**

**Issue Excerpt Text:** So any action or plan that covers any NPS lands, whether undertaken by the NPS or the BLM must be informed by and fully comply with the Organic Act, the Redwoods Act, NPS Policy 2006, and all other applicable NPS requirements such as Director's Orders and, Reference Manuals. The EIS and RMP failed to comply with this mandate.

**Western Watersheds Project****Jonathan Ratner**

**Issue Excerpt Text:** What is clear is that the BLM's duty is limited to administering grazing leases and nothing else. Further, it is clear that the BLM is constrained by NPS law, regulation, policy and direction. The EIS and draft MMP utterly and completely ignores this basic fact in its rush to impose BLM standards on NPS lands.

**Western Watersheds Project****Jonathan Ratner**

**Issue Excerpt Text:** The proposed RMP fails to implement NPS's Inventory and Monitoring Program for NPS lands.

**Western Watersheds Project****Jonathan Ratner**

**Issue Excerpt Text:** Regarding archeological resources, the EIS ignored [the NPS's Management Policies 2006] and the RMP failed to implement [the NPS's Management Policies 2006].

**Summary:** The BLM has violated NEPA by failing to discuss and analyze compliance with various laws and policies applicable to the National Park Service (NPS) in evaluating livestock grazing decisions in the Proposed RMPs/Final EIS.

**Response:** FLPMA establishes land use planning as applicable to BLM management: "The Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands." (FLPMA 202(a)). The BLM land use planning regulations also establish the applicability of land use planning for BLM-administered lands: "The purpose of this subpart is to establish in regulations a process for the development, approval, maintenance, amendment and revision of resource management plans, and the use of existing plans for public lands administered by the Bureau of Land Management." (43 CFR 1601.0-1).

The BLM has appropriately considered NPS laws, regulations, and policies in developing the Proposed RMPs/Final EIS. The FLPMA establishes the direction and authority for the BLM to make land use planning decisions on BLM-administered lands (Section 202(a)). The BLM does not have the authority to make land use planning decisions on lands not administered by the BLM. The BLM has not proposed to make any decisions for land management on NPS lands through this Proposed RMPs/Final EIS. The Proposed RMPs/Final EIS clearly identifies that "The BLM will not be making a decision on these areas [Glen Canyon NRA], but the National Park Service may use the analysis in this EIS for subsequent decisions" (Proposed RMPs/Final EIS, p. 1-1).

The BLM has appropriately considered NPS laws, regulations, and policies in developing the Proposed RMPs/Final EIS. Accordingly, this protest is denied.



**FLPMA – ACECs*****The Wilderness Society et al.******Phil Hanceford et al.***

**Issue Excerpt Text:** Therefore, from the outset, BLM’s FEIS and proposed plans fail to meet the agency’s duty to safeguard relevant and important values by only concentrating on nominated ACECs and not the relevant and important values across the entire Monument designated under Proclamation 6920.

***The Wilderness Society et al.******Phil Hanceford et al.***

**Issue Excerpt Text:** As previously discussed, BLM already determined in its 1999 GSENM Planning process that the entire Monument contained relevant and important values. However, BLM did not determine that any of these proposed ACECs were relevant and important enough to carry forward for inclusion in the FEIS. Looking at BLM’s ACEC Evaluation Report (Appendix S in the FEIS), it is clear that BLM made these determinations in error, in a manner that was arbitrary and did not comply with the agency’s duties under FLPMA.

**Summary:** The BLM violated FLPMA by failing to consider the relevant and important (R&I) values across the entire GSENM that were nominated in the 2000 RMP.

**Response:** In FLPMA Section 103(a), an area of critical environmental concern (ACEC) is defined as “an area on BLM-administered lands where special management attention is required to protect and prevent irreparable damage to important historic, cultural, or scenic values; fish and wildlife resources; or other natural systems or processes, or to protect life and ensure safety from natural hazards.” This special designation is used to delineate areas for special management to protect R&I resource values.

To be designated as an ACEC, an area must require special management attention to protect the R&I values. Therefore, areas which have R&I resource values and for which special management attention is prescribed are to be designated as ACECs using the procedures set forth in BLM Manual 1613. “Special management attention” refers to management prescriptions developed during preparation of an RMP or amendment expressly to protect the R&I values of an area from the potential effects of actions permitted by the RMP, including proposed actions deemed to be in conformance with the terms, conditions, and decisions of the RMP. These are management measures which would not be necessary and prescribed if the critical and important features were not present. That is, they would not be prescribed in the absence of the designation. A management prescription is considered to be special if it is unique to the area involved and includes terms and conditions specifically to protect the R&I values occurring on that area.

When an area is found not to meet the relevance and importance criteria, the analysis supporting that conclusion must be incorporated into the plan and associated environmental document.

The BLM must review all nominated ACECs for the presence of R&I values, which is required for a nominated ACEC to be considered for potential ACEC designation (BLM Manual Section 1613.11). The BLM must review all ACECs found to have R&I values for a need for special

management attention, which is required for the BLM to be allowed to designate an ACEC (BLM Manual Section 1613.12).

The BLM must carry forward all potential ACECs as recommended for designation in at least one alternative (BLM Manual Section 1613.22B). The BLM has full discretion in the selection of ACECs for the various alternatives. A comparison of estimated effects and trade-offs associated with the alternatives leads to development and selection of the Proposed RMPs.

There are no existing ACECs in the Planning Area. During the public scoping period, a request for ACEC nominations was issued, and new nominations were received for KEPA. The process used to evaluate nominations for ACECs is described in Appendix S (Areas of Critical Environmental Concern Evaluation Report). The BLM interdisciplinary team evaluated 1,193,077 acres (including some overlapping acreages) that were nominated as ACECs. Of these, 14 areas totaling 309,044 acres met the criteria for R&I values, resources, natural systems or processes, or hazards/safety/public welfare (referred to collectively as values) and were identified as potential ACECs for consideration in the land use planning process.

To be designated as an ACEC, an area must require special management attention to protect and prevent irreparable damage to the relevance and importance values. “Special management attention” refers to management prescriptions developed during preparation of an RMP or amendment expressly to protect and prevent irreparable damage to the R&I values of an area from the potential effects of actions allowed by the RMP, including proposed actions deemed to be in conformance with the terms, conditions, and decisions of the RMP. These are management measures that would not be necessary and prescribed if the R&I features were not present.

All ACEC nominations were evaluated in accordance with BLM Manual 1613. Values meeting relevance and importance criteria were identified and are the basis for establishing potential ACECs for further consideration in the RMPs. Criteria that guided the Interdisciplinary Team’s consideration of relevance and importance criteria outlined in 43 CFR 1610.7-2 are included in the Evaluating Relevance and Importance Criteria section. Following the evaluation of identified values using the relevance and importance criteria, 309,044 acres were identified as potential ACECs (Proposed RMPs/Final EIS, Appendix S, p. S-6).

The BLM has discretion to select all, some, or none of the ACECs within the range of alternatives and there is no requirement that the agency carry forward potential ACECs into the Proposed RMPs/Final EIS (see BLM Manual 1613.33.E). A comparison of estimated effects and trade-offs associated with the alternatives led to development and selection of the final alternative within the Proposed RMPs/Final EIS.

For the reasons stated above, this protest is denied.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** Regarding the 14 nominated ACECs BLM did consider as qualifying in the FEIS, BLM has not demonstrated that it has met its duty under FLPMA and Manual 1613 to protect their identified relevant and important values in the preferred alternative.

Although the FEIS concludes that over 300,000 acres of land within the planning area have relevant and important values as ACECs, the proposed plan would manage none of these areas as ACECs. This is at odds with the mandate of FLPMA that BLM give “priority” to the designation of ACECs and certainly does not accomplish BLM’s duty to “defend or guard against damage or loss of the identified R&I values, either through management prescriptions specifically for the ACEC or, absent the ACEC designation, through other management sufficient to protect the values.” FEIS at 3-129.

BLM attempts throughout its discussion of each of the 14 ACECs to explain away the need for ACEC designation based on other management prescriptions that, according to BLM, would serve as adequate protection for each area’s relevant and important values. However, in almost every instance, it is clear that BLM simply cannot demonstrate that the proposed plan—designating *no* acres as ACECs—would protect identified relevant and important values. According to the agency itself, it would not seek to manage the qualifying ACECs for protection of their relevant and important values, and “any protection for R&I values would be incidental to management for other program areas.” FEIS at 3-130. This violates BLM’s duty under FLPMA.

### **Western Watersheds Project**

#### **Jonathan Ratner**

**Issue Excerpt Text:** 43 CFR 1610.7-2 requires that the BLM: Designation of areas of critical environmental concern. Areas having potential for Areas of Critical Environmental Concern (ACEC) designation and protection management shall be identified and considered throughout the resource management planning process (see §§ 1610.4-1 through 1610.4-9). FLPMA itself provides the direction for ACEC designation when the statutes stated: (3) give priority to the designation and protection of areas of critical environmental concern; (FLPMA Section 202) The EIS and proposed RMP failed to implement this requirement to give priority to ACEC designation.

#### **Laura Fertig**

**Issue Excerpt Text:** For example, no ACECs are designated, as is typical with BLM lands. This violates FLPMA and BLM Manual 1613, which directs BLM to give priority to the identification of ACECs. The PRMP asserts that lands will be protected by other rules and regulations but if that was truly effective no BLM unit would have ACECs. Designating special use landscapes is entirely appropriate and a common practice in field office RMPs. The entire planning area was considered worthy of ACEC protection (see GSENM 2000 Monument Management Plan) and management was supposed to protect resources therein accordingly.

**Summary:** The BLM violated FLPMA and BLM Manual 1613 by failing to give priority to the designation of ACECs in the Planning Area.

**Response:** FLPMA Section 202(c)(3) requires that, in the development and revision of land use plans, the BLM give priority to the designation and protection of ACECs. The implementing regulations at 43 CFR § 1610.7-2 provide the agency with requirements for the identification and consideration of ACECs for designation and protection during the resource management planning process. The BLM ACEC manual (BLM Manual 1613) establishes the agency’s policy and procedures for the evaluation and designation of ACECs as part of the land use planning process.

Pursuant to BLM Manual 1613.33E, the rationale for not proposing designation of a potential ACEC in the Proposed RMPs must be provided. In other words, if the proposed plan does not call for special management attention of a potential ACEC in the Proposed RMPs (and therefore, it is not proposed for designation), the reasons for the decision not to provide special management attention must be clearly set forth. These reasons may include:

- Special management attention is not required to protect the potential ACEC because standard or routine management prescriptions are sufficient to protect the resource or value from risks or threats of damage/degradation. (That is, the same management prescriptions would have been provided for the area in the absence of the important and relevant values).
- The area is being proposed for designation under another statutory authority, e.g., Wilderness, and requires no management attention differing from that afforded the entire designation.
- The manager has concluded that no special management attention is justified either because exposure to risks of damage or threats to safety is greater if the area is designated or there are no reasonable special management actions which can be taken to protect the resource from irreparable damage or to restore it to a viable condition.

Pursuant to BLM Manual 1613.51, if the management attention provided under a Congressional designation is adequate to protect a resource or value, it is not necessary or appropriate to designate a potential ACEC area as an ACEC.

The BLM considers a number of factors when determining whether to designate a potential ACEC. One such factor is whether the same management prescriptions would have been provided for the area in the absence of the relevant and important values (R&I values) (BLM Manual 1613.33E.1). Another is whether the area is being proposed for designation under another authority (such as wilderness) which would afford similar management attention (BLM Manual 1613.33E.2). The BLM considered these factors and determined that other management prescriptions (including overlapping protective management and the application of BMPs and stipulations) would afford some protection of R&I values and would serve as adequate protection for each area's relevant and important values (Proposed RMPs/Final EIS, p. 3-128). For example, the Proposed RMPs/Final EIS emphasizes that overlapping special designations (e.g., WSAs) generally would confer additional benefits on the values for which ACECs are designated in the GSENM Planning Area (Proposed RMPs/Final EIS, p. 3-130). As a result, the BLM determined that the other management prescriptions described in Section 3.16 are adequate to protect and manage the R&I values within these areas.

Further, consistent with BLM Manual 1613.51, the BLM determined that the management attention and protections provided for under the national monument designation is adequate to protect the R&I values in the GSENM Planning Area; therefore, no special management is required, and it is not necessary or appropriate to designate the nominated ACECs in the GSENM.

For the reasons stated above, this protest is denied.

## **FLPMA – Consistency with State, Local, and Tribal Plans**

### **Kane County Commission**

#### **Andy Gant**

**Issue Excerpt Text:** Appendix F of the RMP, page F-3&4 lists a number of laws, regulations, policies, and guidance that the planners used in the preparation and development of this RMP. Kane County discovered upon further review of the proposed RMP a substantial error, the RMP lists four plans for Kane County that were reviewed and considered throughout the development of the RMP as required by FLPMA. Two of the four plans listed for Kane County are plans that have no affiliation with Kane County, Utah. Kane County 2040 Plan (adopted May 2012) and Kane County 2030 Land RMP (March 2011) are long-range comprehensive plans for Kane County, Illinois.

It is Kane County's stance that although local BLM staff met their planning obligations at the local cooperating level, the agency failed to properly analyze local laws, regulations, and policies set forth in the affected Counties planning documents. If the agency had performed a proper analysis of the documents listed in Appendix F, to meet consistency obligations as outlined in FLPMA, it would have been discovered that two of the four listed documents for Kane County, Utah were in fact planning documents for Kane County, Illinois. This also reflects for plans listed for Garfield County. At least two of the plans mentioned for Garfield County are planning documents for Garfield County, Colorado.

**Summary:** The BLM has violated FLPMA by failing to properly analyze the local laws, regulations, and policies set forth in the affected Counties' planning documents.

**Response:** Section 202(c)(9) of the FLPMA requires that "... the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans [and] assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands... ."

During the development of the Proposed RMPs/Final EIS, the BLM gave consideration to state, local, and Tribal plans that are germane to the development of the Proposed RMPs/Final EIS. The BLM worked closely with state, local, and Tribal governments during preparation of the Proposed RMPs/Final EIS, including the protesting party, which was a cooperating agency during the development of the RMPs/EIS. Chapter 4, Section 4.3 of the Proposed RMPs/Final EIS describes coordination that has occurred throughout the development of the Proposed RMPs/Final EIS.

A list of the local, State, and Tribal plans that the BLM considered can be found in Appendix F of the Proposed RMPs/Final EIS. The BLM acknowledges that several of the citations to plans for Garfield County, Utah, and Kane County, Utah, were documented incorrectly. However, the BLM demonstrates in Section 4.5 of the Proposed RMPs/Final EIS that the BLM performed reviews of local plans that led to detailed consideration of these plans during the land use planning process. As such, it is clear that the errors documented in Appendix F are typographical, and not evidence of the BLM's failure to have appropriately considered the Kane and Garfield County plans.

The BLM satisfied FLPMA’s consistency requirements in preparation of the Proposed RMPs/Final EIS. For the reasons described above, this protest is denied.

### ***FLPMA – Multiple Use***

#### ***Laura Fertig***

**Issue Excerpt Text:** Because the plan allows increased livestock grazing as a priority over other resources the BLM is required to protect, with no analysis of data or justification, it is in violation of both Proclamations (6920 and 9682), as well as the Antiquities Act, FLPMA, and the Omnibus Public Lands Management Act of 2009.

#### ***The Wilderness Society et al.***

##### ***Phil Hanceford et al.***

**Issue Excerpt Text:** Accordingly, the standard approach to multiple-use management does not apply to the monument, and any effort to adopt such a management approach to the detriment of its cultural and natural values would be in violation of the proclamation and the mandates of FLPMA and the Omnibus Public Lands Management Act of 2009.

#### ***The Wilderness Society et al.***

##### ***Phil Hanceford et al.***

**Issue Excerpt Text:** In summary, BLM failed to meet its obligations under the Antiquities Act and the establishing proclamation (whether considering Proclamation 6920 or Proclamation 9682) by developing Proposed Plans that do not prioritize protection of monument objects. BLM must revise its FEIS and move forward with a management alternative that prioritizes the protection of monument resources.

#### ***The Wilderness Society et al.***

##### ***Phil Hanceford et al.***

**Issue Excerpt Text:** The Proposed Plans similarly prioritize increased livestock grazing over the protection of other Monument objects as well, including cultural resources, geologic features, fossils, vegetation communities, and water resources. See, e.g., *id.* at 3-22 (Alternative E "would generally allow greater access and development in GSENM than alternatives A and B, and therefore would have the potential to result in more adverse impacts on cultural resource monument objects than alternatives A and B."). The Proposed Plans therefore violate the protection mandates of Proclamations 6920 and 9682, the Antiquities Act, FLPMA, and the Omnibus Public Lands Management Act of 2009.

#### ***The Wilderness Society et al.***

##### ***Phil Hanceford et al.***

**Issue Excerpt Text:** In addition, the overarching purpose of vegetation management on NCL units is to maintain, restore, and promote a natural range of native plant associations in national BLM monuments (BLM Manual 6100). The Proposed Plans do not comply with this direction. In no case does Alternative D or E afford more protection or benefits for any of the vegetation, wildlife, natural resources or named monument objects on the monument than Alternative B.

***The Wilderness Society et al.******Phil Hanceford et al.***

**Issue Excerpt Text:** As explained in more detail below, the Proposed Plans in many instances prioritize multiple uses within the Monument at the expense of protecting Monument objects, in violation of the statutory, regulatory, and policy mandates to prioritize the protection of such objects.

***Western Watersheds Project******Jonathan Ratner***

**Issue Excerpt Text:** What this demonstrates is that the BLM, in NLCS units, must prioritize the conservation, protection and restoration of these “nationally significant landscapes” above BLM’s standard ‘multiple use’ approach. Again, the BLM has put the cart before the horse and determined that livestock grazing will be increased by 40% without any rational or logical analysis or determination that its approach is “consistent with the designating legislation or proclamation.” Again, the BLM failed to make this basic NLCS requirement common to all alternatives nor, and more fundamentally, has the BLM provided an analysis (AMS) of what level of livestock grazing could be allowed “to the extent that they are consistent with the designating legislation or proclamation.” This is a fatal error violates FLPMA and the NLCS specific requirements discussed above.

***The Wilderness Society et al.******Phil Hanceford et al.***

**Issue Excerpt Text:** FEIS alternatives A and B recognize wildlife corridors and provide some plan direction related to their maintenance and restoration. Alternative E, in contrast, does not. In fact, the FEIS readily acknowledges that Alternative E “[g]enerally allow[s] surface-disturbing activities, fence modification and maintenance, travel, and vegetation treatment in big-game crucial seasonal ranges, birthing habitats, and migration corridors on a basis consistent with other resource use restrictions and with the BMPs identified in Appendix G, Best Management Practices.” See FEIS 3-31.

Therefore, the Proposed Plans violate the Antiquities Act by failing to provide the proper care and management for wildlife objects that need to be able to migrate across the landscape.

***The Wilderness Society et al.******Phil Hanceford et al.***

**Issue Excerpt Text:** That said, it is plain that Alternative E fails to protect ecological intactness as a Monument Object as mandated by the Antiquities Act, does not meet BLM’s duties to safeguard the connectivity and integrity of National Landscape Conservation System and to comply with Secretarial Order 3308, fails to protect Glen Canyon and is contrary to the Land Exchange Act.

***The Wilderness Society et al.******Phil Hanceford et al.***

**Issue Excerpt Text:** By not adequately protecting pollinators, which are named as monument objects in Proclamation 6920, the agency fails to comply with its obligation under the Antiquities Act to protect and restore Monument objects.

***The Wilderness Society et al.******Phil Hanceford et al.***

**Issue Excerpt Text:** By not adequately protecting desert bighorn sheep, which are named as monument objects in Proclamation 6920, the agency fails to comply with its obligation under the Antiquities Act to protect and restore Monument objects.

***The Wilderness Society et al.******Phil Hanceford et al.***

**Issue Excerpt Text:** Therefore, based on BLM's own analysis underscores that Alternative E fails to protect Monument Objects and values dependent on ecological intactness as mandated by the Antiquities Act, does not meet BLM's duties to safeguard the connectivity and integrity of National Landscape Conservation System and to comply with Secretarial Order 3308, fails to protect Glen Canyon and is contrary to the Land Exchange Act.

**Summary:** The BLM has violated the Omnibus Public Management Act of 2009 (Pub. L. 111-11) (OPLMA), FLPMA, and other applicable statutes by failing to adequately protect GSENM objects and values by improperly prioritizing multiple uses over GSENM objects and values in the Proposed RMPs/Final EIS.

**Response:** The National Landscape Conservation System (NLCS), as established by Congress in the OPLMA, is a permanent system of public lands conservation, with the stated purpose to “conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations.” 16 U.S.C. § 7202(a). Through the land use planning process, the BLM identifies specific and measurable goals and objectives for each object and value (BLM Manual Section 6220.1.6.G.4.a).

Section 302(a) of FLPMA states that public lands are to be managed under the principles of multiple use and sustained yield “except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it will be managed in accordance with such law.” For this planning effort, the area will therefore be managed in accordance with FLPMA and the OPLMA. Land use planning decisions for each NLCS unit must be consistent with the purposes and objectives of the designating proclamation or Act of Congress (BLM Manual Section 6100.1.6.B).

Established by Congress in the OPLMA (Section 2002 of Pub. L. 111-11), the NLCS - or National Conservation Lands – is a permanent system of public lands conservation with the stated purpose to “conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations.” 16 U.S.C. § 7202(a). As defined by the OPLMA, the NLCS is comprised of a number of different Presidential and Congressional designations, including National Monuments, National Conservation Areas, WSAs, and designated wilderness, among others. 16 U.S.C. § 7202(b). Each of these designations include an array of different management requirements for the BLM. Recognizing that, the OPLMA directs the BLM to manage each component of the NLCS in accordance with any applicable law relating to that specific component of the system and in a manner that protects the values for which the area was designated. 16 U.S.C. § 7202(c). Further, the OPLMA states that nothing in Section 20s, diminishes, or modifies any law or proclamation under which a NLCS component is established or managed, including the FLPMA. 16 U.S.C. § 7202(d). The GSENM



was designated under the Antiquities Act; therefore, under the OPLMA the BLM is required to manage the GSENM to provide for the care and management of the Monument objects and values identified in Proclamation 6920, as modified by Proclamation 9682. While the more general language in the OPLMA relating to the purpose of the NLCS provides a number of goals for the management of all system components, the more specific management language makes it clear that BLM's management responsibilities for national monuments, such as GSENM, are not enhanced beyond the requirements of the Antiquities Act, designating proclamations, and FLPMA.

The term “multiple use” means 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; making 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 to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output (43 U.S.C. § 1702(c)).

The Proposed RMPs/Final EIS appropriately identifies management that provides proper care and management to GSENM objects and values identified in Proclamation 6920, as modified by Proclamation 9682, and, where consistent with that standard, allows for and facilitates multiple use

As noted above, while the BLM must manage GSENM in accordance with the FLPMA and the direction in Proclamation 6920, as amended by Proclamation 9682, no controlling legal authority requires the agencies to manage the Monument in a particular way or to choose management actions that are the most protective of Monument objects and values. Rather, courts have been clear that the BLM may satisfy its legal obligations by balancing the protection of a national monument's objects and values with facilitating the public's enjoyment and beneficial use of the monument's land and resources. The Proposed RMPs/Final EIS, which recognize the important relationships and interdependencies among the Monument's objects and values and other natural and cultural resources, strike an appropriate balance. They do not prioritize multiple uses over protection of the Monument's objects and values. They merely allow multiple uses where doing so is consistent with the proper care and management of monument objects.

Public Law 111-11 and Proclamation 6920 (as modified by Proclamation 9682) mandate the protection of the monument objects and values within the GSENM units. The range of alternatives in the Proposed RMPs/Final EIS are designed to provide a framework that ensures protection of the objects and values while managing the GSENM to allow for other uses as contemplated by FLPMA's direction to manage the public lands for multiple use and sustained yield. The BLM's approach to protecting the Monument's objects and values while still managing the Monument with an eye towards multiple use is exemplified by the goals, objectives, and management actions

in the proposed plan. In developing the goals, objectives, and management actions, the BLM considered the location and distribution of Monument objects and values, their sensitivity to other uses, and the anticipated nature and intensity of existing and future resource uses. In some instances, providing for the proper care and management of Monument objects and values required placing site-specific restrictions or prohibitions on certain resources and uses. In other instances, the BLM developed stipulations, BMPs, monitoring protocol, and other management contained in the Proposed RMPs that would be applied by the Authorized Officer to the future management of the GSENM, including any proposed activities within the GSENM, to provide for the proper care and management of Monument objects and values. In all situations, the BLM recognized that managing for multiple uses is only appropriate where the protection of monument objects and values is achieved. As such, all future actions authorized, carried out, or funded by the BLM within the GSENM must be consistent with the proper care and management of the Monument objects and values.

The BLM analyzed a full range of alternatives to manage for these objects and values, with varying levels of protection for these objects and values. The BLM included measures in the Proposed RMPs/Final EIS that protect GSENM objects and values, and contribute to meeting the goals and objectives for each object and value as set forth in the Proposed RMPs/Final EIS. All alternatives considered in the Proposed RMPs/Final EIS, as described in Section 2.1 provide an appropriate balance of uses on the public lands. 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.

Providing proper care and management can be consistent with multiple use management, so long as the BLM ensures that management of those uses continues to ensure adequate protection of GSENM objects and values. The Proposed RMPs/Final EIS includes specific management actions to ensure that such care is provided (see the various alternative comparison tables in Chapter 2 of the Proposed RMPs/Final EIS for examples of where Alternative E [the Proposed RMPs] is more protective of Monument objects and values than Alternative A).

These more protective management actions ensure that Alternative E (the Proposed RMPs) allows multiple use in a manner that is consistent with the BLM's obligations under Pub. L. 111-11 and Proclamation 6920, as amended by Proclamation 9682. Therefore, Alternative E (the Proposed RMPs) complies with the requirements of both Public Law 111-11 and FLPMA, as it manages resources to conserve, protect, and restore the values outlined in Proclamation 6920 (as amended by Proclamation 9682) while also managing resources pursuant to the multiple use mandate under FLPMA (Proposed RMPs/Final EIS, p. 1-1).

See "Response" section of *Other Laws - Omnibus Public Lands Management Act* for the response regarding that Act.

Alternative E (the Proposed RMPs) adequately protects Monument objects and values, thereby complying with the requirements of the OPLMA, FLPMA, and other applicable statutes. Because of these factors, the BLM denies this protest.

***The Wilderness Society et al.******Phil Hanceford et al.***

**Issue Excerpt Text:** Federal courts have consistently rejected efforts to affirmatively elevate energy development over other uses of public lands. In the pivotal Tenth Circuit case, *N.M. ex rel. Richardson v. BLM*, the court put to rest the notion that BLM can manage chiefly for energy development, declaring that “[i]t is past doubt that the principle of multiple use does not require BLM to prioritize development over other uses.” 565 F.3d 683, 710 (10th Cir. 2009); see also *S. Utah Wilderness Alliance v. Norton*, 542 U.S. 52, 58 (2004) (defining “multiple use management” as “striking a balance among the many competing uses to which land can be put”). As written, BLM’s Preferred Alternative for the KEPA is not consistent with its multiple-use mandate and must not be adopted.

**Summary:** The BLM violated FLPMA’s multiple use mandate by improperly prioritizing energy development over other uses in the Planning Area in the Proposed RMPs/Final EIS.

**Response:** Section 102(a)(7) of FLPMA declares that it is the policy of the U.S. 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.

The FLPMA’s multiple use policy does not require that all uses be allowed on all areas of the public lands. Through the land use planning process, the BLM evaluates and chooses an appropriate balance of resource uses which involves tradeoffs between competing uses. 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, short of unnecessary and undue degradation.

All alternatives considered in the Proposed RMPs/Final EIS, as described in Section 2.1, provide an appropriate balance of uses on the public lands. All alternatives allow some of level of all uses present in the Planning Area, in a manner that is consistent with applicable statutes, regulations, and BLM policy. Consequently, the BLM did not prioritize energy development over other uses in the Planning Area.

The BLM satisfied FLPMA’s multiple use policy in the Proposed RMPs/Final EIS. Accordingly, this protest is denied.

***FLPMA – Special Status Species******The Wilderness Society et al.******Phil Hanceford et al.***

**Issue Excerpt Text:** While the FEIS recognizes the agency’s duty to “[r]educe or eliminate threats to BLM sensitive species to minimize the likelihood of and need for listing of these species under the ESA,” see FEIS at 3-26, the agency has failed to demonstrate that its actions under the Proposed Plans improve the status of BLM sensitive species and will not contribute to the need for listing under the ESA.

***The Wilderness Society et al.***  
***Phil Hanceford et al.***

**Issue Excerpt Text:** The FEIS points to BMPs as proof that the agency will somehow meaningfully mitigate impacts to sensitive species, see e.g. 2-9, 3-37, however, the FEIS only offers a list of BMPs that *may* be required at the implementation level, it does not ensure that application of those BMPs will be mandatory in all cases. See FEIS Vol. 2 at G-1. The FEIS further indicates that BMPs in Appendix G won't necessarily be employed in all cases by stating that the Proposed Plans will employ such BMPs “[o]r current guidance” see FEIS at 2-9, giving no assurance that future “current guidance” will ensure that the need for ESA listing of BLM sensitive species will be avoided and that the status of those species will improve.

***The Wilderness Society et al.***  
***Phil Hanceford et al.***

**Issue Excerpt Text:** BLM's response to our comments on the need to protect special status plants merely mentions that they prepared a range of alternatives with varying levels of protection. This is not responsive to our point that by choosing the alternative with the highest level of impacts on rare plant species the agency is failing to provide the level of protection required by the aforementioned regulations. The document also fails to address the protective measures we recommended in our comments on the DEIS.

***Western Watersheds Project***  
***Jonathan Ratner***

**Issue Excerpt Text:** The RMP failed to provide scientifically defensible and clear direction for the recovery and management ESA listed and BLM Sensitive Species. The EIS fails to accomplish this. BLM failed to ensure full compliance with BLM Manual MS-6840.06.E (Special Status Species Management). BLM Manual MS-6840.06.E requires that “protection provided by the policy for candidate species shall be used as the minimum level of protection for BLM sensitive species.”

**Summary:** The BLM violated FLPMA and its own policies under BLM Manual 6840 (Special Status Species Management) by failing to demonstrate that its actions or provided BMPs under the Proposed Plans improve the status of BLM sensitive species and will not contribute to the need for listing under the ESA.

**Response:** Section 302(a) of FLPMA directs the Secretary to “manage the public lands under principles of multiple use and sustained yield, in accordance with land use plans developed . . . under section 202 of the Act” except as otherwise provided by law. 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. These vital resources include fish and wildlife species. Section 302(b) of FLPMA also 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.

BLM Manual 6840 describes how the BLM should address BLM sensitive species and their habitats during the land use planning process (6840.2(B)) with an overall objective of initiating “proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of these species under the ESA” (6840.02(B)). Under BLM

6840, the agency is directed to “[u]ndertake conservation actions for such species before listing [under the ESA] is warranted” and to “[i]mprove the status of such species so that their Bureau sensitive recognition is no longer warranted.”

Manual 6840 serves “to provide policy and guidance for the conservation of BLM special status species and the ecosystems upon which they depend on BLM-administered lands.” The manual further states, “When BLM engages in the planning process, it shall address Bureau sensitive species and their habitats in land use plans and associated NEPA documents.” Finally, it states, “In compliance with existing laws, including the BLM multiple use mission as specified in the FLPMA, the BLM shall designate Bureau sensitive species and implement measures to conserve these species and their habitats, including ESA proposed critical habitat, to promote their conservation and reduce the likelihood and need for such species to be listed pursuant to the ESA.”

The Proposed RMPs/Final EIS complies with Manual 6840 and the requirements of FLPMA. As noted in the application section of *NEPA – Impacts Analysis – Fish, Wildlife, and Special Status Species*, the BLM has taken a hard look in Sections 3.3.2 and 3.3.3 at the potential impacts on special status species in the Proposed RMPs/Final EIS and implemented measures to conserve species and their habitats, balanced against its multiple use mission identified in FLPMA. The analysis in the Proposed RMPs/Final EIS focuses on the direct, indirect, and cumulative impacts that would potentially result from changes to management approaches that would result from adoption of the alternatives in the Proposed RMPs/Final EIS and, in addition to the BMPs identified in Appendix G (Best Management Practices) and monitoring strategies found in Appendix I (Monitoring Strategy), includes mitigation through such actions as the application of no surface occupancy stipulations with certain exceptions, modifications, and waivers; and avoidance areas for such land use authorizations as rights-of-ways. The best available data has been used to analyze potential impacts to fish and wildlife and special status species in the Planning Area, and where data is incomplete, qualitative analysis has been included to describe other potential impacts. These measures combined with ongoing consultation with the USFWS ensure proper care and management of fish and wildlife and special status species throughout the planning and implementation process.

All action alternatives require application of appropriate BMPs for the protection of special status species as identified in Appendix G (Best Management Practices) as well as the committed conservation and protection measures for federally listed species in the Biological Opinion. Application of BMPs and committed conservation and protection measures would provide for the proper care and management of biological and ecological resource monument objects and their associated special status species. Also, in accordance with Section 7 of the ESA, during site-specific permitting the BLM would ensure that actions that are authorized, funded, or carried out would not be likely to jeopardize the continued existence of a listed species or modify or destroy its designated critical habitat.

The BLM adequately fulfilled its obligations regarding the conservation and protection of special status species and sensitive species under BLM Manual 6840 and FLPMA in the Proposed RMPs/Final EIS. Accordingly, the protest is denied.

**FLPMA – Unnecessary or Undue Degradation*****The Wilderness Society et al.******Phil Hanceford et al.***

**Issue Excerpt Text:** We protest the Proposed Plans on the grounds that they have failed to prevent the undue degradation of the resources of these public lands, and thereby failed to comply with FLPMA and failed to meet the letter and spirit of the Proclamation.

***The Wilderness Society et al.******Phil Hanceford et al.***

**Issue Excerpt Text:** BLM’s duty to prevent unnecessary or undue degradation under FLPMA is mandatory, and BLM must, at a minimum, demonstrate compliance with the degradation standard. See, e.g., *Sierra Club v. Hodel*, 848 F.2d 1068, 1075 (10<sup>th</sup> Cir. 1988).

**Summary:** The BLM failed to prevent unnecessary and undue degradation of the resources in the Planning Area in violation of FLPMA.

**Response:** 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.”

The BLM’s Proposed RMPs/Final EIS is consistent with FLPMA’s mandate to prevent unnecessary and undue degradation. The Proposed RMPs/Final EIS provides for the balanced management of the public lands in the Planning Area. In developing the Proposed RMPs/Final EIS, the BLM fully complied with its planning regulations (43 CFR § 1610), the requirements of NEPA, and other statutes, regulations, and Executive Orders related to environmental quality. The Proposed RMPs/Final EIS identifies appropriate allowable uses, management actions, and other mitigation measures that prevent unnecessary or undue degradation of public lands. Proposed management changes would result in foreseeable effects on resources and uses in the Monument, but such effects could be justified in the balancing of competing interests, reflecting the BLM’s multiple-use mission. Congress recognized that through the BLM’s multiple-use mandate, there would be conflicting uses and impacts on the public land. As a result, the BLM’s Proposed RMPs/Final EIS is consistent with FLPMA’s mandate against undue and unnecessary degradation.

The BLM adequately protected the Monument from “unnecessary and undue degradation” in the Proposed RMPs/Final EIS. Accordingly, the protest is denied.

**Other Laws – Colorado River Basin Salinity Control Act*****Western Watersheds Project******Jonathan Ratner***

**Issue Excerpt Text:** The Colorado River Basin Salinity Control Act, 43 U.S.C. 1593, requires a comprehensive program for minimizing salt contributions to the Colorado River from BLM lands. Livestock grazing significantly increases salinity in runoff and the alternatives must provide compliance with the above, but the EIS fails to even mention this requirement, let alone implement management requirements and limitations to implement "a comprehensive program for minimizing salt contributions" to fulfill the Act.

**Summary:** The BLM violated FLPMA by failing to incorporate the requirements of the Colorado River Basin Salinity Control Act into the Proposed RMPs/Final EIS.

**Response:** FLPMA requires the BLM to develop, maintain, and revise land use plans which provide for the use of BLM-administered lands (FLPMA 202(c)). 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). An RMP is not a final implementation decision on actions which require further specific plans, process steps, or decisions under specific provisions of law and regulations (43 CFR 1601.0-5(n)). All future resource management authorizations and actions and subsequent more detailed or specific activity plans must conform to the approved plan (43 CFR 1610.5-3(a)).

The BLM has appropriately addressed land use planning level decisions of livestock grazing impacts to the Colorado River Basin in the Proposed RMPs/Final EIS. An RMP makes broad land management decisions providing guidance and sideboards to an overall landscape for a selected trade-off of multiple-use and sustained-yield land management the applicable BLM-administered lands. These RMP decisions do not include comprehensive program decisions for any single program or resource's management. The BLM makes comprehensive program or resource management decisions for the management of an individual program or resource through implementation-level NEPA. In the case of livestock grazing, the BLM may make livestock grazing management and grazing permit renewal process decisions through individual project-level NEPA for or through activity planning NEPA in an allotment management plan.

All BLM decisions implementing resource management authorizations, including those associated with livestock grazing, would be made in conformance with the RMPs, once approved. The BLM has identified in Appendix F of the Proposed RMPs/Final EIS identifies the applicable laws, regulations, and policies that apply to resources and resource uses considered in the BLM land use planning process. The BLM listed the Colorado River Basin Salinity Control Act of 1974 (Public Law 93-320) as one of the laws relevant to the BLM land use planning process for the GSENM and KEPA RMPs. Consequently, the BLM has appropriately considered the requirements of the Colorado River Basin Salinity Control Act in developing the Proposed RMPs/Final EIS. The BLM would also apply any requirements of the Colorado River Basin Salinity Control Act when making decisions implementing the approved RMPs for livestock grazing.

The BLM has appropriately addressed land use planning level livestock grazing decisions in the Proposed RMPs/Final EIS consistent with the requirements of the Colorado River Basin Salinity Control Act. Accordingly, this protest is denied.

## **Other Laws – Land Exchange Act**

### ***The Wilderness Society et al.***

### ***Phil Hanceford et al.***

**Issue Excerpt Text:** BLM does acknowledge that approximately 54,500 acres of exchanged lands are within WSAs. FEIS at 3-39. Even then, BLM admits that Alternative E, the preferred alternative, would result in adverse impacts to WSAs, including the lands acquired under the Land Exchange Act. E.g. ES-27 (comparison of alternatives for WSAs); ES-42 (same); ES-13; ES-19; ES-

20; ES-30; ES-33. These impacts are inconsistent with the protective mandate of the Land Exchange Act and therefore contrary to the law.

Further, BLM does not address how it will comply with the Land Exchange Act and its mandate that the former School Trust Lands and mineral interests the United States acquired in the Monument – as well as the parcels surrounding these lands and interests – will be protected from harm and managed to further the “preservation of these scientific and historical resources for which the Monument was established.” Rather, throughout the Planning Area, BLM’s preferred alternative authorizes unacceptable adverse impacts on the very watershed and water resource values the Land Exchange Act seeks to protect. E.g. FEIS at ES-17 to ES-18 (soil and water resources); ES-33 to ES 34 (soil and water resources); ES-42 (Wild and Scenic); ES-18 to ES-19 (vegetation treatment); FEIS at 3-54 to 3-60.

Finally, the sheer failure of BLM to address the issue of how it will protect the exchanged lands in keeping with the Land Exchange Act violates NEPA’s hard look and well-informed decision-making requirements. In any case, BLM must manage the Planning Area consistently with the Land Exchange Act.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** By allowing adverse impacts to the values the Land Exchange Act seeks to protect on the former SITLA parcels and surrounding lands, the Proposed Plans violate the Lands Exchange Act.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** Moreover, as explained elsewhere in these comments, BLM is obligated to protect Monument Objects and values, including those sensitive to air pollution such as visibility, scenic qualities, water quality, plants and animals, on the lands subject to the 1998 Land Exchange Act and the lands adjacent to these lands. As Alternative A is the only management option that fulfills this legal duty, BLM must adopt this “no action” alternative. For the same reason, the agency is prohibited from adopting any management scheme that fails to properly care for and protect from injury Monument Objects located on the Monument, the exchanged lands and the lands adjacent to the exchanged lands.

**Summary:** The BLM has violated the Land Exchange Act by failing to establish management to meet the protective mandate of the Land Exchange Act, thus allowing adverse impacts to the values on the acquired lands.

**Response:** The 1998 Land Exchange Act states “Any lands and interests therein acquired by the United States within the exterior boundaries of the Monument pursuant to section 2(E) shall become part of the Grand Staircase-Escalante National Monument and shall be subject to all the laws and regulations applicable to the Monument.”

The BLM has complied with the Utah Schools and Land Exchange Act (USLEA) in the development of the Proposed RMPs/Final EIS. Pursuant to the USLEA, the Federal Government



ratified a 1998 agreement between the United States and the State of Utah under which the United States acquired certain Utah School and Instructional Trust Lands within GSENM in exchange for cash consideration and certain property located in Utah but outside of GSENM. In addition to ratifying the 1998 agreement, the USLEA also incorporated all of the agreement's terms and conditions, including section 5(A) of the agreement, which provided that the lands acquired within the exterior boundaries of GSENM were to become a part of the monument and would be subject to all of the laws and regulations applicable to the monument.

Upon acquisition, the lands that the BLM acquired became part of GSENM and were managed under the laws and regulations that governed the monument. The USLEA did not impose any additional substantive requirements on the acquired lands or enhance the legal protections they were to be afforded. It simply made clear that the BLM was to manage the acquired lands in a similar fashion to those already existing within the monument. The BLM has done that. As made clear in the Proposed RMPs/Final EIS, all of the alternative considered provide for the proper care and management of monument objects within the GSENM units. Accordingly, any lands acquired under the USLEA that are located within the monument units would be managed in accordance with the laws and regulations applicable to national monuments.

As described above, the BLM has not violated any requirements of the Land Exchange Act. Accordingly, this protest is denied.

### **Other Laws – Consolidated Appropriations Act**

#### ***The Wilderness Society et al.***

#### ***Phil Hanceford et al.***

**Issue Excerpt Text:** In the FEIS, BLM asserts that its activities to modify the management plan for KEPA to make areas available for oil and gas leasing under the MLA are not barred by the provision above because it is undertaking these pre-leasing planning activities under FLPMA, not the MLA. This specious argument fails because under FLPMA, BLM cannot authorize oil and gas leasing under the MLA unless such action is consistent with the governing plan for the area in question. Thus, revising the plan to make areas available for leasing is not merely a planning exercise under FLPMA, it is a necessary preliminary step to leasing those areas under the MLA, and therefore is necessary to implementing the leasing activities pursuant to the MLA. It is therefore clearly a pre-leasing activity to leasing conducted under the MLA. Moreover, FLPMA provides the framework through which BLM manages federal interests in land under other statutes, such as the MLA. 43 U.S.C. § 1702(e); 1731 (b); 1712(a). FLPMA requires BLM to make plans for the use of public lands, which in turn are defined as federally owned land and interests in land that have been placed in the authority of BLM to administer by statutes like the MLA. Planning is thus inherently implementation of the underlying statutes being administered by BLM, not just of FLPMA itself.

**Summary:** The BLM violated the Consolidated Appropriations Act of 2019 (H.R. 3052) by expending funds on planning for leasing because Congress has specifically prohibited BLM from using funds to implement oil and gas leasing under the MLA (Mineral Leasing Act), including “pre-leasing” activities that ultimately are required to implement such leasing.

**Response:** Under the Consolidated Appropriations Act (H.R. 3052), Congress has directed that “No funds provided in this Act may be expended to conduct preleasing, leasing and related activities under either the Mineral Leasing Act (30 U.S.C. 181 et seq.) or the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) within the boundaries of a National Monument established pursuant to the Act of June 8, 1906 (16 U.S.C. 431 et seq.) as such boundary existed on January 20, 2001, except where such activities are allowed under the Presidential proclamation establishing such monument.” (Section 408).

The BLM Planning for Fluid Mineral Resources Handbook (H-1624-1), Chapter IB, outlines an overview of the tiered decision making applicable to the BLM fluid minerals program as follows:

- **Policy Tier.** The Director establishes Bureau-wide policies and procedures for the leasing of Federal fluid minerals and the management of exploration, utilization, development and abandonment activities on Federal oil and gas or geothermal leases.
- **Resource Management Planning Tier.** The State Director determines where and under what conditions oil and gas or geothermal exploration, development, and utilization activities will be permitted. These determinations are the basis for the timing, surface use, and no surface occupancy stipulations that are attached to a Federal oil and gas or geothermal lease.
- **Activity Planning and Implementation Tier.** The District or Area Manager establishes the site-specific conditions under which exploration, development, and abandonment will be permitted on specific leases, and determines if stipulation waivers, exceptions or modifications are warranted.

The BLM has appropriately complied with the Consolidated Appropriations Act in the development of the Proposed RMPs/Final EIS. The Consolidated Appropriations Act prohibits the BLM from expending appropriated funds on preleasing and leasing activities under the Mineral Leasing Act on lands excluded from GSENM by Presidential Proclamation 9682. Preleasing and leasing activities under the Mineral Leasing Act are separate and distinct from, and do not include, land use planning under FLPMA. The BLM Fluid Mineral Resources Handbook (H-1624-1) specifically identifies three separate and distinct tiered levels of information assessment and decision-making, with land use planning being separate from decisions associated with pre- and post-leasing decision-making. The Consolidated Appropriations Act therefore does not prohibit the BLM from initiating and engaging in land use planning on the lands excluded from GSENM by Presidential Proclamation 9682 (i.e., KEPA lands).

The BLM has appropriately complied with the Consolidated Appropriations Act in the development of the Proposed RMPs/Final EIS. For the reasons stated above, this protest is denied.

## **Other Laws – National Trails System Act**

### **John Hiscock**

**Issue Excerpt Text:** The described FEIS and RMP discretionary authority of the BLM over allowable activities in the OSNHT corridor, is “arbitrary and capricious an abuse of discretion, and otherwise not in accordance with law,” in contradiction to the statutory limitations on such authority mandated by the NTSA.

***The Wilderness Society et al.***  
***Phil Hanceford et al.***

**Issue Excerpt Text:** Consequently, federal land management agencies, such as the BLM, are obligated to protect the resources and values of the OSNHT, as described in NTSA for said sections of the Trail. The BLM’s Proposed Plans/FEIS have failed to explain, and emphasize, this protective mandate in regard to the OSNHT.

**John Hiscock**

**Issue Excerpt Text:** In summary, the BLM RMP, DEIS, and FEIS fail to sufficiently meet the procedural requirements of either Policy Manual H-1601-1, or H-8320-1 that have been described, to ensure compliance of the RMP with the statutory requirements of the NTSA, or the policy requirements of BLM Policy Manual 6280 - Management of National Scenic and Historic Trails . . . (2012).

- Recognition of the OSNHT as a special designation area is still not acknowledged in the FEIS. As an example, FEIS Section 1.6.1 on “planning issues” makes no mention of the NHT.
- The requirements of the NTSA and BLM policies on management of NHTs are ignored, or improperly assessed.
- “Goals, objectives and measures to achieve” the OSNHT, and “restrictions to avoid potential adverse affects” on the OSNHT are only superficially mentioned, and not in compliance with the mandates of the NTSA
- No SRMA(s) for OSNHT lands have been established in the RMP and FEIS.
- OHV allowances in the RMP and FEIS are contrary to the statutory requirements of the NTSA and required restrictions in the Trail corridor are lacking.
- Contextual historic landscapes of the OSNHT are not evaluated and protections for such conditions neither discussed nor planned.

**Summary:** The BLM has violated the NTSA, as amended, by failing to identify special area designations or specific limitations and allowable discretionary uses to protect the values along the designated Old Spanish National Historic Trail (OSNHT) in the Proposed RMPs/Final EIS.

**Response:** The NTSA, as amended, states that the identification of “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.” (16 U.S.C. 27 §1246 (c)). This section further states “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.” (Id.)

BLM policy directs the BLM to “set forth allocation decisions, management actions, and necessary restrictions for resources and resource uses within that National Trail Management Corridor (NTMC) in order to effectively manage the nature and purposes of National Trail and the resources, qualities, values, and associated settings and the primary use or uses.” (H-6280 at p. 4-1). It further directs that the BLM is to make land use planning level decisions of “management goals, objectives, and actions for each designated National Trail.” (Id.)

BLM policy further states that “To help effectively manage [Recreation and Visitor Services] R&VS, the BLM designates recreation management areas (RMAs), and the areas are classified as either a special recreation management area (SRMA) or an extensive recreation management area (ERMA). Both types of areas are recognized as producing high quality recreation opportunities and offering beneficial outcomes for recreation participants, recreation-tourism partners, visitor service providers, and communities. R&VS objectives in RMAs are recognized as a primary resource management consideration, and specific management is required to protect the recreation opportunities. The RMA designation is based on recreation demands and issues, RSCs, resolving use/user conflicts, compatibility with other resource uses, and resource protection needs. There is no requirement to designate all lands as RMAs.” BLM policy clarifies management focuses between SRMAs and ERMAs as follows: “An SRMA is managed to protect and enhance a targeted set of activities, experiences, benefits, and desired RSCs. .... Within an SRMA, R&VS management is recognized as the predominant [land use planning] focus, where specific recreation opportunities and RSCs are managed and protected on a long-term basis.”; “An ERMA is managed to support and sustain principal recreation activities and associated qualities and conditions. Management of ERMAs is commensurate with the management of other resources and resource uses.”

The BLM has appropriately identified land use planning level decisions to manage for the protection of the OSNHT in the Proposed RMPs/Final EIS in compliance with the NTSA, as amended. The NTSA, as amended, establishes that the Secretary of the Interior is charged with the administration of the OSNHT. With this charge, the BLM is delegated responsibility for determining discretionary uses along the designated trail and for evaluating whether or not these uses would “not substantially interfere with the nature and purposes of the trail.” The BLM has established national policy for the management of Congressionally designated national trails that identifies land use planning to identify management goals, objectives, and actions for each designated national trail. The BLM has identified these for each alternative in the Proposed RMPs/Final EIS in section 2.3.17 (Proposed RMPs/Final EIS, p. 2-59 - 2-60). 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). The Proposed RMPs/Final EIS provide the required plan components for the OSNHT necessary to provide the guidance and control for future management actions. The Proposed RMPs/Final EIS further identifies that the BLM shall “Prepare an Activity Plan for the OSNHT to identify specific uses and management actions that would be taken to implement the goals and objectives of the trail” (Proposed RMPs/Final EIS, p. 2-59). As part of the development of the activity plan, the BLM will determine the compatibility of actions proposed or requested to ensure no authorized uses would substantially interfere with the nature and purposes of the trail consistent with the objectives and management actions approved for the selected alternative.

The BLM also has discretion regarding where to establish SRMAs, and identifies areas appropriate for designation as SRMAs or ERMAs based on criteria set forth in BLM policy. Ultimately, the BLM decides on the level of RMA designation to evaluate in an alternative based on the focus commensurate with the alternative, other resource management actions needed, and the purpose and need for the land use planning effort. Based on these factors, the BLM identified and evaluated

the application of an ERMA designation for all alternatives. This is appropriate, particularly when looked at in the context of the areas that were evaluated and considered as SRMAs in the Proposed RMPs/Final EIS. In particular, the establishment and management of the NTMC provides the boundary and management emphasis necessary to support recreation management commensurate with management of the OSNHT geographically, and the need to manage for recreation and the nature and purposes of the trail clearly means the BLM is appropriate in considering the OSNHT as an ERMA, which “is managed to support and sustain principal recreation activities and associated qualities and conditions. Management of ERMAs is commensurate with the management of other resources and resource uses.”

See also the following response regarding OHV decisions.

The BLM has appropriately identified land use planning level decisions to manage for the protection of the OSNHT in the Proposed RMPs/Final EIS in compliance with the NTSA, as amended. For the reasons stated above, this protest is denied.

***John Hiscock***

**Issue Excerpt Text:** In addition, the RMPs do not regulate OHV and mechanized vehicle use in the OSNHT corridor as required by the NTSA. There is limited and insufficient information on such limitations or preclusions in the RMPs and FEIS. Again, the NTSA states: “Other uses along the historic trails . . ., 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. 16 U.S.C. §1246(c). A thorough and complete reading of the foregoing NTSA language clearly mandates that the Secretary’s allowance of motor vehicle use in national trail corridors, including the OSNHT corridor, shall be circumscribed to appropriate, administratively allowed, pre-2002 vehicle use. Other vehicle use should be precluded. The failure of the BLM FEIS and RMPs to outline these limitations or prohibition of vehicle use in the OSNHT corridor is “arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law.”

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** In addition, the Proposed Plans do not regulate OHV and mechanized vehicle use in the OSNHT corridor as required by the NTSA.

**Summary:** The BLM has violated the NTSA, as amended, by allowing OHV use along the designated OSNHT in the Proposed RMPs/Final EIS.

**Response:** The NTSA, as amended, states that “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. ... Where a national historic trail follows existing public roads, developed rights-of-way or waterways, and similar features of man’s nonhistorically related development, approximating the original location of a historic route, such segments may be marked to facilitate retracement of the historic route, and where a national historic trail parallels an existing public road, such road may be marked to commemorate the historic route. Other uses along the historic trails..., 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 the administration of the trail.” (16 U.S.C. 27 §1246 (c)).

The BLM’s national policy for the Management of National Scenic and Historic Trails and Trails Under Study or Recommended as Suitable for Congressional Designation states that the “BLM should consider limiting motorized use on National Historic Trails through the land use planning process... and should consider ... Whether motorized use on roads or primitive roads or routes under the BLM’s jurisdiction (BLM travel management policy definition) was allowed on the National Trail at the time of designation.” (H-6280 at 4.2(E)(4)(vii)(a)). It further states that “iii. Motorized vehicle use may be limited or prohibited on National Historic Trails” (H-6280 at 5.4(A)(7)(vii)(a)) and “Motorized use may be allowed along National Historic Trails, and must be monitored.” (H-6280 at 5.4(A)(7)(iii)(b)).

The BLM’s Travel and Transportation Management national policy identifies that the BLM identifies travel management areas and designates allowable levels of OHV uses for the travel management areas as land use planning level decisions. (H-8342 at p. 5). This policy identifies that the designation of uses on individual routes are implementation-level decisions. (Id). The policy identifies that the BLM may choose to make implementation-level decisions concurrent to the land use planning process or defer it from the land use planning process. (Id.)

The BLM has evaluated and identified decisions appropriate at the land use planning level for motorized vehicle use on the OSNHT. The BLM identified travel management areas and identified the allowable level of use for the area for each of the alternatives in the Proposed RMPs/Final EIS and described these in Section 3.17 and displayed them on Maps 79-83. Across the range of alternatives, different travel management areas overlapped with the OSNHT and evaluated different levels of allowable OHV use between both closed and limited. Consideration of both closed and limited travel management area designations for historic trails is consistent with both the National Trail System Act, as amended, and BLM policy which do not prohibit motorized vehicle use on historic trails.

The BLM elected to defer implementation-level travel management planning from the revisions of these RMPs for this area. The Proposed RMPs/Final EIS states “Following the approval of the RMPs, the BLM would develop implementation-level plans, including ... travel and transportation management plans.” (Proposed RMPs/Final EIS, p. 2-3). It further identifies a management action of “Until future travel management planning is complete, consistent with OHV area designations made through this planning process, allow OHV vehicle use on routes identified in the GSENM RMP (BLM 2000), unless otherwise specifically addressed in this EIS. While the GSENM RMP identified a route system for the monument, route designation is an implementation-level decision that the BLM undertakes in a separate NEPA process.” (Proposed RMPs/Final EIS, p. 2-56). The BLM will complete the process of making route-specific designations of the OSNHT to determine what types and seasons of uses would be appropriate for the sections of the trail consistent with the approved RMPs and the NTSA.

The BLM has evaluated and identified decisions appropriate at the land use planning level for motorized vehicle use on the OSNHT. For the reasons stated above, this protest is denied.

**John Hiscock**

**Issue Excerpt Text:** Although identification of “high potential segments” or “high potential sites” on federal lands may be relevant to the development of a trail CMP it does not eliminate the NTSA requirements regarding Federal protection components of the OSNHT.

Therefore, BLM FEIS and RMP planning language limiting NHT protection to “high potential sites or segments” is “arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law.” All “Federal protection components” of the OSNHT are mandated for protections detailed in the NTSA, **not only** identified “high potential sites and segments” of the OSNHT. Examples of such inappropriate FEIS/RMP management dictates include:

- VRM classification (VRM Class II) based on OSNHT Co-Administrator identification of “high potential sites and segments – Alts. B, C, and D. VRM classification, as previously discussed, should be VRM Class I for all stretches of the OSNHT on BLM lands due to BLM policy calling for such automatic classification for congressionally designated “special areas.”
- Varying levels of protection and discussion of allowance for NTSA compatible activities as tied to OSNHT Co-Administrator identification of “high potential sites and segments
- Alts. D & E.

Limiting NTSA protections for NHTs to only “high potential sites or segments” of such trails is “arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law.” All “Federal protection components” of NTs are subject to the statutory protections of the NTSA.

**Summary:** The BLM has violated the NTSA, as amended, by only providing for management of “high potential sites and segments” in the designated OSNHT in the Proposed RMPs/Final EIS.

**Response:** The NTSA does not set forth any requirements regarding the appropriate scope of BLM land use planning decisions. Further, neither the BLM nor the Department of the Interior have regulations regarding BLM land use planning decisions for National Historic Trails. As such, the BLM’s MS-6280 Management of National Scenic and Historic Trails and Trails Under Study or Recommended as Suitable for Congressional Designation serves as the guiding policy for the requirements of BLM land use planning decisions specific to National Historic Trails.

Consistent with the NTSA, the BLM policy defines ‘high potential historic sites’ as “those historic sites related to the route or sites in close proximity thereto, which provide opportunity to interpret the historic significance of the trail during the period of its major use. Criteria for consideration as high potential sites include historic significance, presence of visible historic remnants, scenic quality, and relative freedom from intrusion. Under the NTSA, high potential historic sites located on federally owned land are referred to as Federal Protection Components.”

Consistent with the NTSA, the BLM policy defines ‘high potential historic segments’ as “those segments of a trail which would afford high quality recreation experience, such as in a portion of the route having greater than average scenic values or affording an opportunity to vicariously share the experience of the original users of a historic route. Under the NTSA, high potential

route segments located on federally owned land are referred to as Federal Protection Components.”

Consistent with the NTSA, the BLM policy defines ‘Federal Protection Components’ as “selected high potential historic sites and high potential route segments and other land- and water based components of a designated National Historic Trail located on federally owned land which meet the National Historic Trail criteria listed in the National Trails System Act and are identified in trail wide Comprehensive Plans, Resource Management Plans, and implementation plans.”

As part of the land use planning process, the BLM policy requires the BLM to establish a NTMC. The BLM is directed to establish allowable uses, management actions, and necessary restrictions within the corridor, and to coordinate and consider all BLM resource programs and uses within the corridor to achieve national trail goals and objectives.

The BLM has appropriately identified land use planning decisions for the OSNHT consistent with BLM policy. The BLM includes land use planning decisions for all portions of the OSNHT in addition to land use planning decisions applicable to specific portions of the trail, including high potential sites and segments. Applicable to all portions of the OSNHT, the BLM identified goals and objectives of: “Goal NHT:1 Promote the preservation and appreciation of the OSNHT for the enjoyment of the American people. Objectives: NHT:1.1 Identify and manage an appropriate trail management corridor for the OSNHT. NHT:1.2 Manage the landscape (viewshed) associated with the OSNHT so that visitors continue to get a sense of how this landscape influenced commercial trade along the trails. NHT:1.3 Provide appropriate interpretation and signage for the OSNHT to improve visitor experiences.” (p. 2-59). The BLM also identifies the following management actions as applicable to all portions of the OSNHT: 3003 Prepare an Activity Plan for the OSNHT to identify specific uses and management actions that would be taken to implement the goals and objectives of the trail. 3004 Develop interpretive signs or other features to increase access to trail, recognize trail location, and help guide users.” (p. 2-60). These land use planning decisions follow BLM policy and are consistent with BLM policy for the interpretation of consistency for land use planning decisions with the requirements of the NTSA. The BLM also included two additional management actions that are applicable only to either the high potential sites and segments or to the KEPA portion of the OSNHT, but the majority of the land use planning decisions for the OSNHT are applicable to all.

For the reasons stated above, this protest is denied.

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** The BLM has adopted a deliberative process for identifying said Trail corridors, spelled out in its Policy Manual 6280 - Management of National Scenic and Historic Trails. The OSNHT is one of only two of our national historic trails co-administered by the NPS and BLM. A Comprehensive Administrative Strategy (CAS) for the OSNHT was issued by the NPS and BLM in December 2017, and in fact co-signed by the BLM OSNHT Co-Administrator, Edwin Roberson, Utah State Director. That CAS states: “Currently, trail protection corridors range from zero to five miles (or more) on either side of the trail route. These are arbitrary and conceptual approaches. Trail administrators will encourage a landscape- or viewshed based approach for trail corridor establishment and protection.” CAS, p. 21. The aforementioned BLM



Policy Manual 6280 provides additional guidance and requirements for identification of National Trail rights-of-way/corridors as part of BLM planning processes in regard to BLM lands.

There is no indication that BLM has progressed through a deliberative process concerning the identification of the OSNHT corridor on lands in GSENM and KEPA in preparation of the current Proposed Plans. In fact, every indication is that BLM has arbitrarily identified corridor widths for each of the new FEIS alternatives presented.

### **Noel Poe**

**Issue Excerpt Text:** The Final EIS does a good job of describing the status of the National Trail Management Corridor (NTMC), but the action Alternatives violates the National Trails System Act . . . The BLM increased the width of the corridor in Alternative E by stating in Record # 3006 page 2-60 that “. . . the width will include lands up to 0.5 mile on either side of the OSNHT centerline or within the viewshed whichever is less.” Record # 3006 also “Allows mineral leasing subject to controlled surface use stipulation.” I suggest that these two statements are inappropriate at this point and should be determined if necessary during the NTMC process. In the EIS, following Table 3. 17-2 on page 3-146, there are statements that imply the corridor width needs to be studied and states the “authorized surface disturbance would also be avoided, minimized or mitigated during NEPA and NHPA Section 106 compliance processes in accordance with the National Trails System Act.” The NTSA requires a deliberative planning process that carefully identifies the route and establishes an appropriate management corridor that protects the National Trail values and resources including the viewshed. Generally, this means the corridor has a varying width depending upon the landscape. Reference the above it would have been appropriate to state something similar to “. . . the OSNHT needs to have a corridor established following NTSA guidelines that takes in consideration the historic trail values, resources and viewshed. The deficiencies in National Historic Trail section needs to be addressed before the ROD is approved.

### **John Hiscock**

**Issue Excerpt Text:** The BLM’s suggested NTMC widths in the FEIS are also in contradiction to its own agency policies. Consequently, assignments of continual width corridors as in the FEIS/RMPs are suspicious at best. And, the GSENM/KEPA planning process has failed to completely inventory OSNHT resources and values in the affected area (with the possible limited exception of archeological resources) or have proceeded through a deliberative process for determining NTMC widths.

### **Old Spanish Trail Association**

#### **Lynn Brittner**

**Issue Excerpt Text:** The BLM 6280 National Trails Management Manual sets a management standard for National Historic Trails including recreation settings which are the geographic extent of the recreation landscape elements that influence the trail experience. The recreation settings inventory includes:

- The identification of physical, social, and operational recreation settings in accordance with the Recreation Opportunity Spectrum and recreation setting characteristics.

Even though concerns associated with OSNHT management were communicated to the BLM on November 28, 2018 during the draft EIS process, there is no indication that BLM progressed through a deliberative process concerning the identification of the OSNHT corridor on lands in GSENM and KEPA for the proposed RMPs.

In fact, there is every indication that BLM arbitrarily identified corridor widths in Section 3.17 for each of the new RMP alternatives presented without adequately performing an inventory a viewshed analysis for the entire length of OSNHT across all parcels (including the KEPA lands).

**Summary:** The BLM has violated the NTSA by failing to provide a reasoned basis or demonstrate a deliberative process for the establishment of the trail management corridors in the Proposed RMPs/Final EIS.

**Response:** According to BLM Policy Manual 6280 - "Management of National Scenic and Historic Trails" (2012), the National Trail Management Corridor (NTMC) is an "allocation established through the land use planning process, pursuant to Section 202 of FLPMA and Section 7(a)(2) of the [National Trail System Act] ("rights-of-way") for a public land area 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. To determine the width of the [NTMC], the BLM conducts an inventory and analyzes the National Trail Right-of-Way as a key consideration. The location and management of the [NTMC] is governed by FLPMA. The BLM uses the term "corridor" to refer to the area of public land surrounding the National Trail "Right-of-Way" which is described in section 7(a)(2) of the [National Trail System Act]. The term "corridor" is used to reduce confusion between the National Trail Rights-of-Way and FLPMA Title V rights-of-way."

BLM policy further identifies that "The National Trail nature and purposes and the National Trail Right-of-Way are key considerations in establishing the National Trail Management Corridor in an RMP. The BLM shall include consideration of, as appropriate, the following from the Trailwide Comprehensive Plan into the land use plan that addresses the National Trail: the nature and purposes of the National Trail; the National Trail Right of Way; the Federal Protection Components, including high potential historic sites and high potential route segments; and other key provisions."

The BLM has appropriately established the NTMC for the OSNHT. As directed by FLPMA, the BLM evaluated a range of NTMCs to allocate among the range of alternatives analyzed in the Proposed RMPs/Final EIS. The range of corridors from as small as 300 feet to as much as 3 miles, or the viewshed, whichever is smaller (p. 2-60). In analyzing this range of alternatives, the BLM is able to understand potential beneficial and adverse impacts on the nature and purposes of the OSNHT from the different widths evaluated. In doing so, the BLM has demonstrated the deliberative process, through the analysis of a range of alternatives, for identifying the different NTMCs considered. This analysis will also provide support to the reasoned basis made through the forthcoming ROD to document the selected alternative. Data and information used in the OSNHT were, as applicable, also used in the BLM's analysis of the trail corridors to determine beneficial and adverse impacts on the nature and purposes of the trail. The BLM established a range of alternatives for the NTMC in the Proposed RMPs/Final EIS in accordance with BLM Manual 6280.

For the reasons stated above, this protest is denied.

## **Other Laws – Omnibus Public Lands Management Act**

### ***The Wilderness Society et al.***

#### ***Phil Hanceford et al.***

**Issue Excerpt Text:** Thus, by authorizing or failing to prohibit development, road building and other surface disturbing activities on the lands surrounding the Monument, BLM is increasing the threat of harm to the ecological objects inside the Monument. BLM is allowing or failing to prevent destructive and damaging development closer to these vulnerable objects and fragmenting isolating important objects. Because this approach fails to properly care for the Monument's objects and ecological values and fails to fulfill BLM's obligation to administer National Conservation Lands as part of an integral landscape, it is not a valid management scheme.

### ***Western Watersheds Project***

#### ***Jonathan Ratner***

**Issue Excerpt Text:** Sec. 4 Policy. a. The BLM shall ensure that the components of the NLCS are managed to protect the values for which they were designated, including, where appropriate, prohibiting uses that are in conflict with those values. If consistent with such protection, appropriate multiple uses may be allowed, consistent with the applicable law and the relevant designations under which the components were established. Again, the BLM has put the cart before the horse. The proposed RMP fails to be based on any assessment or implementation of the above policy. d. Science shall be integrated into management decisions concerning NLCS components in order to enhance land and resource stewardship and promote greater understanding of lands and resources through research and education. The alternatives and proposed MMP fail to implement science into the process. For instance, the RPM fails to implement the most basic range management science, such as utilization rates or stocking determinations. Further, the RMP fails to provide any implementation of current science regarding biological soil crust. Again, the BLM fails to comply with its own direction.

### ***Noel Poe***

**Issue Excerpt Text:** On Attachment D on page 5 of the November 30, 2018 submission, I addressed the use of seeding nonnative species to optimize land health, forage and productivity in nonstructural range improvements. As stated there, this action was in violation of P.L. 111-11 (establishment of National Landscape Conservation System -- now known as National Conservation Lands [NCL] and the BLM's associated policies dealing with NCL. However, Record # 1071 with Objective VG-1.4 on page 2-19 states in Alternatives D & E, "In areas available/or livestock grazing, restore existing nonstructural range improvements (seedings) using a mix of native and nonnative species." Record # 1070 with the same Objective # goes further and states in Alternatives D & E "Consistent with Federal policy, prioritize the use of native species. Allow the use of nonnative species where necessary 10 optimize land health, forage and productivity in nonstructural range improvements."

**Summary:** The Proposed RMPs/Final EIS violates the OPLMA by:

- failing to properly care for the Monument's objects and values
- failing to fulfill the BLM's obligation to properly administer National Conservation Lands and

- failing to implement science in management decisions concerning NLCS components
- failing to meet requirements for seeding with nonnative species

**Response:** The FLPMA, as amended, governs the BLM’s management of public lands. The FLPMA provides that the BLM “shall manage the public lands under principles of multiple use and sustained yield ... except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.” 43 U.S.C. 1732(a). The designation of the GSENM by Proclamation 6290, as modified by Proclamation 9682, reserved the lands to provide for the proper care and management of the Monument’s objects and values and directed the BLM to provide for the proper care and management through compliance with applicable legal authority, such as the FLPMA and the OPLMA.

Established by Congress in the OPLMA (Section 2002 of Pub. L. 111-111), the NLCS - or National Conservation Lands – is a permanent system of public lands conservation with the stated purpose to “conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations.” 16 U.S.C. § 7202(a). As defined by the OPLMA, the NLCS is comprised of a number of different Presidential and Congressional designations, including National Monuments, National Conservation Areas, WSAs, and designated wilderness, among others. 16 U.S.C. § 7202(b). Each of these designations include an array of different management requirements for the BLM. Recognizing that, the OPLMA directs the BLM to manage each component of the NLCS in accordance with any applicable law relating to that specific component of the system and in a manner that protects the values for which the area was designated. 16 U.S.C. § 7202(c). Further, the OPLMA states that nothing in Section 20s, diminishes, or modifies any law or proclamation under which a NLCS component is established or managed, including the FLPMA. 16 U.S.C. § 7202(d). The GSENM was designated under the Antiquities Act; therefore, under the OPLMA the BLM is required to manage the GSENM to provide for the care and management of the Monument objects and values identified in Proclamation 6920, as modified by Proclamation 9682. While the more general language in the OPLMA relating to the purpose of the NLCS provides a number of goals for the management of all system components, the more specific management language makes it clear that BLM’s management responsibilities for national monuments, such as GSENM, are not enhanced beyond the requirements of the Antiquities Act, designating proclamations, and FLPMA.

Secretarial Order 3308 speaks to the management of National Conservation Lands. The Order states in pertinent part that “the BLM shall ensure that the components of the NLCS are managed to protect the values for which they were designated, including, where appropriate, prohibiting uses that are in conflict with those values.” Secretarial Order 3308. The Order also requires the incorporation of science into the decision-making process for National Conservation Lands, stating, “[s]cience shall be integrated into management decisions concerning NLCS components in order to enhance land and resource stewardship and promote greater understanding of lands and resources through research and education.” Id. § 4(d); see also BLM Manual 6100. § 1.6(A)(9) & (F) (BLM must “use the best available science in managing NLCS units”); BLM Manual 6200, § 1.6(A)(7) & (M) (same). BLM’s 15-Year Strategy for the National Conservation Lands discusses utilizing large-scale assessments, such as BLM’s Rapid Ecoregional Assessments, to identify how to connect and protect resources at the landscape-level.

The CEQ regulations implementing the NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)). The NEPA regulations require the BLM to “ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24). The BLM NEPA Handbook also directs the BLM to “use the best available science to support NEPA analyses and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55). Under the BLM’s guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

During the planning process, the BLM staff, including scientists and NEPA specialists, reviewed both known and new studies related to the proper care and management of Monument objects and values in the Planning Area, and considered how these sources informed the planning decisions and environmental conditions in the GSENM (see Literature Cited). The BLM staff also reviewed any new information and studies identified in the public comments received to determine if the information is substantially different than the information considered and cited in the Draft RMPs/EIS. Generally, the BLM determined that studies identified by the public did not offer information that changed the analysis of the Proposed RMPs/Final EIS and did not offer any new conditions or other information the BLM had not already considered; however, the BLM made updates to the Proposed RMPs/Final EIS as appropriate based on the sources provided.

To meet the purpose of and need for the plans, all action alternatives must be compatible with the proper care and management of the Monument objects and values outlined in Presidential Proclamation 6920, as modified by Presidential Proclamation 9682. In completing the Proposed RMPs/Final EIS, the BLM relied on high-quality information from a large number of sources to ensure that the agency used the best available science to fully analyze the impacts of plan decisions on the objects and values present in the GSENM. As a result of that analysis, the agency determined that all action alternatives presented in the Proposed RMPs/Final EIS provide for the proper care and management of Monument objects and values as required by Proclamation 6920, as modified by Proclamation 9682.

These alternatives also provide for a range of multiple uses to the extent that they are consistent with the proper care and management of Monument objects and values. While the designating proclamations provide for a number of management requirements, including the overarching requirement to provide for the care and management of monument objects and values, in some circumstances those Proclamations lacked specific management direction to the agency. In the absence of such direction, the BLM has discretion in making management decisions. In making management decisions for the GSENM, the BLM utilized the discretion provided by Proclamation 6920, as modified by Proclamation 9682, to balance protection of the objects and values with its desire to allow the public to enjoy and make beneficial use of the lands and resources. Using the best available science, as discussed above, the BLM established a framework that will recognize the important relationships and interdependencies among the Monument’s resources, while providing for the protection of the Monument objects and values in a manner that avoids and minimizes conflicts between resources and uses and therefore protects the values for which the monument was designated in accordance with the OPLMA.

BLM Handbook H-1740-2, Integrated Vegetation Management Handbook, Chapter 8, provides guidance on the use of native plants and seed in restoration and other revegetation projects. It also describes the conditions by which nonnative plants can be used. By meeting these requirements and in considering Monument objects, there could be circumstances where nonnative species would be allowable, and the plan provides for that flexibility, should the case arise.

As detailed in the Final EIS, the Proposed RMPs/Final EIS provides for the proper care and management of Monument objects and values as directed by Proclamation 6920, as modified by Proclamation 9682. In areas where the BLM has discretion under the proclamations, the agency provided opportunities for other multiple uses while ensuring that the plan would minimize or avoid conflicts between public use and the protection of monument objects.

Lastly, regarding the protestor's statement regarding the BLM's failure to meet requirements for seeding with nonnative species, the BLM relies on BLM Handbook H-1740-2, Integrated Vegetation Management Handbook, Chapter 8, which provides guidance on the use of native plants and seed in restoration and other revegetation projects. This handbook also describes the conditions by which nonnative plants can be used. By meeting these requirements and in considering Monument objects, there could be circumstances where nonnative species would be allowable in the Planning Area. The Proposed RMPs/Final EIS provides for that flexibility, should the case arise. Therefore, the BLM complied with its obligation to meet requirements for seeding with nonnative species in the Proposed RMPs/Final EIS.

For the reasons stated above, this protest is denied.

### ***Other Laws – Automobile National Heritage Act (Public Law 105-355)***

#### ***State of Utah – Office of the Governor***

##### ***Kathleen Clarke***

**Issue Excerpt Text:** The restrictions imposed on utility development within VRM Class III areas could impede future utility development and are inconsistent with a congressionally designated utility corridor.

#### ***Kane County Water Conservancy District***

##### ***Mike Noel***

**Issue Excerpt Text:** The designation of the corridor is statutory. Executive branch land management agencies do not have the authority to use land management decisions to circumvent decisions made by Congress and signed by the President. The management objectives and actions set forth in the Proposed KEPA RMP, however, would create conflicting management prescriptions for new ROWs in the congressional and other designated utility corridors (e.g. Lands and Realty Objective LR:1.2; Visual Resources Record 1088 Visual Resources).

#### ***Washington County Water Conservancy District***

##### ***Ronald Thompson***

**Issue Excerpt Text:** The designation of the corridor is statutory. Executive branch land management agencies do not have the authority to use land management decisions to circumvent decisions made by Congress and signed by the President. The management objectives and actions

set forth in the Proposed KEPA RMP, however, would create conflicting management prescriptions for new ROWs in the congressional and other designated utility corridors (e.g. Lands and Realty Objective LR: 1.2; ... Visual Resources Record 1088 Visual Resources).

**Summary:** The BLM has violated the Automobile National Heritage Action Act (P.L. 105-355) by allocating the Congressionally designated utility corridor along Highway 89 as a visual resource management class III (visual resource management [VRM] Record 1088) and establishing an objective to focus placement of new major rights-of-ways for energy, utility, and transportation system in identified energy and utility corridors (LR:1.2).

**Response:** Public Law 105-355 Section 202 designated a “utility corridor with regard to U.S. Route 89, in Kane County, Utah. The utility corridor runs from the boundary of the Glen Canyon Recreation Area to Mount Carmel Jct. This utility corridor consists of the following:

- BLM lands located on the north side of U.S. Route 89 within 240 feet of the center line of the highway.
- BLM lands located on the south side of U.S. Route 89 within 500 feet of the center line of the highway.”

The BLM’s visual resource management policy defines visual resource management class III’s objective as “to partially retain the existing character of the landscape. The level of change to the characteristic landscape should be moderate. Management activities may attract attention but should not dominate the view of the casual observer. Changes should repeat the basic elements found in the predominant natural features of the characteristic landscape.” (H-8431 at Appendix 2).

The BLM has appropriately evaluated decisions within the Congressionally designated utility corridor along Highway 89 in the Proposed RMPs/Final EIS.

Specific to the visual resource management class allocated, BLM policy for visual resources management establishes a process by which to inventory of the visual resource in an area (H-8410-1). The BLM inventoried visual resources for the entire Planning Area and rated the Congressionally designated utility corridor along Highway 89 as a visual resources inventory class of III. Visual resource inventory classes are informational in nature and provide the basis for the BLM to consider visual values in the land use planning process; they do not establish management direction or be used as a basis for constraining or limiting surface disturbing activities (H-8410-1 at V(A)(1)). The BLM considered the visual values of the inventory in the Congressionally designated utility corridor along Highway 89 and weighed those against the objectives and management actions applicable to the corridor for each alternative to identify visual resource management classes under each alternative. The BLM determined that a visual resource management class III was appropriate under the management evaluated for three alternatives (A, D, and E). The establishment of the Congressionally designated utility corridor along Highway 89 does not prohibit the BLM from identifying management that may condition how infrastructure and utility projects in the corridor would be conducted so long as decisions do not prohibit this use. A visual resource management class III would not prohibit infrastructure and utility projects as it allows for moderate landscape changes and non-dominant infrastructure within the viewshed.

The objective to focus the location of new major rights-of-ways for energy, utility, and transportation system in identified energy and utility corridors is consistent with the intent behind the Congressional designation along Highway 89 as a utility corridor. As part of the land use planning process, the BLM determines whether or not there is a need to identify locations and boundaries for transportation and utility corridors to address resource needs. The process for evaluating areas includes considering environmental impacts, costs, and logistics corresponding to the foreseeable needs (43 CFR 2802.11). For this Proposed RMPs/Final EIS, the BLM determined that existing energy and utility corridors would provide the best locations to meet all the criteria considerations required by the regulations.

The land use planning decisions of a visual resource management class III (VRM Record 1088) and objective to focus placement of new major rights-of-ways for energy, utility, and transportation system in identified energy and utility corridors (LR:1.2) do not prevent utility development within the utility development corridor established by Public Law 105-355.

For the reasons stated above, this protest is denied.

***State of Utah – Office of the Governor***

***Kathleen Clarke***

**Issue Excerpt Text:** The placement of a ROW avoidance area where ROWs are “strongly discouraged” on top of a congressionally designated utility corridor creates a direct conflict within the Proposed RMP that is inconsistent with Public Law 105-355 .

***Kane County Water Conservancy District***

***Mike Noel***

**Issue Excerpt Text:** The designation of the corridor is statutory. Executive branch land management agencies do not have the authority to use land management decisions to circumvent decisions made by Congress and signed by the President. The management objectives and actions set forth in the Proposed KEPA RMP, however, would create conflicting management prescriptions for new ROWs in the congressional and other designated utility corridors (e.g. ... Lands and Realty Record 2011 for Alternatives B, C and E...).

***Kane County Water Conservancy District***

***Mike Noel***

**Issue Excerpt Text:** Placing a ROW avoidance area over designated utility corridors establishes an immediate management conflict that could only be resolved through a subsequent RMP amendment process if not corrected now. More importantly, overlaying a ROW avoidance area with a congressionally designated utility corridor does not satisfy the intent of Congress in designating a utility corridor.

***Washington County Water Conservancy District***

***Ronald Thompson***

**Issue Excerpt Text:** Placing a ROW avoidance area over designated utility corridors establishes an immediate management conflict that could only be resolved through a subsequent RMP amendment process if not corrected now. More importantly, overlaying a ROW avoidance area with a congressionally designated utility corridor does not satisfy the intent of Congress in designating a utility corridor.



**Summary:** The BLM has violated the Automobile National Heritage Action Act (P.L. 105-355) by allocating the Congressionally designated utility corridor along Highway 89 in Kane County as right-of-way (ROW) avoidance.

**Response:** Public Law 105-355 Section 202 designated a “utility corridor with regard to U.S. Route 89, in Kane County, Utah. The utility corridor runs from the boundary of the Glen Canyon Recreation Area to Mount Carmel Jct. This utility corridor consists of the following:

- BLM lands located on the north side of U.S. Route 89 within 240 feet of the center line of the highway.
- BLM lands located on the south side of U.S. Route 89 within 500 feet of the center line of the highway.”

The BLM defines ROW avoidance areas as “an area designated on a land use plan for which use for a ROW should be avoided if at all possible.” (MS-2800 at p. 1).

Congressionally designated utility corridors are managed for this designation as a primary use. ROW avoidance allocations by BLM definition identify areas where the BLM has made a decision under a land use plan that ROWs ‘should be avoided if at all possible.’ As Congress designated this as a utility corridor, the BLM does not have the authority to override the designation to instruct the avoidance of rights-of-ways in the corridor through a land use planning decision.

The BLM has incorrectly applied a ROW avoidance allocation over the Congressionally designated utility corridor along Highway 89. As such, this protest issue is remanded back to the state director for consideration, clarification, further planning, or other appropriate changes to resolve.

## **Other Laws – National Historic Preservation Act**

***The Wilderness Society et al.***

***Phil Hanceford et al.***

**Issue Excerpt Text:** The Proposed Plans violates the NHPA in several ways. First, the Proposed Plans appear to define the APE as the entirety of the planning area although BLM does not use the term “area of potential effect.” FEIS at 3-16. While the planning area is relevant to analyzing cultural resource impacts under NEPA, the NHPA requires BLM to define APEs more narrowly as “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties.” 36 C.F.R. § 800.16(d). Within that area, BLM must make a “reasonable and good faith effort” to identify historic properties. 36 C.F.R. § 800.4(b). The Proposed Plans violate the NHPA because it authorizes several immediate uses of lands within the Planning Area that may impact cultural resources, such as designating two motorized vehicle routes and one OHV open area but fails to define APEs for those potentially impacted areas.

Second, BLM failed to make a “reasonable and good faith effort” to identify historic properties within the Planning Area. 36 C.F.R. § 800.4(b). Only 7 percent of the lands within the Planning Area have been surveyed for cultural resources. FEIS at 3-16. Aside from those conducted for the V-Road and Inch Worm Road, BLM did not conduct surveys or inventories of historic

properties within the monument. FEIS at J-12. BLM notes that the agency is in the process of updating a Class I inventory of the Planning Area with an associated predictive model, however, that Class I inventory has not yet been completed. *Id.* Because the Proposed Management Plans authorize several activities that could cause adverse effects to historic properties, BLM must make a “reasonable and good faith effort” to identify historic properties at this stage.

Finally, BLM’s conclusion that designating the V-Road and Inch Worm Road would have no adverse effects on historic properties is unsupported and arbitrary. With regard to the V-Road, the route is in an area predicted to have a high probability of cultural resources and there are several cultural sites along the roadway itself. FEIS at K-31. BLM acknowledges both that there are cultural sites along the roadway and that designating the route would increase the potential for theft and vandalism and nevertheless concludes that designating the route would have no effect on historic properties. *Id.* This conclusion is arbitrary. BLM similarly concluded that designating the Inch Worm Road would have no adverse effects on historic properties – as long as bypass route is adopted. FEIS at K-35. BLM notes that several sites have been exposed by OHV use along the route and claims that adopting the bypass route would avoid adverse effects. *Id.* However, that conclusion ignores potential direct effects from the potential that OHVs will travel off the designated route (as is currently occurring) and indirect effects from increased access to an area with exposed cultural sites, including potential vandalism, looting and site degradation. BLM’s own information makes it clear the designating either route may have an adverse effect on historic properties.

**Summary:** The BLM has violated the National Historic Preservation Act (NHPA) in the Proposed RMPs/Final EIS by:

- failing to define areas of potential effects (APEs) for potentially impacted areas
- failing to make a “reasonable and good faith effort” to identify historic properties within the GSENM and
- arbitrarily ignoring its own information in its conclusion that designating the V-Road and Inchworm Road would have no adverse effect on historic properties

**Response:** Section 106 of the NHPA requires Federal agencies to take into account the effects of their actions and use authorizations on properties included in or eligible for inclusion in the National Register of Historic Places. Agencies must determine and document the area of potential effects (APE), as well as identify historic properties within the APE as part of satisfying Section 106 of the NHPA (36 CFR § 800.4).

The APE is defined in 36 CFR § 800.16(d) as the “geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.”

Agency officials “must complete the section 106 process ‘prior to the expenditure of any Federal funds on the undertaking or prior to the issuance of any license.’ This does not prohibit agency official from conducting or authorizing nondestructive project planning activities before completing compliance with section 106 . . .” (36 CFR § 800.1(c)). Federal agencies must meet

the requirements of Section 106 prior to issuing a decision (CEQ and Advisory Council on Historic Preservation NEPA and NHPA: A Handbook for Integrating NEPA and Section 106 (March 2013)).

Commensurate with the limitations of the proposed land use planning decisions and in accordance with applicable case law governing Section 106 obligations during the land use planning process, the BLM identified historic properties within the Planning Area, considered potential adverse effects, incorporated general management prescriptions aimed at ensuring the protection of historic properties, and ultimately concluded that the proposed planning decisions would not adversely affect historic properties within the Planning Area. The BLM's land use planning handbook (BLM-H-1601-1) instructs the BLM to develop land use plans that identify and adopt goals, objectives, allocations for resources uses, and specific management direction, as a means of guiding future land management actions. While a land use plan may sometimes include management direction that is highly specific, land use plans do not generally authorize on-the-ground actions. Rather, land use plan decisions, in the form of either desired outcomes or allowable uses, establish how and where future actions or uses may or may not be allowed and what restrictions or requirements may be placed on those future actions to achieve land use plan objectives (BLM-H-1601, p. 12).

Implementation decisions differ from land-use planning decisions in that they generally represent the final authorization for on-the-ground action without further agency analysis or approval. It is generally at the implementation stage, when the BLM authorizes specific projects and activities, that the agency makes an irretrievable commitment of resources that may reduce its ability to prevent harm to cultural resources on a particular parcel of public land. By comparison, land use planning decisions consider overarching management objectives and uses and do not commit agency resources in a manner that jeopardizes the BLM's ability to prohibit uses on a particular parcel.

In light of the foregoing, and as detailed below, the BLM engaged in a reasonable and good faith effort to identify historic properties, and completed appropriate portions of the Section 106 process for the current planning effort. The land use planning decisions analyzed in the Proposed RMPs/Final EIS do not represent an irretrievable commitment of agency resources that eliminates the BLM's ability to prevent adverse effects on a particular parcel of public land. As explained more below, future, site-specific activities will require additional environmental review and authorization, including all applicable procedures to comply with the NHPA. Specifically, the agencies will conduct appropriate NHPA and NEPA analyses for implementation decisions that would authorize specific uses in specific areas, and complete consultation as necessary.

Cultural resources inventory is continuous and ongoing through related NHPA Section 106 and Section 110 compliance processes. The BLM performed a thorough Section 106 review of all known previous cultural inventories completed in the Planning Area (Proposed RMPs/Final EIS, p. 3-16) that included the identification of historic properties through reviews of the Class I Cultural Resources Inventory Report and reviews of a cultural resources probability model developed based upon the Class I information. A Class I cultural resources inventory meets the "reasonable and good faith effort" standard, as future project specific undertakings will be subject to additional NHPA Section 106 review, which will include the identification and evaluation of

historic properties and assessment of effects on National Register of Historic Places (NRHP) eligible properties and consultation with the State Historic Preservation Officer (SHPO), tribes, and other parties. The BLM relied on this review in preparation of the Proposed RMPs/Final EIS.

Approximately 5 to 7 percent of the Planning Area has been comprehensively surveyed and inventoried for cultural resources. Previous inventories indicate that there are 3,179 known cultural resources sites within the Planning Area. Of this total, there are 483 cultural resources in the Escalante Canyons Unit; 430 in the Grand Staircase Unit; 1,010 in the Kaiparowits Unit; and 1,256 in KEPA. In addition, in 2002, Brigham Young University conducted a cultural resource survey on 3,492 acres that included the Little Desert RMZ that is included in Alternatives B, C, D, and E. The survey documented a total of 126 new sites and revisited/re-recorded 19 previously recorded sites. Of the 145 sites in the 3,492-acre survey area, 133 were recommended as eligible for the NRHP. Therefore, the BLM has engaged in a reasonable and good faith effort to identify historic properties, consistent with 36 CFR § 800.4(b). Future inventory across the Decision Area will generally be in response to NHPA Section 106 compliance or Section 110 obligations. The extent and location of Section 106 inventories would be largely determined by the specifics of the project generating the need for inventory (Proposed RMPs/Final EIS, Appendix J, p. J-15).

The protests assert that the Proposed RMPs/Final EIS authorize several activities that could cause adverse impacts on historic properties without first having completed a Class I Inventory. Regulations do not require federal agencies to complete the NHPA Section 106 process prior to issuing a Final EIS. As 36 CFR § 800.1(c) states, agency officials must complete the section 106 process prior to the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, and must meet the requirements of Section 106 prior to issuing a decision. The GSENM currently has on file a prehistoric Class I written in 2000. Therefore, there is already an existing, completed Class I Inventory for the GSENM. Consequently, the BLM engaged in a reasonable and good faith effort to identify historic properties, consistent with 36 CFR § 800.4(b). Depending on factors such as new research, boundary changes, land tenure adjustments, and other actions, a Class I overview will be periodically updated to reflect the most recent information available. GSENM is currently in the process of updating the original Class I Overview including KEPA lands. The BLM Kanab Field Office is currently also producing a Class I Overview specifically for the Kanab Field Office non-KEPA lands (Proposed RMPs/Final EIS, Appendix J, p. J-12).

The protests also assert that the BLM failed to properly define APEs for potentially impacted areas. The APE for Section 106 consultation was identified as the Planning Area. As stated in 36 CFR § 800.16(d), the APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking. Given the scale of the GSENM/KEPA Planning Area and the uncertainty over where exact impacts may occur on cultural resources, the BLM properly defined the APE as the entirety of the Planning Area. Additionally, the BLM has committed to developing a Cultural Resources Management Plan for each GSENM unit and the KEPA in accordance with the standards of BLM Manual 8130 (Proposed RMPs/Final EIS, p. 2-6 and 3-21). This Cultural Resources Management Plan will address ways to reduce direct impacts and resolve potential conflicts from natural or human-caused deterioration or other resource uses, as well as assign cultural sites to use categories (e.g., public, scientific, or traditional use), and manage for the protection and interpretation of these sites. This Cultural

Resources Management Plan would help provide site-specific, implementation-level direction to effectively manage resource uses while protecting the integrity of significant cultural resources.

Regarding the impacts on cultural resources from designating the V-Road and Inchworm Road, the BLM properly analyzed the proposed route designation according to the criteria set forth by policy. The addition of specific routes to the GSENM/KEPA route map for the Planning Area is an implementation-level decision. Alternative E (the Proposed RMPs) would amend the current GSENM/KEPA route map through implementation-level decisions to include the V-Road, Inchworm Arch Road, and Flag Point Road (Alternative D only) as open and available for OHV use (Chapter 2, Section 2.3.15, Travel and Transportation Management) (Proposed RMPs/Final EIS, Appendix K, p. K-29). These implementation-level projects can be resolved with site-specific consultation and planning by implementing specific measures to avoid, minimize, or mitigate those impacts through the NHPA Section 106 process, which is required of implementation-level projects. As with all other routes in the Planning Area, the three route designations in Appendix K will be reviewed through the travel management planning process.

The Proposed RMPs/Final EIS emphasizes that impacts on historic properties related to BLM-authorized surface disturbances will be addressed through the NHPA Section 106 review process, which requires direct or indirect effects on properties included or eligible for inclusion in the NRHP to be avoided, minimized, or mitigated.

Additionally, appropriate tools for cultural resource site protection identified in Appendix J (Cultural Resources) monitoring strategies for cultural resources described in Appendix I (Monitoring Strategy), and BMPs outlined in Appendix G (Best Management Practices) would ensure the proper care and management of monument objects. Under all action alternatives, the BLM will develop a cultural RMP and cultural resource monument objects will be assigned use categories in order to properly care for and manage cultural resources (Proposed RMPs/Final EIS, p. 3-21). Further, NRHP eligible sites, including archaeological, historic, or cultural objects within GSENM, will have site inspections annually, or more frequently and as needed if required by site-specific conditions, which will help monitor and reduce impacts (Proposed RMPs/Final EIS, Appendix I, p. I-21).

The Proposed RMPs/Final EIS acknowledges that allowing public access from designation of the V-Road would increase the potential for theft and vandalism of Moki Marbles and cultural sites, to which the route provides access. However, the current condition of the route with the added fill material decreases the potential for any further effect on cultural resources. Additionally, the Proposed RMPs/Final EIS emphasizes that implementing special monitoring, signage, education, and enforcement would help address effects from an increase in public access and help to reduce effects (Proposed RMPs/Final EIS, Appendix K, p. K-31). Further, implementation of mitigation would reduce impacts and ensure the proper care and management of monument objects.

The Proposed RMPs/Final EIS also acknowledges that allowing increased public access and OHV use from designation of the Inchworm Road could increase the potential for degradation of sites crossed by the route. The BLM has limited control over off-route incursions, and allowing OHV access could therefore allow effects to occur on cultural resources adjacent to the route. The BLM has initially identified several alternate routes that bypass/avoid the sites to avoid ongoing damage or degradation. On December 20, 2018, the BLM consulted with the Utah SHPO

regarding a finding of “no adverse effect” for Inchworm Arch Road (with realignment), as all NRHP-eligible sites will be avoided; SHPO concurred with the BLM’s finding of “no adverse effect” on December 21, 2019 (letter from Merritt [SHPO] to Barber [BLM], December 21, 2019) (Proposed RMPs/Final EIS, Appendix K, p. K-34 – K-35).

The BLM has properly complied with the requirements of Section 106 of the NHPA in preparing the Proposed RMPs/Final EIS, and properly concluded that designation of the V-Road and Inchworm Road would not result in adverse impacts on historic properties in the Planning Area. For the reasons stated above, this protest is denied.

## **Secretarial Order 3362**

### ***National Wildlife Federation***

#### ***Mary Greene***

**Issue Excerpt Text:** BLM must consider habitat corridors in the Final Environmental Impact Statement (FEIS). Secretarial Order 3362 directs BLM to work with Western States to identify big game habitat and migration corridors. States have upheld their end of the bargain and identified a number of big game habitat corridors across the West. BLM now needs to uphold their end and recognize those corridors in the planning process.

### ***The Wilderness Society et al.***

#### ***Phil Hanceford et al.***

**Issue Excerpt Text:** The FEIS claims that the Proposed Plans’ inclusion of best management practices (BMPs) will mitigate harm to desert bighorn. FEIS, G-6. However, a look at the Big Game BMPs undermines this claim. There are only three BMPs, and of these, only one specifically addresses desert bighorn sheep habitat. See FEIS, G-6. The BMPs fail to address Department of Interior Secretarial Order 3362’s direction to use best available science to restore degraded habitat, minimize development that would fragment winter range and migration corridors, and limit disturbance on winter range.

**Summary:** The BLM failed to comply with the requirements of Secretarial Order 3362 in the Proposed RMPs/Final EIS.

**Response:** Secretarial Order 3362 directs states to “(5) Evaluate and appropriately apply site-specific management activities, as identified in State land use plans, site-specific plans, or the Action Plan (described above), that conserve or restore habitat necessary to sustain local and regional big-game populations through measures that may include one or more of the following:

- (i) restoring degraded winter range and migration corridors by removing encroaching trees from sagebrush ecosystems, rehabilitating areas damaged by fire, or treating exotic/invasive vegetation to improve the quality and value of these areas to big game and other wildlife;
- (ii) revising wild horse and burro-appropriate management levels or removing horses and burros exceeding established appropriate management levels from winter range or migration corridors if habitat is degraded as a result of their presence;
- (iii) working cooperatively with private landowners and State highway departments to achieve permissive fencing measures, including potentially modifying (via smooth wire),

- removing (if no longer necessary), or seasonally adapting (seasonal lay down) fencing if proven to impede movement of big game through migration corridors;
- (iv) avoiding development in the most crucial winter range or migration corridors during sensitive seasons;
  - (v) minimizing development that would fragment winter range and primary migration corridors;
  - (vi) limiting disturbance of big game on winter range; and
  - (vii) utilizing other proven actions necessary to conserve and/or restore the vital big-game winter range and migration corridors across the West.”

The BLM has complied with the land use planning requirements to establish migration corridors and identify protection measures for big game species outlined in Secretarial Order 3362 in the Proposed RMPs/Final EIS. The BLM identified a migration corridor along Highway 89 that is used by Mule Deer Herd Unit 27 in the Proposed RMPs/Final EIS (Proposed RMPs/Final EIS, p. 3-25). The BLM included management and a BMP for a seasonal timing limitation for this mule deer migration corridor in the Proposed RMPs/Final EIS. This mule deer migration corridor was also added to Map 3 (Big Game). The BLM has committed to working with Utah Division of Wildlife Resources to identify corridors and provide protection for corridors as they are developed using approved management actions, mitigation measures, and BMPs (Proposed RMPs/Final EIS, Appendix W, p. W-40). Consequently, the Proposed RMPs/Final EIS complied with the land use planning level requirements to enhance and improve the quality of big-game winter range and migration corridor habitat on Federal lands as outlined in Secretarial Order 3362.

For the reasons stated above, this protest is denied.

## **Proclamation 9682**

### **National Parks Conservation Association**

#### **Robert Rosenbaum et al.**

**Issue Excerpt Text:** The RMP-EIS fails to identify whether or not the required “one or more advisory committees under the Federal Advisory Committee Act (5 U.S.C. App.)” have been created and, if so, the outcome of such mandated committees. (See Proclamation 9682). To the extent that BLM presented the RMP-EIS only to an existing BLM Resource Advisory Council (RAC) instead of a GSENM advisory committee, the RMP-EIS does not comply with the Proclamation directive.

**Summary:** The BLM has violated Proclamation 9682 by failing to disclose in the Proposed RMPs/Final EIS whether or not the required “one or more advisory committees under the Federal Advisory Committee Act (FACA) (5 U.S.C. App.)” have been created and, if so, the outcome of such mandated committees.

**Response:** Proclamation 9682 states that “Proclamation 6920 is amended to provide that the Secretary shall maintain one or more advisory committees under the FACA (5 U.S.C. App.) to provide information and advice regarding the development of the above-described management plans, and, as appropriate, management of the monument. Any advisory committee maintained shall consist of a fair and balanced representation of interested stakeholders, including State and local governments, tribes, recreational users, local business owners, and private landowners.”

The BLM complied with the requirements of Proclamation 9682 in the development of the Proposed RMPs/Final EIS. The protestor incorrectly claims that Proclamation 9682 states that the BLM was required to create a new, GSENM-specific advisory committee. The Proclamation clearly states that the “Secretary shall *maintain* one or more advisory committees under the Federal Advisory Committee Act (5 U.S.C. App.) to provide information and advice regarding the development of the above-described management plans, and, as appropriate, management of the monument” [emphasis added].

Section 4.4 of the Proposed RMPs/Final EIS describes the BLM’s coordination efforts process with the Utah Resource Advisory Council (RAC). The Utah RAC is a FACA-compliant committee composed of a 15-member committee that includes State and local government officials, tribal members, representatives of the recreation community, local business owners, and private landowners in compliance with Proclamation 9862. The Proposed RMP/Final EIS explains that the Utah RAC met on June 17 and June 18, 2019, where they heard a presentation about and discussed the GSENM-KEPA Draft RMPs/EIS, and took public comments. During the meeting, the RAC provided the BLM with recommendations and comments on the RMPs. The input addressed management of recreation management, vegetation, lands with wilderness characteristics, cultural resources, grazing, travel and transportation, and overall management flexibility. The BLM used and incorporated the input and recommendations in the development of the Proposed RMPs/Final EIS. Consequently, by coordinating with the Utah Resource Advisory Council, the BLM complied with Proclamation 9682.

Further, BLM is in the process of establishing a monument advisory committee for GSENM to advise on future planning and management of the monument. The Proposed RMPs/Final EIS states that “[a] Grand Staircase-Escalante National Monument Advisory Committee (chartered under the FACA) will be established to advise monument managers as per the Monument Advisory Committee Charter (Proposed RMPs/Final EIS, p. 2-64).” The monument advisory committee’s charter was signed on September 5, 2018, and memorialized a 15-member committee that includes State and local government officials, tribal members, representatives of the recreation community, local business owners, and private landowners.

The BLM complied with the requirements of Proclamation 9682 in the development of the Proposed RMPs/Final EIS. Accordingly, this protest is denied.