

November 7, 2013

BLM Director (210)  
Attn: Brenda Hudgens-Williams  
P.O. Box 71383  
Washington, D.C. 20024-1383

Sent via U.S. Mail; electronic courtesy copy emailed to [bhudgens@blm.gov](mailto:bhudgens@blm.gov)

Re: Protest of the Tres Rios Field Office Proposed Resource Management Plan and Final Environmental Impact Statement, released September 2013

To Ms. Hudgens-Williams:

Please accept this timely protest of the Bureau of Land Management's Tres Rios Field Office Proposed Resource Management Plan and Final Environmental Impact Statement (PRMP). We note that the deadline for protesting the Tres Rios PRMP was extended to November 7, 2013, due to the federal government shutdown during the protest period. This protest is submitted by the following protestants:

- The Wilderness Society
- San Juan Citizens Alliance
- Rocky Mountain Wild
- National Parks Conservation Association
- Natural Resources Defense Council
- Park Rangers for Our Lands
- Earthworks
- Sheep Mountain Alliance

The protestants have and will continue to participate in the planning process for the Tres Rios RMP. Our organizations submitted comments on the Draft Land Management Plan in 2008 and collaborated on the Supplemental EIS comments in 2011, including submitting a Master Leasing Plan proposal. *See, e.g.,* Joint comments on the San Juan Draft Land Management Plan/EIS (attached as Exhibits A to C).

This protest is filed in accordance with 43 C.F.R. § 1610.5-2 and addresses the following issues:

- I. Inadequate NEPA Analysis and Public Comment Opportunity..... p. 5
- II. Lands with Wilderness Characteristics..... p. 6
- III. Areas of Critical Environmental Concern..... p. 17
- IV. Gunnison Sage-Grouse..... p. 22
- V. Oil and Gas Management ..... p. 25
- VI. Travel Management..... p. 36

Our discussion of each of these issues concisely states why we believe the State Director's decisions are wrong and the corresponding portions of the PRMP at issue, as well as our requested remedy for each issue addressed.

## LIST OF EXHIBITS

- A. Joint comments on the San Juan Draft Land Management Plan/EIS, submitted April 11, 2008
- B. Joint comments on the San Juan Land Management Plan Supplement to the Draft EIS, submitted November 25, 2011
- C. Proposed San Juan Master Leasing Plan, submitted November 25, 2011
- D. Lands with Wilderness Characteristics Recommendations: North Island Mesa
- E. Lands with Wilderness Characteristics Recommendations: Silveys Pocket
- F. Lands with Wilderness Characteristics Recommendations: Steamboat Hill
- G. Lands with Wilderness Characteristics Recommendations: Summit Canyon
- H. Lands with Wilderness Characteristics Recommendations: Pole Canyon
- I. Lands with Wilderness Characteristics Recommendations: McKenna Peak
- J. Lands with Wilderness Characteristics Recommendations: Maps of additional roadless areas meriting field inventories
- K. Nominations for the Designation of Areas of Critical Environmental Concern in the San Juan Public Lands Planning Area, submitted by Center for Native Ecosystems, September 5, 2007
- L. Memorandum from Regional Director, Intermountain Region, National Park Service to Tres Rios Field Office, BLM (Oct. 2012)
- M. Letter from La Plata County Board of County Commissioners, to Helen Hankins, BLM (June 2013)

## INTERESTS OF THE PARTIES

The Wilderness Society has a long-standing interest in the management of Bureau of Land Management lands in Colorado and engages frequently in the decision-making processes for land use planning and project proposals that could potentially affect citizen-proposed wilderness areas and other wilderness-quality lands managed by the BLM in Colorado. TWS members and staff enjoy a myriad of recreation opportunities on BLM-managed public lands, including hiking, biking, nature-viewing, photography, and the quiet contemplation in the solitude offered by wild places. Founded in 1935, our mission is to protect wilderness and inspire Americans to care for our wild places.

Founded in 1986, San Juan Citizens Alliance organizes people to protect our water and air, our lands, and the character of our rural communities in the San Juan Basin. SJCA focuses on four program areas: 1) Wild San Juans Campaign, preserving the San Juan National Forest lands and adjacent areas; 2) Dolores River Campaign, protecting the Dolores River watershed; 3) a River Protection program, safeguarding river flows and water quality in the San Juan basin; 4) San Juan Basin Energy Reform Campaign, ensuring proper regulation and enforcement of the oil, gas, and coal industry and transitioning to a renewable energy economy. SJCA has been active in BLM and National Forest oil and gas issues in southwest Colorado since the early 1990s, and has commented on virtually every multi-well drilling program, lease sale, and programmatic environmental review conducted in the region by the federal land management agencies since the early 1990s. SJCA's members live, work, and recreate throughout the San Juan Basin and San Juan Mountains. SJCA's members' health, use and enjoyment of this region is directly impacted by the decisions identified in this protest.

Rocky Mountain Wild (formerly Center for Native Ecosystems) protects, connects, and restores wildlife and wildlands. We envision a biologically healthy future for our region with a diversity of species, healthy ecosystems and thriving populations of wildlife. RMW has a long history of interest in the management of BLM lands in Colorado. We regularly engage in the process around land use planning and project proposals that have the potential to affect special status species that rely on habitat on BLM lands in Colorado. RMW staff and members enjoy a wide variety of activities on lands managed by the the Tres Rios BLM Field Office, including wildlife watching, viewing rare plants, birding, hiking, camping, backpacking, rafting, and nature photography. We are part of a coalition of conservation organizations that petitioned for listing of the Gunnison sage-grouse under the Endangered Species Act. We have commented on every BLM planning process with potential to affect Gunnison sage-grouse, and participated in the development of the Gunnison Basin Candidate Conservation Agreement. RMW and San Juan Citizen's Alliance nominated Areas of Critical Environmental Concern needed to protect special status species in the Tres Rios BLM Field Office.

The mission of the National Parks Conservation Association (NPCA) is to protect and enhance America's National Parks for present and future generations. We believe that America's national parks and historical sites embody the American spirit. They are windows to our past, homes to some of our rarest plants and animal species, and places where every American can go to find inspiration, peace, and open space. But these living, breathing monuments to our nation's history, culture, and landscape need care and support to overcome the many dangers that threaten to destroy them forever. At the NPCA, we work every day to ensure our national parks get that vital care and support.

The Natural Resources Defense Council (NRDC) is a non-profit environmental membership organization with more than 565,000 members throughout the United States, including thousands in Colorado. NRDC members use and enjoy public lands across the country, including those in the San Juan National Forest

and within the BLM's Tres Rios Field Office. With its nationwide membership and a staff of lawyers, scientists, and other environmental specialists, NRDC plays a leading role in a diverse range of land and wildlife management and resource development issues. In particular, NRDC has had a longstanding and active interest in the protection of public lands and national forests, the responsible development of oil and gas resources, and the protection of public health from environmental threats.

Park Rangers for Our Lands ("PROL") includes former park rangers who continue to care about the national parks. PROL is committed to working to protect the national parks through outreach and advocacy with decisionmakers and in the media. PROL's members continue to use and enjoy lands and resources within and surrounding the Tres Rios Field Office, including Mesa Verde National Park, and its interest in the ongoing protection of Mesa Verde and other national parks in the region will be affected by decisions within the Proposed RMP.

Earthworks is a nonprofit organization dedicated to protecting communities and the environment from the impacts of irresponsible mineral and energy development while seeking sustainable solutions. Earthworks stands for clean water, healthy communities and corporate accountability. We're working for solutions that protect both the Earth's resources as well as our communities.

Sheep Mountain Alliance is a 25-year-old grassroots citizen organization dedicated to preserving the natural environment in the Telluride Region and southwest Colorado. We strive to protect and educate people about the regional ecosystems, wildlife habitats and watersheds. We represent over 400 members in and around the San Juan Mountains and San Miguel and middle Dolores watersheds.

## I. Inadequate NEPA Analysis and Public Comment Opportunity

### **BLM HAS ESSENTIALLY CREATED A NEW PLAN AND MUST PROVIDE AN OPPORTUNITY FOR PUBLIC REVIEW AND COMMENT.**

The Executive Summary of the Proposed RMP incorporates a “Summary of Changes Made Since the Draft Land and Resource Management Plan and Environmental Impact Statement.” Final EIS, pp. xiv-xvi. A review of these acknowledged changes, as well as additional omissions, highlights the need for supplemental analysis and public comment prior to signing a Record of Decision.

Scoping for this planning effort began in 1999. The Draft LRMP was released for public review in December 2007 and a supplemental EIS was released in August 2011 to address the impacts of the likely development of the Gothic Shale Gas Play and to disclose the results of a new air quality model. The Summary of Changes as it applies to the Tres Rios RMP includes:

- New climate change strategies,
- Incorporating BLM off-highway vehicle designations, instead of only using Forest Service terminology,
- Incorporating a visual resources inventory,
- Removal of management areas designations from BLM lands, which are now limited to the Forest Service,
- Inventory of lands with wilderness characteristics on BLM lands, as well as management for certain lands.

The public has not had an opportunity to comment on the data generated, the manner in which it has informed BLM’s management alternatives, or the agency’s analysis of environmental consequences associated with those decisions. Further, as discussed in detail below, the BLM has acknowledged that it identified 19 areas in the field office that met criteria of having sufficient “relevance and importance” to be designated as areas of critical environmental concern (ACEC) but only evaluated 4 of them for potential designation and management in the Draft LRMP, through some form of “oversight.” While the BLM proposes to defer correction of this process to a later date, it is absolutely inconsistent with developing a meaningful management plan to ignore over 100,000 acres that deserve protection when making decisions about oil and gas leasing, off-highway vehicle use, and other potentially damaging activities.

Similarly, as discussed below, BLM’s inventory of lands with wilderness characteristics is deeply flawed, including oversights of areas with wilderness characteristics and inaccurate application of the relevant BLM guidance. As a result, areas have also been omitted from consideration for management to protect wilderness characteristics. Moreover, the public has not had a previous formal opportunity to comment on the evaluation of potential lands with wilderness characteristics or on BLM’s decisions to manage some of those lands to protect or minimize impacts to wilderness characteristics.

Finally, the public has not had the opportunity to review and comment on the BLM’s application of the “master leasing plan” (“MLP”) criteria, set forth in Instruction Memorandum (“IM”) 2010-117 and Chapter V of the BLM’s Handbook on Planning for Fluid Mineral Resources (“Chapter V”), to areas within the Tres Rios Field Office. This is critical, since the BLM failed to apply the criteria correctly, including when it evaluated the publicly-nominated San Juan MLP.

Supplemental analysis is required to document “substantial changes in the proposed action that are relevant to environmental concerns.” 40 C.F.R. § 1502.9(c)(1)(i). The environmental consequences of the changes made since the Draft RMP/EIS (which have not been made available for public comment) have not been previously considered, are not within the spectrum of alternatives previously disclosed, and are more than a “minor variation” from those alternatives; consequently further analysis is required. *See, State of New Mexico v. Bureau of Land Management*, 565 F.3d 683, 705 (10<sup>th</sup> Cir. 2009), *citing Friends of Marolt Park v. U.S. Dep’t of Transp.*, 382 F.3d 1088, 1096-97 (10<sup>th</sup> Cir.2004), *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*, 46 Fed.Reg. 18026, 18035 (Mar. 17, 1981).

***Requested Remedy:*** BLM cannot approve the Proposed RMP based on the numerous substantive changes (and omissions) made to the alternatives. The public has not yet had an opportunity to comment on the changes, the alternatives and the agency’s conclusions about their environmental effects. These defects cannot be remedied through the 30-day protest period provided in the regulations. Further supplemental analysis is required.

## **II. Lands with Wilderness Characteristics**

### **THE BLM’S INVENTORY OF LANDS WITH WILDERNESS CHARACTERISTICS IS NOT COMPLIANT WITH NEPA, FLPMA AND RELATED BLM GUIDANCE.**

#### **A. BLM’s approach to inventorying lands with wilderness characteristics did not comply with FLPMA and relevant agency guidance.**

FLPMA requires the BLM to inventory and consider lands with wilderness characteristics during the land use planning process. 43 U.S.C. § 1711(a); *see also Ore. Natural Desert Ass’n v. BLM*, 531 F.3d 1114, 1119 (9<sup>th</sup> Cir. 2008). IM 2011-154 and Manuals 6310 and 6320 contain mandatory guidance on implementing that requirement. The IM directs BLM to “conduct and maintain inventories regarding the presence or absence of wilderness characteristics, and to consider identified lands with wilderness characteristics in land use plans and when analyzing projects under [NEPA].” In Appendix O of the proposed final RMP/EIS, the BLM states:

In addition to the initial wilderness review required by Section 603 of the Federal Land Policy and Management Act of 1976 (FLMPA) that led to the creation of wilderness study areas (WSAs), the Secretary of the Interior is also required to “maintain on a continuing basis an inventory of all public lands and their resource and other values,” which encompasses wilderness characteristics as a resource (FLPMA, Section 201).

In July 2011 the Bureau of Land Management (BLM) Director reaffirmed this responsibility via Instruction Memorandum (IM) No. 2011-154, which directed field units to review and update their inventory of lands for their wilderness characteristics and established a uniform protocol for doing so. The same IM emphasized that such an inventory “shall not, of itself, change or prevent change of the management or use of the lands.” Rather, the findings of the inventory are to be considered among all other resource values and potential resource uses during the land use planning process. BLM Manual 6310 was released after IM No. 2011-154 and contains official agency direction for conducting inventory of wilderness characteristics. This inventory was initiated prior to publication of BLM Manual 6310, but completed after release of the

manual. Therefore, the inventory was done in accordance with IM No. 2011-154 and BLM Manual 6310.

Proposed RMP Final Environmental Impact Statement, Appendix O, p. O-1.

However, in actuality, the BLM has not complied with FLPMA or relevant BLM guidance in addressing lands with wilderness characteristics in the Tres Rios Proposed RMP.

1. Inventory approach was not compliant.

The TRFO's LWC inventory began with, "a preliminary geographic information system (GIS) analysis...that isolated areas with no inventoried (GIS cataloged) roads and that were greater than 5,000 acres in size" (FEIS, p. O-1). This process, intended to identify those areas of contiguous unroaded BLM lands greater than 5,000 acres (or of any size if adjacent to Wilderness Study Areas) resulted in the identification of "20 land units totaling 109,484 acres on the TRFO, which were prioritized for further analysis" (FEIS, p. O-1). However, this analysis was flawed in that it relied on road data that is currently outdated and/or does not differentiate between BLM roads that meet the criteria for wilderness inventory roads (WIRs) as defined in BLM Manual 6310 and those that do not meet that criteria<sup>1</sup>.

The proposed RMP states, "Currently, most of the roads, primitive roads and trails located on BLM lands within the TRFO have not yet been fully inventoried or mapped" (Final LRMP, p.95). The Tres Rios Field Office contains thousands of miles of roads and trails, many of which are relics of historic mining activity or other antiquated uses. Many of these historic routes are no longer being maintained and are largely reclaimed either naturally or through active reclamation. These reclaimed routes do not meet the definition of wilderness inventory roads as they are not "regularly maintained using mechanical means to insure relatively regular and continuous use" and as such should not be considered as boundaries to potential LWC units nor as impacts on the wilderness characteristic of "apparent naturalness" unless their cumulative effects can be shown to have such impacts; these impacts require field visits and documentation, and should not be assumed prior to verification in the field.

BLM's initial GIS inventory of potentially qualifying LWC parcels should be broad in scope to begin with, to ensure that potentially qualifying areas are not overlooked. Then as more information is gathered on these units—such as that gathered through field visits—these areas should be narrowed down to those units that truly qualify. Because the TRFO road layer (GIS cataloged roads) includes countless roads that do not meet the definition of wilderness inventory roads, the initial GIS analysis excluded many areas from further detailed investigation that may appear "roaded" by GIS, but in reality are either unroaded or include antiquated or relic roads that do not meet the criteria for wilderness inventory roads as defined by BLM Manual 6310.

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<sup>1</sup> For example, the BLM's initial GIS analysis of unroaded areas of contiguous BLM lands greater than 5,000 acres in size identified three units south of Disappointment Valley Road (San Miguel County Road 19Q/Dolores County Road D) as being adjacent to the McKenna Peak WSA. Only after further investigation did the BLM recognize that this graded and maintained county road separated these units from the WSA, "[a]fter the original GIS analysis, it was determined that this area is not adjacent to the McKenna Peak WSA" (FEIS, p. O-4), and "this unit was also misidentified as adjacent to the existing McKenna Peak WSA (CO-030-286) due to the county road being inadvertently not included in the original roadless GIS analysis" (FEIS, O-5). This is just one example of many where the faulty road layer utilized to conduct the initial roadless analysis resulted in the misidentification *or omission* of certain units.

Compounding the fact that BLM utilized a faulty road layer in its initial analysis, the BLM then buffered off of this road layer when drawing the potential boundaries for units to be further investigated (see maps included as Exhibits D-I). BLM Manual 6310 clearly states, “When establishing a boundary do not create a setback or buffer from the physical edge of the imprint of man.” However, the TRFO buffered every single road or impact throughout its analysis, removing qualifying acreage from the analysis. Further, by arbitrarily reducing the acreage numbers, it is possible that potentially qualifying units that would meet the size criteria of 5,000 acres before buffering were unnecessarily excluded after those acreages were reduced through buffering, resulting in units of less than 5,000 acres.

Because the preliminary GIS analysis relied on outdated road data while also including significant buffers around theoretical human impacts, the resulting portfolio of potential LWCS (20 units) was both inaccurate and incomplete. Because this baseline portfolio of units potentially containing wilderness characteristics was incomplete, BLM precluded several areas from being given the detailed analysis that they require in order to assess whether or not they actually qualify as lands with wilderness characteristics according to BLM policies.

Where BLM did conduct more detailed field inventories or other investigations (20 units, 109,000 acres) the agency failed to follow its own policies on boundary delineation, identification of and/or impacts to the necessary wilderness characteristics of apparent naturalness, outstanding opportunities for solitude, and outstanding opportunities for primitive and/or unconfined recreation. Additionally, the rationale behind these decisions was not adequately documented or illustrated through detailed narrative, photographs, and maps.

Manual 6310 describes not only on what constitutes a road for wilderness inventory purposes (“wilderness inventory road”), but also provides detailed guidance on how to identify the required wilderness characteristics of “size,” “apparent naturalness” and “outstanding opportunities for solitude or primitive and unconfined recreation.” However, BLM has failed to follow this guidance and FLPMA in the following ways:

- a. Incorrect and/or unsubstantiated boundary delineation decisions

BLM Manual 6310 states that, “[t]he boundary [for a wilderness characteristics inventory unit] is usually based on the presence of wilderness inventory roads” but can also be based on changes in property ownership or developed rights-of-way. Wilderness inventory roads are further defined as those roads that are “improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road” (Manual 6310, p. 14).

In countless instances in the proposed RMP/FEIS, BLM chooses boundaries for wilderness characteristics inventory units that do not meet the above definition of a wilderness inventory road or other qualifying feature for boundary delineation purposes, and as such, BLM fails to identify the true qualifying boundary for the respective wilderness characteristics inventory units. Often this results in units being overlooked or excluded from further analysis; in other instances it results in non-qualifying units, or pieces of units, being considered for protection, when in fact these units have features (powerlines, pipelines, etc.) within them that disqualify them from consideration or where the boundaries should be adjusted to remove these disqualifying features.

Attached Exhibit I, Photos 1 and 2 shows photographs of just two of countless examples throughout the inventory where BLM uses clearly unmaintained and even signed closed routes as boundaries for analyzed wilderness characteristics units; these routes are clearly not maintained using mechanical means and should not be used as boundaries (in several cases the routes are even marked with BLM-installed carsonite posts denoting closures or rehabilitation areas). Instead, these routes should be analyzed as potential impacts to apparent naturalness. However, in many cases, BLM uses these routes as boundaries, while also failing to provide rationale—either written or photographic—to illustrate why BLM determined that these routes meet the criteria for boundary delineation laid out in Manual 6310; **no Route Analysis forms (Manual 6310, Appendix C) or route photographs are included to backup these boundary decisions.**

Attached Exhibit F, Photos 49 illustrates an example where BLM identifies an existing above-ground pipeline as an impact to naturalness, but fails to redraw the unit so that the developed right-of-way (pipeline) is the new boundary for the unit. Throughout BLM's inventory there are cases where impacts to naturalness are cited but then no effort is made to remove these impacts from the unit to determine whether a smaller unit can be delineated that omits impacts to naturalness while still meeting the criteria for size and other wilderness characteristics. For example, BLM found that the XXX acre XXX unit did not have wilderness characteristics because of a lack of naturalness caused by, "XXX", yet the area where these impacts occur can easily be removed from the unit, resulting in a slightly smaller unit that is free of impacts to naturalness and still meets the 5,000 acre threshold.

The photographs included here are just representative examples of decisions made by BLM throughout the field office and in no way detail every case where BLM fails to make correct and substantiated boundary decisions on lands with wilderness characteristics units in the field office.

- b. Inadequate documentation of the rationale behind BLM's boundary decisions and wilderness characteristics determinations.

In order for the public to fully understand the rationale behind BLM's decisions on boundaries and/or the presence or absence of wilderness characteristics in potential lands with wilderness characteristics units, BLM policy requires that a Permanent Documentation File be maintained for each inventory unit. Further, Manual 6310 requires that this permanent documentation file contain, among other things, photo-documentation and maps "that depict the area's...boundary and any photo points." Additionally, the Manual states that "necessary forms for each area will be completed" including Appendix C: Route Analysis forms. While the field office has maintained such files, they seem to have only made them available to the public on request<sup>2</sup>. These files contain several photos, maps, and road determination forms that were not otherwise released to the public or included in any form in the proposed RMP/FEIS. Yet even so, the majority of the wilderness characteristics determinations and wilderness inventory road assessments made by BLM in its updated wilderness inventory are not backed up by documentation of any kind. Countless boundary roads, cherrystemmed roads, and roads used as impacts to naturalness are missing their corresponding Route Analysis forms that might otherwise provide the public with the rationale behind seemingly confounding decisions. Very few statements in BLM's inventory determining that an area does not possess apparent naturalness or opportunities for solitude or primitive and unconfined recreation are backed up with photo-documentation or other illustrative evidence. For

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<sup>2</sup> Our initial request for this information was emailed to the field office on July 18<sup>th</sup>, 2013. The field office was unable to send us this requested documentation until late September 2013, just days before the release of the proposed final RMP/FEIS. The proposed final RMP/FEIS was released on September 20, 2013.

example, BLM states in its analysis of the naturalness of the McIntyre Canyon unit (CO-030-290c) that, “The unit has historic mining activity and Abandoned Mine Land activities concentrated in areas that detract from the naturalness,” but not a single photograph of such activities is included in either the proposed RMP/FEIS or in the permanent documentation file provided by the BLM for that unit. Nor are the “concentrated” areas where this historic mining and Abandoned Mine Land activities are supposedly located described or shown on any map. Further, because BLM was still conducting inventories in September 2013<sup>3</sup>, completed documentation was not incorporated into the Proposed RMP or made available.

Omitting necessary information regarding the inventory from public review makes it difficult for the public to understand the wilderness resources in the TRFO and the BLM’s rationale for decisions being made in the RMP; since comments are necessarily based on available information, the public’s ability to comment is similarly compromised.

c. Overly narrow interpretations of naturalness.

Naturalness is a key criterion for determining whether or not area has wilderness characteristics. BLM Manual 6310 focuses on “apparent naturalness” which depends on whether an area looks natural to “the average visitor who is not familiar with the biological composition of natural ecosystems versus human affected ecosystems” and is not equivalent with ecological integrity. The Manual states that, “The location of boundaries should primarily be set to exclude the unnatural portions of the area.” Human impacts and other features can be present within the remaining unit as long as they are “substantially unnoticeable” to the casual visitor. Types of human impacts that are considered relatively minor include stock ponds, “barely visible” linear disturbances, bridges, minor radio repeater sites, and others. Further, the guidance states that “if several minor impacts exist, summarize their cumulative effect on the area’s degree of apparent naturalness.” Not only does BLM frequently cite many of these minor impacts as the rationale for disqualifying entire units from further consideration, but nowhere in the entire report are the cumulative effects of minor impacts on the apparent naturalness of a unit as a whole summarized or illustrated in any way. In fact, the key term “substantially unnoticeable” is not used a single time in the LWC report and the term “substantially noticeable” is used only once. If BLM analyzed whether or not certain extant impacts are “substantially noticeable” and do in fact have negative effects on apparent naturalness, that analysis was not described or provided to the public in any way in this report.

In several cases, BLM lists existing impacts when describing the presence or absence of naturalness for a unit. However, BLM almost universally fails to describe or illustrate where exactly these impacts occur, whether or not they are “substantially noticeable,” and/or whether or not their cumulative effects have negative impacts on naturalness. The BLM also fails to “exclude the unnatural portions of the area” in order to determine if a remaining but smaller unit can be drawn that still meets the criteria for lands with wilderness characteristics.

For example, in the description of “Sub-Unit CO-030-290a,” BLM’s entire narrative describing why the area was found not to meet the naturalness criterion is as follows:

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<sup>3</sup> Per emails received by The Wilderness Society.

“Electrical corridors, pipelines, uranium developments, and adjacent County roads. Abandoned mine land work in past, present, and future. Existing range improvements. Three major mines are adjacent”

Similarly, BLM’s entire narrative describing the lack of apparent naturalness in “Sub-Unit CO-030-290e” is as follows:

“Similar to sub-unit ‘E’: Historic mining activity, bulldozer scars, wells, and DOE leasing in the vicinity.”

These are merely lists of impacts, not the descriptions called for by BLM’s guidance, which instructs BLM to “include land ownership, location, topography, vegetation, and summary of major human uses/activities” (Manual 6310). These lists does not describe the specific type of impact or its scope, don’t tell the public where these impacts are located and whether or not they can be drawn out of the unit while still retaining an area of over 5,000 acres that is void of said impacts, or describe the cumulative effects of these impacts on the overall naturalness of the entire unit. No photos are included of these purported impacts to show that they are not “substantially unnoticeable to the average visitor” and thus detract from the overall apparent naturalness of the unit as a whole.

Throughout BLM’s inventory report, features are listed (but not described or illustrated through photographs) that are either explicitly or implicitly listed in IM 2011-154 as “human made features that may be considered substantially unnoticeable in certain cases” when assessing the apparent naturalness of a wilderness inventory unit. These include range improvements such as stock ponds, fencing, and spring developments. Additionally, BLM lists several features that, if proven to have negative impacts to naturalness, should be cut out of a wilderness inventory unit prior to assessing whether or not that unit meets the size criterion, including county roads (which are considered developed rights-of-way and thus should be used as boundaries, not impacts to naturalness), “bulldozed routes,” “roads,” and “existing wells in production.”

BLM Manual 6310 explicitly states that, “Undeveloped ROWs and similar undeveloped possessory interests (e.g., mineral leases) are not treated as impacts to wilderness characteristics because these rights may never be developed” and “The BLM must document existing conditions as opposed to potential future conditions.” Yet, in several instances throughout this inventory BLM cites “DOE leasing” and “DOE leasing in the vicinity” as impacts to naturalness” while also noting conditions that once occurred or may occur in the future, such as “abandoned mine land work in past, present, and future” and “ongoing AML activities” as impacts to naturalness.

“Roads,” “bulldozer scars,” “existing range improvements,” “roads,” “adjacent mines,” “uranium developments,” “wells,” and “mining activity” can all be considered impacts to naturalness. However listing these impacts alone, without documenting the exact location, present condition, and concentration of these features is not proof of their negative impacts on naturalness and do not alone preclude the unit from being analyzed for the additional wilderness characteristics of size and outstanding opportunities for solitude or primitive and unconfined recreation. BLM must show that these features cannot be excluded from the unit while still retaining a smaller unit that does meet the criteria for lands with wilderness characteristics. As Manual 6310 states, “An area can have wilderness characteristics even though every acre within the area may not meet all the criteria” for lands with wilderness characteristics.

Additionally, the listed features of “county road access,” “pipelines,” “electrical corridors,” “intermittent access” and “existing wells in production” are all features that could be excluded from the inventory unit or should not be considered when analyzing whether or not a unit contains wilderness characteristics. BLM Manual 6310 states that, “The location of boundaries should primarily be set to exclude the unnatural portions of the area.”

Finally, BLM often cites the shape of a unit in its assessment<sup>4</sup> of whether or not that unit contains wilderness characteristics. In fact, BLM states in its 2012 Wilderness Characteristics Assessment for the BLM Portions of the San Juan Public Lands (2012 Wilderness Assessment) that “other areas were eliminated as they would be unmanageable due to their physical shape” (2012 Wilderness Assessment, p.6). Irregular boundaries may influence the BLM’s analysis of opportunities for solitude or primitive and unconfined recreation, or in deciding whether or not to manage a qualifying area for its wilderness characteristics; however, an irregular boundary should not be used as a criterion for determining whether or not that area meets the size or apparent naturalness criteria. Nor should the shape of an area alone, prior to on-the-ground field work to confirm its boundaries, “preclude managing [it] for wilderness characteristics” (Wilderness Assessment, p.6). An irregular shape is not a recognized factor in determining whether or not an area *contains* wilderness characteristics, but instead should be considered when determining whether or not to manage an area identified as having wilderness characteristics for protection of those characteristics.

- d. Arbitrarily omitted numerous qualifying polygons adjacent to BLM Wilderness Study Areas from the portfolio of wilderness characteristics inventory units

BLM Manual 6310 defines how the size criterion for lands with wilderness characteristics units can be met. The size criterion can be met not only by areas of contiguous unroaded BLM lands greater than 5,000 acres in size, but also by roadless areas less than 5,000 acres that “are contiguous with lands which have been formally determined to have wilderness or potential wilderness values, or any federal lands managed for the protection of wilderness characteristics” including designated Wilderness and BLM Wilderness Study Areas (Manual 6310, p.8). Appendix O of the proposed RMP/FEIS states that in the initial GIS analysis of potential wilderness inventory units, “Per IM No. 2011-154, areas of any size adjacent to existing WSAs or designated wilderness were also identified.” However, while several WSA-adjacent polygons were identified by BLM in the McKenna Peak WSA, Weber/Menefee WSAs, and Silverton Areas, the Dolores River Canyon WSA was mainly overlooked. The only units identified and analyzed adjacent to the Dolores River Canyon WSA and moved forward into the lands with wilderness characteristics inventory were Lower Dolores River Area Sub-Units CO-030-290a and CO-030-290h. And only CO-030-290a was found to have wilderness characteristics, despite the fact that 290h also abuts the WSA and thus inherits the wilderness characteristics found therein. There are several parcels of contiguous roadless BLM lands that exist adjacent to the Dolores River Canyon WSA which should have been included in BLM’s analysis of lands with wilderness characteristics. These include areas around Skein Mesa, Wild Steer Mesa, Bull Canyon, Silveys Pocket, Coyote Wash, and North Island Mesa. Additionally, there appear to be several polygons adjacent to the Weminuche Contiguous, Whitehead Gulch, and West Needles WSAs which also were not analyzed. Maps and descriptions of these units, as well as full field inventories of several units are included as Exhibits D-J.

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<sup>4</sup> The term “irregular shape” is often used to in the description portion of the Inventory Area Evaluations and boundaries are either explicitly or implicitly analyzed for their manageability (i.e. the unit “has manageable boundaries”).

e. Did not complete inventory

As noted above, BLM was still conducting inventory in the days before release of the Proposed RMP and so has not provided that information to the public. Taken in conjunction with the arbitrary exclusion of potential areas (described in detail below) violates the requirements of Manual 6310 to evaluate lands with wilderness characteristics as part of land use planning processes and make the inventory available for public review and comment.

***Requested Remedy:*** BLM should conduct a full field inventory of all potential lands with wilderness characteristics in the Tres Rios Field Office to comply with the requirements listed above and document these findings with extensive narrative, relevant photographs, and detailed maps (with photograph locations included).

2. BLM's inventory approach, including its reliance on a faulty initial GIS analysis, precluded many areas from being given further analysis, including field inventories, and thus the resulting portfolio analysis of the wilderness characteristics of specific units within the field office was not compliant.

BLM's initial GIS inventory resulted in a portfolio of 20 units and 109,484 acres being moved forward for further analysis. As detailed above, this initial GIS analysis was flawed and as such precluded qualifying areas, or portions of areas, from being given the further analysis that they deserved. Our extensive field inventory work in 2013, as well as an independent GIS analysis of roadless lands, found significant discrepancies between the BLM's findings and BLM's policies for identifying lands with wilderness characteristics as outlined in IM 2011-184 and BLM Manual 6310. These discrepancies are described in detail in this protest and in the individual inventory reports attached as Exhibits D-J. The following is a list of units and the summaries of our findings. More details on each of these units can be found in the attached inventory reports.

- North Island Mesa: North Island Mesa is comprised of 12,900 acres along the north and east slopes of Island Mesa including Coyote Wash. BLM analyzed two sub-units that overlap with this area including CO-030-290g and CO-030-290h. CO-030-290h was found by BLM to contain wilderness characteristics while BLM found that CO-030-290h did not meet the criteria for apparent naturalness. North Island Mesa corrects several of the boundary and cherrystem errors included in BLM's draft inventory and the result is a unit that meets all of the criteria for a lands with wilderness characteristics unit according to BLM policies.
- Silveys Pocket (Dolores River Canyon WSA adjacent unit): Silveys Pocket was not analyzed by BLM as an individual potential lands with wilderness characteristics unit despite lying adjacent to the Dolores River Canyons WSA. A portion of the very northern part of this unit were included in the draft boundaries for BLM unit CO-030-290g, however these areas do not appear to have been field inventoried as no photos or route analysis forms are included for these portions of 290g. Because of that the BLM failed to recognize that the unroaded BLM lands contiguous to the Dolores River Canyons WSA are much larger than those small areas included in the draft boundaries for 290g and in fact include around 4,700 acres of BLM lands just to the south and west of the WSA in the Little Gypsum Valley and Silveys Pocket.
- Steamboat Hill: We identified several adjustments that should be made to the BLM's boundaries for the Lower Dolores River sub-units CO-030-290c and CO-030-290f (290c, 290f) to bring them

in line with the policies for boundary delineation described in Manual 6310. We found that 290c and 290f are actually one unit, according to the boundary delineation policies laid out in BLM Manual 6310. Because BLM units 290f and 290c are not separated by a qualifying feature for boundary delineation purposes, BLM should reassess its determination of lack of naturalness made in its updated inventory and included in the analysis of its proposed RMP/FEIS. The boundary changes described above should be analyzed and considered and a full field inventory of the single Steamboat Hill unit conducted to document the presence or absence of wilderness characteristics. Our inventory of the Steamboat Hill proposed LWC shows it to have outstanding wilderness characteristics—including naturalness and unique opportunities for solitude and primitive recreation.

- Summit Canyon: The BLM's draft inventory analyzed a 5,440-acre parcel identified as CO-030-290d. BLM's determination was that no part of unit 290d contained wilderness characteristics because of a lack of apparent naturalness. However, as explained in Exhibit G, the boundaries used by BLM to make this assessment of wilderness characteristics do not meet the criteria for boundary delineation laid out in BLM Manual 6310 and thus must be moved to qualifying features such as wilderness inventory roads or developed rights-of-way as required by BLM policy. The boundaries used are made up of several routes that do not meet the criteria for wilderness inventory roads. A large powerline is included in the southwest portion of the inventory unit at the head of Summit Canyon. BLM's assessment of naturalness is not based on a full picture of the unit as a whole and the rationale for determining that this unit does not contain apparent naturalness is not illustrated by photographs, described in any detail whatsoever, or otherwise explained. BLM should reinventory the Summit Canyon unit using the attached narrative, maps, and photographs as a reference and then reassess the presence or absence of wilderness characteristics located therein.
- Pole Canyon: Pole Canyon is a unit that was not analyzed in either the BLM's initial LWC inventory from November 2012 or its updated inventory from 2013. The unit sits just south of the Disappointment Valley road near the McKenna Peak WSA and is comprised of 11,700 contiguous unroaded acres of BLM lands. This unit is entirely natural and has outstanding opportunities for solitude on the gentle and juniper-covered slopes that bend north from Glade Mountain. Outstanding primitive hunting opportunities are also found in the unit.
- McKenna Peak Units (including McKenna Peak WSA adjacent units): BLM identified several polygons totaling over 6,000 acres adjacent to the north and west boundaries of the McKenna Peak Wilderness Study Area as potential lands with wilderness characteristics in its initial 2012 Wilderness Characteristics Assessment. In the proposed RMP/FEIS BLM identified four polygons, totaling 2,600 acres, which contain wilderness characteristics and are proposed for management of those characteristics in Alternative C. While we agree with the BLM that these areas are in fact contiguous to the WSA and thus inherit the wilderness characteristics documented and protected within the WSA (as well as containing additional wilderness values of their own), we found that the BLM did not accurately delineate the boundaries for these polygons according to policies laid out in Manual 6310 and also failed to recognize the wilderness characteristics present in several sub-units that were not carried forward into the proposed RMP/FEIS. These discrepancies are detailed in our full field inventory included at the end of this report as Exhibit I.

- Snaggletooth East and West Units: These units were found by BLM to contain wilderness characteristics. However, the boundaries for these units, particularly along the western rim, are not based on wilderness inventory roads.

In addition to the units listed and described above and in Exhibits D-I, the following units also seem to meet the criteria for lands with wilderness characteristics detailed in Manual 6310. Excepting a portion of the Weber/Menefee WSA adjacent units, these units were included in BLM's draft inventory and found not to contain wilderness characteristics. However, as described above, the BLM's draft inventory was predicated on a faulty and out-of-date road layer that does not differentiate between routes that qualify as roads for wilderness inventory purposes and those that do not. Because of this, many of the boundaries used to define these units are incorrect and thus any determinations made as to the presence or absence of wilderness characteristics within the units are not based on complete information. Like every one of the units inventoried and described above, the documentation for these unit contain very few to zero route analysis forms, photographs, or detailed descriptions of the boundaries or human impacts to naturalness. Without this information it is impossible for the public to understand how and why the BLM made the decisions it made. These units should be included in any update to the lands with wilderness characteristics inventory in the Tres Rios field office that may result from this protest.

- Bull Canyon (Dolores River Canyon WSA adjacent unit): This 2,300 acre unit sits adjacent to the Dolores River Canyon WSA yet was not inventoried by the BLM.
- Big Gypsum Cliffs (Dolores River Canyon WSA adjacent unit): This unit overlaps with the BLM's Lower Dolores River Sub-unit CO-030-290a. This unit was inventoried by the BLM but found not to meet the criterion of naturalness. Several human impacts were cited by the BLM as rationale for this determination including electrical corridors, pipelines, and adjacent County Roads. However, it seems that no attempt was made by BLM to remove these impacts from within the boundaries of the unit. Our attached map does attempt to remove these features and the remaining 3,400 acre unit should still qualify for consideration as a lands with wilderness characteristics as it lies contiguous with the Dolores River Canyons WSA on its northern boundary.
- Skein Mesa (Dolores River Canyon WSA adjacent unit): Skein Mesa was not analyzed in either the draft or updated inventories produced by BLM despite the fact that it is around 8,500 acres of unroaded BLM lands contiguous with the Dolores River Canyon WSA. Although significant mining activity has occurred in this area, there exists large parcels of unroaded and unimpacted BLM lands adjacent to the WSA which could qualify as lands with wilderness characteristics under BLM policies and as such should be given a closer look by BLM.
- Menefee/Weber Mountain Wilderness Study Areas adjacent units: Similar to the Big Gypsum cliffs unit. See attached map.
- Storm Peak: This unit seems to have been overlooked in BLM's initial draft inventory. The unit contains 10,500 acres of contiguous unroaded BLM lands. Although numerous parcels of private lands (mining claims) are contained within this unit, it may in fact still qualify as a lands with wilderness characteristics unit and as such deserves a closer look by BLM.

- Handies Peak Wilderness Study Area Adjacent units: All three of these units are contiguous with the Handies Peak Wilderness Study Area.
- Weminuche Wilderness adjacent units: These are small parcels of unroaded BLM lands adjacent to the West Needles, Whitehead Gulch, and Weminuche Contiguous WSAs, as well as adjacent and contiguous with the Weminuche Wilderness. These areas should be analyzed for the presence or absence of wilderness characteristics.

**Requested Remedy**: BLM should acknowledge that the above-referenced areas have wilderness characteristics, then evaluate management alternatives to protect those characteristics, including specific prescriptions as described in Manual 6320.

#### **B. The BLM's Inventory of Lands with Wilderness Characteristics Did Not Comply with NEPA.**

NEPA requires that “environmental information is available to public officials and citizens before decisions are made and before actions are taken” to allow the “public scrutiny” that is “essential to implementing NEPA.” 40 C.F.R. § 1500.1(b). However, no lands with wilderness characteristics inventory was included in either the Draft RMP/EIS for the Tres Rios Field Office or the Supplemental EIS. The first lands with wilderness characteristics inventory for the Tres Rios Field Office was completed and released as the “Wilderness Characteristics Assessment for the BLM Portions of the San Juan Public Lands” in November 2012, after the closing of the comment periods for the Draft RMP/EIS and supplemental EIS. In addition, this inventory was simply published on the BLM TRFO website and contained only very generic maps and no photographs or road determination forms with which the public could adequately analyze how and why the BLM made the boundary and wilderness characteristics determinations it made for the units analyzed. BLM has not provided a formal comment period on its wilderness inventory, which violates NEPA’s requirement to provide for public comment on information and analysis. In addition, both the data provided and the analysis of environmental consequences made available are incomplete.

NEPA requires agencies to “describe the environment of the areas to be affected or created by the alternatives under consideration.” 40 C.F.R. § 1502.15/ Establishment of baseline conditions is a requirement of NEPA. In *Half Moon Bay Fisherman’s Marketing Ass’n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988), the Ninth Circuit states that “without establishing . . . baseline conditions . . . there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA.” The court further held that “[t]he concept of a baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives is critical to the NEPA process.” BLM’s inventory of lands with wilderness characteristics is incomplete and inaccurate, such that there is not an accurate baseline for the agency to use in evaluating the effects of management alternatives on lands with wilderness characteristics.

Further, NEPA requires the BLM to assess the direct, indirect and cumulative environmental impacts of proposed actions, taking a “hard look” at environmental consequences and performing an analysis commensurate with the scale of the action at issue. 42 U.S.C. § 4321 et seq.; 40 C.F.R. § 1508.8; *see also Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989). Because the BLM has not accurately evaluated or acknowledged the presence of lands with wilderness characteristics (as

described in detail above), BLM has not adequately analyzed the direct, indirect and cumulative impacts of management decisions on these lands.

NEPA requires the BLM to consider a reasonable range of management alternatives. 40 C.F.R. § 1502.14; *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1310 (9th Cir. 1990). 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, 1122-1123 (9th Cir. 2002) (and cases cited therein); *Or. Env'tl. Council v. Kunzman*, 614 F.Supp. 657, 659-660 (D. Or. 1985) (stating that the alternatives that must be considered under NEPA are those that would “avoid or minimize” adverse environmental effects). Because BLM has not identified the lands with wilderness characteristics in the field office, the agency has not considered a reasonable range of alternatives for managing lands with wilderness characteristics.

Finally, in order to address the omissions and inaccuracies in BLM’s inventory and evaluation of lands with wilderness characteristics, BLM is required to conduct a supplemental NEPA analysis, including an opportunity for meaningful public comment.

***Requested Remedy:*** To remedy failures to comply with NEPA, BLM should not issue a Record of Decision (ROD) for this RMP, but instead issue a supplement to the proposed RMP which adequately addresses LWCs. This supplement should include the results of the full field inventory of the potential units detailed in this document and should recognize the information on wilderness characteristics units provided herein. The supplement must include an accurate baseline of lands with wilderness characteristics, a range of management alternatives for lands with wilderness characteristics and an analysis of likely environmental consequences, as well as providing an opportunity for public comment.

### III. Areas of Critical Environmental Concern

#### **BLM DID NOT GIVE PRIORITY TO THE DESIGNATION AND PROTECTION OF ACECS AS REQUIRED BY FLPMA AND BLM’S PLANNING GUIDANCE.**

##### **A. The Tres Rios PRMP does not comply with FLPMA or BLM Manual 1613.**

When developing a land use plan, such as the Tres Rios RMP, FLPMA mandates that BLM “*give priority* to the designation and protection of areas of critical environmental concern.” 43 U.S.C. § 1712(c)(3) (emphasis added). ACECs are areas “where special management is required (when such areas are developed or used or where no development 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.” *Id.* § 1702(a).

BLM’s ACEC Manual (1613) provides additional detail on the criteria to be considered in ACEC designation, as discussed in the applicable regulations, as well. *See* Manual 1613, Section .1 (Characteristics of ACECs); 43 C.F.R. § 8200. An area must possess *relevance* (such that it has significant value(s) in historic, cultural or scenic values, fish & wildlife resources, other natural systems/processes, or natural hazards) and *importance* (such that it has special significance and distinctiveness by being more than locally significant or especially rare, fragile or vulnerable). In addition, the area must require *special management attention* to protect the relevant and important values (where current management is not sufficient to protect these values or where the needed management action is considered unusual or unique), which is addressed in special protective management prescriptions. 43

U.S.C. § 1702(a). An ACEC is to be as large as is necessary to protect the important and relevant values. Manual 1613, Section .22.B.2 (Size of area to receive special management attention).

As noted in the Tres Rios PRMP, all areas which meet the relevance and importance criteria “must be identified as potential ACECs and fully considered for designation and management in resource management planning.” Manual 1613, Section .21. For potential ACECs (those that BLM has identified as meeting relevance and importance), management prescriptions are to be “fully developed” in the RMP. Manual 1613, Section .22 (Develop Management Prescriptions for Potential ACECs). If an area is not to be designated, the analysis supporting the conclusion “must be incorporated into the plan and associated environmental document.” Manual 1613, Section .21 (Identifying Potential ACECs).

The Draft San Juan Land Management Plan evaluated 22 areas as potential ACECs and found 11 areas met the relevance and importance criteria. Of those 11 areas, only four were evaluated for designation in the range of alternatives for the draft plan (Draft LRMP, Appendix U, p. 2). This clearly does not comply with FLPMA’s requirement to prioritize designation of ACECs or Manual 1613’s requirement to fully consider for designation **all areas** that meet the relevance and importance criteria. Furthermore, many of the areas which were found not to meet the relevance and importance criteria were disqualified due to the arbitrary and unsupported criterion that “the low proportion of public land does not warrant further consideration as a potential ACEC” (*See, e.g.,* Draft LRMP, Appendix U, pp. 22, 24, 27, 28).

The Proposed RMP includes updated relevance and importance findings for the 22 potential ACECs, finding that 19 of them meet the relevance and importance criteria (PRMP, Appendix U, Table U.1). However, the PRMP notes that the 15 areas which meet the relevance and importance criteria but were not evaluated for designation in the Draft LRMP cannot be evaluated or designated in the PRMP without supplemental NEPA analysis. Therefore, the PRMP states: “To correct this oversight, the BLM will consider these potential ACECs in a future plan amendment” (PRMP, Appendix U, p. 4). This is completely inadequate to protect the relevant and important values of these potential ACECs and is legally unsupportable in the context of the agency’s obligations regarding ACECs under FLPMA.

A critical aspect of the statutory language cited above is FLPMA’s requirement that BLM “give priority” to ACEC designation *and* protection. 43 U.S.C. § 1712(c)(3). In essence, FLPMA directs BLM to prioritize protection and designation of ACECs across all alternatives under consideration, not simply the “conservation” alternative. In the Tres Rios PRMP, BLM has neither recognized nor carried out this statutory mandate. To resolve this, once BLM has determined that certain areas in the Tres Rios Field Office contain the requisite relevant and important values and that the PRMP does not protect all of those values—which the Tres Rios Field Office has already done—the agency must give priority to the designation of those areas as ACECs over other competing resource uses and likewise give priority to the protection of those areas over other competing resource uses. BLM has violated FLPMA both by failing to analyze protection of areas that meet the criteria in the RMP and also by failing to give protection to the designation and protection of ACECs.

Where BLM has found special values that meet the relevance and importance criteria, and where impacts could or would occur to these identified values if no special management prescriptions are implemented, BLM then violates its FLPMA obligations by failing to fully evaluate designation of ACECs. In addition, BLM violates its FLPMA obligations by failing to designate the areas or large enough acreage areas. BLM has improperly ignored or discounted the threats to special places from oil and gas development, other mineral development, off-road vehicle use, and other actions and so has failed to

designate and/or failed to incorporate sufficient protections for proposed ACECs to protect relevant and important values from the irreparable harm that is likely to result from these other activities.

The PRMP attempts to compensate for this failure to protect relevant and important values through ACEC designation by laying out alternative protective management prescriptions which will apply to those 15 areas, stating that until the ACECs can be evaluated and designated in a plan amendment, “The relevance and importance values identified within these 15 areas are largely protected through specific direction in the LRMP... In addition, protection of identified relevance and importance values will be considered during project-level analysis of any management actions or project proposals” (PRMP, Appendix U, p. 4). Protective management stipulations are not a substitute for ACEC designation, and considering relevant and important values at the project level does not give the same level of protection that ACEC designation would nor would it necessarily entail adequate environmental analysis and public review. BLM has acknowledged the threats to these areas and the need for special management. Consequently, BLM cannot dismiss its obligations under FLPMA with regard to ACECs based on interim protective management direction. This is especially unacceptable in light of the substantial acreage and number of proposed ACECs that BLM already identified as meeting ACEC criteria and somehow simply failed to evaluate in the previous years of planning.

**B. The Tres Rios RMP must designate and protect the following ACECs which BLM found to meet the relevance and importance criteria.**

Center for Native Ecosystems (now Rocky Mountain Wild) and San Juan Citizens Alliance nominated eight areas in the Tres Rios Field Office for ACEC designation in August of 2007. (See Exhibit K.) All eight of those nominated areas were also nominated by The Nature Conservancy. In addition to those eight areas, we supported designation of ACECs nominated by other entities in our comments on the Draft LRMP and Supplemental DEIS. Below we detail the potential ACECs which should be designated in the Tres Rios RMP to protect relevant and important values in the Tres Rios Field Office. A summary table of relevance and importance values of these potential ACECs is included at the end of this section.

San Miguel Basin

The San Miguel Basin potential ACEC is critically important to protect Gunnison sage-grouse in the Tres Rios Field Office. The potential ACEC contains occupied habitat for the San Miguel Basin Population of Gunnison sage-grouse, a G1S1 species which is proposed for listing as endangered under the Endangered Species Act, as well as Gypsum Valley cateye. This area has been proposed as critical habitat for Gunnison sage-grouse by USFWS. Public lands managed by the Tres Rios Field Office contain much of the remaining habitat for the San Miguel Basin population of Gunnison sage-grouse, and therefore BLM must address threats to the species and put protective measures in place in this RMP to avoid a significant effect on the long-term viability of the species and contribute to the need to protect the species under the ESA.

The USFWS proposed rule to list Gunnison sage-grouse describes several threats to the San Miguel Basin population, including but not limited to livestock grazing (78 FR 2503,2504), cheatgrass (78 FR 2507), and oil and gas development (78 FR 2512, 2526). Additional threats include off road vehicle use, minerals development, utility corridors, and fire and fuels management. None of these threats are adequately addressed by general plan components, oil and gas stipulations, or other existing conservation plans and collaborative efforts, although special management attention was developed for the BLM lands included in this potential ACEC to address the threat posed by oil and gas development (such as oil and gas stipulations that protect the San Miguel Basin population of Gunnison sage-grouse

and its habitat). This special management attention demonstrates the importance of designating this ACEC and putting protective management in place.

Northdale

The Northdale potential ACEC is also critical to protecting Gunnison sage-grouse, as it provides habitat for the Dove Creek population. This area has been proposed as critical habitat for Gunnison sage-grouse by USFWS. Public lands managed by the Tres Rios Field Office contain much of the remaining habitat for the Dove Creek population of Gunnison sage-grouse, and therefore BLM must address threats to the species and put protective measures in place in this RMP to avoid a significant effect on the long-term viability of the species and contribute to the need to protect the species under the ESA.

The USFWS proposed rule to list Gunnison sage-grouse describes several threats to the Dove Creek population including but not limited to livestock grazing (75 FR 2504), cheatgrass (75 FR 2507), oil and gas development (75 FR 2512), renewable and nonrenewable energy development (75 FR 2529), and fragmentation (75 FR 2514). Additional threats to the species in this area include off road vehicle use, minerals development, utility corridors, fire and fuels management, and invasive species. None of these threats are adequately addressed by general plan components, oil and gas stipulations, or other existing conservation plans and collaborative efforts, although special management attention was developed for the BLM lands included in this potential ACEC to protect the Dove Creek population of Gunnison sage-grouse and its habitat, such as through the Willow Creek Wildlife Habitat Management Area. This special management attention does not substitute for ACEC designation, and demonstrates the importance of designating this ACEC and putting protective management in place.

In addition to designating the San Miguel Basin and Northdale ACECs to protect Gunnison sage-grouse, the following ACECs should be prioritized for protection of their relevant and important values: Disappointment Valley Northwest, McIntyre Canyon, Slick Rock, Silvey’s Pocket, Snaggletooth and Dolores River Canyon. While some of these areas would have some level of protective management in the PRMP, such as through the Dolores River Canyon Special Management Area, alternative protective management direction does not substitute for actual ACEC designate and does not relieve BLM from its obligation under FLPMA to prioritize designation of ACECs.

Furthermore, we support the evaluation and designation of all ACECs which BLM found to meet the relevance and importance criteria in the PRMP. BLM must produce supplemental analysis and provide for public review of all potential ACECs so that a final plan can be put in place that adequately protects relevant and important values managed by the Tres Rios Field Office.

<b>Relevance and Importance of Potential ACECs</b>		
<b>Potential ACEC Name</b>	<b>Primary Values: Species or Community/CNHP rarity rank and BLM status</b> (includes all species or communities within the PCA with a CNHP rarity rank of G1-G3 or of S1-S2 – each PCA may contain additional values with ranks of G4-G5 and S3-S5)	<b>CNHP Biodiversity Significance Rank</b> (must be B1-B3 to be nominated)
San Miguel Basin  (Note: the San Miguel Basin PCA)	Gunnison sage-grouse ( <i>centrocercus minimus</i> )/G1S1, BLM sensitive Gypsum Valley cat-eye ( <i>Cryptantha gypsophila</i> )/G1S1	B2 Very High

encompasses BLM lands within the Miramonte Reservoir West PCA, and these lands are included in this nominated ACEC)	Cushion bladderpod ( <i>Physaria pulvinata</i> )/G1S1 (on private land within Miramonte Reservoir West PCA) Parish's alkali grass ( <i>Puccinellia parishii</i> )/G2S1 (on private land within Miramonte Reservoir West PCA)	
Disappointment Valley Northwest	Gypsum Valley cat-eye ( <i>Cryptantha gypsophila</i> )/G1S1 Naturita milkvetch ( <i>Astragalus naturitensis</i> )/G2G3S2S3, BLM sensitive	B2 Very High
McIntyre Canyon	Naturita milkvetch ( <i>Astragalus naturitensis</i> )/G2G3S2S3, BLM sensitive hanging garden community ( <i>Aquilegia micrantha</i> - <i>Mimulus eastwoodiae</i> )/G2G3S2S3 Eastwood monkey-flower ( <i>Mimulus eastwoodiae</i> )/G3S1, BLM sensitive xeric western slope pinon-juniper community ( <i>Pinus edulis-Juniperus monosperma, Juniperus osteosperma/Hesperostipa comata</i> )/G2?S2	B2 Very High
Slick Rock/Slick Rock Hill	SR Naturita milkvetch ( <i>Astragalus naturitensis</i> )/G2G3S2S3, BLM sensitive short-stem beardtongue ( <i>penstemon breviculus</i> )/G3S2 SRH Western Slope grasslands ( <i>Hesperostipa comata</i> Great Basin herbaceous vegetation)/G2G4S2 Naturita milkvetch ( <i>Astragalus naturitensis</i> )/G2G3S2S3, BLM sensitive short-stem beardtongue ( <i>Penstemon breviculus</i> )/G3G2 canyon treefrog ( <i>Hyla arenicolor</i> )/G5S2, BLM sensitive	SR B2 Very High SRH B3 High
Silveys Pocket	Paradox breadroot ( <i>Pediomelum aromaticum</i> )/G3S2, BLM sensitive Naturita milkvetch ( <i>Astragalus naturitensis</i> )/G2G3S2S3, BLM sensitive Western Slope grasslands <i>Hesperostipa comata</i> Great Basin herbaceous vegetation/G2G4S2	B3 High

**Requested Remedy:** Proceeding with a ROD in the face of the absolute failure to comply with FLPMA obligations regarding ACECs is not acceptable; the agency's careless approach to this statutorily mandated priority should not be enshrined in a final plan. BLM should not issue a ROD for the Tres Rios

RMP at this time, but should instead issue a supplement to the Proposed RMP which adequately addresses ACECs, including evaluating all 19 areas that meet the relevance and importance criteria for designation and management in the RMP and providing for public comment.<sup>5</sup>

#### **IV. Gunnison Sage-Grouse**

### **THE BLM'S PROPOSED PLAN COMPONENTS AND ANALYSIS OF IMPACTS ON GUNNISON SAGE-GROUSE ARE NOT COMPLIANT WITH NEPA, CEQ REGULATIONS, AND BLM GUIDANCE.**

#### **A. The Tres Rios PRMP does not comply with NEPA and CEQ Regulations**

USFWS has proposed to list the Gunnison sage-grouse as an endangered species, and proposed to designate critical habitat for Gunnison sage-grouse. The San Miguel Basin and Dove Creek populations of Gunnison sage-grouse are found within the Tres Rios Field Office, and the Field Office includes occupied and unoccupied habitat, as well as proposed critical habitat. These populations are essential to the conservation of the Gunnison sage-grouse and have already declined to very low numbers, in part due to past and present actions authorized by the BLM.

NEPA requires that “environmental information is available to public officials and citizens before decisions are made and before actions are taken” in order to fulfill the “public scrutiny” that is “essential to implementing NEPA.” 40 C.F.R. § 1500.1(b). Regulations also state that: “To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by... the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)” 40 C.F.R. § 1502.25(a). The Biological Assessment (BA) of impacts of the proposed RMP to Gunnison sage-grouse has not been done in time to inform the NEPA review. The BLM intends to publish the BA with the LRMP ROD, and states that “the ROD will include information to ensure this FEIS analysis is consistent with the accepted BA by the USFWS” (Final EIS, Chapter 3, p. 156). BLM cannot assess the environmental impacts of the proposed RMP when the necessary analysis of impacts – here the analysis of impacts on Gunnison sage-grouse contained within the BA - has not been done in time to inform the NEPA review. Thus, BLM has failed to adequately assess and disclose the impacts of the proposed RMP on Gunnison sage-grouse, despite recognizing that the proposed RMP “may affect, and is likely to adversely affect” Gunnison sage-grouse and proposed critical habitat (Final EIS, Chapter 3, p. 165).

BLM has violated NEPA by failing to take a “hard look” at the direct, indirect and cumulative impacts of the proposed plan on Gunnison sage-grouse and has failed to meet its obligations with respect to special status species. The BLM fails to adequately disclose the likely direct, indirect and cumulative impacts on Gunnison sage-grouse that would result from the proposed plan. As a result, BLM has failed to adequately minimize impacts on Gunnison sage-grouse, or to meet the requirements for management of special status species outlined in BLM Manual 6840. We hereby incorporate by reference all of Rocky Mountain Wild’s previous comments on the impacts of the proposed plan on Gunnison sage-grouse. As discussed above, BLM has failed to publish the BA in a timely manner. Further, the limited analysis of impacts in the FEIS is inadequate. The FEIS does not analyze the impacts of all of the management decisions made in the plan with potential to impact Gunnison sage-grouse. For example, the FEIS

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<sup>5</sup> Alternatively, and secondarily, BLM could issue a partial ROD that does not include ACECs and concurrently begin a public comment period on the potential ACECs that were omitted from the draft RMP, allowing for those ACECs to be designated in a separate ROD.

contains no analysis of the impacts of management decisions made in the plan with respect to livestock grazing and utility corridors, despite recognizing the potential for such decisions to negatively impact Gunnison sage-grouse populations (FEIS, Chapter 3, p. 166). In addition, where impacts of management decisions have been analyzed, the analysis lacks detail on the extent of impacts, and the likely response of Gunnison sage-grouse populations to impacts. Further, though the plan describes a variety of activities that will result in loss, degradation and fragmentation of Gunnison sage-grouse habitat (e.g. FEIS, Chapter 3 pgs. 166-167 & 211-214), the plan does not contain an adequate analysis of the likely cumulative effects of these and other past and present actions on Gunnison sage-grouse, particularly in light of the fact that the Dove Creek and San Miguel Basin populations have declined to such low numbers that they are already at risk of extirpation even in the absence of additional impacts, due to small population size and isolation (78 FR 2530-2531). The FWS notes that the Dove Creek population may soon be extirpated due to low current population estimates and an overall declining population trend, even in the absence of further impacts. (78 FR 2531). Further the FWS notes that the San Miguel Basin population has declined by 40% since 2004, and states that cumulative factors may combine to cause its future extirpation (78 FR 2531). The BLM fails to adequately analyze the cumulative impacts of management decisions in the proposed RMP given this information.

The BLM has failed to ensure the scientific integrity of its NEPA analysis. BLM must evaluate the effectiveness of the conservation measures used to minimize adverse impacts to wildlife and sensitive species with the best available science. "The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." 40 C.F.R. § 1500.1(b) (2009). "For this reason, agencies are under an affirmative mandate to 'insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements[,] identify any methodologies used and . . . make explicit reference by footnote to the scientific and other sources relied upon for conclusions[.]'" *Env'tl. Def. v. U.S. Army Corps of Eng'rs*, 515 F. Supp. 2d 69, 78 (D.D.C. 2007) (citing 40 C.F.R. § 1502.24 (2009)). If there is scientific uncertainty NEPA imposes the mandatory duties to (1) disclose the scientific uncertainty; (2) complete independent research and gather information if no adequate information exists unless costs are exorbitant or the means of obtaining the information are not known; and (3) evaluate the potential, reasonably foreseeable impacts in the absence of relevant information. See 40 C.F.R. § 1502.22 (2009). The BLM's analysis of the impacts of the management decisions made by the proposed plan on Gunnison sage-grouse is inconsistent with the best available science. We hereby incorporate the USFWS proposed rule to list the Gunnison sage-grouse as endangered (FWS proposed rule), and the 2011 Bureau of Land Management Technical Report, titled "A Report on National Greater Sage-grouse Conservation Measures" (NTT Report) by reference. The BLM fails to consider the impacts of plan decisions on Gunnison sage-grouse in light of the information on the status of the Dove Creek and San Miguel Basin populations, relevant research on the impacts of energy development and other actions on sage-grouse outlined in the FWS proposed rule and NTT Report, and the conservation measures that experts suggest are necessary to maintain Gunnison sage-grouse populations and prevent adverse impacts to the species.

NEPA requires an analysis of the effectiveness of mitigation measures. "Mitigation must 'be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated.'" *Carmel-the-Sea v. U.S. Dep't of Transp.*, 123 F.3d 1142, 1154 (9th Cir. 1997). (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 353 (1989)). The Ninth Circuit explained that fair evaluation requires agencies to "analyze[] the mitigation measures in detail [and] explain how effective the measures would be. A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA." *Nw. Indian Cemetery Protective Ass'n v. Peterson*, 764 F.2d 581, 588 (9th Cir. 1985), *rev'd on*

*other grounds*, 485 U.S. 439 (1988). In *Neighbors of Cuddy Mountain*, the court noted that “it is also not clear whether any mitigating measures would in fact be adopted. Nor has the Forest Service provided an estimate of how effective the mitigation measures would be if adopted, or given a reasoned explanation as to why such an estimate is not possible.” The BLM has not provided an adequate analysis of the likely effectiveness of the mitigation measures aimed at minimizing impacts to Gunnison sage-grouse in the proposed RMP. There is substantial uncertainty regarding whether the mitigation measures in the plan will actually be implemented. First, Appendix H of the Final LRMP/FEIS contains a variety of detailed lease stipulations to protect Gunnison sage-grouse and other wildlife resources during federal mineral development. Though this includes explicit criteria outlining when exceptions, modifications and waivers may be granted on USFS lands, these explicit criteria do not apply on BLM lands. Instead, decisions regarding exceptions, modifications and waivers of stipulations intended to protect Gunnison sage-grouse will be left to discretion of BLM’s authorized officer. Thus, it is impossible to evaluate the effectiveness of stipulations for protecting Gunnison sage-grouse on BLM land. Second, the FEIS states that LRMP implementation “may affect, is likely to adversely affect” Gunnison sage-grouse, and the USFWS identifies oil and gas development as a threat to the species. Thirteen percent of the federal minerals underlying the San Miguel Basin Gunnison sage-grouse population are leased. The LRMP proposes to lease the remainder with a No Surface Occupancy stipulation that is subject to exceptions, modifications and waivers at BLM’s discretion, resulting in little certainty that the NSO stipulation will prevent adverse impacts to Gunnison sage-grouse. The BLM does not compare the likely effectiveness of the no lease option for new leases with the likely effectiveness of the NSO stipulation, given BLM’s discretion in allowing exceptions, modifications and waivers. Further, the NSO stipulation will encourage development of roads and placement of well pads just outside but adjacent to occupied critical habitat. The best available science indicates that Gunnison sage-grouse can be negatively impacted by roads and energy development structures that are several miles from leks and occupied habitat. For example, declines in male greater sage-grouse lek attendance were reported within 1.9 miles of a well or haul road with a traffic volume exceeding one vehicle per day (Holloran 2005, p. 40 in 78 FR 2512). The BLM does not provide an analysis of the likely effectiveness of the NSO stipulation given this fact. Finally, though a number of conservation measures that have been identified as necessary to conserve sage-grouse are outlined in Appendix N, Sage-grouse Best Management Practices, it is unclear whether and under what circumstances these measures will be adopted.

## **B. The Tres Rios RMP is inconsistent with IM 2010-071**

Current BLM policy is to maintain sustainable sage-grouse populations and to manage sage-grouse to promote conservation and minimize the need for listing of sage-grouse under the Endangered Species Act. *See*, Instruction Memorandum (IM) 2010-071). The Tres Rios RMP does not include an objective to maintain sustainable Gunnison sage-grouse populations or to manage Gunnison sage-grouse to promote conservation and minimize the need for listing Gunnison sage-grouse under the Endangered Species Act. Lack of such an objective makes the plan inconsistent with IM 2010-071. Further, IM 2010-071 outlines a set of actions that should be considered in priority habitat, when necessary to maintain sustainable sage-grouse populations across the landscape. The IM defines priority habitat as “the habitat of highest conservation value relative to maintaining sustainable sage-grouse populations range-wide. Priority habitat will be areas of high quality habitat supporting important sage-grouse populations, including those populations that are vulnerable to localized extirpation but necessary to maintain range-wide connectivity and genetic diversity”. Occupied and critical habitat for the San Miguel Basin and Dove Creek Gunnison sage-grouse populations in the Tres Rios Field office clearly meets this definition. Unoccupied suitable habitat in the Tres Rios Field Office likely also meets this definition. These measures include excluding priority habitat from energy development and transmission projects via the

RMP revision process. See IM 2010-071 (“In RMP revisions and amendments, analyze one or more alternatives that would exclude priority habitat from energy development and transmission projects.”). Further, the IM outlines actions to protect sage-grouse from a variety of different types of energy development, including not only oil and gas development, but also geothermal development, oil shale development, wind and solar energy development and associated site testing, and transmission. The proposed RMP fails to adequately consider actions to protect Gunnison sage-grouse from non-oil and gas related energy development. The BLM has failed to analyze one or more alternatives that exclude priority Gunnison sage-grouse habitat from energy development and transmission projects and has failed to consider conservation measures necessary to protect Gunnison sage-grouse from all types of energy development.

***Requested Remedy:*** BLM should not issue a ROD for the Tres Rios RMP at this time, but should instead issue a supplement to the Proposed RMP which adequately addresses Gunnison sage-grouse. The supplement must include: 1) the completed Biological Assessment, 2) an adequate analysis of both the impacts to Gunnison sage-grouse and the likely effectiveness of mitigation measures that is consistent with the best available science, and 3) an alternative that excludes priority Gunnison sage-grouse habitat from energy development and transmission projects, 4) selection of the no lease option for new leases in occupied and unoccupied Gunnison sage-grouse habitat, 5) provision of explicit criteria for exception, modification and waiver of lease stipulations and other mitigation measures for Gunnison sage-grouse, and 5) incorporation of the conservation measures outlined in Appendix N as required standards and guidelines, rather than optional Best Management Practices. The supplement must also provide for public comment.

## **V. Oil and Gas Management**

### **A. BLM IMPROPERLY APPLIED THE MASTER LEASING PLAN CRITERIA.**

Chapter V contains four criteria that, when satisfied, require preparation of MLPs<sup>6</sup> Those four criteria are as follows:

1. A substantial portion of the Federal Lands in the MLP area is not currently leased.
2. There is a majority Federal mineral interest in the MLP area.
3. The oil and gas industry has expressed a specific interest in leasing in the MLP area demonstrated through discussions, expressions of interest, or existing leases in the area, and there is a moderate or high potential for oil or gas confirmed by the discovery of oil or gas in the general area.
4. Additional analysis is needed to address likely resource impacts (including cumulative impacts) if oil and gas development were to occur where there is a potential for:
  - Multiple-use or natural/cultural resource conflicts; or
  - Impacts to air quality; or
  - Impacts on the resources or values of a unit of the National Park System, national wildlife refuge, or National Forest wilderness area, as determined after consultation or

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<sup>6</sup> Virtually identical criteria are found in IM 2010-117.

coordination with the National Park Service (NPS), Fish and Wildlife Service (FWS), or Forest Service; or

- Impacts on other specially designated areas.

Chapter V at B.1.-4. In Appendix R, the BLM applied those criteria to three areas in the Tres Rios Field Office: Northern San Juan Basin, Paradox Leasing Analysis Area (“PLAA”) and San Juan Sag.<sup>7</sup> Only the PLAA received a detailed evaluation. As explained below, that evaluation is deeply flawed.

### 1. A Substantial Portion of the PLAA Is Not Leased.

Contrary to the BLM’s finding in Appendix R, the PLAA is not substantially leased. Under Chapter V, a “substantial portion of Federal lands” within areas under consideration for MLPs must not be leased. Chapter V at B.1. Neither Chapter V nor IM 2010-117 define “substantial.” However, in Colorado, the BLM has frequently interpreted that term far too narrowly to mean, “not more than 50 percent leased.”<sup>8</sup> This overly narrow definition is inconsistent with the policy goals of IM 2010-117,<sup>9</sup> as well as with the approach of at least one neighboring state, and cannot be followed.<sup>10</sup>

Nevertheless, even under this narrow interpretation, the PLAA still qualifies. The BLM suggested as much in Appendix R, which found that 52 percent of the “BLM federal mineral estate” in the PLAA is not currently leased. Final EIS at App. R-2. The percentage of unleased “Federal lands” (as opposed to “federal mineral estate”) is not identified Appendix R, even though that is the controlling factor. However, according to current data provided by the BLM, approximately 147,000 of the 433,000 acres of land managed by the BLM within the PLAA (or one-third) are currently leased. Thus, the PLAA is substantially not leased.

The BLM tries to avoid this undeniable conclusion by excluding lands “that would not be available for lease” in the Proposed RMP. Final EIS at App. R-2. Only by omitting those lands was the BLM able to bring the amount of unleased federal land in the PLAA to below the 50 percent level. *See id.* (asserting that 44 percent of the PLAA is not leased). Neither Chapter V nor IM 2010-117 permits the BLM to consider that factor, however. They instead pose a simple and straightforward question to the BLM: is “a substantial portion” of federal lands within the PLAA unleased for oil and gas development? The answer to that question is “yes.” Therefore, the only possible conclusion is that the PLAA satisfies the first criterion.

### 2. The PLAA Has a Majority Federal Mineral Interest.

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<sup>7</sup> The external boundaries of the PLAA closely align with those of the citizen-proposed “San Juan” MLP area. Compare FEIS at App. V – Map 48 with San Juan Proposed MLP Map 1 (Exhibit C).

<sup>8</sup> Kremmling Draft RMP at App. V-2.

<sup>9</sup> IM 2010-117 encourages “the BLM to take the initiative to strategically plan for leasing and development in areas that have the potential for oil and gas development but have not been fully leased.” That policy goal is frustrated by narrowly defining the term “substantial.”

<sup>10</sup> See MLP Assessment Book Cliffs Divide-Grand Valley-Cisco Desert at 4 (Nov. 2010) (stating that proposed MLP area, which is 37 percent unleased, satisfies the MLP criteria), available at [http://www.blm.gov/pgdata/etc/medialib/blm/ut/lands\\_and\\_minerals/oil\\_and\\_gas/mlp\\_-\\_master\\_leasing.Par.11139.File.dat/MLP%20Assessment%20-%20Book%20Cliffs%20Divide.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/ut/lands_and_minerals/oil_and_gas/mlp_-_master_leasing.Par.11139.File.dat/MLP%20Assessment%20-%20Book%20Cliffs%20Divide.pdf); MLP Assessment Vernal at 2 (Nov. 2010) (stating that proposed MLP, which is 35 percent unleased, satisfied the MLP criteria), available at [http://www.blm.gov/pgdata/etc/medialib/blm/ut/lands\\_and\\_minerals/oil\\_and\\_gas/mlp\\_-\\_master\\_leasing.Par.24916.File.dat/MLP%20Assessment%20-%20Vernal.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/ut/lands_and_minerals/oil_and_gas/mlp_-_master_leasing.Par.24916.File.dat/MLP%20Assessment%20-%20Vernal.pdf).

The PLAA also satisfies Chapter V's second criterion, which requires "a majority Federal mineral interest in the MLP area." Chapter V at B.2. In Appendix R, the BLM failed to expressly conclude, one way or the other, whether this is the case. However, Appendix R implies that the criterion is not satisfied within the PLAA. This implication is drawn from the BLM's decision to exclude non-federal minerals from the analysis: "Within the PLAA there are multiple ownerships; however, only the BLM mineral estate acreage is included in this appendix and used to address the MLP four criteria and concerns raised in the external MLP." Final EIS at App. R-2. It goes without saying that in order to determine whether "a majority federal mineral interest" is present, the BLM must identify and consider the amount of "non-federal minerals" within the area. Yet, in Appendix R, the BLM failed to do just that.

If the BLM had included non-federal minerals, as required by Chapter V, then it would have found that the PLAA's mineral estate is largely federal. This is obvious even to the naked eye. *Compare* Final EIS at App. V, Map 48 with 2009 Addendum to the Oil and Gas Potential and Reasonable Foreseeable Development (RFD) Scenarios in the San Juan National Forest and BLM Public Lands, Colorado at 11 [hereinafter, "RFD Addendum"]. Thus, the PLAA satisfies Chapter V's second criterion.

### 3. The Oil and Gas Industry Has a Specific Interest in Leasing within the PLAA.

Chapter V also requires a "specific interest" in leasing from industry. This requirement consists of two elements: (1) "discussions, expressions of interest, or existing leases in the area"; and (2) "a moderate or high potential for oil or gas confirmed by the discovery of oil or gas in the general area." Chapter V at B.3. Both elements are satisfied for the PLAA.

First, industry has repeatedly and extensively "discussed" its interest in obtaining additional leases in the PLAA. In fact, the BLM prepared the SEIS at the behest of industry and for the sole purpose of evaluating industry's desire to intensively develop the Gothic Shale Play. According to Appendix R, the PLAA is

an area where oil and gas industry has expressed leasing and development interest. . . . [T]he area contains a significant amount of existing leases (317) and has had successful development over the past 90+ years. Additionally, the emergence of the Gothic Shale Gas Play (GSGP) within the PLAA (which was identified by industry in 2008 and necessitated the Supplement to the Draft EIS) is of interest to industry, especially given the advancement of horizontal drilling and hydraulic fracturing technology that has made development of shale gas possible and more economical.

Final EIS at App. R-3. The existing leases within the PLAA further underscore industry's interest. *See id.* at App. R-2. Thus, the PLAA satisfies the first element.

Second, the BLM has determined that over 70 percent of the federal mineral estate within the PLAA has "high" occurrence potential for oil and gas and most of the remainder has "moderate" occurrence potential. *Id.* at App. R-4. This potential is not speculative; it has been confirmed by "successful development over the past 90+ years." *Id.* at App. R-3. In spite of this evidence, the BLM once again failed to expressly conclude that this criterion was satisfied. It plainly is, as industry's interest in leasing within the PLAA is overwhelming.

### 4. Additional Analysis is Needed to Address Likely Resource Conflicts.

Appendix R contains an extensive list of potential resource conflicts for the PLAA. Those conflicts include the potential for oil and gas development in the Gothic Shale Play to harm critical wildlife habitat, lands with wilderness characteristics, air quality and Mesa Verde National Park. Final EIS at App. R-5-7. Additional conflicts were identified by the BLM and other agencies, including the National Park Service (“NPS”), Colorado Parks and Wildlife (“CPW”), Colorado Department of Transportation and La Plata County, during and after the planning process for the BLM’s February 2013 oil and gas lease sale, which initially included several parcels within the PLAA.

For instance, the NPS stated leasing lands near Mesa Verde National Park could cause “significant air quality impacts and that the BLM needed to adopt specific “air quality mitigation measures for the oil and gas sector . . . to ensure protections of air resources in the park.”<sup>11</sup> In a formal protest to the proposed lease sale, CPW stated that leasing within the southern portion of the PLAA “will decrease population levels of big game and result in lower quantity and fewer hunting and fishing recreation opportunities . . . .”<sup>12</sup> CPW also identified a conservation easement that “is being specifically purchased to preserve a large block of unfragmented habitat and to provide remote recreational hunting opportunities” that “would be compromised by leasing and development of this property for oil and gas.” *Id.* at 5. CDOT identified “several intersections . . . that could potentially require access or safety improvements” should leasing and development occur in the affected part of the PLAA and formally requested the preparation of a “traffic impact study.”<sup>13</sup> Finally, in response to the proposed leasing, La Plata County requested the preparation of an MLP because of the potential conflicts with “landowners, farmers and ranchers, and Mesa Verde National Park.”<sup>14</sup> Because those conflicts are specifically identified in Chapter V, the PLAA satisfies the fourth and final criterion.

***Requested Remedy:*** The proposed San Juan MLP and PLAA satisfy the requirements of the agency’s MLP guidance; BLM must prepare an MLP as part of the Tres Rios RMP. The agency’s determinations are not supported by the actual conditions in the area and cannot be used to justify its failure to prepare an MLP.

## **B. BLM FAILED TO EVALUATE A REASONABLE RANGE OF ALTERNATIVES FOR OIL AND GAS LEASING AND IN THE TRES RIOS FIELD OFFICE.**

The BLM failed to evaluate a reasonable range of alternatives for oil and gas leasing in the Tres Rios Field Office. Alternatives are “the heart of the environmental impact statement.” 40 C.F.R. § 1502.14. For this reason, the BLM must “rigorously explore” and “objectively evaluate” all “reasonable” alternatives. *Id.* § 1502.14(a); *see also WildEarth Guardians v. Nat’l Park Serv.*, 703 F.3d 1178, 1183 (10th Cir. 2013) (evaluating the adequacy of a range of alternatives under a “rule of reason”). Further, the BLM must “briefly discuss the reasons” for eliminating alternatives from “detailed study. . . .” *Id.* The Final EIS complies with neither of those requirements.

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<sup>11</sup> Memorandum from Regional Director, Intermountain Region, National Park Service to Tres Rios Field Office, BLM at 1 (Oct. 2012) [Exhibit L].

<sup>12</sup> Letter from Rick Cables, Director, CPW to Helen Hankins, State Director, BLM at 3 (Dec. 2012), *available at* [http://www.blm.gov/pgdata/etc/medialib/blm/co/programs/oil\\_and\\_gas/Lease\\_Sale/2013/february0.Par.70938.File.dat/Protest\\_26\\_50.zip](http://www.blm.gov/pgdata/etc/medialib/blm/co/programs/oil_and_gas/Lease_Sale/2013/february0.Par.70938.File.dat/Protest_26_50.zip).

<sup>13</sup> BLM, Final EA Tres Rios February 2013 Oil and Gas Lease Sale at 174-75 (Nov. 2013), *available at* [http://www.blm.gov/pgdata/etc/medialib/blm/co/information/nepa/san\\_juan\\_public\\_lands/february\\_2013\\_lease.Par.38830.File.dat/Tres\\_Rios\\_Feb\\_2013\\_Lease\\_EA\\_Final\\_111612.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/co/information/nepa/san_juan_public_lands/february_2013_lease.Par.38830.File.dat/Tres_Rios_Feb_2013_Lease_EA_Final_111612.pdf).

<sup>14</sup> Letter from La Plata County Board of County Commissioners, to Helen Hankins, BLM at 1 (June 2013) [Exhibit M].

1. The BLM Did Not Fully Consider Phased and Reduced Leasing Alternatives as a Means of Addressing the Impacts of the Significant Increase in Drilling Proposed for the Gothic Shale Play.

The BLM failed to fully consider phased or reduced leasing alternatives in response to the significant increase in drilling proposed for the Gothic Shale Play following publication of the Draft RMP. Both alternatives are fully consistent with the “purpose and need” for the EIS, which include the need to “achieve a balance between continued traditional uses of the planning area . . . and the diverse mix of recreation activities (many of which require, or are enhanced by, the maintenance of large, contiguous areas of relatively undeveloped land)” and “achieve a balance between energy production needs and the protection of other resources. . . .” Final EIS at 10; *see also Citizens’ Comm. to Save Our Canyons v. U.S. Forest Serv.*, 297 F.3d 1012, 1030 (10th Cir. 2002) (“determining whether an agency considered reasonable alternatives” by “look[ing] closely at the objectives identified in an EIS’s purpose and needs statement.”). Thus, the BLM violated NEPA by not fully evaluating phased and reducing leasing alternatives in the Final EIS.

In the Draft RMP, the BLM predicted that industry would drill 1,185 oil and gas wells over the next fifteen years. 2009 Addendum to the Oil and Gas Potential and Reasonable Foreseeable Development (RFD) Scenarios in the San Juan National Forest and BLM Public Lands, Colorado at 9 (July 2010) [hereinafter “RFD Addendum”]. Drilling would occur in five major oil and gas plays, with activity focused on the Northern San Juan Basin, where about two-thirds of the proposed wells would be drilled. *Id.* at 9, 14, 17. In total, the drilling proposed in the Draft RMP would cause over 4,000 acres of “gross surface disturbance.” *Id.* at 9. The BLM relied on these estimates to develop the Draft RMP’s leasing alternatives, which ranged from zero to 1.4 million acres available for leasing. Draft LMP/EIS at 2.48.

Following publication of the Draft RMP, industry notified the BLM that it had not accounted for an emerging oil and gas play in the western portion of the planning area known as the Gothic Shale. This play includes approximately 646,403 acres of land, 39 percent of which is managed by the U.S. Forest Service and 16 percent of which is managed by the BLM. RFD Addendum at 5. The federal government also owns 57 percent of the mineral estate within the play, only 35 percent of which is currently leased. *Id.* In response, the BLM updated the RFD and prepared the SEIS, both of which focus on development within the Gothic Shale Play.

Not surprisingly, the estimated number of wells increased dramatically—by almost 150 percent. *See* RFD Addendum at 6 (estimating that industry would drill “an additional 1,769 Gothic shale gas wells”). This would disturb over 250 percent more land than originally forecasted<sup>15</sup> and result in “potentially significant environmental effects. . . .” Final EIS at 372; *see also, e.g. id.* at 190 (discussing the “potential for increased impacts to elk winter ranges” from drilling in the Gothic Shale Play). Additionally, “*even with the implementation of BMPs*”, the BLM has concluded that the cumulative impacts of drilling in portions of the Gothic Shale Play has “the potential to increase soil surface erosion and runoff” and “degrade water quality conditions potentially to the point of not meeting water quality standards.” BLM, Tres Rios February 2013 Oil and Gas Lease Sale Final EA at 71 (Nov. 2012) (emphasis added).<sup>16</sup> Yet,

<sup>15</sup> *See* RFD Addendum at 6 (estimating that drilling would disturb 10,919 acres under the updated RFD).

<sup>16</sup> Available at

[http://www.blm.gov/pgdata/etc/medialib/blm/co/information/nepa/san\\_juan\\_public Lands/february\\_2013\\_lease.Par.38830.File.dat/Tres\\_Rios\\_Feb\\_2013\\_Lease\\_EA\\_Final\\_111612.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/co/information/nepa/san_juan_public Lands/february_2013_lease.Par.38830.File.dat/Tres_Rios_Feb_2013_Lease_EA_Final_111612.pdf).

in spite of the potential for these “significant” and unresolvable impacts, the BLM did not fully consider alternatives that reduced the amount of land available to leasing or “phased” leasing. Both alternatives were specifically recommended in comments from the public. TWS et al., Comments on the SEIS at 21-29.

**a. The BLM failed to consider alternatives that reduced the amount of land available to leasing, in response to the significant increase in drilling proposed for the Gothic Shale Play.**

NEPA required the BLM to evaluate alternatives that closed additional lands in the Gothic Shale Play to leasing. A range of alternatives violates the “rule of reason” when each of an EIS’s alternatives leads to the same “end result.” *California v. Block*, 690 F.3d 753, 767-68 (9th Cir. 1982); *see also Citizens for Env’tl. Quality v. United States*, 731 F. Supp. 970, 989 (D. Colo. 1989) (“Consideration of alternatives which lead to similar results is not sufficient under NEPA. . .”). The “end result” for oil and gas development within the Gothic Shale Play, as shown by the number of acres available for leasing, wells drilled, acres disturbed and miles of roads constructed, is effectively the same under each of the Final EIS’s alternatives.<sup>17</sup> Further, in recent cases, courts have found NEPA violations based on an agency’s failure to evaluate an alternative that evaluated reduced leasing and development in an RMP. *See, New Mexico v. BLM*, 565 F.3d at 710-711 (Alternative considering closing Otero Mesa to oil and gas leasing must be considered as part of oil and gas amendment to governing land use plan); *Colorado Environmental Coalition v. Salazar*, 875 F.Supp.2d 1233, 1249-1250 (D.Colo. 2012) (BLM required to consider community alternative protecting Roan Plateau from surface disturbance). Therefore, by failing to evaluate alternatives closing additional lands to leasing, the Proposed RMP/Final EIS lacks a reasonable range of alternatives and fails to meet the requirements of NEPA.

In the Draft EIS, the amount of land available to leasing within the Gothic Shale Play did not vary meaningfully across the alternatives (again, not including the “no lease” alternative):

<b>ACRES AVAILABLE FOR LEASING IN THE GOTHIC SHALE PLAY IN THE DRAFT RMP</b>			
<b>ALT. A</b>	<b>ALT. B</b>	<b>ALT. C</b>	<b>ALT. D</b>
393,525	379,627	379,615	379,627

SEIS at 2.6. Even though the BLM now claims that it prepared the SEIS to “focus[] narrowly on fluid mineral easing” within the Gothic Shale Play, this is simply not the case. Final EIS at App. S-66-67. The SEIS incorporated fully and without change the Draft RMP’s fluid mineral leasing alternatives and thus assumed that the Gothic Shale Play would experience the *same basic level of development* under each of those alternatives. *See* SEIS at 2.1 (“ . . . the proposed acreages for leasing availability in the GSGP area do not vary to a great extent.”); *id.* at 1.2 (“ . . . this Supplement to the Draft EIS is needed to present new analysis of the potential development of the GSGP and to disclose the new air quality model results. All information contained in the Draft EIS remains unchanged . . . unless necessary to establish further context for meaningful review.). This is the borne out by the development projections contained in the SEIS:

**DEVELOPMENT PROJECTIONS FOR UNLEASED FEDERAL LANDS IN THE PLANNING AREA**

<sup>17</sup> Not including the “no lease” alternative.

	ALT. A	ALT. B	ALT. C	ALT D.
Projected Wells	800	776	758	790
Projected Road Miles	258	250	245	255
Projected Acres Disturbed	2,661	2,592	2,520	2,630

SEIS at 2.5-2.6. In no way does this constitute a “reasonable” range of alternatives. *See Block*, 690 F.3d at 767-68. Thus, because the “end result” of oil and gas development within the Gothic Shale Play does is virtually the same across the Final EIS’s alternatives, the BLM violated NEPA.

**b. The BLM arbitrarily refused to consider a “phased” leasing alternative.**

The BLM arbitrarily dismissed a “phased” leasing alternative from detailed consideration. In comments on the SEIS, the public recommended that the BLM consider a “phased” leasing alternative to guide development within the Gothic Shale Play. TWS et al., Comments on the SEIS at 21-24 (Nov. 2011). The benefits of this approach are well known to the BLM. *See Chapter V at C.2.* Furthermore, the U.S. Forest Service lauded the potential benefits of a “phased” leasing approach for the Gothic Shale Play:

An orderly leasing and development approach would likely apply to the portion of the Paradox Basin that falls within the SJNF, and would offer leases in phases based on an established set of criteria. For example, the first phase of lease offerings might include lands with the highest potential for oil and gas development; lands that are adjacent to leased lands; lands that contain existing oil and gas-related infrastructure; or lands that have been modified by other management and development activities where additional development would not cause significant new impacts. Criteria for offering leases for subsequent phases might require that monitoring data indicates that impacts within the previous phase are within or below the acceptable range; that development has occurred on a certain percentage of the spacing units of lands within the previous phase; or demonstration that a majority of geologically favorable lands within the previous phase have been developed.

There are many unknowns related to oil and gas exploration and future development. An orderly leasing and development approach would provide increased structure for industry and safeguard for unintended consequences while remaining adaptive to respond to new information for resource potential and development needs.

Proposed RMP at 153. However, the BLM declined to consider a detailed “phased” leasing alternative, because it claimed that “a majority of lands with medium to high potential for oil and gas production are already leased, leaving limited flexibility to guide future leasing patterns.” Final EIS at App. S-56-57. For three primary reasons, this determination was arbitrary and lacks a rational basis.

First, the BLM’s assertion that “a majority of lands with medium to high potential for oil and gas production” within the Gothic Shale Play are already leased is unsupported by the record. In fact, as the BLM acknowledges in Appendix R, 52 percent of the federal mineral estate is not currently leased. Final EIS at App. R-2. Because the federal mineral estate within the Gothic Shale Play is almost entirely “high” and “medium” potential, the BLM’s claim that a majority of the most productive lands are already

leased is unfounded and unsupported in the record. *Id.* at App. R-4. Thus, the BLM’s sole reason for rejecting the “phased” leasing alternative lacks a rational basis.

Second, the BLM did not account for the likelihood that leases within the Gothic Shale Play will expire without being developed. Lease expiration broadens management options and allows the BLM to reconsider whether and how leasing should proceed. This is particularly important in areas within the Gothic Shale Play where sensitive resources, such as critical wildlife habitat and lands with wilderness characteristics, are burdened by existing leases. See Proposed San Juan MLP, Maps 2, 8, 9, 10 (Exhibit C). That leases will expire without being developed is more likely now than it was just two years ago, as natural gas prices remain depressed and the current long-term forecasts are considerably lower than the estimates used in the updated RFD. Compare RFD Addendum at 28-29 with Energy Information Administration, Market Trends – Natural Gas (Apr.-May 2013).<sup>18</sup> Thus, in light of the poor market conditions for natural gas, the BLM failed to consider the likelihood that leases will expire within the Gothic Shale Play, a situation that lends itself favorably to “phased” leasing.

Third, the BLM failed to explain why a “phased” leasing approach could not be adopted for the entire Gothic Shale Play. This was the approach recommended by the public—that the BLM and the U.S. Forest Service coordinate and develop a comprehensive “phased” leasing and development approach for the Gothic Shale Play. TWS et al., Comments on the SEIS, Att. 1 at 5. Not only do the two agencies share boundaries within the Gothic Shale Play, but they also share and co-manage resources, such as critical wildlife habitat and migration corridors. See Proposed San Juan MLP, Maps 1, 8, 10 (Exhibit C). Thus, the BLM’s decision to not consider a comprehensive “phased” leasing approach with the U.S. Forest Service was arbitrary.

2. The BLM Failed to Discuss the Reasons for Not Considering Reduced Leasing Alternatives.

The BLM failed to explain why reduced leasing alternatives were not considered in response to the significant increase in drilling proposed for the Gothic Shale Play. When alternatives are proposed by the BLM or the public, but do not receive “detailed” consideration, the BLM must provide a brief explanation. 40 C.F.R. § 1502.14; see also BLM NEPA Handbook, H-1790-1.6.6.3. In comments on the SEIS, the public notified the BLM that the range of alternatives for leasing within the Gothic Shale Play was inadequate and that it needed to consider additional alternatives. TWS et al., Comments on the SEIS at 21-29. Yet, in the Final EIS, the BLM did not discuss this recommendation and explain why it was not feasible or consistent with the project’s “purpose and need.” See Final EIS at 21-22 (listing alternatives eliminated from detailed study); *id.* at App. S (responding to comments). Thus, the BLM violated NEPA by failing to discuss why reduced leasing alternatives were not considered.

**Requested Remedy:** The BLM must evaluate reduced leasing alternatives, including phased leasing, prior to approving the current proposed action.

**C. BLM HAS FAILED TO PROVIDE MEANINGFUL OIL AND GAS LEASE STIPULATIONS AND CONDITIONS OF APPROVAL.**

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<sup>18</sup> Available at [http://www.eia.gov/forecasts/aeo/MT\\_naturalgas.cfm#natgas\\_prices?src=Natural-b5](http://www.eia.gov/forecasts/aeo/MT_naturalgas.cfm#natgas_prices?src=Natural-b5) (last visited Oct. 25, 2013).

Appendix H sets out Oil and Gas Stipulations that apply to the planning area. As the introductory language explains:

In addition to the **standard lease terms**, there are additional stipulations that may be utilized and an implementation step that applies to the leasing and permitting process to assure this accomplishment: **special lease stipulations** and **Conditions of Approval**. Special lease stipulations are applied at the lease issuance stage and are presented in this appendix to the LRMP. Conditions of Approval are imposed during the oil and gas permitting process, are based on the requirements of the LRMP (the stipulation itself and LRMP standards and guidelines and additional referenced direction), are consistent with lease rights previously granted, and are not included in this LRMP. Final EIS, p. H-1 (emphasis in original).

While the plan incorporates an entire appendix to address stipulations, it does not provide stipulations or conditions of approval in a manner that will actually provide meaningful management of development or reliable protection for other resources.

1. The Conditions for Waivers, Exceptions and Modifications are not Sufficiently Defined.

The Proposed RMP does not include specific criteria that must be met for waivers, exceptions or modifications of oil and gas lease stipulations or provide public comment opportunities for application of stipulations on BLM lands. Appendix H states:

On BLM federal mineral estate leases, exceptions, modifications, and waivers would be considered for all leasing stipulations in this appendix. Detailed exceptions, modifications and waivers identified under each of the stipulations apply only to leases USFS mineral estate lands. Final EIS, p. H-7.

As a result, for BLM leases, there are only general conditions that apply to when an exception, modification or waiver of these stipulations may be granted. However, since “[s]pecial lease stipulations are applied to an oil and gas lease if additional restrictions on the operations of lessees are required to protect environmental resources” (Final EIS, p. H-5), is it vital that the stipulations provide reliable protection. For the BLM lands, the only criteria are general, which is not acceptable.

Per BLM’s regulations:

A stipulation included in an oil and gas lease shall be subject to modification or waiver only if the authorized officer determines that the factors leading to its inclusion in the lease have changed sufficiently to make the protection provided by the stipulation no longer justified or if proposed operations would not cause unacceptable impacts. If the authorized officer has determined, prior to lease issuance, that a stipulation involves an issue of major concern to the public, modification or waiver of the stipulation shall be subject to public review for at least a 30-day period. In such cases, the stipulation shall indicate that public review is required before modification or waiver. If subsequent to lease issuance the authorized officer determines that a modification or waiver of a lease term or stipulation is substantial, the modification or waiver shall be subject to public review for at least a 30-day period. 43 CFR § 3101.1-4.

Other than a reference to this regulation in the beginning of the appendix, there are no references to public review in association with any of the stipulations. BLM has clearly not taken the time to identify

stipulations that would be of major concern, which would have led to requirements for public comment associated with waiver, exception or modification. The agency should take the time to comply with the requirements of its regulations.

Further, BLM's guidance requires development of criteria for exception, waiver and modification that are tailored to stipulations. Per Instruction Memorandum 2008-032, Attachment 1:

Lease stipulations and related exceptions, waivers, and modifications are to be developed during the land use planning process through an interdisciplinary team approach with management oversight and public review to ensure consistency, reasonableness, and appropriateness. Developing exceptions, waivers, and modifications is a creative process requiring the authors to think of situations that could occur well into the future and anticipate various scenarios that may render the stipulation unnecessary or ineffective, or may require increased flexibility in the application of the stipulation. **Nearly all lease stipulations should have exception, waiver, and modification criteria documented in the land use plan and on the lease.**

....

The land use plan should also **identify the documentation requirements and, if required, public notification or review** associated with granting exceptions, waivers, and modifications to a lease stipulation. (emphases added).

Unfortunately, BLM did not comply with this direction so all stipulations are subject to open-ended criteria for waiver, exception and modification, without any requirements for public review. This is obviously arbitrary and capricious when evaluated against the standards of applicable regulations and guidance, not to mention the fact that the Forest Service provided specific criteria in the very same appendix.

BLM has developed detailed, specific criteria for waivers, exceptions in other recent plans, such as the Draft HiLine RMP (*see*, Appendix E.4, Oil and Gas Stipulations and Exception, Modification, and Waiver Criteria<sup>19</sup>) and Miles City Draft RMP (*see*, Minerals Appendix<sup>20</sup>). Both of these plans also cite and comply with the referenced Instruction Memorandum.

## 2. Lease Stipulations Are Needed to Protect the Resources of Mesa Verde National Park.

Although the RMP acknowledges that special lease stipulations are developed to protect resources, it does not include stipulations to protect the resources of Mesa Verde National Park, such as night skies, viewsheds and soundscapes. This is problematic because, under the Proposed RMP, there are lands directly adjacent to the national park that are available for oil and gas leasing without specific measures

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<sup>19</sup> Available at:

[http://www.blm.gov/pgdata/etc/medialib/blm/mt/field\\_offices/malta/rmp/draft\\_rmp.Par.89837.File.dat/Appendices.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/mt/field_offices/malta/rmp/draft_rmp.Par.89837.File.dat/Appendices.pdf)

<sup>20</sup> Available at:

[http://www.blm.gov/pgdata/etc/medialib/blm/mt/field\\_offices/miles\\_city/rmp/draft\\_rmp.Par.91236.File.dat/Appendices.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/mt/field_offices/miles_city/rmp/draft_rmp.Par.91236.File.dat/Appendices.pdf)

to address the potential impacts of development on the park. See Proposed RMP at Figure 2.19.3. Additional lands within the park's viewshed also lack such measures. *Id.*

In similar situations elsewhere, the BLM has acknowledged and taken steps to limit the potential impacts of oil and gas leasing and development on national park values. For example, the BLM is currently preparing the Moab MLP in large part to develop new leasing categories and stipulations that will address potential impacts on "night-skies, soundscape concerns and visual resources" associated with two national parks, Arches and Canyonlands. MLP Assessment Moab at 3 (Nov. 2010).<sup>21</sup> Additionally, in a recent lease sale, the BLM developed stipulations to protect the viewshed of Chaco Culture National Historical Park.<sup>22</sup> Finally, in the Proposed RMP, the U.S. Forest Service developed and adopted a specific stipulation to protect the "scenic and cultural integrity of the viewshed, night sky, and auditory environment of the Chimney Rock National Monument." Proposed RMP at App. H-47. This stipulation applies to the "[m]apped area of the Chimney Rock viewshed and night sky horizon, and within auditory range of the interpreted archaeological area." *Id.* Unfortunately, Appendix H does not contain any stipulations to protect the resources of Mesa Verde National Park – and does not even mention the existence of the national park, leaving its resources at risk.

### 3. The RMP Should Also Specify Conditions of Approval, Which Would Apply to Approval of Permits to Drill.

In addition to prescribing lease stipulations, the Tres Rios RMP can and should prescribe conditions of approval that will apply to approval of permits to drill. Appendix H states "Standard lease terms provide that additional, reasonable measures may be required by the Authorized Officer to minimize adverse impacts to other resource values, land uses, or users not addressed in the lease stipulations at the time operations are proposed." Final EIS, p. H-1. Although the conditions will apply at the time of operations are proposed, many conditions can and should be specified at this time, in order to ensure protection of resources.

Specifying conditions of approval is especially important in the context of existing leases. Appendix H further provides:

It is important to note that the special lease stipulations in this appendix apply only to new leases (issued after adoption of the SJNF and TRFO LRMP). Existing leases are subject to the stipulations attached to them under the current Resource Management Plan (BLM 1985) at the time they were issued. However, **new development on existing leases must also comply with the current LRMP management direction.** This direction is consistent with the Interior Board of Land Appeals (IBLA) decisions (Yates Petroleum Corp., IBLA 2006-213, 2006-226 and William P. Maycock, IBLA 2008-197, 2008-200) which gives the BLM discretion to modify surface operations to add specific mitigation measures supported by site-specific National Environmental Policy Act (NEPA) analysis undertaken during the development phase on existing leases (CO-2010-028). Final EIS, p. H-5 (emphasis added).

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<sup>21</sup> Available at [http://www.blm.gov/pgdata/etc/medialib/blm/ut/lands\\_and\\_minerals/oil\\_and\\_gas/mlp\\_-\\_master\\_leasing.Par.73453.File.dat/MLP%20Assessment%20-%20Moab.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/ut/lands_and_minerals/oil_and_gas/mlp_-_master_leasing.Par.73453.File.dat/MLP%20Assessment%20-%20Moab.pdf).

<sup>22</sup> See 49 BLM, EA for Farmington Field Office's January 2014 Oil and Gas Lease Sale at 48-49 (developing stipulations to protect the "foreground" and "middle-ground" of the park's viewshed), available at [http://www.blm.gov/pgdata/etc/medialib/blm/nm/programs/0/og\\_sale\\_notices\\_and/2014/january\\_2014.Par.45013.File.dat/Jan%202014%20OG%20Lease%20Sale%20EA\\_Public%20Review\\_Farmington\\_Change%201.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/nm/programs/0/og_sale_notices_and/2014/january_2014.Par.45013.File.dat/Jan%202014%20OG%20Lease%20Sale%20EA_Public%20Review_Farmington_Change%201.pdf).

We appreciate BLM acknowledging its authority to regulate new development on existing leases. Other BLM RMPs have taken the next step to prescribe conditions of approval in order to ensure that conditions that are likely to be encountered will be addressed. For instance, the Draft White River RMP Amendment sets out best management practices and conditions of approval in Appendix B<sup>23</sup> and the Draft Miles City RMP also sets out conditions of approval in the Minerals Appendix<sup>24</sup>. In the Draft HiLine RMP, BLM provided for specific conditions of approval that would apply to existing leases in order to conserve greater sage-grouse (see Appendix M – Mitigation/Conservation for Greater Sage-Grouse Habitat<sup>25</sup>).

***Requested Remedy:*** BLM should revise stipulations and conditions of approval to ensure protection of other resources. BLM must comply with applicable regulations and guidance to develop specific criteria for waiver, exception and modification, including requirements for public comment and designating certain stipulations as not eligible for waiver, exception or modification. BLM should also develop stipulations to protect the resources of Mesa Verde National Park, which will otherwise be harmed by development. Further, BLM should specify conditions of approval that will apply to existing and new leases.

## VI. Travel Management

The Tres Rios RMP defers comprehensive travel and transportation planning, as provided for in BLM's regulations. However, the PRMP is not consistent with BLM's policy for deferred travel planning. The PRMP does improve upon the Draft LRMP by designating areas as open, limited or closed for motorized use across the field office, and minimizes open play areas, as required by BLM's guidance:

Under Alternative B [the preferred alternative] most of the TRFO would be designated as limited to existing routes. The closed areas would be similar to Alternative A, with the addition of closing lands managed for their wilderness characteristics. Two small play areas totaling 23 acres within the Cortez Special Recreation Management Area (SRMA) would be designated open to cross-country travel.

PRMP, p. 30.

BLM policy provides for deferred travel planning and interim designation of "Limited to Existing Routes" as long as a preliminary network is identified and a process established to select a final travel management network. Specifically, the Land Use Planning Handbook provides a list of requirements for deferring travel planning. Appendix C, pp 18-19 states:

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<sup>23</sup> Available at:

[http://www.blm.gov/pgdata/etc/medialib/blm/co/programs/land\\_use\\_planning/rmp/white\\_river/documents/rmpa-3.Par.23456.File.dat/09\\_WRFO\\_RMPA-EIS\\_Appendix%20B\\_Aug2012.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/co/programs/land_use_planning/rmp/white_river/documents/rmpa-3.Par.23456.File.dat/09_WRFO_RMPA-EIS_Appendix%20B_Aug2012.pdf)

<sup>24</sup> Available at:

[http://www.blm.gov/pgdata/etc/medialib/blm/mt/field\\_offices/miles\\_city/rmp/draft\\_rmp.Par.91236.File.dat/Appendices.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/mt/field_offices/miles_city/rmp/draft_rmp.Par.91236.File.dat/Appendices.pdf)

<sup>25</sup> Available at:

[http://www.blm.gov/pgdata/etc/medialib/blm/mt/field\\_offices/malta/rmp/draft\\_rmp.Par.89837.File.dat/Appendices.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/mt/field_offices/malta/rmp/draft_rmp.Par.89837.File.dat/Appendices.pdf)

If the final travel management network is to be deferred in the RMP, then the RMP should document the decision-making process used to develop the initial network, provide the basis for future management decisions, and help set guidelines for making road and trail network adjustments throughout the life of the plan. The identification of the uncompleted travel management networks should be delineated in the land use plan and the following tasks completed for each area:

- 1) Produce a map of a preliminary road and trail network;
- 2) define short-term management guidance for road and trail access and activities in areas or sub-areas not completed;
- 3) outline additional data needs, and a strategy to collect needed information;
- 4) provide a clear planning sequence, including public collaboration, criteria and constraints for subsequent road and trail selection and identification;
- 5) provide a schedule to complete the area or sub-area road and trail selection process; and
- 6) identify any easements and rights-of-ways (to be issued to the BLM or others) needed to maintain the preliminary or existing road and trail network.

If the decision on delineating travel management networks is deferred in the land use plan to the implementation phase, the work normally should be completed within 5 years of the signing of the ROD for the RMP.

Colorado IM 2007-020 further instructs that:

“Limited to existing roads, primitive roads and trails” designations should be used only as an interim measure prior to your next scheduled RMP revision. **Where the Field Offices choose an interim designation of “limited to existing roads, primitive roads and trails”, a map showing the existing travel and transportation network is required.**

- An inventory and map of roads, primitive roads and trails is necessary to assess and evaluate the need for individual routes as part of the travel and transportation network.
- Without baseline inventory the Field Offices will not be able to confirm and document when new routes have been created or adequately monitor resource conditions. Baseline inventory maps are essential to effectively respond to the issue of user created route proliferation.
- Inventory and baseline data is needed to provide supporting rationale to justify management actions such as closures and rehabilitation of routes created after the interim designation is made.
- The BLM needs to provide the public clear and consistent information regarding access opportunities and provide a map showing the location of existing roads, primitive roads and trails that are available for public use and access.

Emphasis added.

The PRMP does not include a map of the preliminary route network that will serve as the interim travel network, and in fact states that BLM has not completed an inventory of the existing routes that motorized travel will be limited to. Table 3.13.4 shows that BLM has inventoried 319 miles of routes in the Tres Rios Field Office. The PRMP also estimates that there are more than 3,000 miles of unauthorized and unmanaged roads and trails within the planning area (including NFS lands), and states that “Maintaining an accurate inventory of these routes is difficult because they are continually being created and expanded through motorized use off of the designated motorized road and trail systems”

(PRMP, p. 382). While maintaining an accurate inventory of routes on the public lands may be a difficult task, BLM is required to complete this inventory during the land use planning process and utilize that inventory to inform travel planning decisions, even if those decisions are being deferred from the RMP. BLM cannot limit travel to existing routes unless those routes are known and mapped. The Tres Rios Field Office therefore must complete a route inventory and include a map of the inventory in the final RMP, as required by the Land Use Planning Handbook.

Additionally, the PRMP does not provide a clear planning sequence, including criteria and constraints for subsequent travel planning, prioritization scheme and schedule, route designation criteria, or other components of an adequate preliminary travel plan as required by the Land Use Planning Handbook. The PRMP does state that

The LRMP emphasizes the need for the agencies to maintain a sustainable and minimum road system that provides safe and efficient access to public lands, which would aid the agencies in meeting maintenance objectives and reducing deferred maintenance. The travel management planning process would be used to identify the minimum transportation system needed based on access needs. Unneeded roads would be decommissioned or transferred to the appropriate jurisdiction. Roads would be maintained only to the level needed for its use. Commercial users would be held accountable for contributing to the maintenance of public lands roads used in their business operations. Road maintenance dollars would be prioritized for use in maintaining high value routes and reducing safety hazards.

PRMP, p. 383.

These are all important commitments to future travel planning that is sustainable, protects resources, and complies with BLM's travel planning policies. However, it is too vague to be considered a preliminary travel plan, and does not comply with BLM's guidance for deferred travel planning. A more specific preliminary travel plan must be completed in the RMP that includes a clear planning sequence, including public collaboration, criteria and constraints for subsequent road and trail selection and identification, and delineation of areas for future travel plans, including schedules and prioritization of special management areas and areas with high conflicts.

***Requested Remedy:*** The Tres Rios RMP must comply with BLM's guidance for deferred travel planning. This includes establishing the methodology for future comprehensive travel planning, establishing interim travel management, and identifying priorities for completing travel management planning. The RMP must include a map of the existing route inventory so that the designation of areas as "limited to existing routes" provides meaningful management and to prevent additional proliferation of user-created routes until a travel plan is completed.

The Final Environmental Impact Statement and Proposed Resource Management Plan are in error for the reasons stated in this protest, generally because the decisions would be based on failures to comply with federal law, including NEPA and FLPMA, and BLM's policies and guidance issued under these and other statutes. BLM should not proceed to finalize the PRMP until these problems are corrected. Instead, the protesting parties request that BLM supplements the FEIS to correct the problems addressed above and re-issue a PRMP that complies with BLM's legal obligations.

Sincerely,

Nada Culver, Director and Senior Counsel, BLM Action Center

The Wilderness Society  
1660 Wynkoop Street, Suite 850  
Denver, CO 80202  
(303) 650-5818 Ext. 117  
[nada\\_culver@twc.org](mailto:nada_culver@twc.org)

Dan Randolph, Executive Director  
San Juan Citizens Alliance  
Box 2461  
Durango, CO 81302  
(970) 259-3583 Ext. 1  
[dan@sanjuancitizens.org](mailto:dan@sanjuancitizens.org)

Megan Mueller, Senior Conservation Biologist  
Rocky Mountain Wild  
1536 Wynkoop St., Ste. 303  
Denver, CO 80202  
(303) 546-0214  
[megan@rockymountainwild.org](mailto:megan@rockymountainwild.org)

Erika Pollard, Southwest Program Manager  
National Parks Conservation Association  
307 West 200 South  
Suite 5000  
Salt Lake City, UT 84101  
(801) 521-0785  
[epollard@npca.org](mailto:epollard@npca.org)

Matthew McFeeley, Project Attorney  
Natural Resources Defense Council  
1152 15th Street N.W., Suite 300  
Washington, D.C. 20005  
(202) 513-6250  
[mmcfeeley@nrdc.org](mailto:mmcfeeley@nrdc.org)

Ellis Richard, Founder  
Park Rangers for Our Lands  
(307) 733-7119  
[sunfish990@msn.com](mailto:sunfish990@msn.com)

Pete Dronkers, Southwest Circuit Rider  
Earthworks  
1612 K Street, NW, Suite 808  
Washington, DC 20006  
970-259-3353 x3  
[pdronkers@earthworksaction.org](mailto:pdronkers@earthworksaction.org)

Hilary Cooper, Director

Sheep Mountain Alliance  
PO Box 389  
Telluride, CO 81435  
(970) 728-3729  
[hilary@sheepmountainalliance.org](mailto:hilary@sheepmountainalliance.org)