



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

**Uncompahgre Field Office
Resource Management Plan**

February 7, 2020

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Contents

Acronyms	ii
Protesting Party Index	1
ESA	3
Secretarial Order 3362.....	5
FLPMA – Areas of Critical Environmental Concern	7
FLPMA – Consistency with other Plans	8
FLPMA – Unnecessary or Undue Degradation.....	12
NEPA – Purpose and Need.....	13
NEPA – Range of Alternatives.....	14
NEPA – Range of Alternatives – Coal production.....	17
NEPA – Range of Alternatives – Fluid Minerals	18
NEPA – Selection of a New Alternative without Public Input	21
NEPA – Best Available Information	25
NEPA – Cooperating Agencies	26
NEPA – Cumulative Effects – Bighorn sheep.....	27
NEPA – Cumulative Effects – Fish.....	28
NEPA – Impact Analysis – Air Quality	29
NEPA – Impact Analysis – Bighorn Sheep.....	33
NEPA – Impact Analysis – Climate Change.....	34
NEPA – Impact Analysis – Fish.....	36
NEPA – Impact Analysis – Fluid minerals	37
NEPA – Impact Analysis – Gunnison Sage-grouse	40
NEPA – Mitigation – Gunnison Sage-grouse.....	43
NEPA – Impact Analysis – Human Health	46
NEPA – Mitigation – Soil Selenium	48
NEPA – Impact Analysis – Water Quality	49
NEPA – Impact Analysis – Wilderness Characteristics	50
NEPA – Impact Analysis -Mitigation	52
NEPA – Impacts Analysis – Carbon/Greenhouse Gas Emissions.....	53
NEPA – Impacts Analysis – Renewable Energy.....	58
NEPA – Impacts Analysis – Socioeconomics	60
NEPA – Impacts Analysis – Uranium Mining	62
NEPA – Response to Comments.....	64

Acronyms

°C	degrees Centigrade
ACEC	area of critical environmental concern
BA	biological assessment
BiOp	Biological Opinion
BLM	Bureau of Land Management
BMP	best management practice
BO	Biological Opinion
BOR	Bureau of Reclamation
CARMMS	Colorado Air Resources Management Modeling Study
CEQ	Council on Environmental Quality
CFR	Code Federal Regulations
CHHR	core herd home range
CO₂	carbon dioxide
CO₂e	carbon dioxide equivalent
CPW	Colorado Parks and Wildlife
CSU	controlled surface use
CURE	Curecanti National Recreation Area
DAU	Data Analysis Unit
DEIS	Draft Environmental Impact Statement
DOE	Department of Energy
DOI	Department of the Interior
DRMP	Draft Resource Management Plan
EA	Environmental Assessment
EIS	Environmental Impact Statement
EPA	U.S. Environmental Protection Agency
EPCA	Energy Policy and Conservation Act
ESA	Endangered Species Act
FEIS	Final Environmental Impact Statement
FLPMA	Federal Land Policy and Management Act of 1976
Fluid Mineral PBO	Programmatic Biological Opinion for Water Depletions Associated with Bureau of Land Management's Fluid Mineral Program within the Upper Colorado River Basin in Colorado
FWS	U.S. Fish and Wildlife Service
GHG	greenhouse gas
GIS	geographic information systems
GuSG	Gunnison sage-grouse
GWP	global warming potential
HAP	hazardous air pollutant
HB	House Bill
HIA	health impact assessment
IPCC	Intergovernmental Panel on Climate Change
IWG	Interagency Working Group
LUR	Land Use Resolution
LWC	lands with wilderness characteristics
MDP	Master Development Plan
MLA	Mineral Leasing Act
NAAQS	National Ambient Air Quality Standards
NEPA	National Environmental Policy Act
NL	no leasing

NPS	National Park Service
NSO	no surface occupancy
ORSA	Outdoor Recreation Satellite Account
PRMP	Proposed Resource Management Plan
RFD	reasonably foreseeable development
RMP	Resource Management Plan
ROW	right-of-way
S.B.	Senate Bill
SCC	social cost of carbon
SCORP	Statewide Comprehensive Outdoor Recreation Plan
SEIS	Supplemental Environmental Impact Statement
Service	U.S. Fish and Wildlife Service
SO	Secretarial Order
SSR	site-specific relocation
TRFO	Tres Rio Field Office
TWS	The Wilderness Society
U.S.C.	United States Code
UFO	Uncompahgre Field Office
ULMP	Uranium Lease Management Program
USFS	U.S. Forest Service
USFWS	U.S. Fish and Wildlife Service
UUD	unnecessary or undue degradation
VOC	volatile organic compound

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Protesting Party Index

Protester	Organization	Determination
David Baumgarten	Board of County Commissioners of Gunnison County, Colorado	Denied
Elaine Brett		Denied
Nicholas Clabbers	The Wilderness Society	Denied
Dan Gibbs	Colorado Department of Natural Resources	Denied
Brent Helleckson	Terror Ditch and Reservoir Company	Denied
Hannah Hollenbeck	Ouray County	Denied
Laura King	Western Environmental Law Center	Denied
Kenneth Knight	Town of Paonia	Denied
Amy Markwell	San Miguel County, Colorado	Denied
Representative Julie McCluskie	Colorado House of Representatives	Denied
Eugenie McGuire	Desert Weyr, LLC	Denied
Jonathan Ratner	Western Watersheds Project	Denied
Karen Tuddenham	Sheep Mountain Alliance	Denied
Michael Burkley		Dismissed – No Standing
James Matusoff		Dismissed – No Standing
Paul Reilly		Dismissed – No Standing
Charles Zick		Dismissed – No Standing
Charles Beall		Dismissed – Comments Only
Thomas Bender		Dismissed – Comments Only
Sarah Bishop		Dismissed – Comments Only
Jim Brett	Slow Food Western Slope	Dismissed – Comments Only
Dave Bristow		Dismissed – Comments Only
Jennifer Chavez		Dismissed – Comments Only
William Crompton		Dismissed – Comments Only
Ralph D'Alessandro		Dismissed – Comments Only
Steve Danuff		Dismissed – Comments Only
Bill Day		Dismissed – Comments Only
Michael Drake		Dismissed – Comments Only
Krista Dudley		Dismissed – Comments Only
Elyssa Edgerly		Dismissed – Comments Only
Sven Edstrom	Colorado Plateau Mountain Bike Trails Association - Delta Area Mountain Bikers Chapter	Dismissed – Comments Only
Dylan Fixmer		Dismissed – Comments Only
Susan Friar		Dismissed – Comments Only
Greta Gibb		Dismissed – Comments Only
Elena Goldstein		Dismissed – Comments Only
Craig Grother	Backcountry Hunters & Anglers	Dismissed – Comments Only
Stephen Gulick		Dismissed – Comments Only
Kay Hannah		Dismissed – Comments Only
Amy Hayutin		Dismissed – Comments Only
David Inouye		Dismissed – Comments Only
Bonnie Inouye		Dismissed – Comments Only

Protester	Organization	Determination
Lisa Joss		Dismissed – Comments Only
Mary Jursinovic		Dismissed – Comments Only
Viva Kellogg		Dismissed – Comments Only
Scott Kellogg		Dismissed – Comments Only
Cedar Keshet		Dismissed – Comments Only
Sharon Kime		Dismissed – Comments Only
Amber Kleinman		Dismissed – Comments Only
Ethel Leslie		Dismissed – Comments Only
Linda Lindsey		Dismissed – Comments Only
David Livingston		Dismissed – Comments Only
Michael McCarney		Dismissed – Comments Only
Patrick McCarney		Dismissed – Comments Only
Tracy McCurdy		Dismissed – Comments Only
Rick McGavin		Dismissed – Comments Only
Laurie Milford		Dismissed – Comments Only
Sean Murphy	Mayor, Town of Telluride	Dismissed – Comments Only
Robin Nicholoff		Dismissed – Comments Only
Ian Oeser		Dismissed – Comments Only
Elizabeth O'Reilly		Dismissed – Comments Only
Robert Oralndo		Dismissed – Comments Only
Karen Ortiz		Dismissed – Comments Only
Ursula Ostrander		Dismissed – Comments Only
Joshua Paigen		Dismissed – Comments Only
Erica Pelland		Dismissed – Comments Only
Michael Price		Dismissed – Comments Only
Tena Price		Dismissed – Comments Only
Kate Redmond		Dismissed – Comments Only
Katie Reily		Dismissed – Comments Only
Kim Schultz	TEDX	Dismissed – Comments Only
Teresa Shishim		Dismissed – Comments Only
Robin Smith		Dismissed – Comments Only
Paige Smith		Dismissed – Comments Only
Marilyn Stone		Dismissed – Comments Only
Luke Tembrock		Dismissed – Comments Only
Brad Thacker		Dismissed – Comments Only
Kathy Thompson		Dismissed – Comments Only
Greg Thompson		Dismissed – Comments Only
Lincoln Vannah		Dismissed – Comments Only
Patricia Walsh-Oeinck		Dismissed – Comments Only
Trudy Welty		Dismissed – Comments Only
Aiyana White		Dismissed – Comments Only
Steve Wolcott		Dismissed – Comments Only
Eli Wolcott		Dismissed – Comments Only
Millicent Young		Dismissed – Comments Only
Cynthia Ziegler		Dismissed – Comments Only

ESA

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: Reliance, however, in the UFO BiOp on the 2017 Programmatic Biological Opinion for Water Depletions Associated with Bureau of Land Management’s Fluid Mineral Program within the Upper Colorado River Basin in Colorado (the “Fluid Mineral PBO” or “PBO”) (attached as Exhibit 21), is improper for the reasons set forth below. First, the Fluid Mineral PBO addresses only impacts from water depletions, not other indirect impacts of authorizing oil and gas leasing, including (a) spills or surface and groundwater contamination by hydrocarbons, hydraulic fracturing fluids, or produced water; and (b) selenium loading to the Gunnison and/or Colorado Rivers resulting from ground disturbance, road construction, erosion, and sedimentation. The 2017 Fluid Mineral PBO does not fully take into account the enormous water depletion effects of horizontal drilling and stimulation techniques such as slickwater hydraulic fracturing. The 2017 PBO is also unreliable in numerous other respects due to significant new information revealing that the Fluid Mineral Program may have effects on the endangered fish in a manner or to an extent not previously considered. This includes new information about (a) the potential for increased Mancos shale play development within the Piceance Basin, much of which would require horizontal drilling and therefore increased water depletions; (b) climate change effects on Upper Colorado River Basin stream flows (which is not even acknowledged in the PBO or the UFO DEIS); (c) long-term drought and increased water demand which has drastically reduced water supplies; (d) mercury and selenium pollution effects on the endangered fish; (e) declining humpback chub and Colorado pikeminnow populations and failure to meet these populations’ recovery targets; (f) the Recovery Program’s failure to meet recommended stream flows necessary for recovery of the endangered fish and (g) the failure of BLM to adequately monitor and track actual water use and depletions in the Upper Colorado River Basin, which could result in higher water use and greater depletions in the UFO planning area than anticipated in the PBO.

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: In sum, BLM’s reliance on the 2017 Programmatic Biological Opinion for the Fluid Mineral Program for foreseeable depletions that will exceed the analysis in that Biological Opinion is unlawful, and does not satisfy its duties to insure jeopardy against the endangered fish. BLM must consult with FWS to address these numerous flaws in the 2017 PBO. Further, BLM must prepare a NEPA analysis addressing water depletion 116 Id. 117 Compare PBO at 55 with PBO at 42, 44. 118 PBO at 69. 119 Id. CONSERVATION GROUPS’ PROTEST UNCOMPAHGRE FIELD OFFICE PRMP AND FEIS 52 effects of horizontal drilling on the endangered fish, in light of climate change, population declines, mercury and selenium contamination, and Recovery Program failures in meeting recommended flows.

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: New scientific information regarding (a) mercury and selenium effects on fish reproduction and population viability, (b) mercury and selenium concentrations in Upper Colorado and White River fish, (c) the potential role of oil and gas development in mercury contamination levels in the White River, (d) the potential for development of the Mancos shale play to increase selenium pollution, and (e) the relationship between climate change and mercury and selenium toxicity constitutes new information revealing that the Fluid Mineral Program may have effects on the endangered fish to an

extent that was not considered in the PBO, and requires reinitiation of consultation over the Fluid Mineral Program.

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: Additionally, the UFO RMP DEIS must analyze cumulative impacts from oil and gas projects moving forward in the Uncompahgre planning area, namely the Bull Mountain Unit Master Development Plan and North Fork Mancos Master Development Plan. In particular, the recently-amended North Fork Mancos Master Development Plan proposal will, on its own, authorize development for slickwater fracking resulting in water depletions that will exceed the thresholds analyzed for the Gunnison Basin in the 2017 Fluid Mineral PBO. By authorizing development that will foreseeably exceed the limits contemplated in the U.S. Fish and Wildlife Service’s 2017 Fluid Minerals Programmatic BiOp, BLM will violate its duties under ESA Section 7 regarding water depletion impacts on the endangered fish. The Revised North Fork Mancos EA’s disclosure of the substantial water demands of slickwater fracking makes clear that the project will foreseeably result in new annual consumptive water uses of Gunnison Basin water of at least 668.5 acre-feet per year, even accepting the questionable assumption that coalbed methane produced water is non-tributary groundwater.⁹² This level of water use, even without the foreseeable possibility of other potential fracking projects within the subbasin, clearly takes the proposed project, and all future water withdrawals within the Gunnison Basin, outside the scope of the 2017 PBO.

Summary:

The Uncompahgre Field Office (UFO) Biological Opinion’s (BO’s) reliance on the 2017 Programmatic Biological Opinion for Water Depletions Associated with Bureau of Land Management’s Fluid Mineral Program within the Upper Colorado River Basin in Colorado (the “Fluid Mineral PBO”) is improper because the Fluid Mineral PBO:

- Only addresses impacts from water depletions, not other indirect impacts of oil and gas leasing;
- Does not fully account for water depletion effects of horizontal drilling and stimulation techniques; and
- Is unreliable due to significant new information revealing that the Fluid Mineral Program may have effects on endangered fish in a manner or to an extent not previously considered.

Additionally, the Bureau of Land Management (BLM) failed to incorporate new information from the oil and gas projects moving forward in the UFO Planning Area, namely the Bull Mountain Unit Master Development Plan (MDP) and Revised North Fork Mancos MDP, which resulted in faulty cumulative effects analysis because the new annual consumptive water uses would exceed the limits contemplated in the Fluid Mineral PBO.

Response:

Section 7(a)(2) of the Endangered Species Act (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 finding in a biological assessment (BA) that a proposed action is likely to adversely affect listed species or designated critical habitat formal, consultation is required under 50 Code Federal Regulations (CFR) 402.14(a).

The BLM determined that the approval of the UFO Resource Management Plan (RMP) is likely to adversely affect listed species or critical habitat, and therefore underwent formal consultation with the U.S. Fish and Wildlife Service (USFWS). The BLM documented this determination in the BA for the UFO RMP, which was provided to the USFWS for its review and comment. The BLM used the same

information and biological data both to prepare the BA and to analyze the environmental impacts on affected species in the Environmental Impact Statement (EIS).

The BO is the formal opinion of the USFWS as to whether a Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. On December 17, 2018, the USFWS issued the BO for the UFO RMP, which concluded that implementation of the UFO RMP: (1) may affect, but is not likely to adversely affect, the greenback cutthroat trout, Mexican spotted owl, western yellow-billed cuckoo, Colorado pikeminnow, razorback sucker, bonytail, and humpback chub; and (2) may affect, and is likely to adversely affect, Colorado hookless cactus, clay-loving wild buckwheat (including designated critical habitat), and Gunnison sage-grouse (including designated critical habitat) and includes measures to avoid adverse modifications to critical habitat. On September 20, 2019, the BLM notified the USFWS of changes to the Proposed Resource Management Plan (PRMP)/Final Environmental Impact Statement (FEIS) (Alternative E) that occurred after USFWS Section 7 concurrence on December 17, 2018. BLM UFO biological staff determined that these changes to the Agency-Proposed Alternative E do not affect species or habitat that were consulted on in 2018. These conclusions are applicable to a revised UFO RMP drafted after the USFWS issued the BO because changes were not made to management actions relevant to threatened and endangered species. The BO is available on the RMP project's website: <https://go.usa.gov/xnpgD>.

In developing the UFO RMP, the BLM has complied with Section 7 of the ESA.

Sections 4.3.3 and 4.3.6 of the PRMP/FEIS contain text describing the 2017 Fluid Mineral PBO associated with the BLM's Fluid Minerals Program within the Upper Colorado River Basin in Colorado. Water depletions analyzed for the consultation with the USFWS were based on reasonably foreseeable development (RFD) scenarios. The projects analyzed in the Bull Mountain EIS and North Fork Mancos MDP are within the estimates contained in the 2012 UFO RFD report currently posted on the RMP project's ePlanning website (<https://go.ussa.gov/xnpgD>). The analysis of water depletions contained in the UFO RMP relies upon the number of projected wells and development included in the RFD report. Refer to Table 4-1 of the UFO PRMP/FEIS for the past, present, and reasonably foreseeable projects considered in the UFO RMP analysis including the Bull Mountain EIS and North Fork Mancos MDP.

As noted on page 4-131 of the FEIS, "The 2017 Programmatic Biological Opinion (USFWS 2017) determined that the 607 acre-feet per year of BLM water depletions associated with BLM approved projects in the Gunnison River Basin are not likely to jeopardize the continued existence of the Colorado pikeminnow, razorback sucker, bonytail chub, and humpback chub. However, reduced flows associated with freshwater depletions from approved projects within the Planning Area [i.e., the Bull Mountain Unit MDP and North Fork Mancos MDP] could exacerbate the effects of selenium and mercury on these fish, as reduced flows could lessen beneficial dilution effects on concentrations of each chemical in a given river (BLM 2017a). The project is also not likely to destroy or adversely modify designated critical habitats for these endangered fish (designated critical habitat occurs in the Decision Area only for Colorado pikeminnow and razorback sucker; see Chapter 3)." The Final North Fork Mancos MDP Environmental Assessment (EA) notes that the project will use a single drill rig to drill all wells over 6 years. At that rate of water use, cumulative depletions from the project and two nearby oil and gas projects (Bull Mountain MDP and Dual Operator 5-Pad EA) would be well below the 607 acre-feet of annual depletions consulted on (Final North Fork Mancos MDP EA 2019, p. 107).

Secretarial Order 3362

UFORMP-096_GibbsD_20190728

Colorado Department of Natural Resources

Gibbs, Dan

Issue Excerpt Text: At least one BLM Colorado Field Office, the Tres Rios Field Office, has recognized the need for a stipulation to limit the density of surface facilities by incorporating a Controlled Surface

Use (CSU) Stipulation in their 2015 RMP revision. Even prior to SO 3362, this stipulation was added to the Tres Rios RMP to address the lack of existing mechanisms to limit the density of surface facilities post-lease when faced with development proposals and individual drilling permits.⁷ The UFO and Colorado State Director's decision not to include similar stipulations in the UFO PRMP may simply be an oversight. Regardless, Colorado protests this decision and requests that the UFO follow in the TRFO's footsteps and, in accordance with SO 3362, take advantage of this planning process to include in the PRMP CSU stipulations to limit the density of surface facilities in critical big game winter range and migration corridors.

SO 3362 was signed after the 2016 Draft RMP/DEIS for the UFO was issued, but almost a year and a half prior to the PRMP/FEIS issuance in June 2019. However, the PRMP does not reference SO 3362, specify or provide additional protections for any big game winter range or migration corridors consistent with SO 3362 and CPW's previous comments, or provide other management guidelines for minimizing development that would fragment winter range and primary migration corridors. As reflected in Colorado's comments, the best available science demonstrates that seasonal timing limitations are not adequate to maintain big game populations in high density development areas; hence our request for stipulations limiting development density for both roads and oil and gas development to minimize development that would fragment winter range and priority habitats.⁴ Pursuant to recent conversations between CPW and BLM's Colorado State Office regarding SO 3362 implementation, BLM staff have indicated that they lack the appropriate authorization to address Colorado's desire to adopt a stipulation to address route and facility densities, but that they could address Colorado's recommendation when RMPs are being revised or amended. Yet, notwithstanding Colorado's repeated requests and the Secretarial Order, BLM has failed to take advantage of the UFO RMP planning process to include these stipulations

Summary:

The BLM did not consider Secretarial Order 3362 in development of the PRMP.

Response:

As of the development of the PRMP/FEIS, the State of Colorado's action plan for the implementation of Secretarial Order 3362 did not include any priority big game migration corridors within the UFO Planning Area. Therefore, this information was not ripe to include in the RMP effort to support additional decision-making or analyze the impacts of proposed density limitations. However, as shown in Appendix T of the PRMP/FEIS, the BLM collaborated with the State of Colorado (Colorado Parks and Wildlife [CPW]) during the planning process by considering CPW objectives in the development of UFO RMP management actions and goals, and by coordinating with CPW in the development of mitigation measures. Since release of the UFO PRMP/FEIS, CPW shared a revised action plan with the BLM Colorado State Office. The BLM will continue to coordinate with the State to further refine these data and to develop mutually beneficial strategies to address big game habitat and migration corridors consistent with Secretarial Order 3362. As a result of the Governor's Consistency Review, the BLM adopted a new controlled surface-use stipulation for fluid mineral leasing with the purpose of ensuring the function and suitability of big game winter range, migration, and production areas. The stipulation will require the development of a mitigation plan in coordination with CPW that demonstrates that the overall function and suitability of big game winter ranges, migration, and production areas will not be impaired.

FLPMA – Areas of Critical Environmental Concern

UFORMP-080_ClabbersN_20190728

The Wilderness Society

Clabbers, Nicholas

Issue Excerpt Text: In the Proposed RMP/FEIS, despite identifying more than 215,000 acres of land that meet the criteria to be designated as an ACEC, BLM basically proposes to keep designations at their existing level (approximately 30,000 acres), which also represents approximately 20,000 fewer acres than the Preferred Alternative discussed in the Draft RMP/EIS. These numbers, on their face, demonstrate that BLM has not given “priority to the designation and protection of [ACECs].” 43 U.S.C. § 1712(c)(3). The rationale for BLM’s decision in this context is unclear and potentially based on flawed information. In comments to the BLM on the Draft EIS/RMP, many of the Protesting Parties noted that the scientific literature cited with respect to ecological emphasis areas was outdated when considered in the context of climate change. That research is also applicable to potential ACECs and has not been updated in the Final EIS/RMP in any meaningful way. See Proposed RMP/FEIS at Appx. D. Indeed, BLM does not appear to cite any research in its discussion of potential effects on ACECs or its designation decisions. This failure, together with the outdated research, calls into question whether BLM has properly considered whether individual potential ACECs have relevant and important values and should therefore be designated.

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: Despite numerous, well-documented Areas of Critical Environmental concern nominated for designation in the Uncompahgre RMP revision, Alternative E adopts no Ecological Emphasis Areas and only 30,190 acres in six small ACECs. In particular, it arbitrarily declines to adopt any ACECs for the San Miguel Gunnison Sage-Grouse or Sims-Cerro Gunnison Sage Grouse ACECs. Despite the acknowledged inadequacy of the standard stipulations for sage-grouse habitat in Alternative E, the relatively low oil and gas potential in the area, and the extreme vulnerability of Gunnison sage-grouse satellite populations, BLM wrongfully and arbitrarily fails to prioritize designation of ACECs generally, and the sage-grouse ACECs in particular, in the FEIS and its preferred alternative.

BLM arbitrarily and in violation of FLPMA fails to adopt reasonable proposed Areas of Critical Environmental Concern for the San Miguel and Sims-Cerro populations of Gunnison sage-grouse. BLM acknowledges that the nominated San Miguel Gunnison Sage-Grouse ACEC and Sims Cerro Gunnison Sage-Grouse ACEC could provide additional protection for two isolated, fragmented populations of threatened Gunnison sage-grouse.

Summary:

The BLM has violated the Federal Land Policy and Management Act of 1976 (FLPMA) by failing to give priority to the designation and protection of areas of critical environmental concern (ACECs).

Response:

In FLPMA Section 103(a), an 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 important and relevant resource values. Furthermore, 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 1610.78-2 provide the agency with guidance for the identification and consideration of ACECs for designation and protection during the

resource management planning process. However, there is no statutory or regulatory requirement that the BLM designate any or all ACECs identified or considered during the planning process.

In accordance with BLM Manual 1613, Areas of Critical Environmental Concern (1983), the BLM interdisciplinary team reviewed BLM-administered lands in the Planning Area to determine whether new areas should be considered for designation as ACECs, and whether existing ACECs should continue to be managed as ACECs, or if they should be expanded or reduced to protect the ACEC values. The BLM determined that management actions as applied under the Proposed Alternative E are adequate to protect the relevant and important values of those potential ACECs that were not carried forward for designation.

The BLM has discretion to designate all, some, or none of the potential ACECs that were evaluated during the planning process; there is no requirement that the agency carry forward potential ACECs into the PRMP (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 proposed plan (see PRMP/FEIS pp. 2-1 to 2-5).

FLPMA – Consistency with other Plans

UFORMP-022_BaumgartenD_20190725

Board of County Commissioners of Gunnison County

Baumgarten, David

Issue Excerpt Text: THE PROPOSED RMP/FINAL EIS WAS DRAFTED WITHOUT CONSIDERATION OF GUNNISON COUNTY’S FORMAL PLANNING AND LAND USE REGIMES. The BLM stated that decisions on the Proposed RMP/Final EIS will strive to be compatible with existing plans and policies of local “agencies within the Planning Area” as long as the decisions are consistent with the purposes, policies, and programs of federal law, and regulations applicable to public lands. As noted above, this is also required by FLPMA, 43 U.S.C. § 1702(c)(9). The Proposed RMP/Final EIS is fatally flawed because it does not consider - much less align with - fundamental Gunnison County regulatory regimes. The Proposed RMP/Final EIS, at Vol. 1, 1-7 through 1-8, identifies as a “related plan and authority,” the Gunnison County Land Use Resolution (the “Gunnison County LUR”). But while the Gunnison County LUR is one of the County’s significant land use planning and regulatory permitting mechanisms, the Proposed RMP/Final EIS neglects to mention, much less consider: 1. The Gunnison County Regulations for Special Development Projects (“1041 Regulations”). The 1041 Regulations are an exercise of Gunnison County’s authority - expressly delegated by the State of Colorado - over subjects that include: * Development within mineral resource areas; * Development within natural hazard areas; * Development within areas around major facilities of a public utility; * Development within an area containing or having a significant impact upon historical, natural or archeological resources of statewide importance; * Efficient utilization of municipal and industrial water projects; and * Development of recreation opportunities. The 1041 Regulations are particularly significant because Colorado S.B. 19-181 - which was adopted earlier in 2019 - grants local governments additional authorities regarding siting and development of oil and gas resources. 2. The Gunnison County Regulations for Oil and Gas Operations. Pursuant to these regulations, Gunnison County considers potential impacts both on and off federal lands. The U.S. Forest Service has explicitly recognized the efficacy of the regulations on federal lands. Subjects considered by these regulations include: * Ownership of surface; * Ownership of minerals; * Characteristics of and current condition of the operation location; * Topographic features; * Roads; * Easements; * Boundaries of districts, municipalities, or subdivisions; * Operation plans; * Water bodies and water structures; * Access and transportation routes; * Potential impacts on wildlife and wildlife habitat; * Potential impacts on vegetation; * Emergency response; * Potential impacts on drinking water supplies; * Municipal watersheds; * Potential impacts on water quality; * Waste management; * Hydraulic fracturing fluids disposal and reporting; and * Wildfire hazards. 3. The Gunnison County Coal Resource Special Area Coal Mining Regulations. These regulations have direct import for the North Fork Valley of the Gunnison River.

UFORMP-022_BaumgartenD_20190725***Board of County Commissioners of Gunnison County******Baumgarten, David***

Issue Excerpt Text: Alternative E does not address Colorado S.B. 19-181, which was made law between the time of the Draft RMP/EIS and the Proposed RMP/Final EIS. S.B. 19-181 prioritizes public health, welfare and safety, the environment, and wildlife.⁶ In certain circumstances, this may constrain or even preclude oil and gas exploration and development. In addition, S.B. 19-181 provides local government jurisdictions the ability to develop oil and gas land use regulations that could be more restrictive than the State’s permitting requirements. As the BLM is likely aware, Gunnison County has the authority to protect and promote the public health, welfare and safety of the people of Gunnison County, and the authority to regulate land use planning and quality and protection of the environment in the County. To this end, Gunnison County has adopted regulations to exercise such authorities including the review, approval or denial of proposed activities and uses of land and natural resources including oil and gas. It is critical for the BLM to include compliance with all Gunnison County 6 Appendix IV, R-329 contains the following: “Further, the Colorado Oil and Gas Conservation Commission is the primary agency charged with fostering the responsible development of Colorado’s oil and gas natural resources in a manner consistent with the protection of public health, safety, and welfare, including the environment and wildlife resources. Although the BLM does have standards and regulations for mineral extraction and development, the BLM requires that all operators be in full compliance with standards and measures set by the Colorado Oil and Gas Conservation Commission when conducting operations on public lands.” The mission of the Commission, as identified above, is consistent with the pre-SB-19-181 role but not the current commission mandate regulations regarding oil and gas exploration, development, operation and upstream activities as a mandatory element of the Proposed RMP/Final EIS. In addition, the BLM should include a requirement that any lessee comply with any other land use or environmental regulation imposed by Gunnison County in any way relates to operations on an oil and gas leasehold, including but not limited to water quality, public roads, emergency response, wildlife concerns, agricultural uses and recreation uses.

UFORMP-074_HollenbeckH_20190729***Ouray County******Hollenbeck, Hannah***

Issue Excerpt Text: THE PROPOSED RMP/FINAL EIS WAS DRAFTED WITHOUT CONSIDERATION OF OURAY COUNTY’S FORMAL PLANNING AND LAND USE REGIMES The BLM stated that decisions on the Proposed RMP/Final EIS will strive to be compatible with existing plans and policies of local “agencies within the Planning Area” as long as the decisions are consistent with the purposes, policies, and programs of federal law, and regulations applicable to public lands. As noted above, this is also required by FLPMA, 43 U.S.C. § 1702(c)(9). The Proposed RMP/Final EIS is fatally flawed because it does not consider - much less align with - fundamental Ouray County regulatory regimes.

UFORMP-102_KingL_20190728***Western Environmental Law Center******King, Laura***

Issue Excerpt Text: In addition, S.B. 19-181 provides local government jurisdictions the ability to develop oil and gas land use regulations that could be more restrictive than the State’s permitting requirements. As the BLM is likely aware, Gunnison County has the authority to protect and promote the public health, welfare and safety of the people of Gunnison County, and the authority to regulate land use planning and quality and protection of the environment in the County. To this end, Gunnison County has adopted regulations to exercise such authorities including the review, approval or denial of proposed activities and uses of land and natural resources including oil and gas. It is critical for the BLM to include compliance with all Gunnison County regulations regarding oil and gas exploration, development, operation and upstream activities as a mandatory element of the Proposed RMP/Final EIS. In addition, the

BLM should include a requirement that any lessee comply with any other land use or environmental regulation imposed by Gunnison County in any way relates to operations on an oil and gas leasehold, including but not limited to water quality, public roads, emergency response, wildlife concerns, agricultural uses and recreation uses.

UFORMP-076_KnightK_20190728

Town of Paonia

Knight, Kenneth

Issue Excerpt Text: The Town of Paonia’s original 2016 comment letter requested the BLM include all buffers and oil and gas restriction recommendations in the North Fork Alternative Plan, including a ½ mile setback and ¼ mile no leasing restriction between oil and gas operations and the Town’s source water supplies, which is consistent with the Town’s Source Water Protection Plan. This ½ mile setback is necessary to ensure that the Town is able to continue providing high-quality drinking water to its residents. The Proposed RMP imposes significantly less-protective setbacks and is inconsistent with the Town’s Source Water Protection Plan.

UFORMP-076_KnightK_20190728

Town of Paonia

Knight, Kenneth

Issue Excerpt Text: Paonia’s water is acquired via 38 surface water influenced ground-water springs and the Town passed Watershed Ordinance 2003-02 on February 25, 2003. Paonia has also created a Source Water Protection Plan which the BLM needs to consider in the determination of the final RMP. The planning team for the source water protection plan recommended “Source Water Protection Best Management Practices” be considered for implementation by several agencies, including the BLM. As our water crisis highlighted, infrastructure is fragile, and the Town needs an RMP crafted with that in mind. The Town of Paonia asks that, in order to protect the quality and quantity of our domestic water, the final UFO RMP include all buffers and oil and gas restriction recommendations in the Source Water Protection Plan and Alternative BL

UFORMP-080_ClabbersN_20190728

The Wilderness Society

Clabbers, Nicholas

Issue Excerpt Text: To comply with FLPMA and SO 3356, BLM’s RMP must include these [county] plans or at least incorporate a clear rationale describing why the desired conditions, goals, and objectives in these plans are not addressed.

SO 3356 directs DOI Bureaus to ““collaborate with state, tribal, and territorial fish and wildlife agencies to attain or sustain wildlife population goals during Department land-management planning and implementation, including prioritizing active habitat management projects and funding that contribute to achieving wildlife population objectives, particularly for wildlife that is hunted or fished, and identifying additional ways to include or delegate to states habitat management work on Federal lands.”” In comments on the Draft RMP/EIS, the Colorado Department of Natural Resources and Colorado Parks and Wildlife expressed concern that the Draft RMP/EIS should incorporate the objectives and commitments contained in several local plans and agreements important to the protection of wildlife and wildlife habitat. Public lands within the planning area have long been known as important to deer and elk populations, and the UFO has in fact been scrutinized by federal courts for failing to adequately consider impacts to wildlife associated with oil and gas development. See *Citizens for a Healthy Cmty. v. United States BLM*, 377 F. Supp. 3d 1223, 1246-47 (D. Colo. 2019). The following local plans were suggested therein, yet were not addressed in the Proposed RMP/FEIS: * The Range-wide conservation agreement and strategy for Roundtail Chub, Bluehead Sucker and Flannelmouth Sucker (2006); * 2006 Conservation Agreement for Colorado River Cutthroat Trout in the States of Colorado, Utah and Wyoming; * 2006 Conservation Strategy for Colorado River Cutthroat Trout in the states of Colorado, Utah and Wyoming, Gunnison and White-tailed prairie dog conservation strategy (2010); * Uncompahgre Habitat Partnership

Program-Habitat Management Plan (2010); * E-20 (2005); * RBS-21 West San Juan bighorn sheep DAU Plan; * Colorado Bighorn Sheep management Plan 2009-2019; and * State Wildlife Action Plan (2015).”

Summary:

The PRMP/FEIS is in violation of FLPMA because it fails to include or incorporate all State, local, and tribal plans or provide a clear rationale describing why the desired conditions, goals, and objectives in these plans are not addressed in the PRMP/FEIS.

Response:

Section 202 (c)(9) of FLPMA requires that “land use plans of the Secretary under this section shall be consistent with state and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.” However, BLM land use plans may be inconsistent with State, local, and tribal plans where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and other Federal laws and regulations applicable to public lands (43 CFR 1610.3-2(a)).

In accordance with this direction, the BLM has given consideration to State, local, and tribal plans that are germane to the development of the UFO PRMP/FEIS and addressed inconsistencies to the extent these entities provided notification of such. The BLM has worked closely with State, local, and tribal governments during preparation of the UFO PRMP/FEIS. Chapter 5 of the FEIS describes coordination that has occurred throughout the development of the UFO PRMP/FEIS.

Assessment and protection of source water areas are presented on pages 3-28 through 3-31 of the UFO RMP/EIS. Additional levels of source water protection are discussed on pages 4-84 and 4-85 of the UFO RMP/EIS. Furthermore, compliance with the Clean Water Act, the Colorado River Salinity Control Act, the Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration, and application of site-specific best management practices (BMPs) and stipulations contained in Appendix B of the UFO RMP would reduce impacts on water resources. Furthermore, the Colorado Oil and Gas Conservation Commission has regulations on setbacks from designated source water protection areas. The BLM considers these and ensures development proposals are consistent with these rules and enforced Federal regulations.

Gunnison County’s comment letter submitted on the Draft Environmental Impact Statement (DEIS) did not mention any of the regulations noted in its protest letter (i.e., the Gunnison County regulations for Special Development Projects, the regulations for Oil and Gas Operations, and the Gunnison County Coal Resource Special Area Coal Mining regulations), nor has the UFO been made aware of these plans by the County to date. In accordance with 43 CFR 1610.3-2, State Directors and Field Managers shall, to the extent practicable, keep apprised of State and local governmental and Indian tribal policies, plans, and programs, but they shall not be accountable for ensuring consistency if they have not been notified, in writing, by State and local governments or Indian tribes of an apparent inconsistency.

Colorado Senate Bill 19-181 does not yet have written regulations associated with it in order to provide for consistency.

The Ouray County protest letter makes the general statement that the RMP/Final EIS is “fatally flawed because it does not consider - much less align with - fundamental Ouray County regulatory regimes.” FLPMA does not require alignment with local plans and allows for inconsistency with State, local, and tribal plans where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and other Federal laws and regulations applicable to public lands (Section 202(c)(9)). The BLM did consider Ouray County regulatory regimes that are germane to the development of the UFO PRMP/FEIS. As an example, the Ouray County letter sent on the DEIS makes several references to land disposals described in the Ouray County Master Plan. The BLM addressed lands “available for disposal” in the RMP/FEIS (see Table 2-1, Lands and Realty; Table 2-2, Line 60). Legal descriptions of lands available for disposal are provided in Appendix N of the RMP/FEIS. Importantly,

while these tracts of public land have been found to meet criteria for disposal in accordance with FLPMA (Section 203 and/or Section 206) during this land use planning effort, the identification of a public land tract as having met FLPMA criteria for disposal is not, in itself, a decision to dispose of public lands. The BLM would evaluate any future disposal actions on a case-by-case basis under project-specific National Environmental Policy Act (NEPA) and appropriate regulations. By regulation, a Notice of Realty Action or Notice of Exchange Proposal must be published in the *Federal Register* for all tenure actions. There are no official plans to dispose of public lands within the UFO RMP Planning Area.

A list of the local, State, and tribal plans that the BLM considered can be found in Section 1.7 of the FEIS. The agency will discuss why any remaining inconsistencies between the UFO PRMP/FEIS and relevant local, State, and tribal plans cannot be resolved in the Record of Decision for the UFO PRMP.

FLPMA – Unnecessary or Undue Degradation

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: FLPMA’s unnecessary and undue degradation requirements are distinct from requirements under NEPA. “A finding that there will not be significant impact [under NEPA] does not mean either that the project has been reviewed for unnecessary and undue degradation or that unnecessary or undue degradation will not occur.” *Ctr. for Biological Diversity*, 623 F.3d at 645 (quoting *Kendall’s Concerned Area Residents*, 129 I.B.L.A. 130, 140 (1994)). In the instant case, the UFO’s failure to specifically account for UUD in the RMP and EIS - which is distinct from its compliance under NEPA - is also actionable on procedural grounds. Conservation Groups addressed this issue in their Comments on the DEIS, at p. 186.

Summary:

The BLM failed to specifically account for unnecessary or undue degradation in the RMP and EIS.

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 PRMP/FEIS provides for the balanced management of the public lands in the Planning Area. In developing the PRMP/FEIS, the BLM complied with its planning regulations (43 CFR 1610), the requirements of NEPA, and other statutes, regulations, and Executive Orders related to environmental quality. The PRMP/FEIS identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the unnecessary or undue degradation of public lands. It does not authorize any use of the public lands, much less any that would result in unnecessary or undue degradation.

Congress recognized that through the BLM’s multiple-use mandate, there would be conflicting uses and impacts on the public land. Because the PRMP/FEIS would not specifically authorize any uses of public lands, and the alternatives evaluated in the FEIS comply with all applicable statutes, regulations, and policies, the PRMP/FEIS will not result in “unnecessary or undue degradation of the lands” under Section 302(b) of FLPMA.

NEPA – Purpose and Need

UFORMP-080_ClabbersN_20190728

The Wilderness Society

Clabbers, Nicholas

Issue Excerpt Text: In the Proposed RMP/FEIS, BLM silently abandoned the purpose and need statement that was articulated in the Draft RMP/EIS and adopted a new one that is inadequate. Compare Draft RMP/EIS at 1-2 with Proposed RMP/FEIS at 1-1. As an initial matter, although the Proposed RMP/FEIS claims that changes between the Draft and Final EIS had been identified through shaded text, it did not do so with the changes to the purpose and need statement. See *id.* As a result, BLM misled the public by concealing the changes to readers who relied on BLM’s statement that the agency flagged changes from the draft with shaded text. Moreover, the final purpose and need statement is inadequate for several reasons. First, it eliminated the Draft RMP/EIS’s stated purpose “to provide broad-scale direction for the management of public lands and resources” in the planning area but failed to replace it with any specific purpose for the Uncompahgre RMP. See Proposed RMP/FEIS at 1-1 (stating only why RMPs are revised “[i]n general”). Second, it narrowed the need to revise the RMP from addressing “new information, revised laws and policies, emerging issues, and changed circumstances and resource conditions” to “ensure compliance with current mandates and to address issues that have arisen since their preparation.” Compare Draft RMP/EIS at 1-2 with Proposed RMP/FEIS at 1-1. BLM provided no rational explanation for excluding new information, changed circumstances, and resource conditions from the enumerated factors that resulted in the need to revise the RMP. Due to the critical role that the purpose and need statement plays in the evaluation and selection of alternatives, these changes were not harmless and do not comply with NEPA.

Summary:

BLM modified the purpose and need statement between the DEIS and FEIS and narrowed the scope without providing an explanation for the change.

Response:

In accordance with NEPA, the BLM has discretion to establish the purpose and need for a proposed action (40 CFR 1502.13). The BLM must construct its purpose and need to conform to existing decisions, policies, regulations, or laws (BLM Handbook H-1790-1, Section 6.2).

The purpose and need may not be so narrow that only one alternative becomes a foreordained outcome and may not be so broad that an infinite number of possibilities could accomplish the goals of the project. The purpose and need statement for the UFO RMP planning process provides the appropriate scope to allow the BLM to analyze a reasonable number of alternatives that represent alternative approaches for managing the public lands in the Planning Area.

The purpose and need statement established by the BLM for the UFO RMP planning process was edited between the DEIS and FEIS. These edits, which were made for readability and organization, did not substantially alter the purpose and need statement or narrow the scope. Furthermore, the purpose and need statement presented in the DEIS Executive Summary was simply carried forward into the FEIS Executive Summary and FEIS Chapter 1, as the BLM believed it represented a more clear version of the text provided in DEIS Chapter 1.

NEPA – Range of Alternatives

UFORMP-022_BaumgartenD_20190725

Board of County Commissioners of Gunnison County

Baumgarten, David

Issue Excerpt Text: Section 1-2 states: “The Curecanti National Recreation Area is withdrawn to the US DOI, BOR and managed by the NPS under a Memorandum of Understanding between NPS and BOR. Curecanti National Recreation Area is within the planning boundary until legislation supersedes. BOR’s withdrawn lands with the boundary are withdrawn from appropriation under the US mining laws, and the area is not closed to fluid mineral leasing or mineral materials disposal.” * The Curecanti Unit which includes both the Black Canyon of the Gunnison National Park and the Curecanti National Recreation area are contemplated in the Proposed RMP/Final EIS under Alternative E to be open for fluid mineral leasing which would be a drastic and wholesale change from previous drafts and the BLM policies and would lead to certain precedence across the nation as to the ability for the DOI to allow for extractive industry to lease land within national parks, monuments and other federal recreation areas. This change is certainly against the desire of the citizens of the United States who overwhelmingly support preservation of these national treasures. It is almost unfathomable that fluid mineral leasing and mineral materials disposal would be considered available in one of the headwater water supply reservoirs that serve the downstream states of the Colorado River.

UFORMP-022_BaumgartenD_20190725

Board of County Commissioners of Gunnison County

Baumgarten, David

Issue Excerpt Text: The Fluid mineral leasing acreage in the newly proposed Alternative E, retains the same open and closed acreage as Alternative A, the current condition. The current RMP predates the concerns for lynx, Gunnison Sage-grouse and many new conditions that have developed, including new science and data regarding climate change. There is no explanation for the changes in the newly proposed Alternative E. The acreage identified for NSO is severely cut in the new alternative. Omission of stipulations NL-8 (Page B-9), NSO-6/SSR-8 (Page B-17), NSO-9/SSR-11 (Page B-18), NSO-11/SSR-13 (Page B-19), NSO-19/SSR-16 (Page B-23), NSO-31/SSR-32 (Page B-128), NSO-69 (Page B-52), CSU-16 (Page B-63), and CSU-23/SSR-26 (B-67) are inadequate for protection of special resources. REQUESTED REMEDY: Chapter 2, Pages 2-8 and 2-11, under the headers of Fluid Mineral Leasing, Restrictions for Surface-disturbing Activities, and Locatable Minerals, Mineral Materials, and Nonenergy Solid Leasable Minerals with the contents of Appendix B: Restrictions Applicable to Fluid Minerals Leasing and Other Surface-disturbing Activities constitute an entirely new Alternative. BLM needs to allow public comment and reconsider Cooperating Agency input for this new Alternative E which severely degrades protections for hydrologic, aquatic, riparian, water supply resources, as well as cultural and wildlife resources. Colorado Parks and Wildlife guidelines and standards need to be followed.

UFORMP-022_BaumgartenD_20190725

Board of County Commissioners of Gunnison County

Baumgarten, David

Issue Excerpt Text: The fluid mineral leasing acreage in the newly proposed Alternative E appears to retain the same open and closed acreage as Alternative A, the current condition. However, the current RMP predates the concerns for lynx, the listing of the Gunnison Sage-grouse as a “threatened species,” and many new conditions that have developed, including new science and data regarding climate change. And, the acreage identified for NSO is severely reduced in Alternative E. Omission of certain stipulations are inadequate for protection of special resources. Gunnison County, as a Cooperating Agency, has been denied the opportunity to comment on the new Proposed Alternative E in the Proposed RMP/Final EIS. It is unclear how the proposed actions in the Proposed RMP/Final EIS were contemplated by the BLM’s referenced BA, which has not been made available, or contemplated by the USFWS’s BO, referenced in

the Proposed RMP/Final EIS as having been signed on December 17, 2018, but also not provided for review.⁷ The Proposed RMP/Final EIS was published in the Federal Register on June 28, 2019.

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: A Comparative Summary of Alternatives is presented in Table 2-1. FEIS 2-6. It shows that many resource uses were considered, including coal and fluid minerals, but, other than addressing ROWs and utility corridors generally, the table plainly illustrates how the Alternatives considered fail to incorporate renewable energy as a resource. The FEIS fails to even list renewable energy development as an Alternatives Considered but Eliminated from Detailed Analysis. FEIS 2-15 to 2-18. On the other hand, the FEIS provides an extensive look at coal and fluid minerals leasing. FEIS 4-236 to 4-273. The Uncompahgre Field Office also conducted an extensive Reasonably Foreseeable Development Scenario report for oil and gas development in 2012.⁶

Contradicting the lack of in-depth analysis of renewable energy potential, the BLM assumes that the demand for renewable energy ROWs ““would increase over the life of this RMP.””⁷ FEIS 4-312. The basis for this assumption and the magnitude of this increase go unexplained. Yet, ultimately, BLM dismisses the potential for renewable energy development in 6 Uncompahgre Field Office, Reasonable Foreseeable Development Scenario for Oil and Gas for the Uncompahgre Field Office, Colorado, 2012, available at https://eplanning.blm.gov/epl-frontoffice/projects/nepa/66641/81689/95910/UncompahgreRFD_Feb2012.pdf (previously attached as Exhibit 40) (““UFO RFD””).⁷ Uncompahgre Field Office, ““Renewable Energy Potential Report,”” Resource Management Plan Revision and Environmental Impact Statement, May 2010, available at: https://eplanning.blm.gov/epl-frontoffice/projects/lup/62103/78800/90467/UFO_RenewEnergy_05-25-2010_508.pdf (previously attached as Exhibit 39).⁸ Id. at 3-5. CONSERVATION GROUPS’ PROTEST UNCOMPAHGRE FIELD OFFICE PRMP AND FEIS 15 the planning area, stating that: ““Although state of Colorado policies and financial incentives are classified as favorable for renewable energy development, the UFO does not rank nationally among the top 25 BLM field offices with potential.””⁸ FEIS 3-117. The FEIS further states that ““the demand for renewable energy-related ROWs should increase nationally, although within the Planning Area, the potential for wind, solar, and biomass energy is considered to be low relative to other field offices in BLM.””⁸ FEIS 3-118. This dismissive approach ignores the high potential found for solar photovoltaic resources, and future economic conditions and energy demand in the planning area. The planning area’s national rank is immaterial to BLM’s requirement to adequately analyze the potential for renewable energy.”

Summary:

The BLM did not adequately consider public comment on the range of alternatives or allow for public comment and cooperating agency input during development of the PRMP (Alternative E). BLM failed to consider renewable energy potential and should consider an alternative with greater constraints on fluid mineral leasing for the protection of other resources.

Response:

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

The BLM developed a reasonable range of alternatives that meet the purpose and need of the UFO PRMP/FEIS and that address resource issues identified during the scoping period. The UFO PRMP/FEIS analyzed six alternatives, which are described in Section 2.3 of the UFO PRMP/FEIS. The alternatives analyzed in the UFO PRMP/FEIS cover the full spectrum by varying in: (1) degrees of protection for each resource and use; (2) approaches to management for each resource and use; (3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and (4) levels and methods for restoration.

As noted in Section 2.5 (*Considerations in Selecting a Preferred Alternative*) of the UFO Draft RMP/EIS, the range of alternatives offers strategies for resolving deficiencies in existing management and addresses issues identified through internal assessment and public scoping. Comments submitted by other government agencies, public organizations, State and tribal entities, and interested individuals were given careful consideration. Public scoping efforts enabled the BLM to identify and shape significant issues pertaining to recreational opportunities, wildlife habitat, mineral exploration and development, cultural resources, grazing, land tenure, potential ACECs, public land access, and other program areas. Cooperating agencies and the Southwest Resource Advisory Council Subgroup reviewed and provided comments at critical intervals during the alternative development process. Appendix R (*Comment Summary and Response Report*) of the UFO PRMP/FEIS describes the public comment and response process to finalize the EIS.

Per its enabling legislation found in PL106-76 (October 21, 1999), the Black Canyon of the Gunnison National Park is “withdrawn from all forms of entry, appropriation or disposal under the public land laws; from location, entry, and patent under the mining laws; and from disposition under all laws relating to mineral and geothermal leasing.” As noted on page 1-2 of the UFO PRMP/FEIS, “The Curecanti National Recreation Area (CURE) is withdrawn to the U.S. DOI, Bureau of Reclamation (BOR) and managed by the National Park Service (NPS) under a Memorandum of Understanding between NPS and BOR. CURE is within the planning boundary until legislation supersedes; BOR’s withdrawn lands within the boundary are withdrawn from appropriation under the U.S. mining laws, and the area is not closed to fluid minerals leasing or mineral materials disposal.” While the current UFO RMP does not make decisions on fluid leasing or mineral materials disposal in the CURE, Alternative E, Agency-Proposed Alternative, of the PRMP/FEIS includes a stipulation that prohibits surface occupancy and use within the boundaries of the CURE (p. B-45). Additionally, under all alternatives, the CURE would remain closed to coal leasing, in accordance with congressional mandates (FEIS p. 4-244).

As part of the planning effort, the BLM prepared a Renewable Energy Potential Report (2010) to identify the potential for development and potential locations of renewable energy on lands administered by the UFO. In addition, and in cooperation with the National Renewable Energy Laboratory, the BLM assessed renewable energy resources on public lands in the western U.S. The BLM reviewed the potential for concentrated solar power, photovoltaics, wind, and biomass energy on BLM, Bureau of Indian Affairs, and National Forest System lands in the western U.S., except Alaska. In December 2005, the BLM signed a Record of Decision for the Wind Programmatic EIS. In October 2012, the BLM signed a Record of Decision for the Solar Energy Development Programmatic EIS. These documents served as the baseline for analysis of renewable energy resources in the UFO PRMP/FEIS. Renewable energy potential within the Planning Area, excluding right-of-way exclusion areas, the Tabeguache Area, and wilderness study areas are discussed in Section 3.2 of the UFO PRMP/FEIS. Importantly, all action alternatives of the UFO PRMP/FEIS allow for renewable energy project development and operation, except in right-of-way exclusion areas and areas identified as exclusion in Table 2-3 (Renewable Energy Exclusion and Avoidance Areas).

NEPA – Range of Alternatives – Coal production

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: Notably, the final EIS indicates that nearly all of the coal production in the resource area will come from a 40,000 acre area that is almost entirely open to leasing under each alternative: the Somerset coal field. FEIS at 4-454; S-104-289 (“Coal production would not change across alternatives even though there are differences in the number of acres. That is because production is expected to come from one mine, and those acres of federal coal are currently leased.”) The only way to produce a range of alternative coal outcomes would be to analyze alternatives that placed significant portions of the Somerset area off-limits to coal mining-which BLM failed to do, in violation of NEPA. Conservation Groups here reiterate their previous request that BLM evaluate at least one alternative that will result in at least a 50% reduction in coal production in the resource area over the 20-year life of the plan, and another that will eliminate new coal leasing.

Summary:

The BLM failed to provide a range of alternatives for the coal program.

Response:

The BLM must analyze a reasonable range of alternatives, but not every possible alternative, to a proposed action: “In determining the alternatives to be considered, the emphasis is on what is ‘reasonable’ 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-1790-1, at 50, citing Question 2a, CEQ, Forty Most Asked Questions Concerning CEQ’s NEPA Regulations, March 23, 1981; see also 40 CFR 1502.14).

The BLM developed a reasonable range of alternatives that meet the purpose and need of the UFO RMP and that address resource issues identified during the scoping period. The PRMP/FEIS analyzed five alternatives and a partial alternative, which are described in Section 2.3. The alternatives analyzed in the PRMP/FEIS cover the full spectrum by varying in: (1) degrees of protection for each resource and use; (2) approaches to management for each resource and use; (3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and (4) levels and methods for restoration. The BLM considered areas acceptable/unacceptable for coal leasing based on the other resource values or land uses that would be protected through closure (see Table 2-2, Solid Leasable Minerals (coal), pp. 2-64 to 2-65; Table 4-16, Quantitative Impacts on Coal Leasing, p. 4-245). This includes but is not limited to wilderness study areas, surface water supplies, state wildlife areas, special recreation management areas, ACECs, and other important resource areas. The resource values protected through closures vary between alternatives. Areas determined to be acceptable for coal leasing in the RMP would be further evaluated prior to any future exploration or leasing. An alternative that would prohibit coal leasing throughout the Decision Area was considered but eliminated from detailed analysis because it would not meet the purpose and need for the RMP, part of which is management direction in accordance with principles of multiple use and sustained yield (see Section 2.4.3, p. 2-16).

New coal leases and development would be affected by an increase in the amount of lands allocated as unacceptable for coal leasing and development and unsuitable for surface mining and surface mining operations. Coal exploration and development on BLM-administered lands would continue under all alternatives on existing leases including the Somerset coal field, which has the greatest potential for continuing to produce the largest amount of coal in the Planning Area (p. 4-241). In terms of production, the BLM states in the PRMP/FEIS that coal production is expected to remain constant across all

alternatives (estimated at 9 to 11 million tons per year) and would not be affected by the planning decisions under consideration (p. 4-240).

The BLM considered a reasonable range of alternatives in the UFO PRMP/FEIS in full compliance with NEPA. This included consideration of an alternative that would prohibit coal leasing throughout the Decision Area, which was eliminated from detailed analysis as described in Section 2.4.4 of the PRMP/FEIS.

NEPA – Range of Alternatives – Fluid Minerals

UFORMP-080_ClabbersN_20190728

The Wilderness Society

Clabbers, Nicholas

Issue Excerpt Text: As in Wilderness Workshop, the BLM should have considered an alternative in the UFO RMP that would eliminate oil and gas leasing in areas with “lower” potential for oil and gas development. Four of the six alternatives considered in the Proposed RMP/FEIS would close only 5% of the 916,030 total acres of federal mineral estate to leasing (Alt. A= 5%, Alt. B = 24%; Alt. B1= 33.5%; Alt. C=5%; Alt. D=5.5%; Alt. E=5%), even though, in each alternative, a significant portion of the areas left open to development have a “lower potential” for development: Lower Potential Areas Left Open to Development Alt. A = 412,150 acres (47%) Alt. B = 353,720 acres (48%) Alt. B1 = 287,570 acres (46%) Alt. C = 412,150 acres (47%) Alt. D = 410,600 acres (47%) Alt. E = 433,230 acres (50%) Proposed RMP/FEIS at Tables 4-18, 4-21, 4-24, 4-26, 4-29, 4-32. This is hardly “provid[ing] legitimate consideration to alternatives that fall between the obvious extremes” as required by *Dombeck*. 185 F. 3d at 1175.

UFORMP-080_ClabbersN_20190728

The Wilderness Society

Clabbers, Nicholas

Issue Excerpt Text: Proposed RMP/FEIS at 4-266 - 4-267. BLM appears to argue that restrictions may limit or minimize development, and so the Proposed Action is different because it is more protective of wilderness and/or recreational values. But there is a significant difference between closing an area - which provides certainty - and applying stipulations that are subject to waiver, exception, and modification. Moreover, this is hypothetical, and as the court in *Wilderness Workshop* pointed out, what is certain is that even if there is minimal chance of development, leasing these lands would detract from BLM designating them for other uses. 342 F. Supp. 3d at 1166.

UFORMP-080_ClabbersN_20190728

The Wilderness Society

Clabbers, Nicholas

Issue Excerpt Text: Similarly, BLM failed to consider a standalone alternative for evaluation of oil and gas allocations based on development potential, as suggested in public comments on the Draft RMP/EIS. Protesting Party TWS provided with its comments on the Draft RMP/EIS a proposal for an updated approach to making oil and gas allocations and management decisions. See Exhibit 4. Under this approach, BLM would prioritize leasing outside of low-potential areas to avoid land-management conflicts later in time and to confer significant public benefits including increased economic return and opportunities to fulfill other objectives of its multiple-use mission. The methodology suggested by TWS would have BLM map oil and gas potential across the planning area, define areas of high/medium/low/no resource conflict, make allocations for areas with high and medium oil and gas development potential, and make allocations for areas with low or no oil and gas potential. This approach, TWS contended, would better reflect the BLM’s multiple use and sustained yield mandate, lead to development of more balanced RMPs, and reduce conflict and costs associated with speculative leasing.

UFORMP-102_KingL_20190728***Western Environmental Law Center******King, Laura***

Issue Excerpt Text: Beyond the agency’s failure to take a meaningful hard look at resource impacts from global warming, BLM failed in its basic obligation to consider all reasonable alternatives, including alternatives that would significantly reduce planning area greenhouse gas emissions, and in particular an alternative that considers not leasing public lands for fossil fuel development. 40 C.F.R. § 1502.14. BLM claims that “a full closure to fluid mineral leasing alternative was not carried forward because the BLM has no suitable thresholds or standards to measure and compare the significance of impacts related to greenhouse gas emissions under that alternative relative to other alternatives.” FEIS at 2-16. This excuse is inadequate under NEPA. BLM also does not address why it could not consider a “limited leasing” alternative. In fact, as Conservation Groups have explained, there are multiple scientifically robust methods to meaningfully disclose the impact of greenhouse gas emissions. One such tool is the social cost of carbon, which was “designed to quantify a project’s contribution to costs associated with global climate change.” High Country Conserv. Advocates v. U.S. Forest Serv., 52 F. Supp. 3d 1174, 1189-90 (D. Colo. 2014). Specifically, the social cost of carbon protocol is a valid, well-accepted, credible, and interagency-endorsed method of calculating the costs of greenhouse gas emissions and understanding the potential significance of such emissions.⁴ The protocol is just the sort of tool that can be used as a proxy for understanding climate impacts and to compare alternatives, as required by NEPA. See 40 C.F.R. § 1502.22(a) (stating agency “shall” include all “information relevant to reasonably foreseeable significant adverse impacts [that] is essential to a reasoned choice among alternatives”).

UFORMP-102_KingL_20190728***Western Environmental Law Center******King, Laura***

Issue Excerpt Text: In rejecting a “no leasing alternative,” BLM also states that “The Mineral Leasing Act (30 US Code 226) gives BLM the authority to lease and manage federal fluid mineral estate.” But BLM fails to acknowledge that it also has legal authority under FLPMA, the MLA and NEPA to adopt a no-leasing alternative as necessary to respond to the threats posed by climate change. BLM has broad discretion in determining when, how, and if fossil fuel resources are made available for leasing.

UFORMP-102_KingL_20190728***Western Environmental Law Center******King, Laura***

Issue Excerpt Text: As Conservation Groups urged in their comments on the Draft RMP/Draft EIS (attached as Exhibit 1-1) at pp. 22-28, BLM must also consider “no leasing” or “limited leasing” alternatives in light of the best available information and science, and in consideration of national policy. BLM failed to do so. Instead, all of the final EIS alternatives, including the new “agency-proposed” alternative E, propose to leave available extensive lands for fossil fuel leasing and development. FEIS at 2-8. BLM’s range of alternatives fails to satisfy its statutory obligations under FLPMA and NEPA.

UFORMP-102_KingL_20190728***Western Environmental Law Center******King, Laura***

Issue Excerpt Text: Even with only one operating oil and gas well, the UFO’s Crawford Population has been in dramatic decline from 2000 through 2012, and had to be supplemented with birds from the Gunnison Basin in 2011 through 2013.¹⁷⁶ BLM manages approximately 63% of the remaining occupied habitat for this population, as well as 13% of occupied habitat. Despite the precarious status of the Crawford Population in particular, the UFO DEIS fails either to take a hard look at the extensive science showing relationship between oil and gas density and sage-grouse population decline, or to consider any alternative that would either limit density of development or exclude oil and gas entirely from Gunnison sage-grouse occupied and/or suitable habitat. Given that 63% of the Crawford Population’s remaining

habitat is on BLM land with “moderate” oil and gas decisions, BLM’s failure to consider a no-leasing alternative for that area foregoes an opportunity to foster recovery and to eliminate a significant threat to the extirpation of one of the few remaining populations of Gunnison sage-grouse.

UFORMP-030_McGuireE_20190727

Desert Weyr, LLC

McGuire, Eugenie

Issue Excerpt Text: Without considered a no-leasing alternative, nor considering how the North Fork Alternative Plan would be carried out if include in the preferred alternative, the draft RMP fails to fulfill it’s duty to consider the full range of reasonable management possibilities.

Summary:

The BLM failed to consider a standalone alternative for evaluation of oil and gas allocations based on development potential, as suggested in public comments on the Draft RMP/EIS, and failed to consider “no leasing” or “limited leasing” alternatives. The BLM failed to consider any alternative that would either limit the density of development or exclude oil and gas entirely from the declining Crawford population of Gunnison sage-grouse occupied and/or suitable habitat. The BLM’s range of alternatives fails to satisfy its statutory obligations under FLPMA and NEPA.

Response:

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

The BLM considered but eliminated from detailed analysis alternatives that proposed exclusive use or maximum development, production, or protection of one resource at the expense of other resources or resource uses (Section 2.4). This included an alternative that would prohibit fluid mineral leasing throughout the Decision Area (Section 2.4.3). All of the alternatives propose closure of areas to fluid mineral leasing based on policy or legislation, or when it has been determined that resource values cannot be adequately protected even with restrictive lease stipulations. Resource values that can only be protected by prohibiting all fluid mineral leasing throughout the Decision Area have not been identified by the BLM. An alternative prohibiting fluid mineral leasing throughout the Decision Area would also not meet the purpose of and need for the RMP, part of which is management direction in accordance with principles of multiple use and sustained yield.

Each alternative analyzed in detail allowed for some level of support, protection, or use of all resources in the Planning Area. In some instances, the alternatives analyzed in detail did include various considerations for eliminating or maximizing individual resource values or uses in specific areas where conflicts existed. In regard to the alternatives considered for special status species, the BLM analyzed a range of limitations on oil and gas development across Alternatives A through E. For example, under Alternative B, the BLM considered a no surface occupancy (NSO) stipulation within habitat for federally listed wildlife and bird species such as the Gunnison sage-grouse to protect all known and currently occupied core habitats for federally protected species, in accordance with the ESA. Under Alternative D, the BLM analyzed NSO to protect all known and currently occupied core habitats for federally protected species to maintain the integrity of habitat for federally listed, proposed, or candidate threatened or endangered wildlife species and promote recovery of the species. The alternatives also evaluated timing limitations, CSU restrictions, and conditions of approval that would minimize impacts on resource values including Gunnison sage-grouse. Regarding the declining Crawford Gunnison sage-grouse population,

the bird's occupied critical habitat is entirely within the Gunnison Gorge National Conservation Area RMP Planning Area; there are small, isolated pieces of BLM-administered land within potential (unoccupied) critical habitat within the UFO RMP Decision Area.

The BLM considered alternatives proposed by the public, including the alternative for evaluation of oil and gas allocations based on development potential, as suggested in public comments on the Draft RMP/EIS, and documented the reason for dismissing the alternative from detailed study in Appendix R (p. R-456) of the UFO PRMP/FEIS. Additionally, Alternative B.I was developed from a resource-based set of recommendations provided by a community group and would close certain areas to oil and gas leasing and impose development setbacks with strict surface use restrictions in the North Fork and Smith Fork drainages of the Gunnison River (see p. 2-5 of the UFO RMP). The BLM's fluid minerals alternatives contain varying options for protection of resources, resulting in varying impacts that can be compared among all alternatives analyzed in the EIS. This includes direct and indirect impacts on sensitive resources, such as wildlife habitat, recreation areas, and sensitive water resources, as well as the analysis contained in the RFD scenario regarding potential development on UFO-administered lands, including the cumulative impacts of fluid mineral lease development in the UFO. Future technologies could change the fluid minerals development potential assumptions, making areas viable in the future; therefore, current development potential alone was not used to allocate closures to fluid minerals.

The BLM properly considered all alternatives submitted by the public and, consistent with 40 CFR 1502.14, the BLM properly dismissed an alternative that would prohibit fluid mineral leasing throughout the Decision Area from detailed analysis in the UFO RMP.

NEPA – Selection of a New Alternative without Public Input

UFORMP-080_ClabbersN_20190728

The Wilderness Society

Clabbers, Nicholas

Issue Excerpt Text: BLM added and selected a new alternative - Alternative E - in the Proposed RMP/FEIS without providing an opportunity for public comment, even though Alternative E was significantly different from alternatives in the draft. Alternative E included “substantial changes” to the proposed action and constituted “significant new circumstances” that required BLM to prepare a supplemental draft EIS. See *W. Expl., LLC v. U.S. Dept. of the Int.*, 250 F. Supp. 3d 718, 748 (D. Nev. 2017) (finding that changes in conservation protections for large swaths of lands constituted a “substantial change” relevant to environmental impacts that warranted an SEIS). BLM misled the public about the scope of these changes, downplaying them as merely a “reasonable combination” of the original alternatives. Proposed RMP/FEIS at 2-5. Absent preparation of a supplemental EIS, BLM has deprived the public of an opportunity to review and comment on Alternative E before the agency issued a Proposed RMP/FEIS, in violation of NEPA's mandates. This also violated BLM's obligation to provide “substantial treatment to each alternative” in a way that allowed reviewers to “evaluate their comparative merits” during the public comment process. See 40 C.F.R. §1502.14(b), (e).

UFORMP-092_McCluskieJ_20190728

Colorado House of Representatives

McCluskie, Julie

Issue Excerpt Text: The BLM's decision to create a wholly new and dramatically different “Alternative E”, and to offer the new Alternative as the Proposed Alternative is extremely disappointing in light of those 42,000 no-leasing comments, and a clear violation of the intent of the National Environmental Policy Act (NEPA). NEPA guarantees that the public will have “meaningful opportunities” to comment on the entire range of alternatives. My constituents have the right to comment on all reasonable alternatives, and the BLM's decision here violates that right. Presenting Alternative E to the public without an opportunity for public input during the final protest period is unacceptable.

UFORMP-122_TuddenhamK_201907***Sheep Mountain Alliance******Tuddenham, Karen***

Issue Excerpt Text: A 30-day comment period is insufficient for interested parties to read through and examine the proposed RMP in depth, particularly when materials such as map files were not publicly available for the majority of the 30-day period. In addition, in contravention of its own recommendations for the agency’s preferred alternative (Alternative D) in the draft RMP, the BLM adopted an entirely new alternative, Alternative E, without providing opportunities for public comment and input. During the 2016 draft RMP process, the agency received over 50,000 comments, the majority of which supported reduction of oil and gas leasing, and many of which recommended the adoption of alternative B.1 (the North Fork Alternative Plan). The agency has summarily dismissed this plan, despite the public support and input into the process that created it. This is unacceptable.

UFORMP-022_BaumgartenD_20190725***Board of County Commissioners of Gunnison County******Baumgarten, David***

Issue Excerpt Text: Alternative E inappropriately contains lands identified “for disposal” that are within 4 miles of a Gunnison Sage-grouse lek, are adjacent to or intersecting Gunnison Sage-grouse critical habitat, or are adjacent to private land conserved for Gunnison Sage-grouse habitat, or the disposal of which would conflict with existing user access to public or private lands, or water rights and irrigation. Gunnison County further protests the fact that the BLM did not timely or publicly make identification of these lands available for the protest period or for the 2016 DRMP/DEIS. REQUESTED REMEDY: A full “comment” opportunity is necessary to address these concerns.

UFORMP-074_HollenbeckH_20190729***Ouray County******Hollenbeck, Hannah***

Issue Excerpt Text: The overarching - and procedurally fatal - flaw in the Proposed RMP/Final EIS is the development of a wholly new Alternative E in disregard of the requirements of NEPA and FLPMA. FLPMA requires the BLM to ensure that the views of the general public and third-party participation are adequately incorporated into the land planning process. 43 U.S.C. 1701 (a)(5); 43 C.F.R. 1610.2. The disregard of NEPA and FPIMA has denied to Ouray County the “meaningful opportunities” guaranteed by those laws to participate in the iterative BIM process that resulted in the Proposed RMP/Final EIS. “The agency (now) has an obligation to re-circulate if a proposed action ultimately differs so dramatically from the alternatives canvassed in the draft EIS as to preclude meaningful consideration by the public.” *W. Org. of Res. Councils v. the BLM*, 591 F. Supp. 2d 1206, 121B n,2 (D. Who. 200B), citing *California v. Block*, 690 f, 2d 753, 770 (91h Cir. 19B2).

UFORMP-074_HollenbeckH_20190729***Ouray County******Hollenbeck, Hannah***

Issue Excerpt Text: In addition, the creation of a wholly new Alternative E - with neither notice to Ouray County nor an opportunity for Ouray County to comment - is in direct contradiction to the BIM’s formal recognition, in the MOU, of the “compelling need to ensure that the interests of Ouray County are accounted for and that [Ouray County will be] meaningfully engaged in the ... resource management planning effort and associated ‘EIS’” and the BLM’s obligation to create the opportunity for Ouray County to participate “to the fullest extent possible” in the development of the Proposed RMP/Final EIS. This obligation is also set out in FLPMA, in the BLM’s obligation to provide for “meaningful” input and “early” notice to local governments with affected lands and regulations, like Ouray County. While the BLM states that “(t}he policy 01 the BLM is to provide opportunities for the public, various groups, other federal agencies, Native American Tribal Governments, and state and local governments to participate meaningfully and substantively by providing input and comments during the preparation of the

RMP/EIS,” (Proposed RMP/Final EIS, Vol. 1, ES-1), the BLM has created - in the Proposed RMP/Final EIS - a wholly new Alternative E that thwarts the opportunity for such participation. REQUESTED REMEDY: Ouray County asserts that the only solution to this overarching and procedurally fatal flaw in the Proposed RMP/Final EIS is to provide a full “comment” opportunity. This is also required by NEPA, based on the new alternative that has been created through the BLM’s creation of Alternative E without sufficient explanation other than an oblique reference to its new policies but fundamentally changed the overall approach to management throughout the planning area. 40 C.F.R. § 1502.9(c)(1)(i)(supplemental NEPA analysis, including an opportunity for comment, is required if an “agency makes substantial changes in the proposed action that are relevant to environmental concerns”); see also *N.M. ex rel. Richardson*, 565 F.3d at 705.

UFORMP-074_HollenbeckH_20190729

Ouray County

Hollenbeck, Hannah

Issue Excerpt Text: Alternative E inappropriately contains lands identified “for disposal” that are adjacent to or intersecting Ouray Sage-grouse critical habitat, or the disposal of which would conflict with existing user access to public or private lands, or water rights and irrigation. Ouray County further protests the fact that the BLM did not timely or publicly make identification of these lands available for the protest period or for the 2016 DRMP/DEIS.

UFORMP-076_KnightK_20190728

Town of Paonia

Knight, Kenneth

Issue Excerpt Text: First, it is improper, and a violation of the National Environmental Policy Act for the BLM to publish an entirely new alternative here in this final proposed RMP. Alternative E, the proposed RMP, is wholly new. It has not been subject to any public comments or review. When the Town of Paonia commented on the Draft EIS for this RMP, we were unable to comment on Alternative E, because it did not exist. To offer a proposed RMP that has been subject to no public comment is unacceptable, doubly so when the new alternative is directly contrary to the comments submitted by over 40,000 members of the public, and the Town of Paonia.

UFORMP-022_BaumgartenD_20190725

Board of County Commissioners of Gunnison County

Baumgarten, David

Issue Excerpt Text: The overarching - and procedurally fatal - flaw in the Proposed RMP/Final EIS is the development of a wholly new Alternative E in disregard of the requirements of NEPA and FLPMA. FLPMA requires the BLM to ensure that the views of the general public and third-party participation are adequately incorporated into the land planning process. 43 U.S.C. 1701(a)(5); 43 C.F.R. 1610.2. The disregard of NEPA and FLPMA has denied to Gunnison County the “meaningful opportunities” guaranteed by those laws to participate in the iterative BLM process that resulted in the Proposed RMP/Final EIS. “The agency (now) has an obligation to re-circulate if a proposed action ultimately differs so dramatically from the alternatives canvassed in the draft EIS as to preclude meaningful consideration by the public.” *W. Org. of Res. Councils v. the BLM*, 591 F. Supp. 2d 1206, 1218 n.2 (D. Colo. 2008), citing *California v. Block*, 690 F.2d 753, 770 (9th Cir. 1982).

UFORMP-022_BaumgartenD_20190725

Board of County Commissioners of Gunnison County

Baumgarten, David

Issue Excerpt Text: In addition, the creation of a wholly new Alternative E - with neither notice to Gunnison County nor an opportunity for Gunnison County to comment - is in direct contradiction to the BLM’s formal recognition, in the MOU, of the “compelling need to ensure that the interests of Gunnison County are accounted for and that [Gunnison County will be] meaningfully engaged in the...resource

management planning effort and associated ‘EIS’ and the BLM’s obligation to create the opportunity for Gunnison County to participate “to the fullest extent possible” in the development of the Proposed RMP/Final EIS. This obligation is also set out in FLPMA, in the BLM’s obligation to provide for “meaningful” input and “early” notice to local governments with affected lands and regulations, like Gunnison County. While the BLM states that “(t)he policy of the BLM is to provide opportunities for the public, various groups, other federal agencies, Native American Tribal Governments, and state and local governments to participate meaningfully and substantively by providing input and comments during the preparation of the RMP/EIS,” (Proposed RMP/Final EIS, Vol. 1, ES-1), the BLM has created - in the Proposed RMP/Final EIS - a wholly new Alternative E that thwarts the opportunity for such participation.

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: In the FEIS, BLM includes for the first time a new alternative, Alternative E. While an agency can modify a proposed action in light of public comments, 40 C.F.R. § 1503.4(a), a supplemental EIS is required if BLM makes substantial changes that are relevant to environmental concerns, as it has in adopting the new Alternative E, 40 C.F.R. § 1502.9(c). Therefore, BLM must prepare a supplemental EIS.

UFORMP-099_MarkwellA_20190728

San Miguel County, Colorado

Markwell, Amy

Issue Excerpt Text: BLM should rescind the Proposed RMP based on the numerous substantive changes made to the alternatives without public and cooperating agency access to complete supporting materials and GIS files at the initial time of publication. Further supplemental analysis is required. An adequate public comment period is warranted due to the introduction of a new Alternative and lack of supporting documentation for review. All supporting background and data should be publicly available at the beginning of the comment period or protest period. References to the Gunnison Sage Grouse: The failure to make available the Biological Assessment (BA) and Biological Opinion (BO). A lack of clarity on which Alternative the BA and BO analyzed. Inadequate NEPA analysis and protections for Gunnison sage grouse and the designation of a Section 368 Energy Corridor that will negatively impact Gunnison sage grouse populations and habitat.

Summary:

The BLM added new content and management to the PRMP/FEIS, including lands identified for disposal, that were not presented in the Draft RMP/EIS and available for public review and comment. The BLM added and selected a new alternative—Alternative E—without providing an opportunity for public comment.

Response:

NEPA requires agencies to prepare supplements to either a draft or final EIS if the agency makes substantial changes to the proposed action that are relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9 (c)). “Substantial changes” in the proposed action relevant to environmental concerns are changes that would result in significant effects outside the range of effects analyzed in the draft or final EIS (BLM Handbook H-1790-1, p. 29).

The BLM did introduce Alternative E, the Agency-Proposed Alternative, in the PRMP/FEIS. Importantly, however, Alternative E is a reasonable combination of objectives and actions from the four alternatives (A, B, C, and D) presented in the Draft RMP/EIS. The PRMP includes management actions and allowable uses from Alternatives A, B, C, and D with consideration given to public comments,

corrections, and rewording for clarification of purpose and intent. When developing the PRMP, the BLM focused on addressing public comments on the Draft RMP/EIS, while continuing to meet its legal, regulatory, and policy mandates (Section 1.8, pp. 1-9 to 1-10). No change in the range of alternatives is relevant to environmental concerns in the PRMP/FEIS. The BLM determined that there are no new significant circumstances or information relevant to environmental concerns bearing on the proposed plan or its impacts. The BLM adequately responded to public comments on the Draft RMP/EIS.

NEPA – Best Available Information

UFORMP-022_BaumgartenD_20190725

Board of County Commissioners of Gunnison County

Baumgarten, David

Issue Excerpt Text: The “action area” was determined to have the following occupied and unoccupied critical habitat areas: * Table 1. GuSG Habitat on the Uncompahgre4 Field Office Occupied Critical Habitat Population BLM Surface Split Estate Total CSCSM 4,526 8,332 12,858 Crawford 0 0 0 Gunnison 0 0 0 San Miguel 821 6,790 7,610 Total 5,347 15,122 20,469 Unoccupied Critical Habitat Population BLM Surface Split Estate Total CSCSM 3,888 4,375 8,262 Crawford 2,727 4,159 6,887 Gunnison 326 21 347 San Miguel 0 1,228 1,228 Total 6,941 9,784 16,725 4 The source for this table was the USFWS’s BO. This information is not available in the Proposed RMP/Final EIS. Because no GIS information has been provided, Gunnison County cannot verify the accuracy of this table. * There is an apparent discrepancy between Table 1 and mapped occupied habitat in the Crawford population. There are at least 5 known leks, all located on the BLM administered lands in the Crawford population. The BO states that “most of this population falls within the Gunnison Gorge National Conservation Area RMP,” but GIS mapping indicates that not all does, and Gunnison County is aware that the BLM wildlife biologist from the BLM Uncompahgre Field Office has long been engaged in GuSG conservation activities. Therefore, the accuracy of this table is questionable, and it likely originated from the BLM’s BA for the other populations.

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: Moreover, Alternative E was presented in the FEIS without all supporting data and files being made publicly and timely available. GIS files for the new alternative were not made available when the protest period was initiated on June 28, 2019. The Proposed RMP/Final EIS states on page ES-1 that “(t)his website contains background information about the project, a public involvement and project timeline, maps and relevant GIS data of the Planning Area, and copies of public information documents released throughout the RMP/EIS process.” However, there were no GIS data files for the new Alternative E available until July 15, which shortened the meaningful time for comment. Further, the Proposed RMP/Final EIS maps in Volume II, Appendix A are at a scale that shows the entire UFO decision area across six counties. This scale does not permit effective review of proposed disposal parcels in context. Nor does this scale allow for examination of proposed actions and the proposed Alternative E in an informed manner. Additionally, the BLM did not make hard copies of the UFO RMP available for the public to review until well into halfway through the comment period, further frustrating public participation.

UFORMP-022_BaumgartenD_20190725

Board of County Commissioners of Gunnison County

Baumgarten, David

Issue Excerpt Text: ALTERNATIVE E WAS PRESENTED IN THE PROPOSED RMP/FINAL EIS WITHOUT ALL SUPPORTING DATA AND FILES BEING MADE PUBLICLY AND TIMELY AVAILABLE. The 30-day Protest period was initiated by the publication of the official Notice of

Availability in the Federal Register on Friday, June 28, 2019. On that date, on the federal e-planning website³ there were no GIS files newer than June 23, 2016. Although the Proposed RMP/Final EIS states on page ES-1 “(t)his website contains background information about the project, a public involvement and project timeline, maps and relevant GIS data of the Planning Area, and copies of public information documents released throughout the RMP/EIS process.” There were no GIS data files for the new Alternative E. Further the Proposed RMP/Final EIS maps in Volume II, Appendix A are at a scale that shows the entire Uncompahgre Field Office decision area across six counties. This scale does not permit effective review of proposed disposal parcels in context. Nor does this scale allow for examination of proposed actions and the proposed Alternative E in an informed manner.

Summary:

The BLM failed to provide supporting information for review concurrently with release of the UFO PRMP/FEIS.

Response:

All protests must be filed within 30 days of the date the U.S. Environmental Protection Agency (EPA) publishes the notice of availability of the FEIS in the *Federal Register* (43 CFR 1610.5-2(a)(1)). The 30-day protest period is prescribed by regulation.

The BLM made the document available at the UFO and on the BLM’s ePlanning website the day the EPA published the Notice of Availability in the *Federal Register*, in full compliance with 43 CFR 1610.5-2(a)(1). The BLM made all supporting information available as soon as was practicable; however, the UFO RMP is considered a stand-alone document and its review is not dependent on supporting information.

The protest period for the PRMP/FEIS provided by the BLM was sufficient and, as noted in the *Federal Register* Notice of Availability for the UFO RMP, hard copy documents were available for review at the BLM UFO.

NEPA – Cooperating Agencies

UFORMP-096_GibbsD_20190728

Colorado Department of Natural Resources

Gibbs, Dan

Issue Excerpt Text: In addition to these issues, Colorado wishes to express its concern that the cooperating agencies were not given an opportunity to review and comment on the final PRMP - specifically, the final version of Alternative E. The cooperators were given one day to preview the final version of the PRM P before it was released to the public, triggering the 30-day protest period. In the year that passed between the time that the cooperators saw the first draft of Alternative E in 2018 and its final rollout in June 2019, substantial changes were made to Alternative E, including the elimination of Ecological Emphasis Areas and other changes that appear to favor energy resource development. During that same time period, the Service completed the Biological Opinion for the PRMP, which Colorado had to request from the Service, as BLM did not include it with the PRMP/FEIS. This abrupt rollout has damaged the good will that the UFO staff had been developing post-2016 and made it challenging for the cooperating agencies to review and digest the contents of the final PRMP and FEIS. This process is not consistent with the MO Us signed between the cooperators and the BLM, which require the BLM/UFO to provide the cooperating agency with “meaningful opportunities for participation.” Moreover, it is inconsistent with the purpose of the cooperating agency relationship, which is intended to result in better decisions by fostering trust and cooperation between various federal, state, and local governments.

Summary:

The BLM did not properly involve cooperating agencies in the development of Alternative E, Agency-Proposed Alternative, before the PRMP/FEIS was released.

Response:

There is no requirement for how the BLM must involve a particular cooperating agency in the development of a land use planning and NEPA document. The specific role of each cooperating agency is based on jurisdiction by law or special expertise, which is determined on an agency-by-agency basis. The BLM works with cooperating agencies to develop and adopt a Memorandum of Understanding that includes their respective roles, assignment of issues, schedules, and staff commitments (43 CFR 46.225(d)). The UFO signed a Memoranda of Understanding with 18 cooperating agencies at the start of the RMP planning process and operated under these Memoranda of Understanding throughout for the duration of this effort.

All cooperating agencies were given opportunities to participate during various steps of the planning process, including identification of issues and data during scoping, regular briefings, requests for input on draft alternatives in the administrative Draft RMP/EIS, and a presentation of and requests for feedback on the draft proposed alternative presented prior to the BLM and Department of the Interior's review and approval, which resulted in additional changes for consistency with agency policy. Due to newly mandated streamlining efforts and scheduling requirements, the UFO was unable to present the revised proposed alternative to cooperating agencies. However, the BLM did reach out to the cooperating agencies prior to the publication of the PRMP/FEIS to explain the proposed alternative and that it fell well within the range of alternatives presented in the DEIS when it was presented to the cooperating agencies prior to issuance of the UFO PRMP/FEIS. The UFO RMP further describes the participation of cooperating agencies in Chapter 5, *Consultation and Coordination*.

NEPA – Cumulative Effects – Bighorn sheep***UFORMP-095_RatnerJ_20190728******Western Watersheds Project******Ratner, Jonathan***

Issue Excerpt Text: BLM fails to consider the cumulative effects of domestic sheep pathogens on bighorn sheep populations within the cumulative impact analysis area. In the last century, bighorn sheep populations have been reduced by more than 90% rangewide as a result of human activities, including the grazing of domestic livestock. Many herds remain small, isolated, and at risk of extirpation. The species has suffered significant and irreversible genetic losses, affecting individual and population fitness, mating success, resilience to disease and disturbance, and the ability to adapt to the effects of climate change. No bighorn sheep herd within the cumulative impact analysis area is secure from the threat of disease posed by domestic sheep on the landscape. The cumulative short- and long-term effects of authorized domestic sheep grazing on bighorn sheep throughout the impact area must be disclosed. This violates NEPA's "hard look" requirement.

Summary:

The BLM failed to consider the cumulative effects of domestic sheep on bighorn sheep populations.

Response:

The BLM must discuss the cumulative effects of the proposed action and the alternatives when preparing an EIS (BLM Handbook H-1790-1, Section 6.8.3). The CEQ regulations define cumulative effects as "...the impact on the environment which results from the incremental impact of the action when added to

other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions” (40 CFR 1508.7).

The cumulative impacts discussion in Section 4.3.6, *Special Status Species*, and Appendix K, *Bighorn/Domestic Sheep Risk of Association Modeling*, identifies relevant actions that were considered in the cumulative impacts analysis, and provides a basis for the cumulative impacts analysis. The cumulative impact analysis considered the effects of the planning effort when added to other past, present, and reasonably foreseeable (not highly speculative) Federal and non-Federal actions. This served as the determining factor for the level of analysis performed and presented. The information presented in the UFO RMP enables the decision-maker to make a reasoned choice among alternatives. The BLM analyzed the impacts on bighorn sheep in Section 4.3.6, *Special Status Species* (see pp. 4-133 through 4-139), the cumulative impacts section, and provided further detail on the potential effect that long-term association (intermingling) with domestic sheep has on bighorn sheep in Appendix K (see p. K-10).

NEPA – Cumulative Effects – Fish

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: One significant foreseeable cumulative impact from oil and gas development occurring adjacent to and in the Uncompahgre planning area are Colorado River water withdrawals necessary for fracking and horizontal drilling techniques. Indeed, millions of gallons of water are withdrawn from the Colorado River for oil and gas extraction, potentially impacting endangered fish in the Gunnison River and Uncompahgre Rivers and communities that rely on this water downstream in the North Fork Valley and elsewhere. BLM must analyze the effects of the massive water demand resulting from relatively new horizontal drilling techniques, such as slickwater fracking, already being deployed in the Gunnison Basin and Upper Colorado River Basin (the “Upper Basin”) which would impact watersheds in the Uncompahgre planning area, including (1) the significant cumulative impacts on local water supplies and the Colorado River endangered fish under NEPA and (2) the cumulative impacts of water depletion effects on the Colorado River endangered fish under Section 7 of the Endangered Species Act.

Summary:

The BLM must analyze the cumulative impacts of water demand resulting from oil and gas development on watersheds specifically for effects on local water supplies and depletions to the Colorado River.

Response:

The BLM must discuss the cumulative effects of the proposed action and the alternatives when preparing an EIS (BLM Handbook H-1790-1, Section 6.8.3). The CEQ regulations define cumulative effects as “...the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions” (40 CFR 1508.7).

The BLM has complied with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past, present, and reasonably foreseeable (not highly speculative) Federal and non-Federal actions. Water supply and reductions are discussed under the nature and types of impacts in Section 4.3.3, and on page 4-131 in the *Effects Common to All* subsection of Section 4.3.6, *Special Status Species*. The analysis accounted for the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor for the level of analysis performed and

presented. The information presented in the UFO RMP enables the decision-maker to make a reasoned choice among alternatives. Furthermore, the usage of fresh water in fluid mineral development projects is dependent on many variables that are best known at the site-specific project level and not the broad landscape-level of an RMP. Fresh water use during project development is not necessary in all projects, and would be speculative in an RMP. Unknown variables become apparent at the site-specific level and fresh water usage would then be compared to the relevant programmatic BO and compared cumulatively with other ongoing and potential projects. Any potential exceedances of thresholds contained in the programmatic BO would then require modifications to the proposed development to ensure compliance with the programmatic BO and USFWS's concurrence.

Furthermore, the USFWS noted in the July 2018 BO that the USFWS issued two programmatic Section 7 BOs in western Colorado for Colorado River fishes. The programmatic BOs analyzed water depletions from BLM activities including oil and gas exploration and development on the UFO and addressed adverse effects on the Colorado pikeminnow, razorback sucker, humpback chub, and bonytail, and their respective critical habitats. Based on this analysis, the USFWS concluded that the BLM has fulfilled the Section 7 consultation requirement for water depletions effects on the Colorado River fishes.

NEPA – Impact Analysis – Air Quality

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: As Conservation Groups previously explained, DEIS Comments (Ex. 1-1) at pp. 99-109, BLM must take a closer look at impacts to air quality. First, BLM may not avoid including winter ozone modeling. BLM's excuse for not including winter ozone modeling-that wintertime ozone formation is not as likely to occur in the Uncompahgre planning area as in other parts of the Rocky Mountain region-is unresponsive. FEIS at R-119. BLM cannot merely summarily dismiss ozone impacts without the support of monitoring or other data. That subverts the purpose of NEPA to look before leaping.

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: Additionally, the UFO should take a hard look at hazardous air pollutant ("HAP") impacts from the proposed development, including the impacts from 1,3-butadiene and secondary formaldehyde. BLM attempts to excuse its failure to take a hard look at HAPs by saying that "RMP-level impact analyses are broad and qualitative rather than quantitative or focused on site-specific actions," R-329, and that HAPs analyses "are developed at the project level stage." R-118. However, the BLM does not explain why HAPs analysis at the RMP stage is inappropriate or infeasible. On the contrary, there is no reason why HAP analysis may not be conducted at the RMP stage to ensure there are no significant health impacts from near-field exposure to HAPs from the proposed development in the planning area. See 40 C.F.R. §1508.27(b)(2).

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: BLM's response to comments on the issue of health impacts is entirely unsatisfactory. BLM merely promises that "under all alternatives, lease stipulations and BMPs" that would be applied during subsequent site-specific NEPA analysis "would limit impacts on human health and safety." R-329. This excuse is conclusory and does not explain why analyzing human health impacts at the RMP stage would not be feasible or appropriate. Oil and gas development is one of the largest sources of VOCs, ozone, and sulfur dioxide emissions in the United States. The relationship between air quality and human health must be analyzed as soon as possible in the NEPA process. The failure of the

UFO to do so here, in the RMP/EIS, represents a fundamental shortcoming of the agency’s analysis, and must be corrected. “The agency must examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” Motor Vehicle Mfrs., 463 U.S. at 43 (1983).

UFORMP-080_ClabbersN_20190728

The Wilderness Society

Clabbers, Nicholas

Issue Excerpt Text: BLM states in the Proposed RMP/FEIS that its information on downstream combustion impacts is based upon an incorporation by reference of BLM Colorado’s Annual Report on the Colorado Air Resource Protection Protocol, which itself incorporates several summaries of effects from other sources. See Proposed RMP/FEIS at 4-28 –4-29. BLM then applies this methodology to “high” and “low” UFO oil and gas production scenarios, estimating that cumulative emissions of carbon dioxide would range from 8 million to 129 million tons. *Id.* at 4-29. In and of itself, this broad range is concerning.

However, BLM never discusses the impact of those estimates in the context of the alternatives discussed throughout the RMP. Instead, it proposes qualitative descriptions of relatively higher or lower indirect impact under a “business-as-usual” scenario and a “decreased emissions” scenario, both relative to various market conditions. BLM’s apparent explanation is that “[a]ny single contribution on a subnational scale is dwarfed by the large number of comparable national and subnational contributors on a global scale,” and “[t]he best surrogate for understanding the potential impact of subnational (e.g., UFO) emissions on climate is the behavior of the BLM-administered lands subnational emissions relative to all the other contributors.” *Id.* at 4-30. In 23 other words, BLM claims that the indirect impacts from UFO oil and gas production are too small and speculative in the grand scheme of worldwide emissions to merit full and specific consideration under the various alternatives in the FEIS. At the same time, BLM includes a robust “quantitative economic impact analysis of fluid mineral development...to examine differences in effects of proposed management decisions by alternative.” *Id.* at 4-437. This analysis resulted in estimates of natural gas well development and the economic value of regional natural gas jobs, labor income, and direct output (e.g., sales). See *id.* at Tables 4-81 and 4-82. BLM also considered tax revenue derived from natural gas activity under six alternatives. *Id.* at Table 4-85. This is not the reasoned analysis or hard look required by NEPA and runs directly contrary to the approach mandated by the federal courts. BLM has meticulously catalogued the potential benefits of oil and gas development under the six alternatives, but has provided only a scant, broad analysis on the downstream impacts of subsequent production - and none on the particularized impacts under the discussed alternatives. This is very similar to the scenario presented to the courts in both Wilderness Workshop and Citizens, both of which concluded that BLM acted in an arbitrary and capricious manner by failing to take a hard look at the indirect effect of fossil fuel combustion while simultaneously relying on production estimates and economic benefits. See Wilderness Workshop, 342 F. Supp. 3d at 1156 (“It is arbitrary and capricious for a government agency to use estimates of energy output for one portion of an EIS, but then state that it is too speculative to forecast effects based on those very outputs.”); Citizens, 377 F. Supp. 3d at 1237 (same). These cases and the inadequate discussion of the indirect impacts here compels the same conclusion.

UFORMP-030_McGuireE_20190727

Desert Weyr, LLC

McGuire, Eugenie

Issue Excerpt Text: The RMP does not take into account the increased haze and dust from the miles of surface roads that would be required to develop in an area. With the Black Canyon nearby as well as other Wilderness areas any loss of visibility and clear air impacts the recreational and viewshed areas.

Summary:

The PRMP/FEIS failed to adequately analyze impacts on air resources from oil and gas actions including:

- Not modeling for winter ozone formation;
- The effects of hazardous air pollutants;
- The relationship of reduced air quality on human health;
- The effects of downstream combustion; and
- The effects of development on visibility and air quality from potential increases of regional haze and dust.

Response:

NEPA directs that data and analyses in an environmental impact statement 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 UFO PRMP/FEIS.

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

A land use planning–level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan–level decisions.

The BLM analyzed the potential impacts on air quality from reasonably foreseeable actions under the PRMP/FEIS (see Section 4.3.1 in the FEIS). Analysis for the PRMP/FEIS followed the process outlined in the Memorandum of Understanding among the U.S. Department of Agriculture, U.S. Department of the Interior, and U.S. Environmental Protection Agency, Regarding Air Quality Analysis and Mitigation for Federal Oil and Gas Decisions through the National Environmental Policy Act Process¹ for determining the scope of the air quality analysis and relied on the Colorado Air Resources Management Modeling Study (CARMMS) 2.0 future year 2025 results for the UFO RMP Planning Area source emissions and for cumulative (regional) source emissions to estimate potential impacts on air quality and air quality–related values from RMP alternatives and cumulative sources. Data from the 2015 Annual Report on the Colorado Air Resource Protection Protocol for the UFO were incorporated by reference in this analysis to describe the cumulative impacts associated with the potential UFO RMP projected emissions under two future oil and gas development scenarios. This approach was selected because it provided the most current information and analysis, and because of uncertainties about the number, nature, and specific location of future sources and activities.

The BLM included estimates of downstream end-use combustion related greenhouse gas (GHG) emissions for two future projected UFO oil and gas production scenarios. Specifically, downstream GHG emissions were calculated for “high” and “low” future 30-year oil and gas production scenarios over the life of the plan (~years 2020–2050) that are based on CARMMS 2.0 future projected oil and gas production profiles. The CARMMS-based “high” scenario future oil and gas production estimates are based on information provided by BLM mineral specialists for new UFO oil and gas development and account for the RFD for the Planning Area, which includes the foreseeable oil and gas development projects Bull Mtn. MDP, North Fork Mancos MDP, and 25-well / 5-Pad Project. The “low” scenario

¹ Memorandum of Understanding among the U.S. Department of Agriculture, U.S. Department of the Interior, and U.S. Environmental Protection Agency, Regarding Air Quality Analysis and Mitigation for Federal Oil and Gas Decisions through the National Environmental Policy Act Process. 2011. <https://www.epa.gov/sites/production/files/2014-08/documents/air-quality-analyses-mou-2011.pdf>. Note that this Memorandum of Understanding was in effect at the time the air quality analysis scope was developed for the UFO RMP; however, on July 25, 2019, the signatories terminated and withdrew the memorandum.

represents the continuation of the current development pace for the Planning Area. The two scenarios therefore bound the levels of existing and new oil and gas production that could occur for the plan alternatives. Application of UFO-specific upper and lower bound estimates for describing potential downstream GHG emissions and climate impacts for the plan alternatives is reasonable because the variance in projected oil and gas production levels across the alternatives is very small relative to the larger-scale U.S. and global energy consumption profiles. The upper-bound RFD-based GHG estimate would adequately describe the potential downstream GHG emissions for each alternative, the lower bound estimate would not allow for most of the new oil and gas development associated with each alternative, and the difference between the CARMMS-based upper and lower bounds estimates would essentially equate to differences between the alternatives and baseline. Due to the uncertainty associated with the potential production levels of each alternative, this method is adequate to capture the potential range of impacts. The 30-year cumulative production totals for UFO were input into an Excel-based calculator with U.S. Energy Information Administration Annual Energy Outlook data to estimate downstream GHG emissions across the various energy consuming sectors (transportation, industrial, residential, etc.) that could be associated with future UFO oil and gas production and to determine the fraction of total U.S. emissions (years 2020–2050) that future UFO cumulative downstream GHG emissions would represent. Refer to the response for *NEPA – Impact Analysis – Carbon/Greenhouse Gas Emissions* for additional information on why the BLM did not utilize the social cost of carbon (SCC) protocol for the RMP.

The CARMMS 2.0 report provides a reasonable forecast of effects and supports the UFO emissions sources and a full cumulative impacts analysis for the Planning Area (FEIS at p. 4-21). The report includes ozone modeling and the results were incorporated by reference (see pp. 4-21 to 4-22 in the FEIS). Additionally, effects of hazardous air pollutants are discussed in the analysis (see pp. 4-19, 4-20, 4-26, 4-34, Q-2, and Q-41 to Q-51) as well as the relationship between reduced air quality and human health (see Section 4.6.2).

Wintertime ozone primarily occurs with two different processes: stratospheric intrusions associated with wintertime mid-latitude upper-level troughs in high-elevation areas, and cold-pool stagnant surface conditions in areas with high ozone precursor (volatile organic compound [VOC] and nitrogen oxide) emissions. The former is a natural phenomenon but the latter scenario occurs frequently in snow-covered basins of the Rocky Mountain Region where cold and very stable surface atmospheric conditions and high levels of oil and gas-related VOC and nitrogen oxide concentrations exist. Over approximately the last 15 years, oil and gas-related wintertime ozone formation has been identified in several basins in the Rocky Mountain Region, including the Green River Basin in Wyoming and Uinta Basin of Utah. Wintertime conditions in the Uinta Basin have caused ozone concentrations to exceed the National Ambient Air Quality Standards, and as the stagnant conditions in the basin subside, the westerlies have advected the elevated ozone plume into northwestern Colorado. BLM Colorado air quality monitoring data for Rangely and Meeker, Colorado, along with EPA and NPS monitoring data for northeastern Utah, have indicated that the wintertime ozone associated with oil and gas primarily forms in the “heart” of the Uinta Basin of Utah and progresses into parts of northwestern Colorado, including Rangely, but not as far east as Meeker, Colorado. These conditions (high levels of oil and gas emissions and adequate atmospheric conditions) do not readily exist together within the Planning Area. For this reason, the BLM did not conduct a refined local wintertime ozone analysis for the planning effort. Moreover, the current Photo-chemical Grid Modeling programs and applications do not simulate wintertime ozone formation adequately due to the complexities of accurately modeling fine-scale surface-based parameters and boundary layer phenomena. The BLM Colorado operates an ozone monitoring station in the North Fork

Valley just below the highest area of projected oil and gas development and production in the Planning Area, and would likely detect a wintertime ozone event in the Planning Area, should such an event occur.²

The BLM complied with NEPA’s requirement to analyze the environmental consequences on air quality and climate change in the PRMP/FEIS.

NEPA – Impact Analysis – Bighorn Sheep

UFORMP-095_RatnerJ_20190728

Western Watersheds Project

Ratner, Jonathan

Issue Excerpt Text: The proposed RMP does not provide meaningful security for bighorn sheep populations in and near the BLM Uncompahgre Field Office, and does not comply with BLM Sensitive Species policy, BLM Manual 1730, or Colorado Grazing Standard 3. As such, it fails to comply with the requirement that RMP’s must provide requirements and limitations needed to resolve use conflicts at the RMP level.

UFORMP-095_RatnerJ_20190728

Western Watersheds Project

Ratner, Jonathan

Issue Excerpt Text: BLM fails to disclose the likely outcomes of bighorn sheep exposure to domestic sheep on BLM allotments under each of the plan alternatives. BLM does not quantify the probable population impacts due to die-offs, declines in lamb recruitment, and habitat limitations resulting from each alternative, so that the alternatives can be reliably compared. BLM also does not disclose the economic losses and losses of recreational opportunities relating to bighorn sheep associated with each alternative. This violates NEPA’s “hard look” requirement.

UFORMP-095_RatnerJ_20190728

Western Watersheds Project

Ratner, Jonathan

Issue Excerpt Text: Appendix K fails to comply with the WO IM on bighorn sheep management. It also fails to utilize current science.

Appendix K relies on BMP’s which have been shown to be ineffective and it ignores completely the WO IM for bighorn sheep which requires effective separation.

<https://eplanning.blm.gov/epl-frontoffice/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=36859&dctmId=0b0003e88040d6d4> 2.4.6 Alternative L - Allow Domestic Sheep and Goat Grazing on All Allotments with Leasing Terms and Conditions to Reduce Potential Interspecies Contact The BLM considered an alternative that would make all four allotments available for domestic sheep and goat grazing with application of the leasing terms and conditions identified in Appendix C to reduce the potential for contact with bighorn sheep. These terms and conditions have previously been identified, recommended, or implemented by the USFS and the BLM as best management practices (BMPs). However, when bighorn sheep CHHR occur in or adjacent to a domestic sheep allotment, and especially when the allotment is within bighorn herd home range, development and implementation of effective separation measures is difficult; and contact between the species will most likely still occur. In other words, special terms and conditions to avoid contact between bighorn and domestic sheep that are known to be in close proximity are generally ineffective to ensure separation of the species. Furthermore, even with these extra measures, control of domestic sheep, or monitoring and locating bighorn sheep in forested/ dense vegetation or steep/rocky/rugged terrain is very

² U.S. Environmental Protection Agency. Air Data Quality Data Collected at Outdoor Monitors Across the US. <https://www.epa.gov/outdoor-air-quality-data>.

difficult. Accordingly, without a large buffer between domestic and wild bighorn sheep, extra measures are not likely to result in a significant reduction in the risk of contact (Schommer 2009). No known studies, research, or peer reviewed literature has documented the effectiveness of BMPs preventing contact and disease transmission when domestic sheep or goats grazed within or adjacent to occupied bighorn sheep habitats. Appendix C contains a more detailed review of the effectiveness of BMPs.”

Summary:

The BLM did not use best available science when creating BMPs related to bighorn sheep interaction with domestic sheep.

Response:

CEQ regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)). NEPA regulations require the BLM to “insure 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).

Management of domestic sheep and goats to sustain wild sheep is integrated into RMPs as appropriate, and the UFO PRMP/FEIS includes management actions to comply with BLM Manual Section 1730.

The UFO RMP includes a bibliography (see the *References* section in Volume II of the FEIS), which lists information considered by the BLM in preparation of the UFO RMP. The BLM has reviewed the suggested Schommer 2009 document to determine if the information is substantially different than the information considered and cited in the UFO RMP, and has determined that Schommer 2009 does not provide additional information that would result in changes to management direction related to BMPs for bighorn sheep in the UFO RMP. It is not necessary to incorporate Schommer 2009 into the UFO RMP. The BLM relied on high-quality information and the best available data in preparation of the UFO PRMP/FEIS. The BMPs upon which the UFO PRMP/FEIS relies are taken from the Western Association of Fish and Wildlife Agencies Wild Sheep Working Group’s 2012 Domestic Sheep and Goat Management in Wild Sheep Habitat strategy. This strategy contains a comprehensive set of recommendations to manage domestic sheep grazing and achieve effective separation in compliance with MS 1730. The strategy states that “Effective separation does not necessarily require removal of domestic sheep or goats in all situations...” and that BMPs are effective on a case-by-case basis. The Western Association of Fish and Wildlife Agencies strategy is the best available science.

Although the BLM did not conduct an economic analysis specific to bighorn sheep and recreational uses, page 3-156 presents information from a publication related to economic output from wildlife watching in southwestern Colorado. Table 3-53 also on page 3-156 presents economic impacts from hunting in the UFO Planning Area, which includes bighorn sheep.

NEPA – Impact Analysis – Climate Change

UFORMP-022_BaumgartenD_20190725

Board of County Commissioners of Gunnison County

Baumgarten, David

Issue Excerpt Text: Alternative E does not acknowledge climate change, make climate change a priority, nor in any substantial way include an analysis of climate impacts of any of the alternatives. REQUESTED REMEDY: An adequate RMP/EIS must, at a minimum, include a carbon emission reduction plan that is

demonstrably consistent with those efforts of the State to meet the State’s climate and carbon emission reduction goals.

UFORMP-074_HollenbeckH_20190729

Ouray County

Hollenbeck, Hannah

Issue Excerpt Text: Alternative E does not acknowledge climate change, make climate change a priority, nor in any substantial way include an analysis of climate impacts of any of the alternatives. REQUESTED REMEDY: An adequate RMP/EIS must, at a minimum, include a carbon emission reduction plan that is demonstrably consistent with those efforts of the State to meet the State’s climate and carbon emission reduction goals.

UFORMP-099_Markwella_20190728

San Miguel County, Colorado

Markwell, Amy

Issue Excerpt Text: The Proposed PRMP/FEIS does not adequately consider the consequences of climate change. Alternative E does not acknowledge climate change, make climate change a priority, nor in any substantial way include an analysis of climate impacts of any of the alternatives. Requested Remedy: An adequate PRMP/FEIS must, at a minimum, include a carbon emission reduction plan that is demonstrably consistent with the efforts of the State to meet the State’s climate and carbon emission reduction goals.

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: In particular, HB 1261 enacts aggressive greenhouse gas emissions targets for the State- 26% by 2025, 50% by 2030, and 90% by 2050. The foreseeable development scenarios for the UFO RMP move in the opposite direction, anticipating an additional 1200 oil and gas wells while making vast acreages available for new oil, gas, and coal leasing. Estimated direct GHGs from development allowed in Alternatives D and E are 2,497,194 tons of CO₂e per year and 2,512,570 tons per year, respectively (approximately 75 million tons of CO₂e over a 30-year period) (Vol I pg. 4-22 of the FEIS). Estimated indirect GHGs from the high production scenario is approximately 129 million tons CO₂e over a 30-year period. (Vol 1 pg. 4-29 of the FEIS). Together, direct and indirect emissions across 30 years are equivalent to the annual emissions of 52 coal-fired power plants. Colorado’s climate goals and greenhouse gas reductions targets would be impossible to attain with BLM’s expansion of fossil fuel development for another 20 years under the UFO RMP.

UFORMP-122_TuddenhamK_201907

Sheep Mountain Alliance

Tuddenham, Karen

Issue Excerpt Text: Indeed, many of their jobs and livelihoods would be negatively impacted by the proposed RMP as written due to climate change impacts, as well as the likely air and water pollution, and wildlife productivity loss that would result from this plan. We believe that the BLM has both the responsibility and the capability to analyze the likely climate change impacts that this increased oil and gas leasing would have on human communities and ecosystems within the UFO.

Summary:

The BLM needs to include a carbon emissions reduction plan that is consistent with the State of Colorado’s climate and carbon emission reduction goals and needs to adequately consider the impacts of climate change. The BLM failed to adequately analyze climate change impacts from potential increased oil and gas development in the Planning Area.

Response:

Section 202 (c)(9) of FLPMA requires that “land use plans of the Secretary under this section shall be consistent with state and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.” However, BLM land use plans may be inconsistent with State, local, and tribal plans where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and other Federal laws and regulations applicable to public lands (43 CFR 1610.3-2(a)).

The State of Colorado has not yet developed a plan for implementing the targets identified by House Bill 1261. The UFO RMP includes an action to comply with applicable State and Federal laws and regulations. As such, the BLM will ensure management is consistent with the State’s plan as it identifies methods to account for oil and gas emissions goals in the projected targets, to the extent consistent with the purposes, policies, and programs of Federal laws and regulations. The BLM has worked closely with the State government during preparation of the UFO RMP, and the Colorado Climate Plan for limiting VOC and methane from oil and gas operations and requiring green completions was considered in the updated CARMMS analysis in the FEIS.

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 UFO PRMP.

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

A land use planning–level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan–level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The FEIS identified the 2015 Annual Report as the baseline, up-to-date information on oil and gas development (e.g., current regulations, drilling and production rates, and emissions inventories) and the state of the atmosphere (e.g., air pollutant concentration trends and air quality–related values) for each applicable BLM Colorado Field Office or respective planning area. The BLM provided a programmatic analysis of climate change/GHG emissions in Section 4.3.1, *Air Quality and Climate*, which included discussion of the potential effects of the alternatives in terms of the GHG emissions resulting from anticipated activities.

NEPA – Impact Analysis – Fish

UFORMP-080_ClabbersN_20190728

The Wilderness Society

Clabbers, Nicholas

Issue Excerpt Text: While drilling and hydraulically fracturing horizontal wells requires significant water use, water depletions for fluid mineral withdrawal in the Colorado River Basin have the potential to impact federally listed Colorado River fish, including the Colorado pikeminnow, razorback sucker,

bonytail chub, and humpback chub. To address this, the USFWS issued a Programmatic Biological Opinion in 2008, later updated in 2017, that limits water depletion from the Colorado River Basin and sub-basins for oil and gas development. The Proposed RMP/FEIS states “[t]he 2017 Programmatic Biological Opinion (USFWS 2017) determined that the 607 acre-feet per year of BLM water depletions associated with BLM approved projects in the Gunnison River Basin are not likely to jeopardize the continued existence of the Colorado pikeminnow, razorback sucker, bonytail chub, and humpback chub.” However, it is unclear whether withdrawals from future “BLM approved projects” will increase water use above the 607 acre-feet threshold. BLM’s failure to discuss and disclose this issue renders its analysis inadequate under NEPA.

Summary:

The BLM failed to analyze future water withdrawals that may increase water use above the amount identified in the Fluid Minerals PBO.

Response:

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

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

A land use planning–level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan–level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

As noted on page 4-65 of the UFO PRMP/FEIS, water depletions analyzed in the BA and FEIS were based on the RFD scenario. The RFD scenario technically analyzed the oil and gas resource known to occur and potentially occurring within the Planning Area and projects future development potential and activity levels for the period from 2010 through 2030. As a result, the 607-acre-foot water depletion estimate accounts for reasonably foreseeable water use through 2030 for BLM-approved projects.

The BLM complied with NEPA’s requirement to analyze the environmental consequences/impacts on federally listed Colorado fish species and their critical habitats from water depletions associated with the BLM’s fluid mineral program within the Upper Colorado River Basin in Colorado.

NEPA – Impact Analysis – Fluid minerals***UFORMP-102_KingL_20190728******Western Environmental Law Center******King, Laura***

Issue Excerpt Text: As described in detail in Conservation Groups’ previous comments, DEIS Comments (Ex. 1-1) at 109-128, there is a wealth of information and reports stressing the dangers of

fracking that must be considered in the agency’s subject NEPA analysis, including methane contamination of drinking water, spills of hydraulic fracturing fluid, and migration of fracking fluids into groundwater aquifers. The potential impacts that may result from hydraulic fracturing are myriad and significant and include, among others, impacts to water quality and supply, impacts to habitat and wildlife, impacts to human health, as well as impacts on greenhouse gas emissions and air quality. In its FEIS, BLM continues to fail to fully address the additional information on resource impacts from hydraulic fracturing provided by Conservation Groups in their comments on the DEIS. FEIS at R-329.

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: The re-fracking impacts analysis appears to still be absent from the EIS and must be conducted for all wells in the field office: private and public, existing and future, existing target formations, and potential new plays. Absent such analysis, BLM has failed to take a hard look at the direct, indirect or cumulative impacts of ongoing and reasonably foreseeable oil and gas development in the UFO.

The RMP/EIS and RFD also failed to consider impacts regarding the subsequent fracturing treatments, or re-fracking operations. The UFO’s RMP/EIS and RFD focus on initial drilling operations and routine maintenance, while these documents remain silent on the frequency and impacts - direct, indirect, and cumulative - related to re-fracking operations.”

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: It is still the case that, as discussed in Conservation Groups’ previous comments, the Reasonably Foreseeable Development scenario fails to sufficiently consider increased oil and gas development due to fracking. For example, BLM estimates that-as projected by the RFD- 1,271 wells would be developed under the RMP on all federal minerals and private minerals within the planning area. FEIS at 4-2. However, this estimate does not allow for the likely scenario that advances in hydraulic fracturing technology will increase the number of drilled wells. The RFD is outdated and underestimates the number of potential wells. The RMP/EIS fails to take into account the most recent trends in well development, which are the most crucial in predicting the extent of development and its likely impacts. As detailed in Conservation Groups’ previously comments, all evidence points to increased drilling in relation to historic trends, and this fact must be considered in BLM’s NEPA analysis.

UFORMP-019_BrettE_20190725

Brett, Elaine M.

Issue Excerpt Text: The draft RMP does not address how fluid mineral development would strain emergency services such as volunteer fire, ems, and rescue groups.

UFORMP-019_BrettE_20190725

Brett, Elaine M.

Issue Excerpt Text: The draft RMP does not consider the cumulative effect that the level of fluid mineral extraction (drilling) outlined in the Reasonable Foreseeable Development Scenario will have on an existing domestic and commercial water supplies, including springs, wells or surface irrigation water.

UFORMP-030_McGuireE_20190727

Desert Weyr, LLC

McGuire, Eugenie

Issue Excerpt Text: Nowhere in the RMP is there any discussions of the number of organic farms and risks that any development pose to this growing source of local income. The North Fork is home to Colorado’s largest concentration of organic farms and any perceived or real contamination of those farms

through even the best managed oil and gas extraction will devastate an economy already hit hard by the loss of coal mining jobs.

***UFORMP-091_HellecksonB_20190729
Terror Ditch and Reservoir Company
Helleckson, Brent***

Issue Excerpt Text: The absence of any analysis of well bore failures and their effects, any proposed long term mitigation, or any method to assign responsibility, and funding, for the long-term monitoring and remediation of well bores argues that the proposed development embodied in the DRMP preferred alternative is incompatible with the existing enterprise in the Valley and incompatible with the BLM mandate for multiple-use and sustained yield. It also argues for a “no leasing in the North Fork watershed” alternative.

Summary:

The RMP/EIS fails to fully address the resource impacts from fluid mineral development activities, including hydraulic fracturing. Re-fracking impacts analysis appears to be absent from the EIS. Absent such analysis, the BLM has failed to take a hard look at the direct, indirect, or cumulative impacts of ongoing and reasonably foreseeable oil and gas development in the UFO. The RFD scenario is outdated and underestimates the number of potential wells. The impacts analysis does not take into account potential impacts of oil and gas development (and hydraulic fracturing) on local farming operations, emergency services, water supplies, water quality, wildlife, human health, air quality, and GHG emissions. The impacts analysis also fails to analyze a “no leasing in the North Fork watershed” alternative.

Response:

The BLM is required to take a “hard look” at potential environmental impacts of adopting the UFO RMP, including the potential impacts of energy development, including hydraulic fracturing; see PRMP/FEIS pages 3-138 (*Public Health and Safety*); 4-18 through 4-40 (*Air Quality and Climate*); 4-42 (*Soils and Geology*); 4-63 through 4-66 and 4-70 (*Water Resources*); 4-112 (*Fish and Wildlife*); and 4-129 through 4-131 (*Special Status Species*).

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

As explained in Washington Office Instruction Memorandum 2004-089: “The RFD projects a baseline scenario of activity... The baseline RFD scenario provides the mechanism to analyze the effects that discretionary management decisions have on oil and gas” (Washington Office Instruction Memorandum 2004-089, Attachment 1, p. 1-1). The fundamental purpose of the RFD scenario is to make a reasonable estimation of the overall level of development anticipated (i.e., number of wells) over a specified time horizon (e.g., 20 years), because the overall level of development is the basis for comparing relative impacts across the alternatives. Therefore, the RFD scenario is not meant to be continually updated as new development occurs; the RFD scenario is valid as long as the overall level of development assumed is still valid. The 2012 UFO RFD scenario anticipated the types and placement of development proposals currently being addressed by the field office within the UFO’s resource area. It also included assumptions on adjacent U.S. Forest Service lands, private lands, and State lands. Refer to Table 4-1 of the UFO PRMP/FEIS for a list of past, present, and reasonably foreseeable projects, plans, or actions, specifically the fluid minerals sub-section of the energy and minerals development section in Table 4-1. The UFO RFD scenario anticipates approximately 489 conventional/horizontal gas wells and 782 coalbed natural gas wells to be “drilled” within a 20 year period. Comparatively, the current rate of drilling Federal

mineral estate within the field office has been fewer than two per year, with no drilling thus far in the current calendar year of 2019. Factors contributing to the pace of development include ongoing litigation and low market prices for produced gas.

BLM guidance states that RFD scenarios should be “based on a reasonable, technical, and scientific estimate of anticipated oil and gas activity based on the best available information and data at the time of the study” (Washington Office Instruction Memorandum 2004-089, Attachment 1). The BLM relied on the best available information at the time the RFD scenario for the PRMP/FEIS was prepared and accurately estimates the level of future oil and gas activities in the Planning Area. If the impacts from future oil and gas development were to exceed the impacts analyzed in the PRMP/FEIS, then, at the development stage, additional NEPA analysis for the development may be appropriate. It is the BLM’s policy to perform a review of planning decisions when new circumstances or information arise (BLM Handbook H-1601-1, p. 37-44). The BLM typically performs these reviews as new information is available or on a 5-year evaluation schedule, whichever comes first. Should an amendment or revision of the RMP be necessary, the BLM will follow all applicable laws and policies.

The PRMP/FEIS adequately considers the potential impacts of oil and gas development on local farming operations as part of the socioeconomic analysis, noting that agriculture in the western end of the county has long been valued and still plays an important role in the local economy (see, for example, Section 3.4.3; Table 3-3, US Department of Agriculture Classified Prime and Unique Farmland in the Planning Area; Table 3-58, County Agricultural Data; Section 4.6.3). The BLM considered but eliminated from further consideration alternatives that would prohibit fluid mineral leasing throughout the Decision Area such as a “no leasing in the North Fork watershed” alternative (Section 2.4.3). All of the alternatives propose closure of areas to fluid mineral leasing based on policy or legislation, or when it has been determined that resource values cannot be adequately protected even with restrictive lease stipulations. However, resource values that can only be protected by prohibiting all fluid mineral leasing throughout the Decision Area were not identified by the BLM.

The range of alternatives in the PRMP/FEIS fully considers substantial restrictions in the North Fork Valley. For example, as described in p. 4-460, under Alternative B.1, additional restrictions would apply to oil and gas extraction in the North Fork area. Approximately 609,360 acres of Federal mineral estate would be open to leasing, 31 percent less than Alternative A. Approximately 306,670 acres would be closed to fluid mineral leasing, seven times greater than Alternative A. Closures and stipulations would be applied and would include no leasing (NL) within 0.25 mile of public water supplies (streams, wells, or springs) and NSO between 0.25 and 0.50 mile of these supplies; NL within 0.25 mile of domestic water wells, ditches, canals, dams, and other water conveyance; NL within 0.50 mile of major rivers and NSO between 0.50 and 1 mile of these features; and NSO within 0.25 mile of agricultural operations. All additional restrictions under Alternative B.1 would occur in the North Fork area only; Alternative B.1 would close 104,750 acres (75 percent) of the North Fork area to oil and gas leasing, which is 94,140 acres more than Alternative B. These closures and stipulations on oil and gas development are intended to protect local water sources for North Fork Valley residents and to maintain water quality for local agricultural operation.

NEPA – Impact Analysis – Gunnison Sage-grouse

UFORMP-022_BaumgartenD_20190725

Board of County Commissioners of Gunnison County

Baumgarten, David

Issue Excerpt Text: Even though the Gunnison Sage-grouse was listed as threatened under the ESA between the Draft RMP/Draft EIS and the Proposed RMP/FEIS, the BLM has not addressed this listing, and its consequences, sufficiently in the Proposed RMP/FEIS. Alternative E has reduced the protection for Gunnison Sage- grouse critical habitat from a right-of-way exclusion to right-of-way avoidance,

reducing the certainty of protection. Proposed RMP/FEIS, pp.2-38 - 2-39. Alternative E also reduced protection from wind, solar and hydropower developments in Gunnison Sage-grouse breeding, nesting and critical habitat from exclusion to avoidance, removing the certainty that habitat will be safeguarded. Proposed RMP, p. 2-113. In addition, the NSO stipulations that apply to Gunnison Sage-grouse habitat are subject to “standard” waiver, exception and modification, meaning they can be changed at the discretion of the BLM authorized officer without additional specific criteria being applied. Proposed RMP/Final EIS, p. B-32. This approach is significantly less protective than the management being applied to the Greater Sage-grouse, even after amendments completed in 2019 that were focused on increasing energy development and even though that species is not listed as threatened or endangered under the ESA. Under the 2019 Northwest Colorado Greater Sage-grouse Amendment, waivers, exceptions, or modifications of NSO stipulations may only be applied if specific criteria are met and then the State of Colorado must be consulted and agree. (Northwest Colorado Greater Sage-grouse Amendment, pp. G-4 - G-7.) This management is insufficiently protective of the Gunnison Sage-grouse, is inconsistent with Gunnison County’s approach and will risk the current threatened status of the species being upgraded to endangered, which will impact Gunnison County. Alternative E cannot be supported. The BLM should return to more protective management, as well as adopting an approach that requires the input of the State of Colorado, for waivers, exception or modification of lease stipulations, similar to that used for the Greater Sage-grouse.

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: Even with only one operating oil and gas well, the UFO’s Crawford Population has been in dramatic decline from 2000 through 2012, and had to be supplemented with birds from the Gunnison Basin in 2011 through 2013. BLM manages approximately 63% of the remaining occupied habitat for this population, as well as 13% of occupied habitat. Despite the precarious status of the Crawford Population in particular, the UFO DEIS fails either to take a hard look at the extensive science showing relationship between oil and gas density and sage-grouse population decline, or to consider any alternative that would either limit density of development or exclude oil and gas entirely from Gunnison sage-grouse occupied and/or suitable habitat.

UFORMP-022_BaumgartenD_20190725

Board of County Commissioners of Gunnison County

Baumgarten, David

Issue Excerpt Text: The Proposed RMP/Final EIS is fatally deficient in its consideration of Gunnison Sage-grouse (“GuSG”). The following are significant data not fully considered in the Proposed RMP/Final EIS: * The BLM Uncompahgre Field Office Proposed RMP/Final EIS was published in the Federal Register on 6/28/19, over 6 months after the Biological Opinion (“BO”) was signed. The Proposed RMP/Final EIS does not address whether - or how - the BO is still applicable, particularly in the context of Alternative E, which appears to be a very new construct in the Proposed RMP/Final EIS. * The U.S. Fish and Wildlife Service (“USFWS”) received the request for a BO from the BLM on July 31, 2018, which included a BA, which Gunnison County has not seen, prepared by the BLM. * The BLM determined in their BA that the Proposed RMP/Final EIS may affect, and is likely to adversely affect, the GuSG. The USFWS agreed with this determination.

Summary:

The UFO PRMP/FEIS failed to properly address the impacts on Gunnison sage-grouse because:

- It did not address the Federal listing of Gunnison sage-grouse;
- It did not adequately adopt protective measures for the species; and
- It is not consistent with Gunnison County’s management approach.

Additionally, the BLM failed to take a hard look at the extensive science showing a relationship between oil and gas density and sage-grouse population decline.

Response:

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).

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 U.S.C. 1336(a)(2)). If an agency determines through a finding in a BA that a proposed action is likely to adversely affect listed species or designated critical habitat, formal consultation is required under 50 CFR 402.14(a).

Section 3.1.7, *Special Status Species*, of the UFO PRMP/FEIS addresses the Federal listing of the Gunnison sage-grouse (p. 3-59 and Table 3-21). Section 4.3.6, *Special Status Species*, specifically addresses potential impacts on Gunnison sage-grouse and habitat as described in the *Gunnison Sage-Grouse Rangewide Conservation Plan* and additional scientific literature (see pp. 4-128 to 4-129 regarding additional information on the relationship of oil and gas development on sage-grouse populations; see a summary of scientific literature in the *Northwest Colorado Greater Sage-Grouse RMP Amendment and Final EIS* [2015]). Chapter 5, Section 5.2, *Coordination and Consultation*, summarizes consultation regarding Gunnison sage-grouse with Federal, State, and coordinating agencies. References located in Volume II of the UFO PRMP/FEIS record Gunnison sage-grouse information sources used by the BLM in preparation of the UFO RMP. Regarding the declining Crawford Gunnison sage-grouse population, as noted in Appendix R, *Response to Comments*, the bird’s occupied critical habitat is entirely within the Gunnison Gorge National Conservation Area RMP planning area; there are small, isolated pieces of BLM-administered land within potential (unoccupied) critical habitat within the UFO RMP Decision Area (see p. R-1040).

Appendix B of the UFO PRMP/FEIS provides a list of common standard operating procedures and BMPs that are applicable to all alternatives in the RMP. The PRMP/FEIS analyzes and adopts mitigation measures that avoid some potential future impacts altogether by closing public lands to certain uses and minimizes other potential future impacts by restricting certain uses on the public lands. At the RMP level, it is typically not appropriate to analyze specific mitigation measures that rectify impacts, reduce impacts over time, or compensate for impacts, because the approval of an RMP does not directly result in any on-the-ground impacts. Additionally, several fluid leasing and surface disturbance stipulations would apply for the protection of Gunnison sage-grouse under the PRMP/FEIS (refer to TL-16, TL-18, NSO-31/SSR-32, and CSU-29/SSR-34 in Appendix B of the UFO PRMP/EIS). The BLM would also look at all appropriate mitigation measures during the decision-making process for future site-specific actions in the Planning Area. The environmental analysis document prepared for site-specific proposals such as oil and gas development (e.g., Applications for Permit to Drill and Sundry Notices) or other surface projects also needs to include and address any proposal to except, modify, or waive a surface stipulation. As noted in Appendix B, the BLM authorized officer may except or modify a stipulation if (1) the protection provided by the stipulation is no longer justified or necessary to meet resource objectives established in the RMP; (2) the protection provided by the stipulation is no longer sufficient to meet resource objectives established in the RMP (applies to modification only); or (3) proposed operations would not cause unacceptable impacts. The BLM authorized officer may waive a stipulation if it is determined that the factors leading to its inclusion in the lease or project no longer exist. The BLM authorized officer may

require additional plans of development, surveys, mitigation proposals, or environmental analysis, and may be required to consult with other government agencies and/or the public in order to make this determination. As a result of the Governor’s Consistency Review, the BLM will modify stipulations associated with Gunnison Sage-grouse habitat to include consultation with CPW on any proposed exceptions, waivers and modifications.

As noted previously under *FLPMA – Consistency with Other Plans*, the BLM has given consideration to State, local, and tribal plans that are germane to the development of the UFO PRMP/FEIS and addressed inconsistencies to the extent these entities provided notification of such. The UFO had not been made aware of the County’s Gunnison Sage-grouse provisions to date. In accordance with 43 CFR 1610.3-2, State Directors and Field Managers shall, to the extent practicable, keep apprised of State and local governmental and Indian tribal policies, plans, and programs, but they shall not be accountable for ensuring consistency if they have not been notified, in writing, by State and local governments or Indian tribes of an apparent inconsistency.

Through development of the UFO PRMP/FEIS, the BLM determined that the approval of the RMP is likely to adversely affect listed species or critical habitat, and therefore underwent formal consultation with the USFWS. The BLM documented this determination in the BA for the UFO PRMP/FEIS, which was provided to the USFWS for review and comment. The BLM used the same information and biological data both to prepare the BA and to analyze the environmental impacts on affected species in the EIS.

The BO is the formal opinion of the USFWS as to whether a Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. On December 17, 2018, the USFWS issued the BO for the UFO PRMP/FEIS, which concluded that implementation of the UFO PRMP/FEIS may affect, and is likely to adversely affect, Gunnison sage-grouse (including designated critical habitat) and includes USFWS-recommended conservation measures to avoid adverse impacts on sage-grouse and modifications to critical habitat. The BO is available online at the RMP’s project website: <https://go.usa.gov/xnpgD>.

The UFO PRMP/FEIS complied with NEPA by including a discussion of measures that may mitigate adverse environmental impacts to the extent appropriate for an RMP, and has fully complied with requirements under Section 7(a)(2) of the ESA.

NEPA – Mitigation – Gunnison Sage-grouse

UFORMP-080_ClabbersN_20190728

The Wilderness Society

Clabbers, Nicholas

Issue Excerpt Text: As these examples highlight, BLM failed to adequately address impacts and mitigation measures identified in FWS’s 2018 BiOp and reduced protections in the Proposed RMP/FEIS despite the listing of Gunnison sage-grouse under the ESA. BLM should have increased protections for the species from the Draft RMP/EIS to the Proposed RMP/FEIS, adopt the mitigation measures identified by FWS, and otherwise act consistently with the best available science to protect the species. However, it completely failed to do so, and this was arbitrary and renders the Proposed RMP/FEIS unlawful. Doing so was further inconsistent with FLPMA’s mandates to avoid undue and unnecessary degradation and permanent impairment of wildlife like Gunnison sage-grouse and the agency’s Special Status Species Policy that requires BLM to implement a BiOp for a listed species.

*UFORMP-080_ClabbersN_20190728**The Wilderness Society**Clabbers, Nicholas*

Issue Excerpt Text: Moreover, BLM cannot comply with its duties under the ESA to ensure against jeopardy of the species and adverse modification of its critical habitat under the ESA by disregarding key elements of the 2018 BiOp. The agency also should have also disclosed these shortcomings to the public under NEPA. 40 C.F.R. § 1508.27 (listing threatened violations of federal law as a significance factor requiring an EIS); *id.* at § 1506.2(d) (requiring discussions of possible conflicts with federal plans, policies, and controls for the area at issue in an EIS); *id.* at § 1502.2(d) (explaining EIS must state “how” alternatives will achieve requirements of “other environmental laws and policies”). For these reasons, BLM must disclose and discuss the 2018 BiOp’s discussion of Gunnison sagegrouse and its mitigation measures in a supplemental EIS and modify the Proposed RMP to adopt adequate mitigation measures for Gunnison sage-grouse, including those provided for in the 2018 BiOp.

*UFORMP-096_GibbsD_20190728**Colorado Department of Natural Resources**Gibbs, Dan*

Issue Excerpt Text: finally, and critically, Colorado requests that, consistent with the recommendation in the Service’s Biological Opinion. BLM include in the PRMP the criteria developed for the Northwest Colorado Greater Sage-grouse RMPA with respect to waivers, exceptions and modifications within NSO-designated areas. These criteria require, among other things, agreement between BLM’s District Manager and CPW and written justification for granting any exceptions or modifications. As mentioned above, land use restrictions for Gunnison sage-grouse habitat should be at least as strong or stronger than those for an unlisted species like the greater sage-grouse. Colorado did not include these recommendations during the comment period on the Draft RMP because we were not alerted until June 2018 that the planning process for a rangewide RMP for Gunnison sagegrouse conservation had been postponed indefinitely.¹⁵ But now that it is up to the Field Offices to amend their RMPs to conserve Gunnison sage-grouse, Colorado respectfully requests that these measures. Recommended by the agency with jurisdiction over management of listed species, be adopted by the UFO, and protests their absence from the PRMP.

*UFORMP-102_KingL_20190728**Western Environmental Law Center**King, Laura*

Issue Excerpt Text: BLM itself acknowledges that these allegedly ““refined”” management measures ““fall short of accepted minimum protection standards to maintain sage-grouse viability.””¹⁸⁰ The FEIS describes Alternative E’s sage-grouse standards as ““similar to Alternative D and would provide some level of protection from surface occupancy and site disturbance in all seasonal habitats; Alternative E specifies that these include designated critical habitat (both designated occupied and unoccupied), winter habitat, and nondesignated occupied breeding habitat.””¹⁸¹ Under Alternative D, however, ““[b]reeding habitat would be protected with similar stipulations as Alternative C (NSO-31/SSR-32), and would similarly fall short of accepted minimum protection standards to maintain sage-grouse viability (Knick and Connelly 2011).””¹⁸² While ““additional conservation measures could be applied as needed under the CSU stipulation within breeding (non-lek) habitats to conserve high-quality sage-grouse habitat and to avoid habitat fragmentation and cumulative effects,”” FEIS at 4-145, the discretionary nature of that stipulation provides no certainty that ““additional conservation measures”” either will be applied, or that effective measures will be selected.

Section 7(a)(1) of the Endangered Species Act mandates that ““All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act.”” BLM’s failure to adopt reasonable measures, based on

the best available science, to conserve Gunnison sage-grouse and its critical habitat, violates this statutory mandate.”

Summary:

The BLM failed to include or adequately address mitigation measures, specifically those included in the 2018 USFWS BO, for the Gunnison sage-grouse in the PRMP/FEIS, rendering it unlawful.

Response:

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).

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 U.S.C. 1336(a)(2)). If an agency determines through a finding in a BA that a proposed action is likely to adversely affect listed species or designated critical habitat formal, consultation is required under 50 CFR 402.14(a).

Appendix B of the UFO PRMP/FEIS provides a list of common standard operating procedures and BMPs that are applicable to all alternatives in the RMP. The UFO PRMP/FEIS analyzes and adopts mitigation measures that avoid some potential future impacts altogether by closing public lands to certain uses and minimizes other potential future impacts by restricting certain uses on the public lands. At the RMP level, it is typically not appropriate to analyze specific mitigation measures that rectify impacts, reduce impacts over time, or compensate for impacts, because the approval of an RMP does not directly result in any on-the-ground impacts. The BLM would also look at all appropriate mitigation measures during the decision-making process for future actions in the Planning Area.

Through development of the UFO PRMP/FEIS, the BLM determined that the approval of the RMP is likely to adversely affect listed species or critical habitat, and therefore underwent formal consultation with the USFWS. The BLM documented this determination in the BA for the UFO PRMP/FEIS, which was provided to the USFWS for its review and comment. The BLM used the same information and biological data both to prepare the BA and to analyze the environmental impacts on affected species in the EIS.

The BO is the formal opinion of the USFWS as to whether a Federal action is likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. On December 17, 2018, the USFWS issued the BO for the UFO PRMP/FEIS, which concluded that implementation of the UFO PRMP/FEIS may affect, and is likely to adversely affect, Gunnison sage-grouse (including designated critical habitat) and includes the USFWS’s conservation recommendations to avoid adverse impacts on sage-grouse and modifications to critical habitat. The BO is available online at the RMP’s project website: <https://go.usa.gov/xnpgD>. On September 20, 2019, the BLM notified the USFWS of changes to the PRMP/FEIS (Alternative E) that occurred after USFWS Section 7 concurrence on December 17, 2018. BLM UFO biological staff determined that these changes to the Agency-Proposed Alternative E do not affect species or habitat that were consulted on in 2018.

The UFO PRMP/FEIS complied with NEPA by including a discussion of measures that may mitigate adverse environmental impacts to the extent appropriate for an RMP and has complied with requirements under Section 7(a)(2) of the ESA.

As a result of the Governor’s Consistency Review, the BLM will modify stipulations associated with Gunnison Sage-grouse habitat to include consultation with CPW on any proposed exceptions, waivers and modifications.

NEPA – Impact Analysis – Human Health

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: SB 181, which was signed into law on April 16, 2019, requires prioritization of public health, safety, and the environment when necessary and reasonable over oil and gas development. It also allows for non-production of oil and gas minerals when necessary and reasonable to protect public health, safety, welfare, the environment and wildlife. The UFO RMP takes the opposite approach; it prioritizes oil and gas development over protection of public health, safety, the environment and wildlife, which directly conflicts with Colorado policy. SB 181 also seeks to put communities impacted by oil and gas on the same level footing as industry and local government. The BLM ignored 42,000 public comments (80% of the total comments received), including local government comments of frontline impacted communities, regarding the incompatibility of leasing 95% of BLM lands and minerals to oil and gas with protecting the health, safety and welfare of the community. The UFO RMP undermines Colorado’s goals to put protection of public health, safety, environment and wildlife first.

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: Entirely absent from the agency’s discussion of air quality impacts is the relationship to human health. Although adherence to air quality mitigation and NAAQS standards will have a positive relationship to human health, poor baseline air quality conditions due to direct, indirect and cumulative impacts in the planning area warrants an independent hard look analysis at human health; and, moreover, such analysis is required by NEPA and CEQ implementing regulations.

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: As discussed in Conservation Groups’ DEIS Comments, Ex. 1-1, at 170-181, BLM did not conduct a health impact assessment, or equivalent analysis, and, as a result, the agency’s RMP/EIS does not satisfy NEPA and its implementing regulations. NEPA requires that the BLM employ at least the same level of effort to analyze human health impacts as it does to promote industry’s interest in development when preparing the RFD and associated analyses regarding projected drilling levels. A health impact assessment (“HIA”) or equivalent analysis would fulfill the regulations governing NEPA, to examine human health impacts “to the fullest extent possible.” A HIA would be forward-looking and attempt to identify all of the potential direct, indirect, and cumulative links between a proposed activity and the health and well-being of affected communities, and to develop mitigation measures to minimize harms and maximize benefits. The RMP does not include this type of analysis of human health impacts.

Summary:

The BLM’s impact analysis is deficient because it did not assess the effects of the plan’s actions on human health.

Response:

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

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

A land use planning–level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan–level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The BLM described the impacts on public health and safety from proposed management actions of other resources and resource uses in Section 4.6.2, *Public Health and Safety*. Here, the BLM included a definition of the indicators for changes in human health, assumptions made for the analysis, and a general discussion of the nature and type of impacts that could be expected; see discussions for the nature and type of impacts anticipated from air and water contamination on pages 4-427 to 4-428.

The BLM notes that “potential for water contamination associated with hydraulic fracturing depends on many factors, including, but not limited to, the chemicals utilized in fracturing fluid, distance from the gas well to ground and surface water, and methods of transport and disposal of wastewaters (Jackson et al. 2011; Vidic et al. 2013). As discussed in Chapter 3, exposure to hazardous materials produced from oil and gas development, and unconventional natural gas development in particular, has been correlated with human health concerns in some studies, including, but not limited to, respiratory problems, cancer, and endocrine system disorders. Studies have not been conclusive as to the level of impacts; however, distance from the site of development has been identified as one key factor in determining the potential for impacts (Qingmin 2015)” (p. 4-428). The BLM analyzed the potential effects from well stimulation techniques to the extent necessary at the land use planning stage of the oil and gas process.

The Colorado Oil and Gas Conservation Commission is currently reviewing, modifying, and establishing new rules to comply with Senate Bill 19-181, which could place additional restrictions on the State permitting process. The BLM Colorado has authority over Federal actions on Federal public lands, and does not have local or State decision-making authority. The BLM Colorado is currently renewing a Memorandum of Understanding with the State of Colorado on how the State and Federal regulatory process will interact. The BLM complied with NEPA’s requirement to analyze the impacts on human health from hazardous conditions in the PRMP/FEIS.

NEPA – Mitigation – Soil Selenium

UFORMP-080_ClabbersN_20190728

The Wilderness Society

Clabbers, Nicholas

Issue Excerpt Text: In describing the environmental consequences of the Proposed Action as to selenium loading, the Proposed RMP/FEIS states that it would “implement management measures related to saline/selenium soils,” and that the Proposed Action “allows the BLM to exert greater discretion and to implement a wider range of land use strategies to improve water quality.” Proposed RMP/FEIS at 4-80, 81. Unfortunately, the BLM’s selection of stipulations and reservation of discretion in this regard renders this assurance meaningless. BLM explicitly declined to include in its Proposed Action either stipulation NL-1, which would close to oil and gas leasing and geophysical exploration soils with high and very high potential for selenium loading, or stipulation NSO-2, which would prohibit surface occupancy and use within 402 meters (0.25 mile) of soils with high and very high potential for selenium loading. See Proposed RMP/FEIS at B-7 and B15, respectively. Instead, BLM chose to include Stipulation CSU-3/SSR-3, which provides that surface occupancy or use may be restricted on lands with selenium soils, that special design, construction or implementation measures (including relocation of operations by more than 200 meters) may be required, and that an operator may be required to submit engineering plans to minimize or mitigate potential effects to soil productivity. See Proposed RMP/FEIS at B-54. BLM failed to estimate how it would apply this discretion, or how doing so would impact water quality and aquatic habitat. This failure was in violation of NEPA.

Summary:

The BLM failed to describe how it would apply stipulations for selenium soils and failed to analyze how not applying the stipulations would affect water quality and aquatic habitat.

Response:

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

The PRMP/FEIS analyzed and incorporated mitigation measures that are expected to avoid, mitigate, and/or minimize anticipated impacts by restricting certain uses on the public lands. At the RMP level, it is typically not appropriate to analyze specific mitigation measures that rectify impacts, reduce impacts over time, or compensate for impacts, because the approval of an RMP does not directly result in any on-the-ground impacts. The BLM will continue to look at all appropriate mitigation measures during the decision-making process for future implementation actions in the Planning Area.

As presented in Appendix B of the PRMP/FEIS, NSO, CSU, and timing limitations are stipulations that may be applied to future fluid mineral leasing and development of Federal fluid mineral estate. Stipulations are designed to provide resource-specific protections. The BLM may modify the operations of surface and other disturbance activities caused by the presence of humans and to require additional specific or specialized mitigation. Stipulations are designed to provide resource-specific protections.

Site-specific relocation (SSR) is a restriction decision that applies to other activities on BLM-administered lands. An SSR restriction is similar to a CSU restriction in that it allows some use and occupancy of BLM-administered lands while protecting identified resources or values. SSR areas are

potentially open to surface-disturbing activities but the restriction allows the BLM to require special constraints, or the activity can be shifted to protect the specified resource or value. As noted in Appendix B, *Restrictions Applicable to Fluid Minerals Leasing and Other Surface-disturbing Activities*, “Lease stipulations and lease notices would be applied, as applicable, to all new leases and to expired leases that are reissued. On existing leases, the BLM would develop Conditions of Approval for Applications for Permit to Drill to achieve resource objectives of lease stipulations contained in this RMP” (43 CFR 3101.1-2).

The PRMP/FEIS complied with NEPA by including a discussion of measures that may mitigate adverse environmental impacts to the extent appropriate for an RMP.

NEPA – Impact Analysis – Water Quality

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: The FEIS does not adequately address or analyze the risks of water quality contamination from surface storage of fracking fluid and other oil and gas wastes, including produced and flowback water from wells. Likewise, the BLM does not quantify, nor fully address, the risk of potentially catastrophic spills and blowouts at well sites.

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: The UFO also failed to sufficiently consider impacts to groundwater related to fracking. For the first time in the FEIS, BLM acknowledges “evidence of fugitive gas migration along wellbores,” but dismisses this evidence as “likely due to faulty well construction.” FEIS at 4-66. BLM concludes that “in some areas, the oil- and gas-related waters are not likely to reach drinking water aquifers, whereas in other areas, constituents of concern simply may not have yet reached the aquifer or have been diluted to below detection limits,” without providing an analysis of the characteristics of the Project Area that would make it more, or less, vulnerable to contamination. FEIS at 4-66. This dismissive approach does not satisfy the requirements of NEPA.

Summary:

The FEIS fails to analyze sufficiently the risks of water quality contamination from oil and gas development and impacts on ground- and surface water from fracking.

Response:

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

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

A land use planning–level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan–level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The BLM provided an analysis of the risk to water quality from oil and gas development and associated assumptions in Section 4.3.3, and included spill data from the Colorado Oil and Gas Conservation Commission from 1999 to 2017, as well as a groundwater study (2012) that analyzes the potential for mixing of water from different aquifers due to hydraulic fracturing and disposal of produced water; a study on hydraulic fracturing and potential environmental impacts (2015); and a 2016 EPA report on impacts from hydraulic fracturing on drinking water. It is not feasible to address unlikely events or area-specific characterizations in an analysis of this scope. This will be analyzed in future, project-specific NEPA documents.

The BLM complied with NEPA’s requirement to analyze the reasonably foreseeable impacts on water resources in the PRMP/FEIS.

NEPA – Impact Analysis – Wilderness Characteristics

UFORMP-080_ClabbersN_20190728

The Wilderness Society

Clabbers, Nicholas

Issue Excerpt Text: Here, BLM recognizes that the planning area contains 42,150 acres of inventoried LWC, but under the preferred alternative, the agency would affirmatively protect the wilderness characteristics of none of that acreage. BLM proposes to manage 18,320 acres “to minimize impacts on wilderness characteristics,” and leave the balance as “not managed” to minimize or protect those characteristics. Proposed RMP/FEIS at Table 4-13. To the extent BLM presents this as adequate protection, it is a smokescreen - although BLM’s Proposed Action commits the agency to “minimize impacts” to a certain portion of LWC, it does so only “when and where possible,” an assessment that is apparently up to its sole discretion without serious consideration or discussion as to how those decisions might be reached. Proposed RMP/FEIS at 4-206. Any supposed protections of LWC would fall by the wayside in the face of other land uses, most prominently development for energy production. Under its preferred alternative, BLM affirmatively indicates that it will “prioritize” other uses over the protection of LWC. Proposed RMP/FEIS at 2-137. In its discussion of the no-action alternative, BLM recognizes that “not managing for the explicit protection of the inventoried [LWC] would leave these lands vulnerable to surface-disturbing activities, which would likely diminish wilderness characteristics over time.” *Id.* at 4-197 (emphasis added). While BLM is permitted to favor certain land uses over others in certain areas, the management strategy outlined in the RMP is far from the “delicate balancing” of land uses mandated by FLPMA. *New Mexico*, 565 F.3d at 710. LWC are a critical part of the agency’s balancing under FLPMA and cannot be summarily dismissed. *ONDA*, 625 F.3d at 1121- 21. Moreover, it does not comply with FLPMA’s mandatory requirement that BLM protect the public lands from “unnecessary or undue degradation.” 43 U.S.C. §1732(b). BLM’s proposals for effectuating its Proposed Action in this context are also deficient. BLM has provided only a cursory overview of its management strategies, frequently deferring to conditions that would be imposed by other programs to provide supposed impact minimization. See, e.g., 8 Proposed RMP/FEIS at 4-206 (NSO stipulation applied to fluid mineral leases); *id.* at 4-207 (SSR restriction for surface-disturbing activities). There are no specific “conditions of use that would avoid or minimize impacts,” 2005 LUP Handbook Appx. C at 12, or “measures or criteria that will be applied to guide day-to-day activities occurring on public land” as required by BLM’s own policies. *Id.* at 13. Furthermore, there is no consideration of any concrete “measures to minimize impacts on [wilderness] characteristic.” 2012 LWC Manual at .06(A)(2)(d). BLM punts its strategy on how to

“minimize impacts” to its future site-specific decisions, stating only that it will “conserve wilderness characteristics where possible through relocation, design criteria, and/or mitigation.” Proposed RMP/FEIS at 2-52. That approach is inconsistent with BLM’s responsibilities under FLPMA, and the agency cannot rely on future, ambiguous measures to comply with its land-use planning obligations. See *Burke*, 981 F. Supp. 2d at 1114.

UFORMP-080_ClabbersN_20190728

The Wilderness Society

Clabbers, Nicholas

Issue Excerpt Text: Even if the content of the Proposed RMP/FEIS itself passed muster, BLM violates its own procedures and policies in failing to provide the required weighing of resource values before deciding to prioritize other land uses over LWC. See, e.g., 2012 LWC Manual at .60(A)(1)(b) (BLM must “consider the benefits that may accrue to other resource values and uses as a result of protecting wilderness characteristics”). There is simply no discussion of why BLM decides to favor other uses over the protection of LWC. BLM does not identify what values the other resource uses will generate that make its decision to forgo protections for LWC the right one.

Summary:

The BLM’s Preferred Alternative would not affirmatively protect the wilderness characteristics of inventoried lands with wilderness characteristics and would instead prioritize other uses over the protection of those characteristics. The management strategy outlined in the RMP does not reflect the “delicate balancing” of land uses mandated by FLPMA, does not comply with FLPMA’s mandatory requirement that the BLM protect the public lands from “unnecessary or undue degradation,” and fails to provide the required weighing of resource values before deciding to prioritize other land uses over protection of wilderness characteristics as specified in the 2012 BLM Lands with Wilderness Characteristics Manual 6340 at Section 1.6 (A)(1)).

Response:

Section 102(a)(7) of FLPMA declares that it is the policy of the United States that management of the public lands be on the basis of “multiple use” and “sustained yield.” Section 103(c) of FLPMA defines “multiple use” as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people.

FLPMA’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. 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 UFO RMP/EIS, as described in Chapter 2, 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. The UFO RMP satisfies FLPMA’s multiple use policy.

The UFO RMP provides for the balanced management of the public lands in the Planning Area. In developing the UFO RMP, the BLM complied with its planning regulations (43 CFR 1610), the requirements of NEPA, and other statutes, regulations, and Executive Orders related to environmental quality. The UFO RMP Proposed Alternative identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the unnecessary or undue degradation of public lands. The UFO RMP/EIS analyzed and included mitigation measures that avoid potential future impacts altogether

by closing public lands to certain uses, and minimizes other potential future impacts by restricting certain uses on public lands.

The BLM conducted the analysis of lands with wilderness characteristics in the PRMP/FEIS in accordance with BLM Manual 6320 including analysis of both the benefits to and negative impacts on wilderness characteristics from a variety of planning decisions across all alternatives (see Section 4.3.12). Considering wilderness characteristics in the land use planning process may result in several outcomes including, but not limited to: (1) emphasizing other multiple uses as a priority over protecting wilderness characteristics; (2) emphasizing other multiple uses, while applying management restrictions (e.g., conditions of use, mitigation measures) to reduce impacts on wilderness characteristics; or (3) prioritizing the protection of wilderness characteristics over other multiple uses (BLM Manual 6320). Under Alternative E, the agency’s PRMP, the BLM would not manage lands to protect wilderness characteristics, and would instead manage to prioritize other multiple uses, while applying some management restrictions to minimize impacts on wilderness characteristics when and where possible.

The BLM outlined and defined the stipulations and mitigation measures that would be applied to resource uses to protect lands with wilderness characteristics. Specifically, Table 2-2 on page 2-53 references CSU-60, which would be applied to lands with wilderness characteristics. Page B-89 of Appendix B provides allowable uses associated with CSU-60.

Congress recognized that through the BLM’s multiple-use mandate, there would be conflicting uses and impacts on the public land.

Because the UFO RMP would not authorize any uses of the public lands, and the alternatives evaluated in the FEIS comply with all applicable statutes, regulations, and policies, the UFO RMP will not result in “unnecessary or undue degradation of the lands” under Section 302(b) of FLPMA.

NEPA – Impact Analysis -Mitigation

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: NEPA was enacted to promote efforts that will prevent or eliminate damage to the human environment. BMPs help “mitigate” environmental impacts. “Mitigation” is defined in CEQ regulations as measures to help, avoid, reduce or compensate for environmental impacts. 40 CFR 1508.20. BLM’s failure to analyze the potential benefits of requiring these BMPs in alternatives does not satisfy NEPA’s hard look mandate and frustrates the purpose of preparing an EIS (40 CFR 1502.1 states that the purpose of preparing an EIS is to “...provide full and fair discussion of significant environmental impacts and [] inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.”). By failing to implement these BMPs in the RMP, BLM has failed to take adequate measures to minimize and mitigate the adverse impacts that will result from the RMP.

Summary:

The BLM has failed to take adequate measures to minimize and mitigate adverse impacts by not implementing BMPs in the RMP.

Response:

NEPA requires the BLM to include a discussion of measures that may mitigate adverse environmental impacts (40 CFR 1502.14(f), 40 CFR 1502.16(h)). Potential forms of mitigation include: (1) avoiding the impact altogether by not taking a certain action or parts of an action; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) rectifying the impact by repairing,

rehabilitating, or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or (5) compensating for the impact by replacing or providing substitute resources or environments (40 CFR 1508.20).

The UFO PRMP/FEIS analyzed stipulations that may be applied, as applicable, to all new leases and to expired leases that are reissued as well as BMPs and standard operating procedures as measures that avoid, minimize, or mitigate potential future impacts. Together, the stipulations noted in Appendix B, *Restrictions Applicable to Fluid Minerals Leasing and Other Surface-disturbing Activities*, and the common standard operating procedures and BMPs listed in Appendix G, *Best Management Practices and Standard Operating Procedures*, help to minimize adverse impacts on the resources as noted in the impact analysis section on pages 4-237 through 4-239 and 4-242 through 4-244, and each alternative impact analysis on pages 4-247 through 4-271. At the RMP level, it is typically not feasible to analyze specific mitigation measures that rectify impacts, reduce impacts over time, or compensate for impacts, because the approval of an RMP does not authorize any specific implementation project or directly result in any on-the-ground impacts. The BLM would look at all appropriate mitigation measures during the decision-making process for future implementation actions in the Planning Area.

The UFO PRMP/FEIS complied with NEPA by including a discussion of measures that may mitigate adverse environmental impacts to the extent appropriate for an RMP.

NEPA – Impacts Analysis – Carbon/Greenhouse Gas Emissions

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: BLM failed to take a ‘hard look’ at the climate impacts of its preferred plan by refusing to consider carbon budgeting as a means of informing the public and decisionmakers about the impact of continued fossil fuel development in the planning area.⁹ BLM must disclose and assess the portion of the carbon budget that fossil fuel production under the UFO RMP will consume. On December 12, 2015, 197 nation-state and supra-national organization parties meeting in Paris at the 2015 United Nations Framework Convention on Climate Change Conference of the Parties consented to the Paris Agreement committing its parties to take action so as to avoid dangerous climate change. The Paris Agreement commits all signatories- including the United States-to a target holding long-term global average temperature “to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels.”¹⁰ Although President Trump announced on June 1, 2017 that the U.S. would withdraw from the Paris Agreement, the earliest possible effective withdrawal date is November 4, 2020, in accordance with Article 28 of the Agreement.

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: BLM fails to adequately address climate change in its Plan or EIS, as NEPA requires, through robust consideration of reasonable alternatives, mitigation measures and standards in the plan. Conservation Groups raised these issues in their comments on the DEIS, which is attached as Exhibit 1-1, at pp. 39-69. BLM acknowledges that “the projected emissions sources” from the Plan “will emit greenhouse gases and will thus contribute to the accumulation of atmospheric greenhouse gases, and potential climate change effects” as projected by the Intergovernmental Panel on Climate Change. FEIS at R-141. However, instead of taking action to reduce GHG impacts from the UFO planning area below the level of significance, e.g. by further limiting development and/or requiring further emission controls, the UFO insists that action is either not possible or not meaningful: Unfortunately, no analysis tools currently exist to describe the planning area’s incremental contributions to the global phenomenon of climate change in terms of potential warming, drought, sea level rise, or other common environmental metrics

associated with increasing concentrations of greenhouse gases. The problem is, by nature, a cumulative issue, and any downscaling of the projected global climate changes effects to project/planning area scales (based on emissions scaling) does not provide meaningful analysis due to the fact that no studies have identified the precise relationship between specific levels of emissions from a particular source, and measurable differences in climate-change-related impacts. Nor has EPA or any other regulatory body adopted standards based on such impacts. Without specific thresholds with which to compare expected emissions, a quantitative analysis of potential differences in climate change impacts and mitigation among alternatives is not possible. FEIS at R-141. This type of dismissive approach fails to satisfy the guidance outlined in Department of Interior Secretarial Order 3226, discussed below, or the requirements of NEPA. “Reasonable forecasting and speculation is ... implicit in NEPA, and we must reject any attempt by agencies to shirk their responsibilities under NEPA by labelling any and all discussion of future environmental effects as ‘crystal ball inquiry.’” *Save Our Ecosystems v. Clark*, 747 F.2d 1240, 1246 n.9 (9th Cir. 1984 (quoting *Scientists’ Inst. for Pub. Info., Inc. v. Atomic Energy Comm.*, 481 F.2d 1079, 1092 (D.C. Cir. 1973)).

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: The GHG emissions from BLM actions in the planning area are significant. The UFO estimates annual direct emissions from BLM actions under the Uncompahgre RMP of 2,512,570 metric tons CO₂e. FEIS at 4-22.55 BLM estimated 30-year total estimated cumulative indirect greenhouse gas emissions for “high” and “low” UFO oil and gas production scenarios: approximately 129 million tons CO₂e for the “high” UFO oil and gas production scenario, and approximately 8 million tons CO₂e for the “low” UFO oil and gas production scenario. FEIS at 4-29. Such emissions would make a significant contribution to total emissions from federal lands, and contribute significantly to total U.S. emissions.⁵⁶ nowhere that we have found in the FEIS does BLM add up the direct and indirect emissions under the plan—a major failing that BLM must correct.

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: With respect to coal, BLM states that it is relying on a U.S. Forest Service EIS for the West Elk coal mine, which, according to the UFO, “concluded that it was not reasonable to assume that the ‘No Action’ Alternative (not making UFO coal available) would result in overall cumulative (global) greenhouse gas emissions reductions.” FEIS at 4-29. That conclusion is incorrect. The Forest Service analysis referred to by BLM did conclude there would be substitution between coal and other fuels under a No Action scenario, such that overall U.S. GHG emissions would be different comparing Action and No Action alternatives. Moreover, the modeling the U.S. Forest Service relied on for West Elk assumed a full and immediate implementation of the Clean Power Plan.

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: The volume of potential coal, oil and gas from the parcels available for lease in the UFO draft RMP and EIS is quantifiable, and the lifecycle GHG emissions impact from these new lease parcels must be disclosed to the public. In our comments on the DEIS (at pp. 44-48), we easily generated an accurate, site-specific impact analysis for each alternative by utilizing BLM’s own Energy Policy and Conservation Act phase III Oil and Gas Inventory Model geodatabase and the Uncompahgre draft RMP DEIS alternative GIS shapefiles to establish future extractible oil and gas volume from the planning area.⁵⁷ Then, we generated potential lifecycle greenhouse gas emissions for resultant oil and gas volumes using a peer-reviewed carbon calculator and lifecycle greenhouse gas emissions model developed by EcoShift consulting.⁵⁸ This model is not novel in 57 Center for Biological Diversity, Maps and volume

estimates of future extractible oil and gas volume in the Uncompahgre planning area based on GIS mapping of U.S. Bureau of Land Management’s EPCA Phase III Inventory GIS Data, published May 2008, found at

http://www.blm.gov/wo/st/en/prog/energy/oil_and_gas/EPCA_III/EPCA_III_geodata.html; U.S. Bureau of Land Management, Uncompahgre Field Office draft Resource Management Plan and Environmental Impact Statement GIS mapping shapefiles, published June 3, 2016 found at

http://www.blm.gov/co/st/en/fo/ufo/uncompahgre_rmp.html; Emails and Dropbox files from David Sinton, Geographic Information Systems Specialist, BLM Uncompahgre Field Office, re: Uncompahgre draft RMP and EIS shapefiles supplemental data (October 7, 2016 2:14 PM MT). Methodology used: Intersect the leasable oil and gas areas for each alternative provided in the Dropbox files and on the planning website for the Uncompahgre field office’s draft RMP and EIS with the model layer from BLM’s Oil and Gas Inventory Model Geodatabase. Then calculate new acreage for each polygon and multiply the “Total Oil Density” and “Total Gas Density” layers by this acreage to create volume data. The resultant maps are attached as Exhibits 79-83. 58 See Mulvaney (attached as Exhibit 23). its development or methodology. Numerous greenhouse gas calculation tools exist to develop lifecycle analyses, particularly for fossil fuel extraction, operations, and transport and end-user emissions. Despite the fact that Conservation Groups provided BLM with a complete GHG lifecycle emissions analysis, BLM failed to use it or conduct its own analysis.

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: As Conservation Groups stated in their comments on the DEIS (attached as Exhibit 1- 1), at pp. 62-69, the BLM failed to monetize climate damages stemming from the UFO RMP. BLM uses faulty reasoning to defend why it has chosen not to use the social cost of greenhouse gas metric to monetize the RMP’s emissions. First, the BLM reasons that “this action is not a rulemaking for which the SCC protocol was originally developed.” FEIS at R-181. However, application of the social cost of carbon is not limited to rulemakings. NEPA requires agencies to fully and accurately estimate environmental, public health, and social welfare differences between alternatives, and the social cost of carbon is the best available tool to compare the climate impacts of alternatives. The tool, which provides a dollar estimate of the damage caused by each additional ton of carbon dioxide emitted into the atmosphere, operates the same way whether those emissions result from a federal agency rulemaking, a federal resource management plan, or a project level approval.

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: BLM should use the best tools available to it in order to fully analyze and disclose the climate impacts of its proposal. Given that the social cost of carbon and the social cost of methane were adopted by the IWG, which includes a dozen federal offices and agencies including the Department of Interior, BLM should use these tools to evaluate the climate impacts of its plan for the Uncompahgre planning area. Additionally, there are numerous studies that outline quantification tools that demonstrate the benefits of reducing greenhouse gas emissions and stabilizing the global climate as described above. BLM must utilize the latest climate tools to assign significance to the greenhouse gas emissions estimated in the UFO RMP FEIS as required by NEPA.

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: It is critically important to reduce methane waste from fossil fuel production in order to limit climate damages. Here, BLM failed to undertake a hard-look analysis of methane waste and global warming potential or adopt enforceable mitigation requirements to minimize methane emissions

and waste. Conservation Groups raised these issues in their DEIS Comments (attached as Exhibit 1-1), at pp. 69-89. The BLM discloses estimated direct (upstream and local midstream) annual methane emissions from the proposed action to be 64,532 metric tons. See FEIS Table 4-3. However, BLM does not disclose what leak rate this calculation represents, even though methane emission rates can differ quite dramatically from one oil and gas field to the next, as Conservation Groups have previously explained. Furthermore, the BLM underestimates the climate impact of these emissions. Specifically, BLM uses a global warming potential (GWP) of 34 over a 100-year time horizon (meaning that methane is assumed to be 34 times as potent as CO₂ over a 100-year time horizon). FEIS at 4-28. However, the 100-year GWP for methane was updated by the IPCC in a 2013 Report to reflect that methane is 36 times as potent as CO₂. Additionally, the IPCC's new research has calculated that methane is 84 times as potent as CO₂ over a 20-year time horizon.⁷² Furthermore, recent peer-reviewed science demonstrates that gas-aerosol interactions amplify methane's impact such that methane is actually 105 times as potent as CO₂ over a twenty-year time period.⁷³ These values should be used-or at the very least acknowledged-in the FEIS but are instead ignored. As one federal district court explained, in invalidating BLM's reliance exclusively on 100-year methane GWPs, "BLM's unexplained decision to use the 100-year time horizon, when other more appropriate time horizons remained available, qualifies as arbitrary and capricious." *Western Org. of Res. Councils v. BLM*, 2018 WL 1475470 at *15 (Mar. 26, 2018). The agency's quantitative assessment must account for methane's long-term (100-year) global warming impact and methane's short-term (20-year) warming impact using the latest peer-reviewed science to ensure that potentially significant impacts are not underestimated or ignored. See 40 C.F.R. § 1508.27(a) (requiring consideration of "[b]oth short- and long-term effects").

Summary:

BLM failed to adequately analyze GHG and carbon emissions in the FEIS because it:

- Did not consider or include a social cost of carbon analysis;
- Did not follow the guidance outlined in Department of the Interior Secretarial Order 3226;
- Did not complete a GHG lifecycle emissions analysis;
- Did not account for the latest peer-reviewed science for methane's long- and short-term warming impacts;
- Did not properly account for direct and indirect emissions; and
- Improperly relied on and interpreted the U.S. Forest Service study.

Response:

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

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

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan-level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground

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

The FEIS used the Climate Change Baselines section of the BLM’s 2015 Annual Report for an updated and comprehensive overview of the topography and climate for the region and a current understanding of the changes to global GHG emissions and climate that have occurred for the last few centuries. The information for the Annual Report section was obtained primarily from the latest Intergovernmental Panel on Climate Change Study (Fifth Assessment Report). For the 2015 Annual Report, the BLM Colorado estimated baseline downstream GHG emissions at approximately 17 percent of the total U.S. Federal oil and gas GHG emissions, and all Federal oil and gas downstream emissions are approximately 8.4 percent of the U.S. total oil and gas combustion (downstream) GHG emissions on an annual basis (see p. 3-4 in the FEIS).

For the RMP/EIS, the BLM developed projected total direct (upstream and local midstream) GHG emissions estimates for comparison across the alternatives. Table 4-3 shows GHG emissions totals by alternative for BLM/Federal activities only. These estimates were developed using RMP-specific information for the alternatives, along with CARMMS 2.0 calculators (for oil and gas) (see p. 4-22). The BLM provided a complete oil and gas development, production (extraction), and end-use life-cycle analysis, using CARMMS 2.0 oil and gas production projections for direct GHG emissions from existing and future Federal and non-Federal wells and estimated total 30-year (sum for years ~2020 to 2050) projected cumulative indirect (end-use) GHG emissions for “high” and “low” UFO oil and gas production scenarios. The indirect emissions were calculated using the 2018 U.S. Energy Information Administration’s Annual Energy Outlook projected oil and gas production and associated GHG emissions estimates. In addition to end-use combustion-related GHG emissions (carbon dioxide and nitrous oxide), the CARMMS 2.0 calculators accounted for venting and fugitive methane emissions from various oil and gas equipment and operations including well completions, workovers, blow-downs, compressor engines, well-head fugitives, and tanks. EPA emissions factors and methodologies along with operator-provided information for western Colorado oil and gas development and operations were used to estimate these methane emissions.

In addition to the U.S. Forest Service EIS for the West Elk coal mine, the BLM used several other analyses and sources of information for assessing UFO coal-related potential GHG emissions and climate impacts over the life of the plan. Information from the BLM Energy-Focused GHG and Climate Change Report³ was included in the RMP/EIS to describe potential future (years 2020 and 2030) GHG emissions for two energy development scenarios (normal and above-normal rates of energy production and consumption). The report contains emissions estimates for each BLM energy-related (oil, gas, coal) state, including Colorado, and included direct and indirect emissions from Federal and non-Federal energy-related development and consumption of coal, oil, natural gas, and natural gas liquids. The study used coal, oil, and natural gas production and consumption data presented in the U.S. Energy Information Administration’s 2016 Annual Energy Outlook to determine growth factors to estimate 2020 and 2030 normal/high inventories. This report describes that Colorado Federal emissions due to coal production (direct) and consumption (indirect) are predicted to decrease from base year 2014 to 2030 for both the normal and high-growth scenarios. The RMP/EIS explains how overall GHG emissions reductions may occur while coal mining continues in the Planning Area.

Global warming potential (GWP) allows comparisons of the global warming impacts of different GHGs. Specifically, it is a measure of how much energy the emissions of 1 ton of a gas will absorb over a given period of time, relative to the emissions of 1 ton of carbon dioxide. The GWP was introduced in the Intergovernmental Panel on Climate Change’s First Assessment Report, where it was also used to illustrate the difficulties in comparing components with differing physical properties using a single metric. The 100-year GWP was adopted by the United Nations Framework Convention on Climate

³ Golder Associates Inc. 2017. Greenhouse Gas and Climate Change Report. Project Number 1539847.

Change and its Kyoto Protocol and is now used widely as the default metric. Per the GHG reporting rule under 40 CFR Part 98 Subpart A, the 100-year carbon dioxide equivalent factor of 25 is used for methane. While the methane GWP was updated in the Intergovernmental Panel on Climate Change’s Fifth Assessment Report, the EPA’s Inventory of U.S. Greenhouse Gas Emissions and Sinks complies with international GHG reporting standards under the United Nations Framework Convention on Climate Change. The choice of emission metric and time horizon depends on the type of application and policy context; hence, no single metric is optimal for all policy goals. In general, the uncertainty increases for metrics along the cause–effect chain from emission to effects. The 100-year GWP strikes a compromise between short-lived and long-lived GHG, as warming effects will be manifest over many hundreds of years, as opposed to short-lived GHGs exerting warming over only a few decades.

Regarding the information used for the analysis, the CEQ regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)). NEPA regulations require the BLM to “insure 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).

For the analysis, operational, production, and construction activity data used to estimate emissions for proposed emission sources were obtained from UFO staff, the RFD scenario for oil and gas for the UFO, Colorado, and information about proposed projects within the Planning Area. Emission factors used to estimate proposed emissions were obtained primarily from the EPA’s AP-42 Compilation of Air Pollutant Emission Factors (1995), EPA’s nonroad engines, equipment, and vehicles emissions model (2009), EPA’s Motor Vehicle Emissions Simulator (2010), American Petroleum Industry Compendium of Greenhouse Gas Emissions Estimation Methodologies for the Oil and Natural Gas Industry (2009), Colorado Department of Public Health and Environment, and Western Governors’ Association – Western Regional Air Partnership (2005).

The BLM has explained the reasons for its choice not to utilize the SCC protocol for this RMP. See pages R-181 through R-183 of Appendix R of the FEIS (Secretarial Order 3289, 2009/10).

To summarize, the PRMP/FEIS did not undertake an analysis of SCC because (1) it is not engaged in a rulemaking for which the protocol was originally developed; (2) the Interagency Working Group, technical supporting documents, and associated guidance have been withdrawn; (3) NEPA does not require cost-benefit analysis and this NEPA process did not conduct an economic cost-benefit analysis; and (4) the full social benefits of energy production have not been monetized, and quantifying only the costs of GHG emissions but not the benefits would yield information that is both potentially inaccurate and not useful. The BLM complied with NEPA’s requirement to analyze the impacts of carbon/GHG emissions in the PRMP/FEIS.

NEPA – Impacts Analysis – Renewable Energy

UFORMP-102_KingL_20190728

Western Environmental Law Center

King, Laura

Issue Excerpt Text: the BLM also fails to consider the impacts of coal and oil and gas development on renewable energy resources and the potential incompatibility of these resource uses. Instead, the FEIS simply states generally that: Implementing management for the following resources would have negligible or no impact on renewable energy and are therefore not discussed in detail: air quality, climate,

soils and water, vegetation, fish and wildlife, special status species, wild horses, wildland fire ecology and management, cultural resources, paleontological resources, lands with wilderness characteristics, forestry and woodland products, livestock grazing, energy and minerals, comprehensive trails and travel management, lands and realty, renewable energy, ACECs, wild and scenic rivers, national trails and byways, watchable wildlife viewing sites, Native American tribal uses, and public health and safety. FEIS 4-321 (emphasis added). Nevertheless, the BLM recognizes that renewable energy facilities are usually sited based on resource potential and proximity to transmission lines or end uses. Oil and gas development that will impinge on these areas would create conflicts with renewable energy development that must be addressed. The discussion of cumulative impacts does identify the impacts of oil and gas on renewable energy development as follows, but no further analysis is conducted: Past, present, and reasonably foreseeable future actions and conditions within the cumulative impact analysis area that have affected and will likely continue to affect renewable energy are energy and minerals development . . . FEIS 4-324. Given the urgent need to transition away from fossil fuels and toward renewable energy to address climate change, it is incumbent upon the BLM to ensure that renewable energy development, especially photovoltaic solar development, is not precluded in the planning area by new oil and gas development.

Summary:

The BLM failed to analyze the impacts on renewable energy development from leasing allocations in the PRMP/FEIS.

Response:

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

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

A land use planning–level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan–level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

As noted on page 4-449 of the PRMP/FEIS, solar energy has moderate to high potential in the Planning Area, while wind, geothermal, and biomass energy have low potential, due to the lack of commercial interest and existing infrastructure. The primary drivers of the pace of development will be market forces and policy variables outside the scope of the RMP. As discussed on page 4-320 of the PRMP/FEIS, of the four active coal fields in the Planning Area, two have limited potential for the next 20 years and the other two have limited rail service or produce low-quality coal. These coal fields have little overlap with areas of “moderate,” “good,” and “very good” solar energy potential in the Planning Area and are not anticipated to result in a substantial resource conflict (refer to Figure 5 of the Coal Resource and Development Potential Report and Figure 3-1 of the Renewable Energy Potential Report).

In addition, the BLM has complied with the requirements of 40 CFR 1508.7 and prepared a cumulative impact analysis based on the broad nature and scope of the proposed management options under consideration at the land use planning level. The cumulative impact analysis considered the effects of the planning effort when added to other past, present, and reasonably foreseeable (not highly speculative) Federal and non-Federal actions. The cumulative impacts section for renewable energy identifies actions that were considered in the cumulative impacts analysis and included actions in energy and mineral development, which include oil and gas activities as noted on page 4-324: “Past, present, and reasonably foreseeable future actions and conditions within the cumulative impact analysis area that have affected and will likely continue to affect renewable energy are energy and minerals development.” Additionally, in the RFD scenario, the BLM assumed the overall magnitude of development that could occur based on known oil and gas resources and current technologies and economic trends, which was considered in the impact analysis. However, it is not possible to estimate specific locations, times, and the pattern of oil and gas development, or rights-of-way for renewable energy projects in the PRMP/FEIS. Making assumptions regarding these factors would be speculative and would not contribute to a meaningful NEPA analysis. The BLM determined that oil and gas development has the potential to present a resource conflict with renewable energy development. As noted in Table 2-3 (PRMP/FEIS p. 2-115), an avoidance area allows some use and occupancy of BLM-administered lands, while protecting identified resources or values. These areas are potentially open to renewable energy projects, but the restriction allows the BLM to require special constraints, or the activity can be shifted to protect the specified resource or value. All applications for renewable energy projects within the Decision Area would be reviewed on a site-specific basis when or if the BLM receives an application.

The analysis accounted for the relationship between the proposed action and these reasonably foreseeable actions. This served as the determining factor for the level of analysis performed and presented. The information presented in the PRMP/FEIS enables the decision-maker to make a reasoned choice among alternatives. The BLM adequately analyzed cumulative effects in the PRMP/FEIS.

NEPA – Impacts Analysis – Socioeconomics

UFORMP-022_BaumgartenD_20190725

Board of County Commissioners of Gunnison County

Baumgarten, David

Issue Excerpt Text: Proposed RMP/Final EIS included Mesa County in the socio-economic impact analysis - even though it is outside of the planning area. This inclusion skews the economic impact data to enable development of an inaccurate picture of the true economic benefits of the oil and gas industry within the Uncompahgre Field Office managed areas. We acknowledge the beneficial economic impacts of the industry within Gunnison County but feel that accurate and relevant data points of areas within the Uncompahgre Field Office managed areas ought be used in this analysis.

UFORMP-022_BaumgartenD_20190725

Board of County Commissioners of Gunnison County

Baumgarten, David

Issue Excerpt Text: In addition to hunting and fishing, which have been integral to local economies, outdoor recreation is a huge and growing driver to the area’s economy. Alternative B/B.I includes NL and NSO stipulations for parks, wildlife refuges, and for federal recreation lands such as Special Recreation Management Areas, including Jumbo Mountain, as well as for public lands recognized for their unique wilderness character. At a minimum, NSO would ensure that the important, and increasing, recreational uses of these lands are given the attention they warrant. In addition, the economic analysis of the economic impacts of recreation within the UFO uses flawed and insufficient data to determine the comparative economic impacts of the multiple uses on the BLM land within the region. There is clear and accurate information on recreation economic benefits within the 2019 Colorado Statewide

Comprehensive Outdoor Recreation Plan (SCORP) and within the federal governments own 2019 US Bureau of Economic Analysis which has Outdoor Recreation as a stand-alone designation. The BLM should redo its analysis utilizing these significant resources for its comparisons.

Summary:

The socioeconomic analysis study area was not appropriate for analyzing the economic effects of the oil and gas industry within the UFO, and the economic impacts analysis of recreation failed to use adequate resources.

Response:

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

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 CEQ regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)). NEPA regulations require the BLM to “insure 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).

A land use planning–level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan–level decisions.

As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. The UFO Planning Area, as indicated in Section 1.2, includes lands in Mesa County, which are illustrated in Figure ES-1. The study area for the socioeconomic analysis is defined as all lands within the six counties that primarily compose the Planning Area (Delta, Gunnison, Mesa, Montrose, Ouray, and San Miguel). These counties were identified as the socioeconomic Planning Area because the BLM-administered lands of the UFO lie within these counties, and most of the effects on the population and economy would occur within this region. The Draft RMP/EIS analysis has been amended to include Mesa County because it is recognized that, as a regional economic center, Mesa County influences and is affected by jobs and economic activity in the Planning Area. The PRMP/FEIS notes that the Planning Area excludes Grand Junction and the surrounding metropolitan area, and the portion of Mesa County within the Planning Area is largely rural. As a result, county-wide data, which include Grand Junction, may not be reflective of the portion of the county within the Planning Area; however, there are regional economic ties between Grand Junction and communities in the Planning Area. These economic ties include supporting natural gas development in the Planning Area; therefore, it was appropriate to include Mesa County in the socioeconomic Planning Area analysis. Quantitative economic impacts associated with natural gas development were assessed for two phases—well development (including drilling and

completion) and production—and were based upon assumptions informed by the UFO RFD scenario (2012) estimates and BLM UFO minerals specialists. As stated in the PRMP/FEIS (p. 4-443), the regional economic impact of gas production on Planning Area land results primarily from expenditures to drill wells and to extract gas from completed wells. Changes to local economic activity would occur based on differing levels of drilling or extraction or changes in cost of development or extraction. Appendix S provides cost estimates that were used for the analysis. Additionally, the PRMP/FEIS indicates that “It is likely that the counties containing the most BLM-administered land, the most intensively used BLM-administered land, or the most split-estate minerals within the Planning Area would be most affected by changes in resource management. Similarly, the counties with the most BLM-administered lands are likely to be the most affected by funding to states and counties through federal payments in lieu of taxes (PILT) and uses of the public lands” (see p. 3-140).

The BLM acknowledges that the 2019 Colorado SCORP and the U.S. Bureau of Economic Analysis Outdoor Recreation Satellite Account (ORSA) data provide valuable information on the effect of outdoor recreation on the economy. For example, the ORSA provides an estimate of the size of the outdoor recreation economy and its contribution to the U.S. gross domestic product. Additionally, the ORSA provides gross output, compensation, and employment estimates for the U.S. outdoor recreation economy as well as information on how individual industries contribute to the U.S. outdoor recreation economy. The ORSA provides a look at the national economy as a whole and the contribution of outdoor recreation at that national scale; it does not provide this information at a state or regional scale. The 2019 Colorado SCORP does provide the economic contributions of outdoor recreation in Colorado on the State’s economy as well as by regional economies. The 2019 Colorado SCORP also provides hunting economic contributions by county. The 2019 Colorado SCORP does not provide the economic contribution of outdoor recreation on UFO BLM lands on the local Planning Area economy.

In the UFO PRMP/FEIS, the BLM acknowledges that recreation plays a large role on public lands in the UFO, and many recreationists rely on BLM-administered lands for their activities. While entry fees are a source of income for the BLM, recreationists also spend money in the area on food, lodging, supplies, fuel, and other commodities. This spending has an economic impact on the local economy, and many smaller communities rely on this source of income from visitors. The economic analysis of recreation in the UFO PRMP/FEIS focused on the economic contributions that visitors/outdoor recreationists on UFO lands provide to the local Planning Area economy. There are two determining factors associated with analyzing economic contributions from outdoor recreation on UFO lands: (1) visitor numbers and (2) how much each visitor spends while in the area. Average visitor data from the BLM Recreation Management Information System for fiscal years 2012 through 2016 were used to estimate current visitor numbers. Spending profiles for recreationists in the Planning Area are assumed to be similar to those determined for other Federal lands in Colorado. Specifically, recent data from the Grand Mesa Uncompahgre National Forest visitor use monitoring surveys, which include expenditure data, were utilized for the spending profiles. A similar analytical process of utilizing Impact Analysis for Planning (IMPLAN) to determine economic contributions was conducted, as was done in the 2019 Colorado SCORP. The results from the UFO PRMP/FEIS and the 2019 Colorado SCORP are not comparable due to geographic scale differences in the study areas used (meaning the economies in which economic contributions were analyzed) and data used; however, the analysis in the UFO PRMP/FEIS provides a more nuanced approach by focusing solely on visitation/outdoor recreation on UFO lands (FEIS pp. 3-102–3-108 and pp. 4-273–4-305).

NEPA – Impacts Analysis – Uranium Mining

UFORMP-099_MarkwellA_20190728

San Miguel County, Colorado

Markwell, Amy

Issue Excerpt Text: The current status of the public lands and the likelihood of uranium mining within the project area is set out in Federal District Court Judge Martinez’s March 18, 2019 Order (see

attachments A-D) dissolving the injunction on lease tracts within the UFO jurisdiction where Dpt of Energy (DOE) manages the minerals and BLM manages the surface. The PRMP/FEIS relies on outdated information and analysis based on the now-invalidated Pinon Ridge Mill license. As stated in the Martinez ruling (page 11): “[T]he supplemental BA [the US Fish and Wildlife Service prepared for the uranium lease tracts jointly managed by BLM and DOE] plausibly and adequately explains why the Piñon Ridge Mill will likely never be constructed, and why substantial uranium mining is not likely to occur anyway”. The Pinon Ridge license was revoked by Colorado regulators on April 26, 2018, based on the April 17, 2018 findings entered by Hearing Officer Dana, pursuant to the September 3, 2014 remand order of the Colorado District Judge McGahey that held the license in abeyance. Federal Judge Martinez’s Order further confirms that “the only potential location that ULMP-generated uranium ore could be milled is the White Mesa Mill near Blanding, Utah, roughly 100 miles from Paradox Valley.” (page 11). Both of Judge Martinez’s conclusions - uranium mining is not likely, and White Mesa is the only potential mill for ore mined from the project area - must be applied to analysis of all uranium mines, whether part of the relocatable minerals BLM leads or the DOE lease program that BLM serves as the surface management agency. The PRMP/FEIS - and particularly the decision to adopt the new Alternative E - is devoid of accurate direct, indirect and cumulative impacts analysis of the current legal status or actual conditions that have changed since the DRMP/DEIS was issued.

Summary:

The BLM failed to adequately analyze the current conditions of uranium mining within the Planning Area.

Response:

The CEQ regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)). NEPA regulations require the BLM to “insure 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 uranium-vanadium mineral resource potential of the Planning Area is classified according to the system outlined in BLM Manual 3031. Under this system, occurrence potential ratings are based on the geologic likelihood of a mineral’s presence in a particular area. The ratings do not reflect the economic feasibility of developing a resource, as this can vary depending on demand and technology. The potential for development of uranium-vanadium mineral resources from the Morrison Formation in the Uravan Mineral Belt part of the Planning Area as projected over the life of the RMP, for 20 years, is rated as high occurrence potential with a high level of certainty. Figure 3-23 (Active Uranium Exploration Sites in the Morrison Formation) depicts active uranium exploration sites in the Morrison Formation within the Planning Area. In addition, in Chapter 4, Table 4-1 (Past, Present, and Reasonably Foreseeable Projects, Plans or Actions that Comprise the Cumulative Impact Scenario), it is stated that the Pinon Ridge Mill may be constructed. The section continues to characterize the status of energy and minerals development and was updated during the FEIS as depicted by shaded text.

The UFO RMP includes a *References* section in Volume II of the PRMP/FEIS, which lists information considered by the BLM in preparation of the PRMP/FEIS.

The BLM has considered the Federal District Court for the District of Colorado’s March 18, 2019 Order in the *Colorado Environmental Coalition, et al. v. Office of Legacy Management and U.S. Department of*

Energy (No. 08-cv-1624) and determined the order does not provide significant new information, and the information would not result in effects outside the range of effects already analyzed in the PRMP/FEIS.

The BLM relied on high-quality information and the best available data in preparation of the PRMP/FEIS.

NEPA – Response to Comments

UFORMP-022_BaumgartenD_20190725

Board of County Commissioners of Gunnison County

Baumgarten, David

Issue Excerpt Text: At the time of release of this Proposed RMP/Final EIS, the Gunnison Sage-Grouse Rangeland RMP Amendment has been canceled and the process terminated. This new situation changes the context and significance of Gunnison County’s comments and input into the need for necessary land protection, resource allocation, and stipulations to protect and enhance GuSG populations and habitat within the Uncompahgre Field Office managed areas.

UFORMP-080_ClabbersN_20190728

The Wilderness Society

Clabbers, Nicholas

Issue Excerpt Text: As to the alternative approach submitted by TWS as to prioritizing oil and gas allocations based on development potential, see *supra*, BLM excerpted relevant portions of TWS’s comments on the Draft RMP, see Proposed RMP/FEIS Appx. R at 438-39, but then utterly failed to address them in its response to comments. It summarizes this five-page section of the TWS comments (pp. 96 to 101) and 21-page appendix (Appendix 5, included here as Exhibit 4) into a single paragraph comprising two sentences, and then it responds by simply pointing the reader to a chapter in the Draft RMP/EIS and explaining that BLM’s alternatives do not address mineral potential on lands managed by the U.S. Forest Service. See Proposed RMP/FEIS Appx. R at 455. It also states summarily, “Future technologies could change the fluid minerals development potential assumptions, making areas viable in the future; therefore, current development potential alone was not used to allocate closures to fluid minerals.” Not only does this explanation fail to respond to the substance of TWS’s detailed comments or alternative approach, but it implies that because technology is evolving, development potential is not relevant to allocating lands for mineral development. As relevant here, it also fails to demonstrate that the agency has individually considered or addressed the comments submitted or provided a response with sufficient explanation as required by NEPA.

Summary:

The BLM failed to respond to comments to the level required by NEPA.

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 RMP/EIS. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix R of the FEIS 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 response identifies any modifications to the alternatives, improvements to the impacts analysis, or

factual corrections made as a result of public comment. The BLM's response also explains why certain public comments did not warrant further agency response.

BLM's comment response process does not treat public comments as if they were a vote for a particular action. The comment response process ensures that every comment is considered when preparing the PRMP/FEIS.

The BLM adequately responded to public comments on the Draft RMP/EIS.