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**To:** GS\_Comments, Blm\_Ut[blm\_ut\_gs\_comments@blm.gov]  
**From:** Kya Marienfeld  
**Sent:** 2017-12-27T17:49:37-05:00  
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**Subject:** SUWA and TWS Comments on GSENM Well and Pipeline Projects (DOI-BLM-UT-0300-2017-0063-EA)  
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[SUWA TWS GSENM Pipeline Project Scoping Dec 2017.pdf](#)

Good afternoon,

Attached, please find scoping comments submitted by the Southern Utah Wilderness Alliance and The Wilderness Society regarding GSENM's forthcoming Well and Pipeline Projects (DOI-BLM-UT-0300-2017-0063-EA).

At your convenience, please confirm that you have received the comments, and please let me know if you have any questions.

Thank you, and Happy Holidays,

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**Kya Marienfeld**  
Wildlands Attorney  
Southern Utah Wilderness Alliance  
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December 27, 2018

Sean Stewart  
Grand Staircase-Escalante National Monument  
669 South Highway 89A  
Kanab, UT 84741  
[blm\\_ut\\_gs\\_comments@blm.gov](mailto:blm_ut_gs_comments@blm.gov)

**Re: GSENM Well and Pipeline Projects (DOI-BLM-UT-0300-2017-0063-EA)**

Dear Mr. Stewart,

Please accept and fully consider the following comments on DOI-BLM-UT-0300-2017-0063-EA or the "GSENM Pipeline and Well Project." The purpose of the project is to "provide reliable water storage and improve water availability for wildlife and livestock" on four grazing allotments in the Grand Staircase-Escalante National Monument as well as to "improve livestock distribution and thereby enhance wildlife habitat and improve vegetation, soil, and water resource conditions."

The Wilderness Society and the Southern Utah Wilderness Alliance represent more than half a million members and supporters nationwide and in Utah and our staff and members have great interest in the protection and enhancement of the natural and cultural resources of the Grand Staircase-Escalante National Monument. We appreciate the opportunity to comment on the project and look forward to participating in this process to consider water improvements in the project area.

On December 4, 2017, the President of the United States signed a proclamation reducing the boundaries of the Grand Staircase-Escalante National Monument and creating three new units within the bounds of the monument. We maintain that this proclamation is unlawful and will be overturned in a court of law. The BLM should put any projects on hold within the Grand Staircase-Escalante National Monument that are not substantially advancing the proper care and management of the objects of interest in Proclamation 6920 (Sept. 18, 1996) until this legal matter is fully settled.

**I. The Purpose of the Project Must Prioritize the Proper Care and Management of Monument Objects**

With the designation of the Grand Staircase-Escalante National Monument in 1996, the Bureau of Land Management (BLM) was given a new mandate for management of these lands to protect the “objects” identified in Proclamation 6920 and to do so by preserving the primitive, frontier state of the landscape as the most important aspect of the monument. Because of its significance, which merited designation as a national monument and inclusion in the National Landscape Conservation System (NLCS), the monument requires special management, different from other BLM lands. The overriding objective of the monument is the permanent conservation of its natural and cultural resources as described in the Proclamation. Management must place priority on conserving, protecting and restoring the natural and cultural values identified in the Proclamation, and must identify and restrict those uses of the land that are secondary to that objective.

Secretarial Order 3308 declares, among other things, that BLM must ensure that the objects and values for which an NLCS unit is designated will be prioritized over other multiple uses if those uses conflict with those values:

The BLM shall ensure that the components of the NLCS are managed to protect the values for which they were designated, including, where appropriate, prohibiting uses that are in conflict with those values. If consistent with such protection, appropriate multiple uses may be allowed, consistent with the applicable law and the relevant designations under which the components were established.

The purpose of the project states that BLM seeks to “improve water availability for wildlife and livestock” in four allotments in addition to improving livestock distribution, enhancing wildlife habitat and improving vegetation, soil and water resource conditions. Pursuant to the proclamation establishing the monument, BLM must prioritize the proper care and management of monument objects and resources over other uses. While domesticated livestock are authorized to continue to graze on the monument, they are not a monument object under the proclamation. The BLM must demonstrate through its analysis that the purpose of the project is for the proper care and management of the objects to be protected. While domesticated livestock may also benefit as a secondary matter, the objects and resources listed in the proclamation must be prioritized over other uses.

In addition, in order to ensure that no Monument objects will be harmed with this project, BLM should provide an updated inventory of the Monument objects in the area that may be affected by the project and set appropriate criteria, terms and conditions on the project.

***Recommendation:*** The agency must take precautions to ensure the proper care and management of identified Monument objects. BLM must demonstrate in the EA how it will protect and care for the monument objects. The document should also include an inventory of objects found in the area with specific criteria and strong terms and conditions the project.

## **II. BLM Must Consider Lands with Wilderness Characteristics**

FLPMA states that it is the policy of the United States that “public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that where appropriate, *will preserve and protect certain public lands in their natural condition . . .*” 43 U.S.C. § 1701(a)(8) (emphasis added). Section 201 of FLPMA requires that BLM:

[M]aintain on a continuing basis an inventory of all public lands and their resources and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory *shall be kept current* so as to reflect changes in conditions and to identify new and emerging resource and other values.”

43 U.S.C. § 1711(a) (emphasis added).

FLPMA requires BLM to “prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values . . . including outdoor recreation and scenic values.” 43 U.S.C. § 1711(a). The “inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values,” including wilderness characteristics, critical habitat for species, and visual resources. *Id.*

The most recent BLM wilderness inventory in the Monument occurred in 1999, as part of the *1999 Utah Wilderness Inventory*. This wilderness inventory was not comprehensive and did not include all lands within the Monument. *See 1999 Utah Wilderness Inventory*. We understand that BLM has been inventorying the Monument for wilderness characteristics per BLM Manual 6310. That inventory information has not yet been posted for the public to review. FLPMA’s mandate to maintain an inventory of public lands resources is the foundation on which all further management decisions are built, from land use allocations to site-specific project planning. BLM should therefore complete the LWC inventory for lands that could be affected by this project. Additionally, Instruction Memorandum 2013-106<sup>1</sup> instructs that BLM field offices should make finalized and signed wilderness characteristics inventory findings available to the public as soon as practicable after their completion and before the inventory data is used to inform decisions.

Recent Utah guidance addresses the issue of keeping wilderness character inventories current when evaluating proposed projects and making management decisions, explaining that “[f]ield offices should confirm that existing inventories are up to date when there is reason to believe that *any action* will adversely impact the existing or potential wilderness characteristics of an area.” *See Additional Guidance for Manual 6320—Considering Lands with Wilderness Characteristics in the BLM Land Use Planning Process*, UT-IM 2016-027, (September 30, 2016). As proposed, both the Butler Valley Pipeline and Storage Tank and the Twenty Mile Pipeline Extension impacts BLM-designated lands with wilderness characteristics.

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<sup>1</sup> Available at: [http://www.blm.gov/wo/st/en/info/regulations/Instruction Memos and Bulletins/national instruction/2013/IM 2013 106.print.html](http://www.blm.gov/wo/st/en/info/regulations/Instruction%20Memos%20and%20Bulletins/national%20instruction/2013/IM%20106.print.html).

BLM Manual 6320: *Considering Lands with Wilderness Characteristics in the BLM Land Use Planning Process* provides specific guidance on how BLM should consider lands with wilderness characteristics in the planning process. Manual 6320 requires BLM to consider lands with wilderness characteristics in land use planning, both in evaluating the impacts of management alternatives on lands with wilderness characteristics and in analyzing alternatives that would protect those values.

FLPMA also requires BLM to inventory areas for visual resources and use the results of this inventory when considering management activities. Pipelines, troughs, and wells, by their very nature, have the potential to greatly impact visual resources. Additionally, the use of project-related vehicles both cross-country and on currently un-maintained, reclaiming two-track routes has the potential disturbing soils, eliminate vegetation, and bisect the landscape with new motorized routes or linear disturbances.

**Recommendation:** The BLM must perform an inventory of wilderness characteristics before issuing a decision on this proposed project per FLPMA and BLM policy guidance.

**Recommendation:** In order to comply with FLPMA and Manual 6320, BLM must assess whether the proposed project will impact the wilderness characteristics, i.e. naturalness, solitude, and opportunities for primitive and unconfined recreation, of the lands in this proposed project area. Because these lands possess wilderness characteristics, BLM must preserve these values, absent a compelling purpose within a narrow exception that is documented and approved.

Much of the proposed pipeline projects have the potential to impact lands with wilderness characteristics and disqualify these lands from future designation as wilderness. BLM should seek to remove any impacts from designated LWC in order to maintain the current landscape conditions.

### III. BLM's Actions Must Be Consistent with the Monument Management Plan

The Federal Land Policy Management Act (FLPMA) requires that BLM manage public lands in accordance with land use plans, such that once a resource management plan is completed, FLPMA requires that "all future resource management authorizations and actions . . . and subsequent more detailed or specific planning shall conform to the approved plan." 43 C.F.R. § 1610.5-3. FLPMA regulations further define "conformity" to mean "that a resource management action shall be specifically provided for in the plan, or if not specifically mentioned, shall be clearly consistent with the terms, conditions, and decisions of the approved plan or plan amendment." 43 C.F.R. § 1601.0-5(b).<sup>2</sup> The following comments and recommendations pertain to provisions of the Monument Management Plan (MMP) that should be directly addressed in the EA for the project:

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<sup>2</sup> In *Norton v. SUWA*, the Supreme Court elaborated on these two obligations: The statutory directive that BLM manage "in accordance with" land use plans, and the regulatory requirement that authorizations and actions "conform to" those plans, prevent BLM from taking actions inconsistent with the provisions of a land use plan.

#### A. Use of Native Species for Revegetation

The scoping notice for the project states that “following project construction activities for all projects disturbed areas would be seeded with native grasses, forbs, and shrub species.” This is a very important requirement of the MMP for the monument and BLM must not only commit to this but also to budget for the cost of seeding with native species in the plan and the planning for projects must not consider the use of non-native species as an alternative per the MMP. *See*, MMP at NAT-3, p. 30. Even if non-native species were allowed under the narrow exceptions for emergencies or research purposes per the MMP, by no means should they be used to increase forage for livestock and wildlife under NAT-5, p. 30 of the MMP.

**Recommendation:** BLM must use non-native species for reseeding the impacted area. The budget for the project must include the cost of the use of native species only and cannot include non-native species in the alternative per the MMP.

#### B. Outback Zone

The majority of the project is within the “Outback Zone” of the Monument. The Outback Zone “is intended to provide an undeveloped, primitive and self-directed visitor experience while accommodating motorized and mechanized access on designated routes. Facilities will be rare and provided only when essential for resource protection.” MMP at 9.

**Recommendation:** The project must abide by these principles set forth in the MMP and only authorize the project after analyzing whether it is essential for resource protection.

#### C. Impact on water provisions of the MMP

The BLM’s scoping notice states that “these projects would specifically conform to MMP direction related to water resources (WAT) and water-related developments (WDEV).” Both WAT-1 and WDEV-1 have similar language on new water developments that BLM must address explicitly in its analysis and finding for this project:

Water developments can be used as a management tool throughout the Monument for the following purposes: better distribution of livestock when deemed to have an **overall beneficial effect on Monument resources**, or to restore or manage native species or populations. They can be done only when a NEPA analysis determines this tool to be the **best means** of achieving the above objectives and only when the water development will not dewater springs or streams. **Developments will not be permitted to increase overall livestock numbers.** MMP at WDEV-1, p. 55 (emphasis added).

**Recommendation:** In order to be in conformance with the MMP, BLM must analyze in the EA and find that this project is the best means of distributing livestock to have an overall benefit on Monument resources. This means that other alternatives for the purpose of the project should be examined against the proposed project.

#### IV. BLM Must Consider a Reasonable Range of Alternatives

The range of alternatives is “the heart of the environmental impact statement.” 40 C.F.R. § 1502.14. NEPA requires BLM to “rigorously explore and objectively evaluate” a range of

alternatives to proposed federal actions. *See* 40 C.F.R. §§ 1502.14(a), 1508.25(c). “An agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action.” *Nw. Env’tl. Defense Center v. Bonneville Power Admin.*, 117 F.3d 1520, 1538 (9th Cir. 1997). An agency violates NEPA by failing to “rigorously explore and objectively evaluate all reasonable alternatives” to the proposed action. *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1310 (9th Cir. 1990) (quoting 40 C.F.R. § 1502.14). This evaluation extends to considering more environmentally protective alternatives and mitigation measures. *See, e.g., Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1122–23 (9th Cir. 2002) (and cases cited therein). For this PRMP, the consideration of more environmentally protective alternatives is also consistent with the Federal Land Policy and Management Act’s (FLPMA) requirement that BLM “minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values (including fish and wildlife habitat) of the public lands involved.” 43 U.S.C. §1732(d)(2)(a).

NEPA requires that an actual “range” of alternatives is considered, such that the Act will “preclude agencies from defining the objectives of their actions in terms so unreasonably narrow that they can be accomplished by only one alternative (i.e. the applicant’s proposed project).” *Col. Env’tl. Coal. v. Dombeck*, 185 F.3d 1162, 1174 (10th Cir. 1999), citing *Simmons v. U.S. Corps of Engineers*, 120 F.3d 664, 669 (7th Cir. 1997). This requirement prevents the environmental impact statement (EIS) from becoming “a foreordained formality.” *City of New York v. Dep’t of Transp.*, 715 F.2d 732, 743 (2nd Cir. 1983). *See also Davis v. Mineta*, 302 F.3d 1104 (10th Cir. 2002).

Further, in defining what is a “reasonable” range of alternatives, NEPA requires consideration of alternatives “that are practical or feasible” and not just “whether the proponent or applicant likes or is itself capable of carrying out a particular alternative”; in fact, “[a]n alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable.” Council on Environmental Quality, *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations, Questions 2A and 2B*, available at <http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm>; 40 C.F.R. §§ 1502.14, 1506.2(d).

**Recommendation:** BLM must consider a reasonable range of alternatives in the EA. As discussed in these comments above, BLM should consider alternatives to surface disturbance that can meet the purpose of the project and cannot consider an alternative that uses only non-native seeding for revegetation.

**Recommendation:** Regarding what alternatives BLM must consider when conducting NEPA review for this project, recent Utah-specific guidance addresses BLM’s obligation to analyze and disclose impacts to LWC during the planning process. *See Additional Guidance for Manual 6320—Considering Lands with Wilderness Characteristics in the BLM Land Use Planning Process*, UT-IM 2016-027, (September 30, 2016). The guidance directs BLM to analyze the direct and indirect “relevant short- and long-term effects” of a proposed project to identified wilderness characteristics. *Id.* at 7. Furthermore, “[d]etermining the magnitude of expected impacts is an analytical process and should be approached independently for each new proposed project . . . .” *Id.*

In addition, in developing a range of reasonable alternatives, “BLM must explore alternative means of meeting the purpose and need for action. *This includes consideration of whether or not the purpose and need of the proposed action could be fulfilled while avoiding or minimizing impacts to wilderness characteristics.*” *Id.* at 4 (emphasis added).

To comply with NEPA’s mandate, BLM must consider and fully analyze a range of reasonable alternatives. Pursuant to UT-IM 2016-027, reasonable alternatives for the project must include an alternative that would avoid or minimize impacts to LWC by removing surface-disturbing activities within those identified areas.

## **V. BLM Must Take a Hard Look at Impacts from the Project**

NEPA dictates that agencies take a “hard look” at the environmental consequences of a proposed action and the requisite environmental analysis “must be appropriate to the action in question.” *Metcalf v. Daley*, 214 F.3d 1135, 1151 (9th Cir. 2000); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989). In order to take the “hard look” required by NEPA, the agencies are required to assess impacts and effects that include: “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, *whether direct, indirect, or cumulative.*” 40 C.F.R. § 1508.8. (emphasis added). NEPA regulations define “cumulative impact” 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 other actions. *Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.*

40 C.F.R. § 1508.7 (emphasis added).

To satisfy NEPA’s hard look requirement, the cumulative impacts assessment must do two things. First, agencies must catalogue the past, present, and reasonably foreseeable projects in the area that might impact the environment. *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 809–10 (9th Cir. 1999). Second, agencies must analyze these impacts in light of the proposed action. *Id.* If agencies determine that certain actions are not relevant to the cumulative impacts analysis, it must “demonstrat[e] the scientific basis for this assertion.” *Sierra Club v. Bosworth*, 199 F.Supp.2d 971, 983 (N.D. Ca. 2002). A failure to include a cumulative impact analysis of actions within a larger region will render NEPA analysis insufficient. *See, e.g., Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1078 (9th Cir. 2002) (analysis of root fungus on cedar timber sales was necessary for an entire area).

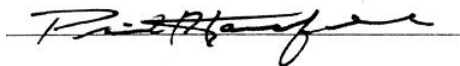
**Recommendation:** BLM must perform a detailed evaluation of the impacts to natural and cultural resources, including specific Monument objects, from the proposed project.

## **Conclusion**

We appreciate the opportunity to provide scoping comments on this project and look forward to remaining engaged as BLM develops the forthcoming EA. Please keep us informed of any

future activity that occurs in relation to this project via the email addresses listed below. Additionally, please send a copy of the Draft EA and other documents to either [kya@suwa.org](mailto:kya@suwa.org) or Southern Utah Wilderness Alliance, P.O. Box 968, Moab, Utah 84532. If you have any questions or concerns, please feel free to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Phil Hanceford", written over a horizontal line.

Phil Hanceford, Conservation Director  
The Wilderness Society, BLM Action Center  
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A handwritten signature in black ink, appearing to read "Kya Marienfeld", written in a cursive style.

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