October 6, 2008

Director (210)
Attention: Brenda Williams
P.O. Box 66538
Washington, D.C. 20035

Sent via U.S. Post, Certified Mail with Return Receipt Requested

Re: Protest of the Monticello Field Office Proposed Resource Management Plan and Final Environmental Impact Statement, released September 2008

To Ms. Williams:

Please accept this timely protest of the Bureau of Land Management's Monticello Field Office Proposed Resource Management Plan and Final Environmental Impact Statement (PRMP). This protest is submitted by the following protestants:

Southern Utah Wilderness Alliance
(SUWA)
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Salt Lake City, Utah 84111
(801) 486-3161

The Wilderness Society (TWS)
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Denver, Colorado 80202
(303) 650-5818

Grand Canyon Trust
HC 64 Box 1801
Moab, Utah 84532-9610
(435) 259-5284

Sierra Club – Utah Chapter
2159 South 700 East, Suite 210
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Public Employees for Environmental
Responsibility (PEER) – Southwest Chapter
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Tucson, Arizona 85705
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Center for Native Ecosystems
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Glen Canyon Institute
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Salt Lake City, Utah 84108
(801) 363-4450

Red Rock Forests
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Moab, Utah 84532
(435) 259-5640

Great Old Broads for Wilderness
649 E. College Drive
Durango, Colorado 81302
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SUWA and TWS have a long-standing interest in the management of Bureau of Land Management (BLM) lands in Utah and often participate in the decision-making process for project proposals and actions that could potentially affect lands included in the Utah Wilderness Coalition's wilderness proposal—America's Red Rock Wilderness Act (ARRWA). SUWA members and staff enjoy a myriad of recreation on BLM-managed public lands, including hiking, biking, nature-viewing, photography, and the quiet contemplation in the solitude offered by wild places. SUWA and TWS have and will continue to participate in the planning process for the Monticello PRMP. SUWA and TWS submitted separate comments on the Draft RMP in 2005 and collaborated on the Supplemental EIS comments in 2008. *See, e.g.,* SUWA *et al* comments on the Monticello Draft RMP (attached as Exhibits A[1]). The additional co-protestants also have interests in BLM's management of the Monticello Planning Area and/or have also participated in the planning process for the Monticello RMP.

We are protesting several different issues and aspects of the PRMP; these issues are listed below along with the location of these discussions in this document. 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.

[1] The attachments and exhibits originally submitted with SUWA's or TWS's comments to the Draft RMP are not attached here as hard copies, but are included on the accompanying CD.

Attached Exhibits
(Maps included with hard copy, the remainder is included on the accompanying disk)

A. SUWA Comments on Monticello Draft RMP
B. Map of Proposed Route Impacts on Wildlands and ACECs
C. Map of Proposed Route Impacts on Grand Gulch WSA
D. Map of Proposed Route Impacts on Fish & Owl and Road Canyon WSAs
E. Map of Proposed Routes within Current ORV Designations
F. Map of Proposed Routes within Proposed ORV Designations
G. Map of Oil & Gas Impacts to Wildlands
H. Map of Oil & Gas Impacts to ACECs
I. Map of VRM Classifications overlaying Wildlands
J. Map of VRM Classifications overlaying ACECs
K. Mileage Estimations by Route in Areas with Wilderness Characteristics
L. EPA letter to Moab Field Office
M. EPA letter to Vernal Field Office
N. ORV Fugitive Dust Inventory
O. Neff "Eolian Dust" paper
P. Jarbidge Resource Management Plan AMS
Q. Jarbidge Resource Management Plan ACEC Report
R. Jarbidge Resource Management Plan Maps
S. Letter from BLM to The Wilderness Society dated February 12, 2004
T. USU OHV Users Study
U. "Forest Service discusses ATV Damage During Archery Hunt" Emery County Progress 9/24/08
V. Selection from West Tavaputs Plateau EIS
W. TMDL List

I. Applicable Legal Standards

The following is a brief synopsis of the legal standards which apply to the claims brought forward in this protest. Detailed descriptions of individual violations follow and will refer to and/or rely upon the information set out below.

A. National Environmental Policy Act

The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq*., requires, among other things, agencies to conduct environmental analysis of the direct, indirect, and cumulative impacts of proposed actions, as well as mitigation measures, consider a range of reasonable alternatives (including an alternative that minimizes environmental impacts), and solicit and respond to public comments.

1. Reasonable Range of Alternatives Must Be Considered

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

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

Further, in defining what is a "reasonable" range of alternatives, NEPA requires consideration of alternatives "that are practical or feasible" and not just "whether the proponent or applicant likes or is itself capable of carrying out a particular alternative"; in

fact, "[a]n alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable." Council on Environmental Quality, *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, *Questions 2A and 2B*, *available at* http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm; 40 C.F.R. §§ 1502.14, 1506.2(d).

2. Hard Look Must Be Appropriate to Proposed Action and Include Direct, Indirect, and Cumulative Impacts

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

> the impact on the environment which results from the *incremental impact of the action when added to other past, present, and reasonably foreseeable future actions* regardless of what agency (Federal or non-Federal) or person undertakes such other actions. *Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time*.

40 C.F.R. § 1508.7 (emphasis added).

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

3. Baseline Information Must Be Sufficient to Permit Analysis of Impacts

Importantly, 40 C.F.R. § 1502.15 requires agencies to "describe the environment of the areas to be affected or created by the alternatives under consideration." Establishment of

baseline conditions is a requirement of NEPA. In *Half Moon Bay Fisherman's Marketing Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988), the Ninth Circuit states that "without establishing . . . baseline conditions . . . there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA." The court further held that "[t]he concept of a baseline against which to compare predictions of the effects of the proposed action and reasonable alternatives is critical to the NEPA process."

4. Mitigation Measures Must Be Described with Specificity and Must Include Commitments for Action

NEPA requires that BLM discuss mitigation measures in an EIS. 40 C.F.R. §§ 1502.14, 1502.16. Also, under NEPA, BLM's Finding of No Significant Impact (FONSI) is lawful only if "BLM has made a convincing case that no significant impact will result there from or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures." *Defenders of Wildlife*, 152 IBLA 1, 6 (2000) (citations omitted). In general, in order to show that mitigation will reduce environmental impacts to an insignificant level, BLM must discuss the mitigation measures "in sufficient detail to ensure that environmental consequences have been fairly evaluated." *Communities, Inc. v. Busey*, 956 F.2d 619, 626 (6th Cir. 1992). Simply identifying mitigation measures, without analyzing the effectiveness of the measures, violates NEPA. Agencies must "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). NEPA also directs that the "possibility of mitigation" should not be relied upon as a means to avoid further environmental analysis. Council on Environmental Quality, *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, *available at* http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm; *Davis v. Mineta*, 302 F.3d at 1125.

Further, general statements that BLM will conduct monitoring are also not an appropriate form of mitigation. Simply monitoring for expected damage does not actually reduce or alleviate any impacts.

5. BLM Must Assess Alternatives Using Quality Data and Scientifically Acceptable Methods of Analysis, Which Are Disclosed to the Public for Comment

BLM cannot evaluate consequences to the environment, determine avoidable or excessive degradation, and assess how best to designate and protect Areas of Critical Environmental Concern (ACECs) without adequate data and analysis. NEPA's hard look at environmental consequences must be based on "accurate scientific information" of "high quality." 40 C.F.R. § 1500.1(b). Essentially, NEPA "ensures that the agency, in reaching its decision, will have available and will carefully consider detailed information concerning significant environmental impacts." *Robertson v. Methow Valley Citizens*

Council, 490 U.S. at 349. The Data Quality Act and BLM's interpreting guidance expand on this obligation, requiring that influential scientific information use "best available science and supporting studies conducted in accordance with sound and objective scientific practices." Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub.L. No. 106-554, § 515. *See also* Bureau of Land Management, Information Quality Guidelines, *available at* http://www.blm.gov/nhp/efoia/data_quality/guidelines.pdf .

BLM's internal guidance also recognizes the importance of accumulation and proper analysis of data. The agency's Land Use Planning Handbook emphasizes the importance of using sufficient, high quality data and analytical methods, and making those available to the public. Appendix H of the Land Use Planning Handbook also directs: "The data and resultant information for a land use plan must be carefully managed, documented, and applied to withstand public, scientific, and legal scrutiny." Appendix F-1 of the Handbook emphasizes the importance of providing a clear explanation of how analysis was conducted, stating: "Regardless of its source, sufficient metadata (data about data) should be provided to clearly determine the quality of the data, along with any limitations associated with its use." In other words, appropriate analysis of data is as important as the accumulation of sufficient data.

Further, both data and analyses must be disclosed to the public, in order to permit the "public scrutiny" that is considered "essential to implementing NEPA." 40 C.F.R. § 1500.1(b). BLM's guidelines for implementing the Data Quality Act also reiterate that making data and methods available to the public permits independent reanalysis by qualified member of the public. In this regard, NEPA "guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision." *Robertson v. Methow Valley Citizens Council*, 490 U.S. at 349. NEPA not only requires that BLM have detailed information on significant environmental impacts, but also requires that the agency make this information available to the public for comment. *Inland Empire Public Lands Council v. U.S. Forest Service*, 88 F.3d 754, 757 (9th Cir. 1996).

Where there is scientific uncertainty, NEPA imposes three mandatory obligations on BLM: (1) a duty to disclose the scientific uncertainty; (2) a duty to complete independent research and gather information if no adequate information exists unless the costs are exorbitant or the means of obtaining the information are not known; and (3) a duty to evaluate the potential, reasonably foreseeable impacts in the absence of relevant information, using a four-step process. Unless the costs are exorbitant or the means of obtaining the information are not known, the agency must gather the information in studies or research. 40 C.F.R. § 1502.22. Courts have upheld these requirements, stating that the detailed environmental analysis must "utiliz[e] public comment and the best available scientific information." *Colorado Environmental Coalition v. Dombeck*, 185 F.3d 1162, 1171-72 (10th Cir. 1999) (citing *Robertson v. Methow Valley Citizens' Council*, 490 U.S. at 350); *Holy Cross Wilderness Fund v. Madigan*, 960 F.2d 1515, 1521-22 (10th Cir. 1992).

As the Supreme Court has explained, while "policymaking in a complex society must account for uncertainty," it is not "sufficient for an agency to merely recite the terms 'substantial uncertainty' as a justification for its actions." Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 52 (1983). Instead, in this context, as in all other aspects of agency decision-making, "[w]hen the facts are uncertain," an agency decision-maker must, in making a decision, "identify the considerations he found persuasive." *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 520 (D.C. Cir. 1983), *quoting Ind. Union Dept., AFL-CIO v. Hodgson*, 499 F.2d 467, 476 (D.C. Cir. 1974).

BLM must provide the public with an explanation of both the data used in analyzing the potential effects of management alternatives and the methods used to conduct the analysis, as well as an opportunity to provide comments and propose corrections or improvements.

6. BLM Must Respond to Public Comments and Specifically Address Scientific Uncertainty and/or Differing Scientific Opinions

Under Council for Environmental Quality (CEQ) regulations implementing NEPA, BLM must respond to substantive comments made during the public comment period for the EIS. 40 C.F.R. § 1503.4. An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

1. Modify alternatives including the proposed action.
2. Develop and evaluate alternatives not previously given serious consideration by the agency.
3. Supplement, improve, or modify its analyses.
4. Make factual corrections.
5. Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

40 C.F.R. § 1503.4(a). Importantly, while agencies must attach comments considered "substantive" to the EIS (40 C.F.R. § 1503.4(b)), a comment need not be substantive to trigger the agency's response requirement.

NEPA requires that, in preparing a final EIS, BLM must discuss "any responsible opposing view which was not adequately discussed in the draft statement and indicate the agency's response to the issue raised." 40 C.F.R. § 1502.9. The Council on Environmental Quality interprets this requirement as mandating that an agency respond in a "substantive and meaningful way" to a comment that addresses the adequacy of analysis performed by the agency. Forty Most Asked Questions Concerning CEQ's

National Environmental Policy Act Regulations. [2] BLM's NEPA Handbook elaborates upon this requirement, providing that: comments relating to inadequacies or inaccuracies in the analysis or methodologies used must be addressed; interpretations of analyses should be based on professional expertise; and where there is disagreement within a professional discipline, "a careful review of the various interpretations is warranted." Handbook H-1790-1, Section V.B.4.a., p. V-11.

Failure to disclose and thoroughly respond to differing scientific views violates NEPA and obligates an agency to perform a compliant environmental analysis prior to approving a proposed action. *See*, *Robertson v. Methow Valley Citizens Council*, *supra* (EIS should reflect critical views of others to whom copies of draft were provided and respond to opposing views); *Sierra Club v. Bosworth*, 199 F.Supp.2d 971 (N.D.Cal. 2002) (failure to disclose and analyze scientific opinion that opposed post-fire logging violates NEPA); *Seattle Audubon Society v. Lyons*, 871 F.Supp. 1291, 1381 (W.D.Wash. 1994) (An EIS must "disclose scientific opinion in opposition to the proposed action, and make a good faith, reasoned response to it."); *Seattle Audubon Society v. Moseley*, 798 F.Supp. 1473, 1482 (W.D.Wash. 1992) (NEPA requires that the agency candidly disclose in its EIS the risks of its proposed action, in its EIS the risks of its proposed action, and that it respond to the adverse opinions held by respected scientists.").

Further, as discussed above, where there is scientific uncertainty, BLM cannot simply dismiss opposing scientific opinion and authority, but must provide a discussion of the support for its decision not to rely upon it. Accordingly, BLM must complete a conforming NEPA analysis that fully considers and responds to public comments, including opposing scientific opinion, and justifies any contradicting conclusions.

7. BLM Must Present Environmental Analysis and Information in a Manner that Facilitates, Rather than Impedes, Public Comment

NEPA requires BLM to "[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment." 40 C.F.R. § 1500.2(d). A critical part of this obligation is presenting data and analysis in a manner that will enable the public to thoroughly review and understand the analysis of environmental consequences. For this reason, NEPA requires the use of high quality data and the disclosure of the methodology underlying proposed decisions, as discussed above, and also explicitly requires that an EIS "be written in plain language" and presented in a way that "the public can readily understand." 40 C.F.R. § 1502.8. These requirements are specifically reinforced for an EIS; the "primary purpose" of this document is "to allow for informed public participation and informed decision making" so its language must be "clear" and "supported by evidence that the agency has made the necessary environmental analyses." *Earth Island Inst. v. U.S. Forest Service*, 442 F.3d 1147, 1160 (9th Cir. 2006); 40 C.F.R. § 1502.1.

[2] The U.S. Court of Appeals for the Tenth Circuit has found that the "Forty Questions" are "persuasive authority offering interpretive guidance" on NEPA from CEQ. *Davis v. Mineta*, 302 F.3d 1104, 1125 (10th Cir. 2002).

Therefore, "an EIS must be organized and written so as to be readily understandable by governmental decisionmakers and by interested non-professional laypersons likely to be affected by actions taken under the EIS." *Oregon Environmental Council v. Kunzman*, 817 F.2d 484, 493 (9th Cir. 1987). Accordingly, where a plan is so unclear as to not permit review and understanding, it may be deemed "incomprehensible" and in violation of NEPA. See, e.g., *California, ex rel. Lockyer v. U.S. Forest Service*, 465 F.Supp. 2d 942, 949-950 (N.D.Cal. 2006) (management plan for Giant Sequoia National Monument was "incomprehensible" because it referenced but did not explain its reliance on certain law and regulations, and because it contained conflicting statements regarding applicable standards for management, which were never clarified).

Where the PRMP and FEIS rely upon existing authority, they must include a sufficient explanation of how such authority actually supports the action taken – especially where such authority (such as the ORV regulations requiring the agency to protect other resources and avoid conflicts with other recreationists) appears to require different actions and where these issues have already been highlighted to BLM in comments. Similarly, where the PRMP and FEIS include conflicting information for the same resources (such as acreage or management prescriptions) or conflicting conclusions about how decisions may harm and protect resources at the same time, the agency must not only correct errors, but also fully explain its conclusions and ultimate management decisions. Numerous inconsistencies in data, conclusions and compliance were raised in our comments on the DRMP and DEIS. The PRMP must correct these deficiencies and fully comply with the requirements of NEPA.

B. Federal Land Policy and Management Act

The Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1701 *et seq*., is BLM's organic act and guides the agency in managing public lands, drafting land use plans, and ensuring that the public has been involved in such decisions.

1. Duty to Inventory and Land Use Planning Requirements

FLPMA imposes a duty on BLM to identify and protect the many natural resources found on public lands. FLPMA requires BLM to inventory its lands and their resources and values, "including outdoor recreation and scenic values." 43 U.S.C. § 1711(a). FLPMA also obligates BLM to take this inventory into account when preparing land use plans, using and observing the principles of multiple use and sustained yield. *See* 43 U.S.C. § 1712(c)(4), (1). Through management plans, BLM can and should protect wildlife, scenic values, recreation opportunities, and wilderness character in the public lands through various management decisions, including by excluding or limiting certain uses of the public lands. *See* 43 U.S.C. § 1712(e). This is necessary and consistent with FLPMA's definition of multiple use, which identifies the importance of various aspects of wilderness characteristics (such as recreation, wildlife, and natural scenic values) and requires BLM's consideration of the relative values of these resources but "not

necessarily to the combination of uses that will give the greatest economic return." 43 U.S.C. § 1702(c).

BLM's obligations in developing a land use plan include: applying principles of multiple use and sustained yield, prioritizing designation and protection for ACECs, considering the relative scarcity of values involved and the availability of alternative means and sites for realization of those values, weighing long-term benefits against short-term benefits to the public, and complying with pollution control laws.

2. Unnecessary or Undue Degradation Standard

FLPMA requires that: "In managing the public lands the [Secretary of Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C. § 1732(b). In this context, because the imperative language "shall" is used, "Congress [leaves] the Secretary no discretion" in how to administer FLPMA. *Natural Resources Def. Council v. Jamison*, 815 F.Supp. 454, 468 (D.D.C. 1992). BLM's duty to prevent unnecessary or undue degradation (UUD) under FLPMA is mandatory, and BLM must, at a minimum, demonstrate compliance with the UUD standard. *See Sierra Club v. Hodel*, 848 F.2d 1068, 1075 (10th Cir. 1988) (the UUD standards provides the "law to apply" and "imposes a definite standard on the BLM").

C. Off-Road Vehicle Regulations and Executive Orders

BLM must ensure that it is in compliance with Executive Orders and agency regulations implementing these Orders in relation to off-road vehicle (ORV) use on public lands. Executive Order 11644 (1972) as amended by Executive Order 11989 (1977) and BLM's regulations (43 C.F.R. § 8342.1) require BLM to ensure that areas and trails for off-road vehicle use are located:

- to minimize damage to soil, watershed, vegetation, air, or other resources of the public lands, and to prevent impairment of wilderness suitability;
- to minimize harassment of wildlife or significant disruption of wildlife habitats, and especially for protection of endangered or threatened species and their habitats;
- to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands; and
- outside officially designated wilderness areas or primitive areas and in natural areas only if the agency determines that off-road vehicle use will not adversely affect their natural, aesthetic, scenic, or other values for which such areas are established.

These Executive Orders put the burden of proof on BLM to ensure that sensitive and protected conservation lands are not harmed by ORV use. Under these directives, BLM should start from the position of evaluating all uses of lands that may harm or conflict with the values mentioned above as closed to ORV use. The next step is to take a hard

look at a reasonable range of alternatives under NEPA with adequate consideration of public input. BLM should provide ample evidence to show how they have located ORV areas and trails to minimize harm, or otherwise keep these areas closed to ORV use. Only after such deliberation has occurred can the agency sufficiently state that they have complied with their legal obligations in deciding how to designate certain ORV management areas.

D. National Historic Preservation Act

BLM has special stewardship responsibilities with respect to cultural resources on land that is under the agency's "jurisdiction or control" under the National Historic Preservation Act (NHPA), 16 U.S.C. § 470 *et seq*. A federal "undertaking" triggers the Section 106 process under NHPA, which requires the lead agency to identify historic properties affected by the action and to develop measures to avoid, minimize, or mitigate any adverse effects on historic properties. 16 U.S.C. § 470f; 36 C.F.R. §§ 800.4, 800.6. Because the drafting of a land use plan is an "undertaking," Section 106 review must occur prior to approving the plan in the record of decision.

The NHPA stipulates that consultation among agency official(s) and other parties with an interest in the effects of the undertaking on historic properties commence at the early stages of project planning, focusing on the opportunity to consider a broad range of alternatives. 36 C.F.R. § 800.1(c). Compliance with Section 106 is applicable "at *any stage* where the Federal agency has authority . . . to provide meaningful review of . . . historic preservation goals." *Morris County Trust for Historic Preservation v. Pierce*, 714 F.2d 271, 280 (3d Cir. 1983) (emphasis added); *Vieux Carre Property Owners v. Brown*, 948 F.2d 1436, 1444–45 (5th Cir. 1991). Therefore, the agencies cannot rely on later review process as a justification for refusing to comply with the NHPA.

To satisfy the Section 106 compliance requirement, the Responsible Agency Official must consult with the State Historic Preservation Officer(s) (SHPO) and appropriate Tribes and/or Tribal Historic Preservation Officer(s) (THPO). In addition, Section 106 regulations require BLM to "make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey." 36 C.F.R. § 800.4(b)(1). As part of this duty, BLM must account for information communicated to it by parties expressing an interest in historic properties affected by the undertaking. *Pueblo of Sandia v. United States*, 50 F.3d 856, 860–61 (10th Cir. 1995).

Section 110 of the NHPA obligates agencies to identify sites that may be eligible for listing on the National Register. BLM should analyze the information obtained to identify eligible sites and commit to or require commitments for further inventory and submissions of proposals for listing. BLM should maximize the opportunity to obtain and use information on cultural resources to fulfill its obligations under the NHPA and increase our knowledge and protection of our cultural heritage.

E. Endangered Species Act

Congress enacted the Endangered Species Act (ESA) as "a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved." 16 U.S.C. § 1531(b). As the Supreme Court observed, the statute "afford[s] endangered species the highest of priorities." *Tenn. Valley Authority v. Hill*, 437 U.S. 153, 194 (1978). To achieve its objectives, Congress directed the U.S. Fish and Wildlife Service (FWS) to list species that are "threatened" or "endangered," as defined by the ESA. 16 U.S.C. §§ 1533, 1532(6) & (20).

Once a species is listed, Section 7 of the ESA mandates that every federal agency "consult" with FWS or the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (collectively referred to as FWS) when taking any action that "may affect" listed species." 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a). *See also Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 422 F.3d 782, 790 (9th Cir. 2005). The purpose of the Section 7 consultation process is to insure that no agency actions "jeopardize the continued existence" of a listed species. *Id.* To facilitate the consultation process, the "action agency" prepares a "biological assessment," which identifies the listed species in the action area and evaluates the proposed action's effect on the species. 16 U.S.C. § 1536(c); 50 C.F.R. §§ 402.02, 402.12. The ESA defines agency action broadly. 16 U.S.C. § 1536(a)(2). *See also Lane County Audubon Soc'y v. Jamison*, 958 F.2d 290, 294 (9th Cir. 1992). It includes "*all* activities or programs *of any kind* authorized, funded, or carried out, in whole or in part, by Federal agencies." 50 C.F.R. § 402.02 (emphasis added). Agency actions include those "actions directly or indirectly causing modifications to the land, water, or air." 50 C.F.R. § 402.02.

Through a biological assessment, the agency determines whether formal or informal consultation is necessary. 50 C.F.R. § 402.13(a). When formal consultation is necessary, FWS prepares a "biological opinion" that determines whether the agency's action will result in jeopardy to the species. 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R. § 402.14(g). If there is jeopardy, FWS sets forth "reasonable and prudent alternatives" aimed at avoiding jeopardy. 16 U.S.C. § 1536(b)(3)(A). If there is no jeopardy, FWS identifies the reasonable and prudent mitigation measures. 16 U.S.C. § 1536(b)(4).

Moreover, all federal agencies are obligated to conserve listed species by "carrying out programs for the conservation of endangered species and threatened species." 16 U.S.C. § 1536(a)(1). Under the ESA, "conserve" is defined as recovering a species. Therefore, the agencies are not only obligated to avoid jeopardizing the survival and recovery of listed species, but are also required to take steps within its purview to recover these species. 16 U.S.C. § 1532(3) (definition of "conserve").

F. Clean Air Act and Clean Water Act

FLPMA and its implementing regulations—along with the applicable land use plans—require that BLM comply with all federal, state, and local environmental laws. *See* 43 U.S.C. § 1712(c)(8); 43 C.F.R. §§ 1610.3-2, 2920.7(b)(3). BLM is obligated, by FLPMA to comply with the environmental standards established in the Clean Air Act, 42 U.S.C.

§§ 7401, *et seq*., and the Clean Water Act, 33 U.S.C. §§ 1251, *et seq*. This means, for example, that BLM may not permit development that will result in exceedances of national ambient air quality standards, prevention of significant deterioration increment limits, air quality related values, and standards for hazardous air pollutants. BLM must conduct a full-scale quantitative analysis of the air quality impacts in the planning area and model these impacts. BLM must also model impacts to water quality and ensure that national and state standards will not be exceeded.

II. Air Quality

The Monticello PRMP fails to model the impacts of the activities that it permits on air quality in the planning area. NEPA, FLPMA, and the Clean Air Act require that BLM prepare such analysis. Without preparing near-field, far-field, and cumulative air quality analyses, BLM will not understand the effects of the pollutants that it has attempted to partially inventory in the Monticello PRMP, thereby violating NEPA and its requirement that BLM understand the environmental impacts of the activities it is permitting. In addition, BLM must model pollution concentrations in order to understand if this plan will comply with federal and state air quality standards, as required by FLPMA and the Clean Air Act.

FLPMA requires that BLM manage the planning area according to federal and state air quality standards. *See* 43 C.F.R. § 2920.7(b)(3) (requiring that BLM "land use authorizations shall contain terms and conditions which shall . . . [r]equire compliance with *air . . . quality standards* established pursuant to applicable Federal or State law") (emphasis added); *see also* 43 U.S.C. § 1712(c)(8) (requiring BLM in land use plans—which would therefore require implementation in daily management—to "provide for compliance with applicable pollution control laws, including State and Federal air . . . pollution standards or implementation plans"). These air quality standards include both the national ambient air quality standards (NAAQS) and the prevention of significant deterioration (PSD) increment limits. The Monticello PRMP also cryptically states that it is a goal of BLM to "[e]nsure that authorized uses on public lands meet or comply with and support federal, state, and local laws and regulations." *See* Monticello PRMP at 2–9. However, this vague and ambiguous guidance must be supplemented to include an affirmative statement by BLM that it will "[r]equire compliance with air … quality standards established pursuant to applicable Federal or State law, as its own regulations require." *See, e.g.*, 43 C.F.R. § 2920.7(b)(3). The Richfield PRMP demonstrates the sort of specific language that must be adopted by BLM here by stating that it is a goal and objective of that plan to "[m]anage all BLM and BLM-authorized activities to maintain air quality within the thresholds established by the NAAQS and ensure that those activities continue to keep the area in attainment, meet PSD Class II standards, and protect the Class I airsheds." Richfield PRMP at 2-8. It further elaborates that BLM will "[m]aintain concentrations of criteria pollutants associated with management actions in compliance with applicable State and Federal Ambient Air Quality Standards" and "[m]aintain concentrations of Prevention of Significant Deterioration … pollutants associated with management actions in compliance with the applicable increment." *Id.* BLM must adopt such clear and unequivocal language in the Monticello PRMP to ensure that it complies with its mandate under FLPMA to manage the planning area according to federal and state air quality standards.

Furthermore, the Clean Air Act itself requires that BLM not license, permit, approve, engage in, or support in any way an activity that will not conform with a state implementation plan. 42 U.S.C. § 7506(c)(1). State implementation plans are developed in order to achieve NAAQS. *See id.* § 7410. They are also developed to in order to observe PSD increment limits. *See, e.g.*, Utah Admin. Code R307-110-9 (implementing

PSD increment limits in Utah's state implementation plan). Conforming with a state implementation plan includes eliminating violations of NAAQS and ensuring that activities BLM approves do not "cause or contribute to any new violation of any standard in any area." *See* 42 U.S.C. § 7506(c)(1). BLM is therefore obligated under the Clean Air Act to ensure that any activity it approves will not violate air quality standards such as NAAQS and PSD increment limits.

The U.S. Environmental Protection Agency (EPA) has recently commented on the Vernal PRMP and the Moab PRMP. *See* Letter from Larry Svoboda, EPA, to Brent Northrup, BLM (Sep. 12, 2008) (discussing inadequacies of the Moab PRMP) (attached as Exhibit L); Letter from Larry Svoboda, EPA, to Selma Sierra, BLM (Sep. 28, 2008) (discussing inadequacies of the Vernal PRMP) (attached as Exhibit M). SUWA incorporates these comments into its protest. As the Moab PRMP and Monticello PRMP air quality support documents and analysis is essentially identical, the EPA's concerns apply equally as well to the Monticello PRMP as to the Moab PRMP. In particular, these letters confirm that BLM has authority to ensure that oil and gas operators—and others—are not permitted to undertake activities on public lands that will result in air quality violations or exceed air quality standards. *See* Letter from Svoboda to Northrup at 1-3; Letter from Svoboda to 1-3. BLM may therefore impose standards and requirements on these operators and other in order to avoid running afoul of federal and state air quality standards. *See* Letter from Svoboda to Northrup at 1-3; Letter from Svoboda to Sierra at 1-3. This directly contradicts statements by BLM in the PRMP to the contrary. *See* PRMP, Response to Comments, sorted by Resource, at 42 of 378. EPA also instructs BLM that it cannot declare that air quality in the planning area will be protected without providing the results of dispersion modeling to confirm that conclusion. *See* Letter from Svoboda to Northrup at 1-2. As EPA says, BLM must perform dispersion modeling or it will not be able to determine whether its authorizations and planned activities will comply with federal and state air quality standards.

As discussed in part below, the Monticello PRMP emissions inventory suffers from a number of flaws that have led to underestimates for various pollutants. Ms. Megan Williams, in her comments on the DRMP, fully described the failures of BLM's emissions inventory. *See* Letter from Megan Williams to Monticello Resource Management Plan Draft EIS Project Manager 10-16 (Feb. 8, 2007). With such flaws the emissions inventory cannot be used to accurately quantify and model pollutant concentrations in the planning area.

Furthermore, even if the emissions inventory were accurate, it does not inform BLM and the public as to what the resulting pollution concentrations will be for the pollutants relevant to NAAQS and the PSD increments. The PRMP does not include any modeling for NAAQS criteria pollutants or for those pollutants related to PSD increment limits. In contrast, the recently released Vernal Field Office Proposed Resource Management Plan and Final Environmental Impact Statement (August 2008) (Vernal PRMP) includes modeling analyses for near-field, far-field, and cumulative impacts. *See* Vernal PRMP at 4-14, 4-19, 4-30. The Monticello PRMP must also undertake such modeling analysis.

Both the State and Federal standards are based on *ambient concentrations* of various air pollutants. BLM does not know whether it is satisfying its obligation to observe air quality standards without modeling the effect that the activities permitted in the PRMP will have on ambient *concentrations* of various pollutants, such as those related to NAAQS and PSD increment limits. *See, e.g.*, PRMP at 4-16 to -31 (predicting likely quantities in tons per year—not ambient concentrations—of various pollutants that will result from plan implementation). Ms. Williams also described the importance of such modeling and what that entails. *See* Williams, Letter at 16-19.

BLM's attempts to punt this obligation to perform quantitative dispersion modeling to a later date fail. *See* BLM Response to Comments, sorted by Resource, at 5-100 (stating that BLM "would consider using a quantitative approach to estimate potential concentrations" when approached with a specific project). The fact that the implementation of the PRMP will result in air pollution (e.g., through approval of motorized use on designated routes) requires that such modeling and quantification be undertaken. *See* Richfield PRMP at 4-6 (admitting that various activities, including oil and gas development and ORV use, generate various pollutants, as well as fugitive dust). The routes identified in this plan that will be open to vehicular travel will never face further analysis whereby better estimates might be developed. In addition, BLM has not committed to conduct such modeling in the future; instead it has conditionally stated that it may be open to the possibility of modeling. *See* BLM Response to Comments, sorted by Resource, at 5-100. *BLM must conduct these analyses now*. Besides, as SUWA pointed out, BLM has prepared models and more comprehensive emissions inventories in its Farmington, New Mexico; Vernal, Utah; and Roan Plateau, Colorado RMPs. This reality directly refutes the Monticello PRMP's insistence that such efforts would be too difficult at this time. Finally, as part of the "hard look" requirement, NEPA demands that BLM determine baseline conditions so that it, and the public, can fully understand the implications of proposed activities. BLM has failed to do this here.

As part of this duty, BLM must accurately describe conditions and activities in the planning area. It is not clear that BLM has done this in terms of incorporating drought conditions into its emissions inventory. *See* PRMP, Response to Comments, sorted by Resource, at 48 of 378 (stating that BLM does not have any control over drought conditions). BLM must assume that the rate of fugitive dust emissions generation will be even higher during times of drought, whether BLM is able to prevent drought or not, because such assumptions are simply reflective of actual conditions.

The Monticello PRMP arbitrarily selects monitoring data from areas that may not be as reflective of actual background concentrations in the planning area thereby understating true levels of pollution. The Monticello PRMP has unjustifiably adopted background concentrations for NAAQS criteria pollutants that are lower than those contained in the Draft RMP. *Compare* PRMP at 3-5 to -6, *with* Monticello Draft RMP at 3-6. For example, the PRMP has adopted a 24-hour maximum average concentration for $PM_{2.5}$ of 13 $\mu g/m^3$. PRMP at 3-6. This figure is taken from a three-year average of data from Farmington, New Mexico. *Id.* However, the Draft RMP had values of 10 $\mu g/m^3$ and 26 $\mu g/m^3$—from Telluride and Durango, Colorado, respectively—for this same 24-hour

maximum average. Monticello Draft RMP at 3-6. The PRMP makes no effort to explain why it has abandoned these previous values.

It is likely that the 24-hour maximum average for $PM_{2.5}$ is higher than 13 $\mu g/m^3$. First of all, it is questionable that Farmington, New Mexico is reflective of air quality in the planning area. Second, the EPA reports that in 2007 the fourth highest 24-hour average maximum value for $PM_{2.5}$ was 14.9 $\mu g/m^3$. EPA, County Air Quality Map—Air Quality Data, San Juan County, New Mexico, Particulate Matter ($PM_{2.5}$), 98th Percentile of 24-hour Average Concentrations, 2007, http://www.epa.gov/cgi-bin/broker?_service=airdata&_program=progs.webprogs.msummary.scl&_debug=2&geotype=co&geocode=35045&geoname=San+Juan+Co%2C+New+Mexico&mpol=pm25_24&myear=2007&exc=&mapsize=zsc&reqtype=viewmap. Surrounding areas report much higher values. The Grand Junction monitor recorded a 98th percentile value in 2007 of 27.3 $\mu g/m^3$. EPA, County Air Quality Map—Air Quality Data, San Juan County, New Mexico, Particulate Matter ($PM_{2.5}$), 98th Percentile of 24-hour Average Concentrations, 2007, http://www.epa.gov/cgi-bin/broker?_service=airdata&_program=progs.webprogs.msummary.scl&_debug=2&geotype=co&geocode=08077&geoname=Mesa+Co%2C+Colorado&mpol=pm25_24&myear=2008&exc=&mapsize=zsc&reqtype=viewmap. The Richfield PRMP, discussing an adjacent planning area, contains a background concentration for the 24-hour average maximum of $PM_{2.5}$ that appears to be near 65 $\mu g/m^3$. *See* Richfield PRMP at 3-10. The Moab PRMP, discussing the planning area immediately north of Monticello, contains a background concentration for the 24-hour average maximum of $PM_{2.5}$ of 22 $\mu g/m^3$. Moab PRMP at 3-6. Megan Williams described numerous monitors that also demonstrated that background concentrations of $PM_{2.5}$ are likely to be higher than described in the Monticello PRMP. *See* Williams, Letter at 4. These figures demonstrate that the Monticello PRMP substantially understates the 24-hour maximum average background concentrations for $PM_{2.5}$ in the planning area.

Likewise, the Monticello PRMP has downplayed and understated background ozone levels in the planning area. Ozone is a serious problem in the planning area. *See, e.g.*, Williams, Letter at 6-8. The PRMP dismisses without any explanation the previous values that it had listed for 8-hour average concentrations of ozone in the Draft RMP. The Draft RMP had values, aside from La Plata County, Colorado, of 0.08 parts per million (ppm), 0.078 ppm, and 0.075 ppm from various monitors in the region. Monticello Draft RMP at 3-6. The 0.075 ppm value was observed at a monitor in San Juan County, Utah at Canyonlands National Park. *Id.* The NAAQS limit for 8-hour average ozone concentrations is 0.075 ppm. *See* PRMP at 3-6. Thus, the Draft RMP showed that ozone concentrations in the planning area were likely at the limit, or above, NAAQS. The PRMP admits that ozone concentrations are "near" NAAQS limits, yet the new background figures contained the PRMP has dismissed the background values found in the Draft RMP without any explanation, thereby downplaying the severity of this problem. *See* PRMP at 3-13.

The Monticello PRMP claims that background concentrations for the 8-hour standard for ground-level ozone was 0.055 parts per million (ppm) in La Plata County, Colorado.

PRMP at 3-5. This figure is apparently based on an average of three-years worth of 4th maxima from 2005, 2006, and 2007. *Id.* at 3-5 to -6. However, regardless of whether this figure is indicative of air quality in the planning area—something that is unlikely considering its divergence from monitored values in the planning area and nearby, the EPA's AirData website shows that this average *is actually 0.067 ppm.* BLM must correct this error. *See* EPA, County Air Quality Map—Air Quality Data, La Plata County, Colorado, Ozone, 4th Highest 8-hour Average Concentration, 2007, http://www.epa.gov/cgi-bin/broker?_service=airdata&_program=progs.webprogs.msummary.scl&_debug=2&geotype=co&geocode=08067&geoname=La+Plata+Co%2C+Colorado&mpol=o3_8&myear=2007&exc=&mapsize=zsc&reqtype=viewmap (reporting a value for 2007 of 0.071 ppm); EPA, County Air Quality Map—Air Quality Data, La Plata County, Colorado, Ozone, 4th Highest 8-hour Average Concentration, 2006, http://www.epa.gov/cgi-bin/broker?_service=airdata&_program=progs.webprogs.msummary.scl&_debug=2&geotype=co&geocode=08067&geoname=La+Plata+Co%2C+Colorado&mpol=o3_8&myear=2006&exc=&mapsize=zsc&reqtype=viewmap (reporting a value of 0.063 ppm for 2006); EPA, County Air Quality Map—Air Quality Data, La Plata County, Colorado, Ozone, 4th Highest 8-hour Average Concentration, 2005, http://www.epa.gov/cgi-bin/broker?_service=airdata&_program=progs.webprogs.msummary.scl&_debug=2&geotype=co&geocode=08067&geoname=La+Plata+Co%2C+Colorado&mpol=o3_8&myear=2005&exc=&mapsize=zsc&reqtype=viewmap (reporting a value of 0.066 ppm for 2005). In 2007 the La Plata 8-hour ozone monitor recorded a value of 0.071 ppm. EPA, County Air Quality Map—Air Quality Data, La Plata County, Colorado, Ozone, 4th Highest 8-hour Average Concentration, 2007.

Surrounding areas confirm that 8-hour ozone levels are either exceeding NAAQS or approaching exceedances. An ozone monitor in Zion National Park has recorded an average of 0.078 ppm for the time period between 2005-07, well in excess of NAAQS. *See* EPA, County Air Quality Map—Air Quality Data, Washington County, Utah, Ozone, 4th Highest 8-hour Average Concentration, 2007, http://www.epa.gov/cgi-bin/broker?_service=airdata&_program=progs.webprogs.msummary.scl&_debug=2&geotype=co&geocode=49053&geoname=Washington+Co%2C+Utah&mpol=o3_8&myear=2007&exc=&mapsize=zsc&reqtype=viewmap (reporting a concentration of 0.071 ppm for 2007); EPA, County Air Quality Map—Air Quality Data, Washington County, Utah, Ozone, 4th Highest 8-hour Average Concentration, 2006, http://www.epa.gov/cgi-bin/broker?_service=airdata&_program=progs.webprogs.msummary.scl&_debug=2&geotype=co&geocode=49053&geoname=Washington+Co%2C+Utah&mpol=o3_8&myear=2006&exc=&mapsize=zsc&reqtype=viewmap (reporting a concentration of 0.072 ppm for 2006); EPA, County Air Quality Map—Air Quality Data, Washington County, Utah, Ozone, 4th Highest 8-hour Average Concentration, 2005, http://www.epa.gov/cgi-bin/broker?_service=airdata&_program=progs.webprogs.msummary.scl&_debug=2&geotype=co&geocode=49053&geoname=Washington+Co%2C+Utah&mpol=o3_8&myear=2005&exc=&mapsize=zsc&reqtype=viewmap (reporting a concentration of 0.091 ppm for 2005). A monitor in nearby Montezuma County, Colorado has reported a three-year 8-hour 4th highest maxima value average of 0.073 ppm for the time period from 2005-07. *See* EPA, County Air Quality Map—Air Quality Data, Montezuma County, Colorado,

Ozone, 4th Highest 8-hour Average Concentration, 2007, http://www.epa.gov/cgi-bin/broker?_service=airdata&_program=progs.webprogs.msummary.scl&_debug=2&geotype=co&geocode=08083&geoname=Montezuma+Co%2C+Colorado&mpol=o3_8&myear=2007&exc=&mapsize=zsc&reqtype=viewmap (reporting a value for 2007 of 0.07 ppm); EPA, County Air Quality Map—Air Quality Data, Montezuma County, Colorado, Ozone, 4th Highest 8-hour Average Concentration, 2006, http://www.epa.gov/cgi-bin/broker?_service=airdata&_program=progs.webprogs.msummary.scl&_debug=2&geotype=co&geocode=08083&geoname=Montezuma+Co%2C+Colorado&mpol=o3_8&myear=2006&exc=&mapsize=zsc&reqtype=viewmap (reporting a value of 0.074 ppm for 2006); EPA, County Air Quality Map—Air Quality Data, Montezuma County, Colorado, Ozone, 4th Highest 8-hour Average Concentration, 2005, http://www.epa.gov/cgi-bin/broker?_service=airdata&_program=progs.webprogs.msummary.scl&_debug=2&geotype=co&geocode=08083&geoname=Montezuma+Co%2C+Colorado&mpol=o3_8&myear=2005&exc=&mapsize=zsc&reqtype=viewmap (reporting a value of 0.076 ppm for 2005). These averages show that the planning area's background is likely to be in exceedance of, or close to exceeding, NAAQS for ozone.

It is critical that BLM list the correct background concentrations for ozone and $PM_{2.5}$ and that it perform modeling for these pollutants now since it is possible that these pollutants could be at unhealthy levels. The health impacts of $PM_{2.5}$ are severe. *See* National Ambient Air Quality Standards for Particulate Matter, 71 Fed. Reg. 61,144 (Oct. 17, 2006) (discussing deleterious health effects of $PM_{2.5}$ pollution). Likewise, the health impacts of ozone are also considerable. National Ambient Air Quality Standards for Ozone, 73 Fed. Reg. 16,436 (Mar. 27, 2008) (discussing adverse health impacts of ground-level ozone pollution).

The Monticello PRMP does not discuss or examine PSD increment limits (particulate matter, nitrogen oxides, carbon monoxide, sulfur dioxide). Ms. Williams alerted BLM to this inadequacy and described how such analysis must be done. *See* Williams, Letter at 9-10. The PRMP does not evaluate this, despite a promise in the Response to Comments section to do so. *See* PRMP, Response to Comments, sorted by Resource, at 49 of 378. These federal air quality standards are also the State of Utah's air quality standards. Thus, there is no evidence, certainty, or indication that the Monticello PRMP will comply with federal and state air quality standards as NEPA and FLPMA require.

NEPA also requires that BLM model the impacts from the various activities—and fully inventory the pollutants generated by these activities—permitted by the Monticello PRMP. "NEPA 'prescribes the necessary process' by which federal agencies must 'take a "hard look" at the environmental consequences' of the proposed courses of action." *Pennaco Energy, Inc. v. U.S. Dept. of the Interior*, 377 F.3d 1147, 1150 (10th Cir. 2004) (quoting *Utahns for Better Transp. v. U.S. Dept. of Transp.*, 305 F.3d 1152, 1162–63 (10th Cir. 2002)) (internal citation omitted). The fundamental objective of NEPA is to ensure that an "agency will not act on incomplete information only to regret its decision after it is too late to correct." *Marsh v. Or. Natural Resources Council*, 490 U.S. 360, 371 (1990) (citation omitted). Without preparing modeling to determine what the ambient concentrations of relevant pollutants will be, BLM cannot understand or disclose

the impacts of these pollutants on humans, wildlife, vegetation, water bodies, or the climate. Since it is actual ambient concentrations that will impact these various components of the ecosystem, BLM must model concentrations to understand these impacts. This is why the EPA demanded that the Moab PRMP include dispersion modeling to support its statements that the activities permitted in that plan would not harm air quality. *See* Letter from Svoboda to Northrup at 1-2. Likewise, BLM's deficient air quality analysis here does not satisfy NEPA's hard look requirement.

An emissions inventory from potential sources of pollution in the planning area alone would likely not be sufficient to explain actual ambient concentrations of pollution. The PRMP discusses the reason for this, in the context of ground level ozone: "ozone concentrations in a given area can result from emissions that are transported into the area from distant emission sources, as well as local emission sources." PRMP at 3-13. BLM must perform dispersion modeling that includes external sources of pollution in order to understand likely ambient concentrations.

The emissions inventory prepared for the Monticello PRMP suffers from numerous deficiencies. SUWA, and its air quality expert Megan Williams, detailed the important contributors to air pollution likely to result from the activities authorized in the PRMP, the proper methodology for quantifying those emissions, and the necessary modeling to fully understand the impacts of those emissions in its February 8, 2008 comments on the Draft RMP and its June 18, 2008 supplemental comments.

Among other things, BLM has failed to inventory the particulate matter pollution, differentiated for $PM_{2.5}$ and for PM_{10}, which will be generated by fugitive dust from vehicles for anything but oil and gas development. The existence of designated routes and travel of automobiles and ORVs on designated routes will generate significant amounts of fugitive dust which will negatively affect air quality in the region. The Monticello PRMP and its air quality emissions inventory have *completely failed* to consider such emissions. The Monticello PRMP acknowledges that ORVs are significant contributors of fugitive dust. *See, e.g.*, Monticello PRMP at 4-17; 3-13 ("Most recreational visitors engage in motorized activities that are emission sources in addition to highway vehicles used for transportation."). However, the PRMP then downplays the potential impacts of vehicle travel on unpaved roads by stating that air quality in the region is fine and that such activity is not likely to lead to exceedances of air quality standards. *See, e.g.*, *id.* As discussed earlier, such unwarranted statements have been rejected by the EPA because to support this sort of conclusion requires dispersion modeling as justification. *See* Letter from Svoboda to Northrup at 1-2. SUWA alerted BLM to the importance of such quantification and modeling in its January 23, 2008 comments. To further guide BLM in how such quantification and modeling could be conducted, SUWA sent a letter on June 18, 2008 with examples of air quality modeling for fugitive dust from vehicular travel on unpaved roads. This modeling was conducted for the West Tavaputs Plateau Natural Gas Full Field Development Plan, Draft Environmental Impact Statement, UT-070-05-055 (Feb. 2008) (West Tavaputs DEIS), and the Enduring Resources' Saddletree Draw Leasing and Rock House Development Proposal, Final Environmental Assessment UT-080-07-671 (Dec. 2007) (Rock House

EA).[3] In both cases, BLM itself attempted to estimate fugitive dust emissions from the passage of vehicles on unpaved roads. Furthermore, it then modeled these emissions to arrive at predicted ambient concentrations of various pollutants. The Monticello PRMP contains no such analysis; this quantification and modeling must be conducted in order to understand where BLM's plans will comply with federal and state air quality standards and to know what impact they may have on human health, wildlife, vegetation, water bodies, and the climate.

The models for these other projects demonstrate that fugitive dust from vehicular travel on unpaved roads can create significant levels of ambient pollution. As SUWA explained in its June 18, 2008 comments, the levels of $PM_{2.5}$ predicted in the Rock House EA were so high that they exceeded NAAQS. It is likely that most of the predicted $PM_{2.5}$ was the result of fugitive dust generated by vehicular traffic. Furthermore, dirt roads and ORV routes may generate fugitive dust even when not being traveled by vehicles (e.g., by wind blown dust). Thus, it is vital that the Monticello PRMP quantify all of the routes that it is designating, estimate the rate at which they will generate fugitive dust when not being traveled by vehicles, estimate the number of vehicles that will use each route, and the likely fugitive dust generation rate, and then model those figures to understand the true impacts of fugitive dust emissions.

To demonstrate the potential particulate matter pollution that could result from the travel of vehicles on unpaved roads, SUWA submits an emissions inventory prepared by Megan Williams, which examines likely emissions from three routes in the planning area. *See* Megan Williams, Fugitive Dust Inventory – ORV Travel on Unpaved Routes (Oct. 3, 2008) (attached as Exhibit N). This emissions inventory was developed using the EPA's guidance on estimating fugitive dust emissions from vehicle travel on unpaved roads and generally follows the instructions and recommendations that SUWA set forth in its June 18, 2008 comments. *See id.* These estimates indicate how BLM must inventory fugitive dust from those routes that are designated as part of the PRMP's route designation plan. This inventory also demonstrates how severely inadequate BLM's emissions inventory is because of its failure to inventory fugitive dust from vehicle travel on designated routes and from the mere existence of routes, which are then susceptible to wind erosion. The inventory prepared by Ms. Williams shows that estimated vehicle travel on the Valley of the Gods scenic byway—some sixteen miles of unpaved road—could result in up to 5.6 tons per year of $PM_{2.5}$ and 55.8 tons per year for PM_{10}. *Id.* This single route alone would surpass the PRMP's projected yearly emissions for PM_{10} (thirty-one tons per year) under the proposed plan. PRMP at 4-29. It alone would nearly match the PRMP's projections for $PM_{2.5}$ (seven tons per year) from all activities approved by the proposed alternative in

[3] The Rock House EA is also instructive as to why it is important that BLM include emissions from drill rig emissions. BLM refused to include these emissions in its inventory. PRMP, Response to Comments, sorted by Resource, at 50-51 of 378. BLM's refusal to do this was based on the assumption that because there would be relatively low numbers of new wells drilled each year, it would not be necessary to inventory those emissions. *Id.* However, the Rock House EA analyzed a small project with a rate of development similar to what is projected for the Monticello planning area. *See* Rock House EA at 4-24. Yet, this project alone modeled impacts that would exceed both NAAQS and PSD increment limits. For this reason it is improper for BLM in the Monticello PRMP to refuse to inventory drill rig emissions simply because the number of rigs per year may be lower than areas of intense development.

the PRMP. *Id.* Ms. Williams projected emissions for two other routes. *See* Williams, Fugitive Dust Inventory. These two routes, combined, consist of thirty-eight miles of unpaved surface; they could contribute up to 51.2 tons per year of PM_{10} and 5.1 tons per year of $PM_{2.5}$. *Id.* In all, vehicle travel on the three routes analyzed by Ms. Williams could result in up to 107.0 tons per year of PM_{10} and 10.7 tons per year of $PM_{2.5}$ from fifty-four miles of unpaved routes. *Id.* These estimates are three times the projected PM_{10} emissions and nearly one and one-half the projected $PM_{2.5}$ emissions in the entire proposed plan. *Compare id.*, *with* PRMP at 4-29. Considering that the Monticello PRMP designates 2,800 miles of unpaved routes in the planning area, it is certain that BLM emissions inventory substantially understates the true impacts from the activities permitted and envisioned in this plan. If one were to extrapolate these estimates to the full 2,800 miles of unpaved routes identified in the Monticello PRMP then PM_{10} emissions would be approximately 5,548 tons per year and $PM_{2.5}$ emissions would be approximately 555 tons per year. BLM must inventory likely fugitive dust emissions differentiated for PM_{10} and $PM_{2.5}$ in order to begin to understand the true impacts of the activities envisioned and authorized in the PRMP on air quality in the planning area. In addition, BLM must then perform dispersion modeling to know how individuals, plants, and wildlife will be affected by these activities.

Furthermore, this methodology for inventorying dust generation could be applied to any activity that will cause fugitive dust (e.g. mining, oil and gas development, grazing) in order to estimate total dust emissions. This information is necessary for understanding the likely contributions to regional climate change caused by this plan from eolian dust deposition and its tendency to cause premature snowpack melt. *See* J.C. Neff et al., *Increasing Eolian Dust Deposition in the Western United States Linked to Human Activity*, Nature Geoscience 1, Advanced Online Publication, 189 (2008) (attached as Exhibit O).

In summary, the Monticello PRMP does not adequately analyze the impacts to air quality that will result from the area and route designations, and activities planned and permitted in this document. Because the planning area has levels of ozone that are near the point of exceeding NAAQS, or that are exceeding NAAQS, BLM must disclose that it is prevented by FLPMA and the Clean Air Act from approving *any activities* that would further exacerbate or exceed these levels. The failures described above are contrary to both FLPMA and the Clean Air Act, which require that BLM observe air quality standards, and NEPA, which requires that BLM disclose the impacts of the activities it is analyzing. BLM must prepare a comprehensive emissions inventory, which includes fugitive dust emissions, and then model these figures in near-field, far-field, and cumulative analyses. Without doing so, BLM cannot know what impact these activities will have and whether it is complying with federal and state air quality standards. BLM may not authorize any activities which will contribute ozone precursors (NO_X and VOCs) or $PM_{2.5}$ to ambient concentrations in the planning area (e.g. it may not permit any vehicular travel on designated routes or permit any oil and gas development) if these emissions will lead to exceedances of federal or state air quality standards.

III. Areas of Critical Environmental Concern

When developing a land use plan, such as the Monticello PRMP, FLPMA mandates that BLM "*give priority* to the designation and protection of areas of critical environmental concern." 43 U.S.C. § 1712(c)(3). Such areas, or 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).

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).

A. BLM Failed to Give Priority to Designation and Protection of ACECs

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 Monticello PRMP, BLM has neither recognized nor carried out this statutory mandate. To resolve this, once BLM has determined that certain areas in the Monticello Field Office contain the requisite relevant and important values (R&I values) and that the PRMP does not protect all of the R&I values—which the Monticello 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 by failing to give priority to the designation and protection of ACECs.

BLM has determined that there are 521,141 acres, comprising twelve existing and potential ACECs, that meet the R&I criteria for ACEC designation. PRMP at 2-49, Table 2.1, 4-483, Appendix H. However, the PRMP proposes to designate seven ACECs, totaling only 73,492 acres, approximately 14% of the acres nominated and found eligible. PRMP at 2-49. The existing San Juan RMP designated ten ACECs totaling 486,616 acres. PRMP at 2-49, Appendix H. Thus, the PRMP would actually *reduce* the total acreage of ACECs. The PRMP proposes to bring forward only four of these existing ten ACECs and, in every case except Hovenweep ACEC, reduces the acreage of individual ACECs despite the fact that all of the existing ACECs meet the relevance and importance criteria, and their R&I values are touted by BLM in the San Juan RMP. Appendix H.

All of the existing ACECs, as well as the potential ACECs that meet the R&I criteria, should be proposed for designation in the PRMP. By only proposing a small fraction of the acreage that BLM has identified as possessing R&I values, and reducing the acreage of ACECs in total, BLM violates FLPMA's mandate that "priority" be given to designation of ACECs. And, for the 86% of eligible acreage that BLM did not designate as ACECs, BLM fails to give priority to the protection of the identified R&I values, in some cases allowing oil and gas development and ORV use to occur. In direct violation of FLPMA, BLM prioritizes oil and gas leasing and subsequent development and ORV route designation over protecting R&I values.

B. The Threats from Oil and Gas Leasing and Development and Off-Road Vehicles Highlight the Need to Designate ACECs to Protect Relevant and Important Values

FLPMA requires BLM to prioritize designation and protection of ACECs. Accordingly, where BLM has found special values that meet the R&I criteria, and where impacts could or would occur to these identified values if no special management prescriptions are implemented, BLM violates its FLPMA obligations by failing to designate the areas as ACECs. BLM has improperly ignored or discounted the threats to special places from oil and gas development and ORV use. BLM has failed to designate and/or failed to incorporate sufficient protections for proposed ACECs to protect R&I values from the irreparable harm that is likely to result from these other activities.

BLM has acknowledged the damage from oil and gas development and improper or excessive ORV use to the values of the public lands that can and should be protected by ACEC designation (e.g., spectacular scenic values, endangered species, geologic formations, cultural resources, and naturalness). *See, e.g.*, PRMP at Appendix H. Furthermore, the Interior Board of Land Appeals (IBLA) has found that even ongoing use of existing motorized recreational routes can lead to more damage to other resources, especially as interest in an area increases. *See Southern Utah Wilderness Alliance*, 164 IBLA 33 (2004). In other words, it is unavoidable and expected that, when BLM establishes routes for ORVs, there will be use beyond those routes, even in violation of route and area designations. As a result, BLM's failure to limit ORV access to the sensitive lands and special places nominated for ACEC protection is likely to endanger their unique R&I values.

The maps attached as Exhibits B and H show the proposed and current ACECs overlaid with ORV route designations and oil and gas leasing designations. These maps illustrate the extent to which BLM disregards the R&I values identified in the existing and proposed ACECs, and prioritizes development and ORV use over critical environmental concerns, in direct violation of FLPMA. Monticello PRMP Oil & Gas Designation Impacts on ACECs, attached as Exhibit H; Monticello PRMP ACEC Designation and Proposed Routes, attached as Exhibit B; 43 U.S.C. § 1712(c)(3).

Where ACEC or potential ACEC values include unique or rare scenic resources or naturalness, they are even more susceptible to irreparable damage from these activities. In some cases, the PRMP proposes a high ORV route density within potential ACECs. Exhibit B; *See, e.g.*, Cedar Mesa Existing and Potential ACEC. These route densities could impair and potentially eliminate the cultural, scenic, wildlife, and other R&I values identified in these critical areas. BLM must develop a manageable travel plan that will protect all of the potential ACECs and their R&I values from the damage directly associated with ORV use.

Areas with R&I values that are jeopardized by oil and gas drilling and/or ORV use should be designated as ACECs and provided with protective management prescriptions that would include road closures, restoration, and closure to oil and gas development, and/or application of best management practices where lands are already leased (such as no surface occupancy stipulations and timing limitations, which can be imposed by the agency and/or negotiated with leaseholders). Without these protections, BLM violates FLPMA's mandate to prioritize the designation *and protection* of ACECs and their identified R&I values.

C. Wilderness Study Area Status, SRMA management, NHPA regulations, Managing for Wilderness Character, and Other Management Prescriptions Are Not a Substitute for ACEC Designation

BLM has acknowledged the threats to lands with R&I values. PRMP in Appendix H. However, BLM has failed to designate ACECs to protect these values. The PRMP repeatedly points to WSA status as a justification for not designating areas ACECs. *See, e.g.*, Bridger Jack Mesa, Butler Wash, Cedar Mesa and Dark Canyon potential ACECs. PRMP at 2-49, 4-484 and Appendix H. ACECs may be designated for a range of R&I values, as listed in FLPMA and Appendix H of the PRMP, which may not be protected by focusing on protecting wilderness character (although they will likely benefit). BLM cannot dismiss its obligations under FLPMA with regard to ACECs based on the existence of a WSA.

ACEC designation is important in the event that WSAs are released by Congress. The PRMP fails to adequately address what would happen in the event that a WSA is released from its status, although the PRMP does note that WSA protection is only temporary. PRMP at 3-151. Delaying ACEC designation and thorough consideration until the areas are released by Congress could jeopardize the scientific values of these potential ACECs. The PRMP must be explicit that BLM *will* manage lands released from WSA status to

protect their important values, including wilderness characteristics and the other R&I values that the PRMP acknowledges, according to the same or comparable standards as analyzed and contemplated in the plan. Without asserting this, BLM's failure to designate all of the potential ACECs that meet the R&I criteria runs afoul of its own ACEC Guidance which requires that the agency specifically detail the "other form of special management" relied upon as support for not designating a potential ACEC. *See* Areas of Critical Environmental Concern; Policy and Procedures Guidelines, 45 Fed. Reg. 57,318, 57,319 (Aug. 27, 1980).

In addition, there is no *per se* bar to managing and protecting R&I values through overlapping designations such as WSAs and ACECs. For example, BLM's Jarbidge RMP (and subsequent amendments) in southern Idaho designated the Bruneau/Jarbidge River ACEC and the Salmon Falls Creek ACEC, which overlap the Bruneau River-Sheep Creek WSA, Jarbidge River WSA, and Lower Salmon Falls Creek WSA. *See* BLM, Jarbidge Field Office, Idaho, Analysis of the Management Situation for the Jarbidge Resource Management Plan: Resource Management Plan/Environmental Impacts Statement at 206, (July 2007), *available at* http://www.blm.gov/pgdata/etc/medialib/blm/id/plans/jarbidge_rmp/documents/analysis_of_the_management.Par.59385.File.dat/part13.pdf (attached as Exhibit P); *see also id.* at Figure 39: Locations of Current ACECs, *available at* http://www.blm.gov/pgdata/etc/medialib/blm/id/jarbidge/rmp/maps.Par.16971.File.dat/Locations%20of%20Current%20ACECs.pdf (attached as Exhibit Q); Figure 40: Wilderness Study Areas, *available at* http://www.blm.gov/pgdata/etc/medialib/blm/id/jarbidge/rmp/maps.Par.75489.File.dat/Locations%20of%20Current%20Wilderness%20Study%20Areas.pdf (attached as Exhibit R). These overlapping designations ensure that BLM protects R&I values both through current management and in the event WSAs are released during the life of the plan.

The PRMP and responses to comments evidence a resistance to layering ACEC and other special designations—even when such a layering of protection would make good policy to protect all lands in a potential ACEC and ensure that they are consistently managed (since IMP management of WSAs might differ greatly from the special management attention envisioned for the R&I values of a particular ACEC or in the event of congressional WSA release).

In addition to conflicting with the directives of FLPMA regarding ACECs and the IMP, BLM's approach is also belied by the BLM's answer to San Juan County's formal comment that it is "opposed to 'layering' or the establishment of ACECs or SRMAs over WSAs and Wild and Scenic Rivers."

To which the BLM responds, appropriately:

> "Layering" is planning. Under FLPMA's multiple use mandate, BLM manages many different resource values and uses on public lands. Through land use planning BLM sets goals and objectives for each of

> those values and uses, and prescribes actions to accomplish those objectives. Under the multiple use concept, BLM doesn't necessarily manage every value and use on every acre, but routinely manages many different values and uses on the same areas of public lands. The process of applying many individual program goals, objectives, and actions to the same area of public lands may be perceived as "layering". BLM strives to ensure that the goals and objectives of each program (representing resource values and uses) are consistent and compatible for a particular land area. Inconsistent goals and objectives can lead to resource conflicts, failure to achieve the desired outcomes of a land use plan, and litigation. Whether or not a particular form of management is restrictive depends upon a personal interest or desire to see that public lands are managed in a particular manner. All uses and values cannot be provided for on every acre. That is why land use plans are developed through a public and interdisciplinary process. The interdisciplinary process helps ensure that all resource values and uses can be considered together to determine what mix of values and uses is responsive to the issues identified for resolution in the land use plan. Layering of program decisions is not optional for BLM, but is required by the FLPMA and National BLM planning and program specific regulations.
>
> FLPMA directs BLM to manage public lands for multiple use and sustained yield (Section 102(a)(7)). As a multiple-use agency, the BLM is required to implement laws, regulations and policies for many different and often competing land uses and to resolve conflicts and prescribe land uses through its land use plans. BLM's Land Use Planning Handbook requires that specific decisions be made for each resource and use (Planning Handbook "H-1601-1"). Specific decisions must be included in each of the alternatives analyzed during development of the land use plan. As each alternative is formulated, each program decision is overlaid with other program decisions and inconsistent decisions are identified and modified so that ultimately a compatible mix of uses and management prescriptions result.

PRMP Response to Comments, at 7-48.

SUWA cannot make this argument any better than BLM does in the preceding paragraphs because BLM clarifies that different designations serve different purposes, and that designations are limited to protect only those values relevant to those particular designations. Therefore, the fact that an ACEC lies within a WSA cannot serve as a justification for failing to designate the ACEC.

Similarly, other provisions of FLPMA, the NHPA, SRMAs, and other management prescriptions and regulations do not necessarily protect the R&I values of ACECs. SRMAs are designated to provide recreation opportunities for users of different types, e.g. motorized, equestrian, biking, hiking, etc., and have nothing to do with protecting

R&I values of potential ACECs. The NHPA deals only with cultural resources, and applies different management prescriptions than ACECs. Therefore, BLM's assertions that other designations, such as the NHPA, WSAs, and SRMAs, adequately protect R&I values of potential ACECs is not true, and BLM must designate all of the potential ACECs in order to adequately protect their R&I values.

D. Wilderness Characteristics Can Be Protected Through ACEC Designation

While managing to protect wilderness characteristics will not protect all types of R&I values that may justify designation of ACECs, ACEC designation is a significant option.[4] Conversely, management of most common R&I values would preclude most surface disturbing activities, thereby simultaneously giving a significant level of protection to wilderness characteristics—even if wilderness characteristics are not specifically one of the R&I values warranting designation as an ACEC. BLM has admitted that it retains the ability to value wilderness character and protect it, including through ACEC designations. Instruction Memoranda (IMs) Nos. 2003-274 and 2003-275, which formalize BLM's policies concerning wilderness study and consideration of wilderness characteristics, contemplate that BLM can continue to inventory for and protect land "with wilderness characteristics," which are identified as naturalness or providing opportunities for solitude or primitive recreation, and specifically reference ACEC designation as a method for providing this protection.

Indeed, BLM's guidance in IM-2003-275 states that "where ACEC values and wilderness characteristics coincide, the special management associated with an ACEC, if designated, may also protect wilderness characteristics." Similarly, in a February 12, 2004 letter to William Meadows, President of The Wilderness Society, Assistant Secretaries of the Interior Rebecca Watson and Lynn Scarlett stated that "through the land use planning process, *BLM uses the ACEC designation or other management prescriptions to protect wilderness characteristics* or important natural or cultural resources." (emphasis added) (attached as Exhibit S).

As discussed above, BLM has acknowledged the threats to lands with wilderness characteristics from other activities, including ORV use and oil and gas development. However, the Monticello PRMP fails to support designation of ACECs to protect these values, as FLPMA requires. BLM has identified 582,360 acres of lands with wilderness character. There are an additional 225,688 acres of lands with wilderness characteristics within the Monticello planning area that are included in America's Redrock Wilderness Act; detailed descriptions and supporting data have been submitted to BLM proving the wilderness character of these lands.

All of these lands represent special resources and values that warrant corresponding protection. Potential ACECs with wilderness characteristics that BLM failed to protect in

[4] BLM should implement the management prescriptions described in SUWA's proposed Red Rock Heritage Plan, submitted with SUWA's comments on the DRMP.

the PRMP include Lockhart Basin and Cedar Mesa; *See* Monticello ACEC Designation and Wildlands Map, Attached as Exhibit B. BLM should designate the above-listed ACECs and consider designating others to protect lands with wilderness characteristics; and these ACECs should include protective management prescriptions, such as closure to oil and gas leasing and ORV use, in order to protect wilderness characteristics.

E. BLM's Proposed Management Will Not Protect Relevant and Important Values for Potential ACECs Not Proposed for Designation

BLM Manual 1613 requires that, 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). Because BLM's proposed management would allow development or ORV activities within the potential ACEC, thereby adversely impacting the R&I values, and because BLM failed to *prioritize* the designation of the Potential ACECs and failed to provide a sufficient rationale supporting its decision, BLM must designate the following potential or existing ACECs.

1. Bridger Jack Existing and Potential ACEC

The PRMP proposes revoking the ACEC status of Bridger Jack Mesa, and the BLM is in error. The PRMP favorably acknowledges the multiple and continuing R&I values of the Bridger Jack Mesa, chiefly the value of the relict vegetation. PRMP at Appendix H-7. The Bridger Jack Mesa Potential ACEC is additionally found to possess relevant scenic, cultural and wildlife values. PRMP at Appendix H-7. As discussed in Section C. above, the fact that the potential ACEC overlies a WSA does not diminish the need for ACEC designation. *Cf.* PRMP at 4-484 Table 4.133. As explained in Section C. above, because different management prescriptions serve different purposes, the corresponding management designations are limited to protect those values relevant to the particular designations (e.g., retention of wilderness suitability vs. relevant and important values for ACECs).

Furthermore, BLM admits that the scenic R&I values of the Bridger Jack Mesa could be impacted by oil and gas development and mineral exploration in the event of WSA release. PRMP at Appendix H-58. The current special management attention expressed in Alternative A of the PRMP is more protective of the R&I values than the proposed plan because by "curtailing almost all surface disturbing activities this alternative would offer direct long-term protection to the R&I relict vegetation." PRMP at 4-489. Additionally, the interdisciplinary team recommended in 2005 that retention of the Bridger Jack Mesa ACEC be management common to all alternatives – the continuance of this ACEC was considered to be worthwhile and removing the protection was not even deemed worthy of additional consideration. PRMP at Appendix H-8.

Despite the requirements of the ACEC Manual, BLM has not provided a sufficient explanation as to how the proposed management for this potential ACEC will protect the R&I values and thus cannot justify its decision not to propose designation of the Bridger Jack Mesa ACEC. BLM Manual § 1613.21 to .22. Because BLM's proposed management would allow development within the potential ACEC, thereby adversely impacting the R&I values, and because BLM failed to *prioritize* the designation of the Bridger Jack Mesa Potential ACEC and failed to provide a sufficient rationale supporting its decision, BLM's proposed decision to de-designate the Bridger Jack Mesa ACEC must be overturned and corrected.

2. Butler Wash Existing and Potential ACEC

The PRMP proposes revoking the ACEC status of Butler Wash, and the BLM is in error. The PRMP favorably acknowledges the multiple and continuing R&I values of the Butler Wash, which are chiefly scenic. Butler Wash ACEC is a continuation of the formations which comprise the world renowned Needles District of Canyonlands National Park. These scenic values are "interrelated" and "not separated" from those of the park. PRMP at Appendix H-9. The park boundary is not determinative with regard to the landscape. Damage to the scenic values in the Butler Wash ACEC would damage the integrity of the park landscape as well. BLM asserts that the fact that all of the ACEC is contained in a WSA will protect adequately the R&I values. PRMP at 4-491. However, as discussed in Section C. above, the fact that the potential ACEC overlies a WSA does not diminish the need for ACEC designation. *Cf.* PRMP at 4-484 Table 4.133.

In addition, special management attention can further protect the R&I values. Alternatives B and E would prioritize acquisition of state inholdings, which BLM admits would be a "major beneficial impact to ACEC values." PRMP at 4-491. Alternative A, the current management with ACEC designation, would specifically "limit recreation use if scenic values are being damaged." PRMP at 2-52. Either of these two special management provisions would enhance protection of the area's values. Relying on the management of the WSA under the IMP only ignores the special management attention focus that ACEC designation provides with regard to protection of specific values.

Despite the requirements of the ACEC Manual, BLM has not provided a sufficient explanation as to how the proposed management for this potential ACEC will protect the R&I values and thus cannot justify its decision not to propose designation of the Butler Wash ACEC. BLM Manual § 1613.21 to .22. Because BLM's proposed management would allow development within the potential ACEC, thereby adversely impacting the R&I values, and because BLM failed to *prioritize* the designation of the Butler Wash Potential ACEC and failed to provide a sufficient rationale supporting its decision, BLM's decision to de-designate the Butler Wash ACEC must be overturned and corrected.

3. Cedar Mesa Existing and Potential ACEC

The PRMP proposes revoking the ACEC status of Cedar Mesa, retaining only the Valley of the Gods as a new standalone ACEC to protect scenic values, and the BLM is in error

to dismiss ACEC protection for the remainder of lands contained in the current Cedar Mesa ACEC. The PRMP favorably acknowledges the multiple and continuing R&I values of the Cedar Mesa, including but not limited to internationally prized cultural resources and designated critical habitat for the Mexican spotted owl. As discussed in Section C. above, the fact that the potential ACEC overlies significant WSA acreage does not diminish the need for ACEC designation. *Cf.* PRMP at 4-484 Table 4.133. The ID Team recommended in its 2005 report that this ACEC remain designated as management common to all alternatives. PRMP at Appendix H-15.

Special management attention is required to focus on protection of cultural values. The outstanding nature of these values is precisely what Congress intended in FLPMA when it charged the BLM to give *priority* to ACEC designation to give focus and intent to the management of those resources. Instead, the BLM incredibly proposes that "no special management prescription would be implemented to protect the R&I cultural and scenic values." PRMP at 4-494. The BLM proposes that managing for recreation under the prescriptions of a SRMA, coupled with certain acres being managed to IMP standard, will adequately protect the R&I values. PRMP at 2-53. The SRMA management "focus would be on providing outstanding recreation opportunities while protecting natural and cultural resource values." PRMP at 4-494. This management strategy is exactly backwards, because the protection of values is now explicitly subordinate to the primary management thrust of providing recreation opportunities. FLPMA clearly directs BLM to give priority to designate and protection of ACECs; in de-designating the Cedar Mesa ACEC, BLM gets it utterly wrong.

Management of WSAs in accordance with the IMP and the management prescriptions of an SRMA would be of little comfort to the R&I values unfortunate enough to be located within Arch Canyon – which is neither in a WSA nor included in the SRMA proposed for the rest of Cedar Mesa. The BLM essentially prioritizes *mismanagement* for this canyon – leaving parts of the area open to standard oil & gas leasing terms, VRM III classification and designation of a motorized route that destroys the riparian zone, threatens cultural resources and negatively impacts designated critical habitat for the Mexican spotted owl. The ID Team notes that Arch Canyon specifically contains R&I cultural and wildlife values. PRMP at Appendix H-12. The ID Team recommended that Arch Canyon be "either closed to OHV or limited to designated with seasonal restrictions" and that the canyon be designated at least a Special Emphasis Area – presumably because special management attention is required to protect the values. PRMP at Appendix H-15.

Despite the requirements of the ACEC Manual, BLM has not provided a sufficient explanation as to how the proposed management for this potential ACEC will protect the R&I values and thus cannot justify its decision not to propose designation of the Cedar Mesa ACEC. BLM Manual § 1613.21 to .22. Because BLM's proposed management would allow development within the potential ACEC, thereby adversely impacting the R&I values, and because BLM failed to *prioritize* the designation of the Cedar Mesa Potential ACEC and failed to provide a sufficient rationale supporting its decision,

BLM's decision to de-designate the Cedar Mesa ACEC must be overturned and corrected.

4. Dark Canyon Existing and Proposed ACEC

The PRMP proposes revoking the ACEC status of Dark Canyon, and the BLM is in error. The PRMP favorably acknowledges the multiple and continuing R&I values of the Dark Canyon, including but not limited to outstanding scenery and wildlife, specifically designated critical habitat for the Mexican spotted owl. The ID Team recommended in its 2005 report that this ACEC remain designated as management common to all alternatives. PRMP at Appendix H-18.

BLM asserts that the fact that all of the ACEC is contained in a WSA will protect adequately the R&I values. PRMP at 4-496. As discussed in Section C. above, the fact that the potential ACEC overlies a WSA does not diminish the need for ACEC designation. *Cf.* PRMP at 4-484 Table 4.133. Alternative A, the current management with ACEC designation, would specifically "limit recreation use if scenic values are being damaged." PRMP at 4-495. There are management actions other than those afforded by WSA IMP management and SRMA provisions that would intentionally and specifically protect the R&I values.

Despite the requirements of the ACEC Manual, BLM has not provided a sufficient explanation as to how the proposed management for this potential ACEC will protect the R&I values and thus cannot justify its decision not to propose designation of the Dark Canyon ACEC. BLM Manual § 1613.21 to .22. Because BLM's proposed management would allow development within the potential ACEC, thereby adversely impacting the R&I values, and because BLM failed to *prioritize* the designation of the Dark Canyon Potential ACEC and failed to provide a sufficient rationale supporting its decision, BLM's decision to de-designate the Dark Canyon ACEC must be overturned and corrected.

5. Hovenweep Existing ACEC

The ID Team determined that adding 620 acres acquired by the BLM would enhance protection of the R&I values and bring management consistency to lands adjoining the National Monument better protecting the resource values. PRMP at Appendix H-21. This expansion is found in several alternatives but not in the proposed plan and there is no rationale for this decision.

Despite the requirements of the ACEC Manual, BLM has not provided a sufficient explanation as to how the proposed management for this potential ACEC will protect the R&I values found warranting an expansion of the proposed ACEC and thus cannot justify its decision not to expand the Hovenweep ACEC. BLM Manual § 1613.21 to .22. Because BLM's proposed management would allow development within the potential ACEC expansion acres, thereby adversely impacting the R&I values, and because BLM failed to *prioritize* the designation of additional acres found to possess R&I values and

failed to provide a sufficient rationale supporting its decision, BLM's decision not to designate the expansion of Hovenweep ACEC must be overturned.

6. Indian Creek Existing ACEC

The BLM proposes to reduce the acreage of this existing ACEC to exclude the WSA acres. This is unnecessary and will create a confusing pattern of management for this sensitive and scenic area within the Canyonlands National Park viewshed. The BLM does not provide sufficient rationale for why the WSA acres should be removed from the ACEC, even while acknowledging that R&I values are present in the WSA portion.

BLM asserts that because portions of the existing ACEC are contained in the Indian Creek WSA, they will adequately protect the R&I values. PRMP at 4-499. As discussed in Section C. above, the fact that the potential ACEC overlies a WSA does not diminish the need for ACEC designation. *Cf.* PRMP at 4-484 Table 4.133. SUWA strongly disputes the notion that IMP management of WSA is the equivalent of the intention and focus of ACEC management for specific values. Further, SUWA disputes whether there any actual harms that could come from the layering of ACEC designation upon WSA.

Despite the requirements of the ACEC Manual, BLM has not provided a sufficient explanation as to how the proposed management for this potential ACEC will protect the R&I values and thus cannot justify its decision reduce the acreage of the Indian Creek ACEC. BLM Manual § 1613.21 to .22. In the event of WSA release there will be no additional protection for the R&I values contained in the WSA portion, thereby adversely impacting the R&I values, and because BLM failed to *prioritize* the designation of the Indian Creek Potential ACEC and failed to provide a sufficient rationale supporting its decision, BLM's decision to de-designate the WSA portion of the Indian Creek ACEC must be overturned.

7. Lockhart Basin Potential ACEC

This potential ACEC was found to include relevant and important scenic and cultural values. The PRMP proposes not designating this ACEC – affording this dramatic landscape within the Canyonlands National Park viewshed no special management attention. In fact, the BLM proposes a management regime that will undermine these R&I values: oil and gas open to standard or minor constraints terms, VRM classes as low as III, and as-yet unexplained revocation of the finding of wilderness characteristics within Lockhart Basin proper. With the potential for oil and gas development and the interrelated National Park viewshed, the BLM must contemplate special management attentions to protect these values. The ACEC is the appropriate vehicle for the warranted special management.

Despite the requirements of the ACEC Manual, BLM has not provided a sufficient explanation as to how the proposed management for this potential ACEC will protect the R&I values and thus cannot justify its decision not to propose designation of the Lockhart Basin ACEC. BLM Manual § 1613.21 to .22. Because BLM's proposed management

would allow development within the potential ACEC, thereby adversely impacting the R&I values, and because BLM failed to *prioritize* the designation of the Lockhart Basin Potential ACEC and failed to provide a sufficient rationale supporting its decision, BLM's decision not to designate the Lockhart Basin ACEC must be overturned.

8. Scenic Highway Existing ACEC

This existing ACEC was found to meet R&I values requirements in the 1991 San Juan RMP and there is not explanation of what has changed. Nevertheless, the BLM ID Team claims that the scenic qualities are now not more than locally significant and therefore not important. PRMP at Appendix H-28. These claims are subjective and specious. Highway 95 is a National Scenic Byway, a title that gives national significance to the scenery in this corridor. ACECs can protect scenic highway corridors. One relevant example would be the existing and proposed continued designation of a corridor ACEC on Interstate 70 through the San Rafael Swell in the Price Field Office. *See* Price PRMP. The ID Team made an incorrect decision in the process of ACEC review by not finding at least, at minimum, the Highway 95 corridor to meet importance requirements.

Despite the requirements of the ACEC Manual, BLM has not provided a sufficient explanation as to how the proposed management for this existing ACEC will protect the R&I values and thus cannot justify its decision not to propose designation of the Scenic Highway ACEC in either the proposed plan or any of the alternatives. BLM Manual § 1613.21 to .22. Because BLM's proposed management would allow development within the potential ACEC, thereby adversely impacting the R&I values, and because BLM failed to *prioritize* the designation of the Scenic Highway ACEC and failed to provide a sufficient rationale supporting its decision, BLM's decision not to consider any alternatives carrying forward this ACEC or designate the Scenic Highway ACEC must be overturned.

9. Shay Mountain Existing ACEC

This ACEC is proposed to have the acreage reduced to exclude riparian areas that the ID Team claimed do not meet R&I values. However, Highway 211 is a National Scenic Byway, which provides a significant rationale for retaining the importance determination for much of this ACEC along the highway. The parts of this ACEC in Shay Canyon south of Newspaper Rock are an important riparian area because of the damage from grazing afflicting the other perennial streams in this area (e.g. Indian Creek and Lavender Canyon).

Despite the requirements of the ACEC Manual, BLM has not provided a sufficient explanation as to how the proposed management for this existing ACEC will protect the R&I values and thus cannot justify its decision not to continue full acreage designation of the Shay Mountain ACEC in either the proposed plan or any of the alternatives. BLM Manual § 1613.21 to .22. Because BLM's proposed management would allow development within the potential ACEC, thereby adversely impacting the R&I values, and because BLM failed to *prioritize* the designation of the Shay Mountain ACEC and

failed to provide a sufficient rationale supporting its decision, BLM's decision to not designate fully the R&I values within the Shay Mountain ACEC must be overturned.

G. BLM's Decision-Making Process is Opaque and Violates NEPA's and the BLM Manual's Public Disclosure Requirement

NEPA and the BLM ACEC Manual require that BLM fully disclose, summarize, and circulate for public review and comment (i.e. *before* the ROD is issued), all data and information that it used to determine eligibility and suitability. BLM Manual § 1613.31 to .33; 42 U.S.C. § 4321 *et seq.*; *Robertson v. Methow Valley Citizens Council*, 490 U.S. at 349; *Inland Empire Public Lands Council v. U.S. Forest Service*, 88 F.3d 754, 757 (9th Cir. 1996).

The BLM ACEC Manual requires that the rationale for ACEC designations must be discussed. BLM Manual § 1613.33(E). However, BLM's reasoning for determining whether to propose a potential ACEC is obscured. The PRMP does not explain what weight BLM gave to the different R&I values or why it determined to propose certain potential ACECs but not others, even when potential units possessed comparable R&I values. *Compare, e.g.*, Butler Wash Potential ACEC *with* Indian Creek Proposed ACEC. To present high-quality information, as required by NEPA and the BLM Manual, the PRMP should clearly indicate the weight given to the different factors and values in the ACEC determination process, and should likewise explain and the justifications for recommending certain areas as proposed ACECs, but not others. BLM Manual § 1613.31 to .33; 40 C.F.R. § 1500.1(b).

IV. Wilderness Study Areas and Lands with Wilderness Characteristics

A. Wilderness Study Areas

BLM is obligated to manage the wilderness study areas (WSAs) in accordance with the Interim Management Policy (IMP) for Lands Under Wilderness Review (BLM Manual H-8550-1), which requires that WSAs be managed to protect their wilderness values. The IMP requires management of the WSAs in the Price Field Office in accordance with the non-impairment standard, such that no activities are allowed that may adversely affect the WSAs' potential for designation as wilderness. As stated in the IMP, the "overriding consideration" for management is that:

> . . . preservation of wilderness values within a WSA is paramount and should be the primary consideration when evaluating any proposed action or use that may conflict with or be adverse to those wilderness values. (emphasis in original)

H-8550-1.I.B.

The IMP also reiterates FLPMA's mandate for public lands, including WSAs, that they must be managed to prevent unnecessary or undue degradation. H-8550-1, Introduction at 2. In order for an activity to meet FLPMA's non-impairment mandate, and thus be permitted to proceed in a WSA, two criteria must be met. First, the activity must be temporary and not cause surface disturbance. H-8550-1.I.B.2.a. ("Surface disturbance is any new disruption of the soil or vegetation requiring reclamation within a WSA. Uses . . . necessitating reclamation (i.e., recontouring of the topography, replacement of topsoil, and/or restoration of native plant cover) are definitely surface disturbing and must be denied."). Second, after the activity ends, "the wilderness values must not have been degraded so far as to significantly constrain the Congress's prerogative regarding the area's suitability for preservation as wilderness." H-8550-1.I.B.2.b. Thus, the non-impairment test is not an "either/or" proposition and a proposed activity must meet *both* criteria to be permitted to take place. H-8550-1.I.B.2.

Chapter I, section B (6) of the IMP directs that proposed actions may be implemented only if they enhance wilderness values, providing:

> If the proposed action would result in a positive or beneficial change in the state or condition of the wilderness value(s) as described, assessed, or calculated on the date of approval of the intensive inventory, then the wilderness value would be enhanced by the proposed action. Conversely, if the proposed action would result in a negative or detrimental change in the state or condition of the wilderness value(s) then that wilderness value would be degraded or impacted and the proposed action must not be allowed.

Additional directives regarding management of ORVs in WSAs can be found in BLM's regulations, which require BLM to ensure that areas and trails for ORV use are located "to minimize damage to soil, watershed, vegetation, air, or other resources of the public

lands, and *to prevent impairment of wilderness suitability*." 43 C.F.R. § 8342.1(a) (emphasis added). BLM is also obligated to close routes to ORV use if ORVs are causing or will cause considerable adverse effects on wilderness suitability. 43 C.F.R. § 8341.2.

1. PRMP Must Include an Alternative Designating new Wilderness Study Areas

As discussed in SUWA's comments on the Monticello DRMP (SUWA's DRMP comments at 20, 25-26), BLM violated FLPMA and NEPA when it failed to consider and fully analyze an alternative that would designate new wilderness study areas pursuant to the agency's broad authority under 43 U.S.C. § 1712. This is a reasonable alternative that was repeatedly proposed in public comments and BLM was required to thoroughly evaluate it in the Price PRMP. The agency's current policy regarding creation of new WSAs does not relieve BLM from the responsibility of considering this alternative under NEPA, despite the agency's claims to the contrary. PRMP Response to Comments at 354, sorted by Resource ("The BLM authority to establish new WSAs pursuant to Section 603 of FLPMA expired no later than October 21, 1993" and designating new WSAs is "outside the scope of the DRMP/EIS.")

2. The PRMP's Designation of "Ways" in WSAs Does Not Comply with the IMP and the ORV Regulations

Given the legal and policy framework set out above, BLM's decision to permit motorized use in WSAs on 19 miles of "ways" and possibly on trails that were not identified as "ways" in the BLM's wilderness inventory is arbitrary.[5] Due to these 19 miles of designated ORV routes, Grand Gulch, Road Canyon and Fish and Owl WSAs are at risk of impairment from damages caused by unlimited vehicle use of these ways.

Designating ways in WSAs as open to ORV use must be compelling in light of the mandates of both the IMP and the ORV regulations to prevent impairment and to minimize damage to wilderness values from motorized use. *See* Monticello PRMP Appendix N, at 24 (designating "ways" as open to motor vehicle use *should be avoided*, and a "very reasonable and clear justification must be made for "ways" that BLM proposes to designate in WSAs." (emphasis added)). The burden of proof is on BLM to show how these designations fulfill the IMP and ORV regulations. However, the PRMP fails to state a purpose and need, let alone a *compelling* purpose and need, for designating these 19 miles of ways (or purported ways) as open to motor vehicle use. In addition, there is no discussion or analysis in the PRMP that indicates the MFO tried to "avoid" designating these 19 miles of ways.

[5] The PRMP fails to disclose the number of miles of way proposed to be designated open to motorized vehicles. SUWA calculated 19.1 miles of way, based on BLM's GIS data. *See* Exhibit K, and Ex. C and D maps of GG and F&O and Road WSA routes. NEPA requires BLM to provide correct and accurate information in the PRMP, and the Monticello PRMP fails to do so with respect to miles of route in WSAs and non-WSA lands with wilderness character. 40 C.F.R. §§ 1500.1(b), 1500.2(d), and 1502.8.

The PRMP presents no baseline documentation of the current appearance of these ways, or evidence that current motorized use on these ways is not causing impairment to the WSAs.[6] In addition, the PRMP fails to analyze the potential adverse effects, including cumulative effects, to the wilderness resources of naturalness, and opportunities for solitude and primitive recreation from its proposal to designate 19 miles of ORV routes in the Grand Gulch, Road, and Fish and Owl Canyons WSAs, and fails to explain how designating ways for ORV use "minimizes" impacts to wilderness suitability, as required by the ORV regulations. *See* PRMP at 4-519 (BLM's general statement that limiting ORV use to designated routes would "protect the natural character of the landscape of the WSAs" fails to comply with NEPA. 40 C.F.R. §§ 1508.7, 1508.8)

BLM's proposal to designate 19 miles of ways in the Grand Gulch, Road Canyon, and Fish and Owl WSAs will certainly encourage motorized use, and such use will eventually denude the trails of all vegetation. As vegetation is worn away and trails become linear swaths of sand and dirt, these trails will become a noticeable impact to the casual visitor and will affect the naturalness of the areas – which could deprive these WSAs of future wilderness designation. *See Southern Utah Wilderness Alliance*, 164 IBLA 33 (2004) (even ongoing use of existing motorized recreational routes can lead to more damage to other resources, especially as interest in an area increases).

BLM's GIS data suggests that extensions of cherry-stemmed routes that may or may not be identified as ways in BLM's official wilderness inventory data will be designated as open routes. *See* Exhibits C and D. Designation of any proposed routes that were not identified as a *way* in the initial wilderness inventory would violate the IMP: *"No vehicle designations in a WSA may allow vehicles to travel off existing ways and trails,"* (H-8550-1.III.H(11) (emphasis in original)), and motor vehicles "may only be allowed on existing ways." *Id.* at I.B.11. Further, the IMP prohibits surface disturbing activities, and states, unambiguously, that "*[c]ross-country vehicle use off boundary road and existing ways is surface disturbing* because the tracks created by the vehicle leave depressions or ruts, compact the soils, and trample or compress vegetation." *Id.* at I.B.3 (emphasis added).

To the extent that BLM fully knows the location of inventoried ways in WSAs, SUWA disputes that BLM will follow the proposed action in the PRMP to close or limit use of these routes in the event that BLM determines impairment is being caused by motor vehicle use through the agency's monitoring and signing efforts so that "use of these was does not impair wilderness suitability . . ." PRMP at 2-71. SUWA's concern is based, in part, on the fact that the PRMP incorrectly states that all WSAs would be closed to ORV use, when in fact 19 miles of ways will be designated as open to ORV use, it fails to provide baseline information as to the current condition of the proposed routes, it fails to assure the public and the decision maker that all proposed designated routes in WSAs are, in fact, ways that were identified in the BLM's initial wilderness inventory, and it fails to include an analysis of impacts to the WSAs from this decision. (*See* PRMP at 2-72 to -72;

[6] The PRMP merely states, "[t]here are no known impairments in the WSAs in the Monticello FO." PRMP at 5-152. However, the PRMP provides no supporting monitoring reports or documentation for any of the WSAs and/or ISAs in which these ways would be designated.

see also Exhibits C, D, and K). *See also* 40 C.F.R. § 1502.15 (requiring agencies to "describe the environment of the areas to be affected or created by the alternatives under consideration.").

The PRMP fails to include a monitoring schedule for the "ways" that will be designated as open routes in the WSAs and clear standards or commitments for closure. A detailed monitoring approach is also required under the BLM's planning regulations:

> The proposed plan shall establish intervals and standards, as appropriate, for monitoring and evaluation of the plan. Such *intervals and standards shall be based on the sensitivity of the resource* to the decisions involved and shall provide for evaluation to determine whether mitigation measures are satisfactory, whether there has been significant change in the related plans of other Federal agencies, State or local governments, or Indian tribes, or whether there is new data of significance to the plan. The Field Manager shall be responsible for monitoring and evaluating the plan in accordance with the established intervals and standards and at other times as appropriate to determine whether there is sufficient cause to warrant amendment or revision of the plan.

43 C.F.R. § 1610.4-9 (emphasis added).

In order to fulfill the mandates of the IMP and FLPMA, BLM should select the alternative that causes the least harm and provides the most benefits to the wilderness characteristics in the WSAs – the PRMP does not do this. Any ways designated as open in WSAs must meet the criteria of the IMP and BLM's ORV regulations, showing that they minimize impacts and do not impair wilderness suitability. BLM must also vigilantly monitor the conditions of these routes and their impact on wilderness suitability, and ensure that they are closed if use of the routes impairs wilderness values.

BLM Instruction Memoranda 2000-096 directs WSAs be managed as Visual Resource Management (VRM) Class I. The object of VRM Class I is "to preserve the existing character of the landscape" and management is so that the "level of change to the characteristic landscape should be very low and must not attract attention" *See*, BLM official Visual Resource Management information website at: http://www.blm.gov/nstc/VRM/vrmsys.html (last visited Sept. 28, 2008).

Although SUWA supports BLM's proposal to manage the WSAs as VRM Class I (*See* PRMP at 4-519), other management decisions made in the PRMP regarding WSAs do not reflect the protection that should be afforded to VRM Class I areas. Specifically, the designation of 19 miles of ways as open routes for motorized vehicles will encourage motorized use of these ways, decreasing vegetation in these ways, and thereby increasing the visual impact of these ways in the WSA.

The PRMP states that "[u]navoidable adverse impacts would occur from surface disturbance resulting from . . . OHV activity . . ." PRMP at 4-520. Thus, by BLM's own

admission, not designating 19 miles of ways (or alleged ways) in the Grand Gulch, Road Canyon and Fish and Owl Canyons WSAs would more fully comply with the stated goals of the IMP, BLM's VRM requirements to make wilderness values paramount to other uses, and the ORV regulation's mandate to minimize impacts to resources, including visual resources.

3. BLM Failed to Take a Hard Look at Impacts to WSAs from Route Designations

The IMP identifies the following wilderness and related values that BLM must analyze in evaluating the impact to wilderness values under the nonimpairment standard when designating ways as official routes:

- How the proposed routes will (or will not) meet the conditions of the being substantially unnoticeable.
- How the proposed routes will reduce or improve the overall wilderness quality of the WSA.
- Soil stability, including erosion impacts.
- Condition or trend of the vegetation including plant species composition and vegetal cover.
- Natural biological diversity including numbers and species composition of microbes, invertebrates, fish, reptiles, amphibians, birds, and mammals.
- Key visual resource characteristics (form, line, color and texture) of the landscape.
- Naturalness.
- Opportunities for solitude.
- Opportunities for primitive and unconfined types of recreation, or quality of existing opportunities for primitive and unconfined types of recreation.
- Description of special features.
- Quality of surface water including dissolved solids, nutrient levels such as nitrates, and microbial concentrations.
- Threatened or endangered plant and animal species.

See H-8550-1 II.B.6.c.

The PRMP fails to disclose baseline information as to the current condition of the ways as well as the condition of the ways at the time of the wilderness inventory. BLM's statement that limiting ORV use to designated routes would "protect the natural character of the landscape of the WSAs" (PRMP at 4-519) falls far short of the hard look required by NEPA. It is insufficient, both under the IMP and under NEPA, for BLM not to analyze all direct, indirect, and cumulative impacts that are likely to occur from this decision. 40 C.F.R. §§ 1508.7, 1508.8. BLM must take the requisite hard look at the impacts of its proposal to designate ways and allow ORV use in WSAs, and revise the PRMP to reflect this analysis.

4. The PRMP must designate WSAs closed to ORV use to comply with the IMP.

Closure and restoration of all ways in WSAs is most consistent with the IMP and with protection of the other natural and cultural resources in the Monticello Field Office. Even though PRMP states that the WSAs will be closed to ORV use, the PRMP simultaneously opens and designates several ways (or purported ways) that were previously closed to motorized use, including ways in Road Canyon WSA and Grand Gulch WSA.[7]

5. WSAs, if Released, Should be Managed to Preserve Their Wilderness Character and Should Not be Excluded from other Management Designations

In designating WSAs, the BLM has recognized that these areas have wilderness characteristics. If Congress releases WSAs from management, then such areas can and should be managed to protect these wilderness characteristics. The PRMP provides:

> Should any WSA, in whole or in part, be released by Congress from wilderness consideration, proposals in the released area would be examined on a case-by-case basis for consistency with the goals and objective of the RMP decisions. Because the management direction of the released lands would continue in accordance with the goals and objectives established in the RMP, there is no separate analysis required in the LUP to address resource impacts if any WSAs are released.

PRMP at 2-71.

Since released WSAs would retain their wilderness characteristics (naturalness, outstanding opportunities for solitude and/or primitive recreation), the PRMP must recognize these values as a resource under 43 U.S.C. § 1711(a) and state clearly that released lands would be managed to protect their wilderness characteristics. *See e.g.* Vernal PRMP, Alternative E, at 2-73. As currently drafted, the Monticello PRMP fails to protect the wilderness characteristics of these areas.

"[W]ilderness characteristics are a value which, under the FLPMA, the Bureau has the continuing authority to manage, even after it has fulfilled its 43 U.S.C. § 1782 duties to recommend some lands with wilderness characteristics for permanent congressional protection." *Oregon Natural Desert Ass'n v. Bureau of Land Management*, 531 F.3d 1114, 1142 (9th Cir. 2008). Therefore, BLM must consider WSAs (in whole or in part) for designation as ACECs, primitive SRMAs, Natural Areas, and Wild and Scenic River segments, in addition to stating that if released, WSAs would be managed to preserve the wilderness characteristics of the areas. As part of these designations, BLM must provide

[7] The PRMP fails to disclose that ways previously closed in WSAs are being designated as open to motorized use. One must review, with a very critical eye, PRMP Maps 58, 63, and 64, as well utilize and review BLM's GIS data to obtain this information. The PRMP violates NEPA's requirement that accurate information be disclosed to permit public scrutiny, and that the PRMP be written in plain language to allow the decision-maker and the public to make informed assessments of the impacts of the proposed decisions. 40. C.F.R. §§ 1500.1(b) and 1502.8.

appropriate management prescriptions to protect wilderness characteristics, including closure to ORV use and oil and gas development.

BLM has acknowledged that WSAs can have additional "layers" of management prescriptions to protect the wilderness and other resource values inherent in these areas:

> "Layering" is [a] planning [tool]. Under FLPMA's multiple use mandate, the BLM manages many different resource values and uses on public lands. Through land use planning BLM sets goals and objectives for each of those values and uses, and prescribes actions to accomplish those objectives. Under the multiple use concept, the BLM doesn't necessarily manage every value and use on every acre, but routinely manages many different values and uses on the same areas of public lands. The process of applying many individual program goals, objectives, and actions to the same area of public lands may be perceived as "layering." BLM strives to ensure that the goals and objectives of each program (representing resource values and uses) are consistent and compatible for a particular land area. Inconsistent goals and objectives can lead to resource conflicts, failure to achieve the desired outcomes of a land use plan, and litigation. Whether or not a particular form of management is restrictive depends on a personal interest or desire to see that public lands are managed in a particular manner. All uses and values cannot be provided on every acre. That is why land use plans are developed through a public and interdisciplinary process . . . . *Layering of program decisions is not optional for BLM, but is required by the FLMPA and National BLM planning and program specific regulations.*

PRMP Response to Comments at #7-48, sorted by Resource (emphasis added).

The Monticello PRMP should take the logical next step, as was done in the Vernal PRMP:

> For example, the BLM has separate policies and guidelines as well as criteria for establishing ACEC as when the WSAs were established. *These differing criteria make it possible that the same lands will qualify for both an ACEC and a WSA but for different reasons. The BLM is required to consider these different policies.*

Vernal PRMP Response to Comments at 553-555, sorted by Resource (emphasis added).

Thus, in order to ensure ongoing protection of the wilderness characteristics in the WSAs, the PRMP should provide for the WSAs to be managed to protect wilderness characteristics in the event that all or part of any WSA is released by Congress from further study, and should include layering of ACEC and other protective management designation on lands included in WSAs. The Monticello PRMP includes zero acres of WSAs in its proposed ACECs. *See* PMRP at 4-484.

B. Wilderness Character Areas

Pursuant to FLPMA, "The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values." 43 U.S.C. §1711(a). Wilderness character is a resource for which BLM must keep a current inventory. As the U.S. Court of Appeals for the Ninth Circuit recently held: "wilderness characteristics are among the 'resource and other values' of the public lands to be inventoried under § 1711. BLM's land use plans, which provide for the management of these resources and values, are, again, to 'rely, to the extent it is available, on the inventory of the public lands, their resources, and other values.' 43 U.S.C. § 1712(c)(4)." *Oregon Natural Desert Ass'n v. Bureau of Land Management*, 531 F.3d at 1119. Therefore, BLM is required to consider "whether, and to what extent, wilderness values are now present in the planning area outside of existing WSAs and, if so, how the Plan should treat land with such values." *Id*. at 1143.

BLM has identified "wilderness characteristics" to include naturalness and providing opportunities for solitude or primitive recreation. *See* Instruction Memoranda 2003-274, 2003-275, Change 1. These values are to be *identified and protected* in the land use planning process. *See* BLM Land Use Planning Handbook (H-1601-1, 2005); *Oregon Natural Desert Ass'n v. Bureau of Land Management*, *supra*. Further, BLM's national guidance provides for management emphasizes "the protection of *some or all* of the wilderness characteristics as a priority" over other multiple uses. IM 2003-275, Change 1 (emphasis added). This guidance does not limit its application to lands suitable for designation of WSAs; for instance, the guidance does not include a requirement for the lands at issue to generally comprise 5,000-acre parcels or a requirement that the lands have *all* of the potential wilderness characteristics in order to merit protection.

As SUWA explained in its comments on the Monticello DRMP, BLM should recognize the wide range of values associated with lands with wilderness character, including scenic values, recreation, wildlife habitat, riparian areas, and cultural resources, and manage these lands to protect and maintain these resources. *See* SUWA DRMP Comments at 23-30; *see also* 43 U.S.C. § 1711(a), § 1702(c), and § 1712.

1. PRMP Ignores Significant New Resource Information Provided by SUWA

BLM's failure to consider and/or the agency's rejection of substantive new information regarding wilderness character provided by SUWA during the planning process with supporting narrative, maps, photographs, and other information is arbitrary and capricious.

In *Oregon Natural Desert Association v. Rasmussen*, CV 05-1616-AS, Findings and Recommendations (D. Or. April 20, 2006); Order (D.Or. Dec. 12, 2006), the court found that BLM's failure to re-inventory lands for wilderness values and to consider the potential impact of decisions regarding management of a grazing allotment violated its

obligations under NEPA and FLPMA, then enjoined any implementation of the decision until the agency re-inventoried the lands at issue and prepared an environmental document taking into account the impacts of its decisions on wilderness values. In *Oregon Natural Desert Association v. Rasumussen,* the district court found that BLM had violated NEPA by failing to consider significant new information on wilderness values and potential impacts on wilderness values, and had also failed to meet its obligations under FLPMA by failing to engage in a continuing inventory of wilderness values. It concluded:

> The court finds BLM did not meet its obligation under NEPA simply by reviewing and critiquing [a local environmental group's] work product. *It was obligated under NEPA to consider whether there were changes in or additions to the wilderness values* within the East-West Gulch, *and whether the proposed action in that area might negatively impact those wilderness values*, if they exist. The court finds BLM did not meet that obligation by relying on the one-time inventory review conducted in 1992. *Such reliance is not consistent with its statutory obligation to engage in a continuing inventory so as to be current on changing conditions and wilderness values*. 43 U.S.C. § 1711(a).
>
> BLM's issuance of the East-West Gulch Projects [environmental analysis] and the accompanying Finding of No Substantial Impact (FONSI) in the absence of current information on wilderness values was arbitrary and capricious, and, therefore, was in violation of NEPA and the [Administrative Procedure Act].

Id. (emphasis added).

Prior to the release of the DRMP, SUWA provided to the MFO detailed narratives, maps, and photographic documentation that demonstrated that the full extent of lands with wilderness characteristics in the MFO had not been identified as required by 43 U.S.C. §1711(a) for the following areas/units: Arch Canyon, Copper Pont, Lockhart Basin, Hatch Point, Harts Point, and Shay Mountain wilderness character units. *See* SUWA's individual Wilderness Character submissions on file at the Monticello FO.

As part of the DRMP comments, SUWA provided the MFO with additional new information on wilderness characteristics for the following area/units: Abajo Mountains, Allen Canyon, Arch Canyon, Cheesebox Canyon, Comb Ridge, Copper Point, Dripping Spring Basin, Fish and Owl Creeks, Gravel and Long Canyons, Hammond Canyon, Harts Point, Lime Creek, Lockhart Basin, Red Rock Plateau, San Juan River, Shay Mountain, Sheep Canyon, The Needle, The Tabernacle, Tin Cup Mesa, Upper Red Canyon, and Valley of the Gods wilderness character units. *See* SUWA Monticello DRMP Comments at 23-56 and Exhibits D-L.

MFO's Wilderness Inventory Revision Document and its subsequent 2007 Documentation of Wilderness Character Reviews (*See* Administrative Record located at

the MFO) addressed and corrected some, but not all, of the previous shortcomings of the MFO's wilderness characteristics inventory and identification. As explained in SUWA's comments on the Monticello DRMP, BLM's rejection of contiguous wilderness character areas separated merely by (1) natural features such as rims, cliffs, and washes; (2) BLM-created "lines" that run directly across the natural landscape; or (3) section lines, including quarter- and half-section lines is arbitrary and capricious. As discussed in detail below, SUWA's new information demonstrates that wilderness values extend beyond these arbitrary boundaries to human-caused impacts, and that due to the arbitrary boundaries used by BLM, the agency failed to identify the full extent of lands with wilderness characteristics.

Throughout the PRMP process, SUWA has submitted significant new wilderness resource information documenting lands with wilderness characteristics that remain unidentified by the MFO. As discussed below, the Monticello PRMP has improperly and illegally failed to consider this resource information resulting in proposed planning decisions that are not based on the most current information for lands with wilderness characteristics, and fails to consider impacts to all of the lands that retain wilderness character. As such, the PRMP fails to comply with the current inventory requirements of FLPMA and the hard look mandates of NEPA.

a. PRMP Failed to Consider Significant New Resource Information Regarding Boundaries

SUWA's detailed wilderness character information clearly demonstrates that the Monticello FO utilized *natural features and/or BLM-created lines or section lines for wilderness characteristic boundaries, rather than man-made impacts.* Due to the use of arbitrary boundaries, BLM's wilderness character inventory fails to include all of the lands that have wilderness character for the following areas:

> Cheesebox Canyon – Rather than using man-made impacts, BLM's wilderness character boundaries utilize natural features and section lines that cross directly over the natural landscape, SUWA has documented (and has been supported by BLM inventories in other Utah BLM FO's) that use of such boundaries preclude lands with wilderness character that should be identified as such. *See* SUWA's Monticello DRMP Comments at Ex. D, Cheesebox Canyon Comment A, C, D and E, Map A-F. The PRMP's Response to Comments of the Draft RMP/EIS at 26-50, 26-52, 26-55 and 26-56, do not address SUWA's substantive new information.
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> Comb Ridge – BLM's wilderness character unit uses the natural feature of Butler Wash as the eastern boundary. While SUWA agrees that there are a few areas that have vehicle ways and camping sites along Butler Wash, the majority of the area is free of any human impacts and appears natural. SUWA has provided extensive information that documents the naturalness that exists adjacent to Butler Wash, yet BLM's inventory fails to consider these adjacent lands east of Butler Wash. *See* SUWA's Monticello DRMP Comments at Exhibit D, Comb Ridge

Comment A and Map A. The PRMP's Response to Comments of the Draft RMP/EIS at 26-58 does not address SUWA's substantive information.

Fish and Owl Creeks – BLM's wilderness character unit uses section line boundaries along the northern portion of the area. SUWA submitted new information that documented that these section line boundaries arbitrarily excluded adjacent lands that retain wilderness characteristics. There is no documentation that BLM has inventoried these adjacent lands in the agency's 1999 Utah Wilderness Inventory or the 2007 WCR. *See* SUWA's Monticello DRMP Comments at Exhibit D, Fish and Owl Creeks Comment A and Map A. The PRMP's Response to Comments of the Draft RMP/EIS at 26-59 does not address SUWA's substantive new information.

Harts Point – In multiple locations, the BLM used canyon rims as boundaries, excluding adjacent bench lands that are natural in appearance, and in two locations BLM used section line boundaries that go up cliff faces onto the mesa tops and run cross-country over the mesa tops. There are no man-made impacts that warrant these boundaries, and these arbitrary boundaries exclude natural lands contiguous with these non-impact boundaries. *See* SUWA's Monticello DRMP Comments at Exhibit D, Harts Point Comment A, B and D and Map A and B. The PRMP's Response to Comments of the Draft RMP/EIS at 26-61, does not address SUWA's substantive new information.

Lockhart Basin – Prior to the issuance of the DRMP, Monticello FO had determined that the majority of the Basin had a reasonable probability of wilderness characteristics ("RPD"). However, during the RMP process, MFO reversed the "reasonable probability determination" for Lockhart Basin, resulting in the entire basin being excluded from lands identified as having wilderness characteristics. To the best of SUWA's knowledge, this is the only RPD area on Utah public lands that was subsequently excluded from areas identified by the agency as having wilderness characteristics in the PRMPs. SUWA submitted substantive new information that included photographs, an extensive narrative, and detailed maps that document wilderness characteristics of this area. *See* SUWA's Monticello DRMP Comments at Exhibit D, Lockhart Basin Comment A and B and Map A. The PRMP's Response to Comments of the Draft RMP/EIS at 26-62 and -63 fails adequately address SUWA's substantive information.

Red Rock Plateau – The expansive and remote Red Rock Plateau area is a good example of the MFO's arbitrary identification of the wilderness characteristics. BLM identified the mesa tops as retaining wilderness values, but used natural rim features as the unit boundaries, and failed to identify the landscape below the rims as possessing wilderness character. BLM concluded that nothing below the mesa rims retains wilderness characteristics, although this is some of the most remote and undeveloped lands in Utah. Had BLM used SUWA new information and conducted on-the-ground fieldwork, the agency would have found that its use of the rims excludes lands that retain naturalness. *See* SUWA's Monticello DRMP

> Comments at Exhibit D, Red Rock Plateau Comment A and Map A and Exhibit J. The PRMP's Response to Comments of the Draft RMP/EIS at 26-66 does not address SUWA's substantive new information.
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> San Juan River – BLM utilizes Lime Creek as the western boundary of this unit, thereby arbitrarily excluding natural lands west of the creek from the agency's wilderness character unit. *See* SUWA's Monticello DRMP Comments at Exhibit D, San Juan River Comment A and Map A. The PRMP's Response to Comments of the Draft RMP/EIS at 26-67 does not address SUWA's substantive new information.
>
> Shay Mountain – While BLM assessed the majority of the area as retaining wilderness characteristics, BLM created an artificial boundary along the western portion of the unit. This imaginary "line" does not separate the natural landscape from an impacted landscape. The lands on both sides of this artificial boundary possess wilderness character. In addition, the lands along the south are contiguous with Forest Service RARE II roadless lands, but BLM failed to take this geographic relationship into consideration. *See* SUWA's Monticello DRMP Comments at Exhibit D, Shay Mountain Comment A and Map A. Also See SUWA's Wilderness Character submission dated June 22, 2007. The PRMP's Response to Comments of the Draft RMP/EIS at 26-68 does not address SUWA's substantive new information.
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> The Tabernacle – BLM created an imaginary boundary line down the cliff face and into the river. This artificial boundary excludes portions of the natural river corridor. BLM made several more critical errors: 1) the agency concluded that due to Gooseneck State Park and the Honaker trailhead, that visitors would not find outstanding solitude; 2) the agency failed to assess the area for primitive recreational opportunities even though the San Juan River would certainly provide such opportunities; and 3) the agency failed to assess the area in context with contiguous lands in the NRA that have been administratively endorsed for wilderness. *See* SUWA's Monticello DRMP Comments at Exhibit D, The Tabernacle Comment A and Map A and Exhibit H.

BLM's generic response to SUWA's new information fails to address the new information SUWA provided to the agency:

> As part of its wilderness characteristics inventory maintenance, the BLM used a combination of field knowledge, ID Team review, og-well GIS data, range allotment files, and a review of BLM and San Juan County (SJ CO) GIS date, including 2006 high resolution aerial photographs. The BLM findings are described in the 1999 Wilderness RE-Inventory documentation, as well as the 2007 WCR process and area available as part of the administrative record in the Monticello BLM Field Office. The BLM stands by its findings of its wilderness characteristics inventories and WCR process.

See e.g. PRMP Response to Comments Draft RMP/EIS 26-36 to 26-73.

BLM's response to simply stand by its previous decisions is non-responsive as it fails to address particular wilderness character lands identified by SUWA's new information, and fails to state if or how the agency assessed SUWA's substantive new information. Had BLM conducted site-specific reviews of the areas discussed in SUWA's new information, these areas would have been correctly identified as part of the larger, contiguous wilderness character areas.

BLM's failure to consider SUWA's new information is arbitrary and capricious and must be reversed, as it violates FLPMA's mandate to maintain a current inventory of resources and NEPA's requirement to use accurate information in evaluating and making management decisions. BLM must revisit each of these proposed wilderness units and conduct on-the-ground assessments to adequately consider SUWA's new information concerning BLM's flawed boundaries. BLM must consider whether the areas—after appropriate boundary adjustments using human impacts—have the requisite attributes to be wilderness character areas (including areas of less than 5,000 acres).

In *Committee for Idaho's High Desert*, 85 IBLA 54, 57 (1985), the Interior Board of Land Appeals discussed the standard of review for challenges to factual BLM determinations regarding the wilderness qualities of inventory units (i.e. naturalness, solitude, opportunities for primitive and unconfined recreation), stating:

> Suppose an appellant establishes that BLM failed to follow its guidelines, or otherwise creates doubt concerning the adequacy of BLM's assessment, and the record does not adequately support BLM's conclusions. In such a situation the BLM decision must be set aside and the case remanded for reassessment. We must point out that evidence of failure to follow guidelines alone is insufficient to require reassessment. An appellant must also point out how the errors affect the conclusions and show that a different determination might result from reassessment.

(quoting *Utah Wilderness Ass'n.*, 72 IBLA 125, 129 (1983)) (internal citations omitted).

SUWA meets this standard with respect to the Monticello PRMP because SUWA has demonstrated that not only did BLM arbitrarily draw *ad hoc* boundaries using natural features, section lines, and/or BLM-created lines, but also that these decisions had a real and immediate effect on BLM's conclusion that thousands of acres of public lands documented by SUWA lack wilderness characteristics. If remanded to the Monticello Field Office, with instructions to reevaluate the areas found not to have wilderness character, it is likely BLM would determine that the areas do retain their wilderness character.

b. BLM Failed to Consider Significant New Resource Information Regarding Wilderness Character Areas Adjacent to Federal Lands Managed by Other Federal Agencies

As discussed in SUWA's DRMP comments at 31, 35, 47-48, and 56, there are wilderness character lands in the MFO that are contiguous to wilderness quality lands managed by the Manti La-Sal National Forest (including RARE II lands which have been identified as possessing wilderness characteristics) and Glen Canyon National Recreation Area. These wilderness character areas include Allen Canyon, Arch Canyon, Copper Point, Shay Mountain, Sheep Canyon, The Tabernacle, and the Abajo Mountains. SUWA provided supplemental new information regarding the wilderness characteristics of these areas during the MFO DRMP comment period, documenting that none of these areas are separated from Forest Service or National Recreation Area lands by man-made impacts. These public lands are contiguous to wilderness character lands administered by other federal agencies with the authority to study and preserve wilderness lands, and the combined acreage for each area is at least 5,000 acres. MFO has failed to identify the natural values and wilderness characteristics of these public lands.

The PRMP states that "[n]on-WSA lands with wilderness characteristics are areas having 5,000 acres, or areas less than 5,000 acres that are contiguous to designated wilderness, WSAs, or other lands administratively endorsed for wilderness; or in accordance with the Wilderness Act's language, areas 'of sufficient size as to make practicable its preservation and use in an unimpaired condition.'" PRMP at 4-182. However, this is not consistent with the Wilderness Act.

The Wilderness Act has no requirement that areas less than 5,000 acres be contiguous to designated wilderness, WSAs, or other lands administratively endorsed for wilderness. The Act merely states that wilderness has "…at least five thousand acres of lands or is of sufficient size as to make practicable its preservation and use in an unimpaired condition." 16 U.S.C. § 1131(c)(3).[8] Thus, contrary to the PRMP, the Wilderness Act does not preclude BLM from identifying areas of 5,000 acres or less as having wilderness character if the lands are contiguous to roadless lands managed by the USFS or NRA that are *not* administratively endorsed for wilderness. In addition, BLM's current guidance (IM 2003-275) contains no requirement that adjacent federal lands be administratively endorsed to comprise a unit of 5,000 acres. Finally, BLM's explicit deference to management prescriptions of other federal agencies is not supported by BLM's obligation under FLPMA to identify resource values that include wilderness characteristics.

SUWA provided substantive new information for Allen Canyon, Arch Canyon, Copper Point, Shay Mountain, Sheep Canyon, The Tabernacle, and Abajo Mountains wilderness character areas, all contiguous with other federal lands, that when combined posses over 5,000 acres of wilderness character lands.

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[8] The Wilderness Inventory Handbook, Policy, Direction, Procedures, and Guidance for Conducting Wilderness Inventory on the Public Lands, September 27, 1978, states that the size criteria will be satisfied to roadless acres of less than 5,000 acres where the acreages is "[c]ontiguous with an area of less than 5,000 acres of other Federal lands administered by an agency with the authority to study and preserve wilderness lands, and the combination total is 5,000 acres or more." H-6310-1.13.B.1a(3). Thus, the PRMP statement that "BLM used the same criteria for determining wilderness characteristics as the 1979 wilderness inventory" regarding "administratively endorsed" lands is incorrect. PRMP at 4-182.

For example, Arch Canyon is contiguous with Forest Service RARE II and other natural lands and SUWA provided BLM with information clearly demonstrating that BLM failed to assess Arch Canyon in the context of being contiguous with these roadless Forest Service lands. Based on BLM's response to SUWA's substantive new information, it appears that BLM, again, looked at only Arch Canyon as a stand-alone area without reference to the contiguous roadless lands:

> Monticello BLM took into consideration the language of the 1964 Wilderness Act, and concluded that a size criterion is an important indicator of whether or not outstanding solitude and/or primitive recreation exist. Areas of less than 5000 acres are generally not large enough to provide for these opportunities. Areas less than 5,000 acres were reviewed for Wilderness Characteristics, in general, the size criterion of 5,000 acres was applied only to units not contiguous with other federal lands previously determined to have wilderness characteristics. The BLM stands by its findings of its wilderness characteristics inventories and WCR process.

PRMP, Response to Comments of the Draft RMP/EIS, Response 26-42 sorted by resource,

BLM's wilderness character reviews, and the resulting identification of wilderness characteristics must be based on the Wilderness Act and FLPMA neither of which contain any requirement that adjacent federal lands must be "administratively endorsed for wilderness" in order to permit BLM to find wilderness characteristics in areas less than 5,000 that are contiguous to roadless lands managed by other federal agencies.[9]

BLM must revisit each of the wilderness character areas listed above and must consider whether standing alone they have the requisite attributes to be wilderness character areas of less than 5,000 acres ***and*** whether together with adjacent public lands – administratively endorsed for wilderness or not – they constitute 5,000 acres of wilderness quality lands, and appropriately identify all BLM wilderness characteristics areas as required by 43 U.S.C. §1711(a). Absent the erroneous prerequisite that the lands be "administratively endorsed for wilderness management," it is likely MFO will determine that these areas do retain their wilderness character, consistent with *Committee for Idaho's High Desert.*

2. Proposed Management of Wilderness Character Lands Does Not Provide Sufficient Protection under FLPMA

The PRMP states that 88,871 acres, or 15%, of the 582,360 acres currently identified as having wilderness characteristics will be managed "…*to protect, preserve, and maintain*

[9] FLPMA Section 201 directs the BLM to inventory its landscape for wilderness character, and Section 603 mandates that the BLM inventory "those roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 201(a) of this Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964." 43 U.S.C. §1782(a).

their wilderness characteristics." PRMP at ES-3 to -4 (emphasis added). Although the PRMP states that BLM proposes 175 miles of routes in the non-WSA lands with wilderness character managed to protect those values (PRMP at 2-115), it appears that the PRMP is incorrect. A review of the BLM's GIS data on which the PRMP is based, suggests that -0- miles of route is proposed for the non-WSA lands with wilderness character managed to protect those values, but that 262 miles of route (not173 miles) will be designated in non-WSA lands with wilderness character managed for other resources (*See* SUWA's Mileage Calculations at Exhibit K).[10]

It is significant to note that BLM gerrymandered the boundaries of the few small areas it proposed to manage to protect wilderness character. Rather than protect the whole wilderness character unit, BLM has arbitrarily decided to protect only small portions of these few wilderness character units. Essentially, BLM is proposing to protect very small islands in the midst of much larger agency-identified wilderness character units. Thus, the 262 miles of route in the non-WSA lands with wilderness character managed for other resources necessarily understates the total miles of route in wilderness character areas and thus the impacts to the non-WSA lands with wilderness character, due to BLM's significant manipulation of the boundaries that resulted in new "boundaries" that bisect previously intact wilderness character areas, and the fact that BLM is proposing to designate routes along many of these new "boundaries."

In addition to 262 miles of route in agency-identified wilderness character areas, the PRMP will allow oil and gas development in the majority of non-WSA lands with wilderness character. *See* Exhibit G. The PRMP acknowledges "…development of oil and gas wells . . . [and] allocation of open areas and designated routes for motorized use…would all result in *irretrievable degradation of the natural characteristics of non-WSA lands with wilderness characteristics*." PRMP at 4-291 to -292 (emphasis added), and Maps 33 and 63; *see also* Exhibits B and G.

[10] The PRMP includes contradictory statements. It states that there are 175 miles of route in non-WSA lands with wilderness character that will be managed to protect the wilderness character and 173 miles of route in non-WSA lands with wilderness character that will be managed for other resource values (PRMP at 2-115), while simultaneously, and confusingly, stating that there are -0- miles of route in non-WSA lands with wilderness character that will be managed to protect the wilderness character (PRMP at 4-254). According to SUWA's calculations based on BLM's GIS data that was used to produce the ORV route maps at Exhibit K, there are -0- miles of route in non-WSA lands with wilderness character that will be managed to protect the wilderness character and 262 miles of route in non-WSA lands with wilderness character managed for other resource values. Part of the difference between the 175 (p. 4-254) and the 262 (GIS calculation) is that the PRMP erroneously omitted from the list on PRMP p. 4-254 the portions of Dark Canyon, Grand Gulch, Mancos Mesa and Nokai Dome wilderness character areas that BLM has decided not manage to protect wilderness characteristics. For purposes of this protest, SUWA will use the 262 mileage figure for lands not managed to protect wilderness character, and -0- mileage figure for non-WSA lands with wilderness character managed to protect wilderness character. NEPA requires BLM to provide correct and accurate information in the PRMP, and in a manner that facilitates rather than impedes understanding. The Monticello PRMP fails to do so with respect to proposed miles of route in WSAs and non-WSA lands with wilderness character. *See* 40 C.F.R. §§ 1500.1(b), 1500.2(d), and 1502.8.

Simultaneously, BLM attempts to downplay the impacts of ORV use in non-WSA lands with wilderness character by stating "[l]imiting OHV use to existing routes would confine soil and vegetation disturbances caused by motor vehicles to existing routes, and result in no additional disturbance and change to the natural characteristics of the non-WSA lands with wilderness characteristics" See PRMP at 4-255. It is inconceivable that "irretrievable degradation of natural resources" would not result in "additional . . . change to the natural characteristics" of the wilderness character lands. The PRMP supplies no quantitative analysis to support BLM's contention that limiting vehicles to routes will result in no additional disturbance or change to wilderness characteristics.

Significantly, BLM is ***not*** limiting ORV use to designated routes – the PRMP will allow cross-country travel within a 300-foot corridor of the designated routes to access dispersed camping areas. *Id.* at 4-243.[11] BLM states, with absolutely no supporting analysis, that this will "prevent expansion of surface disturbance that would degrade the natural characteristics of non-WSA lands with wilderness characteristics." *Id.* By allowing cross-country travel along a 300-foot wide corridor for 262 miles of route in the non-WSA lands with wilderness characteristics, BLM is effectively designating 9,527 acres in the WC lands as ***open*** ORV play areas. The PRMP completely fails to inform the public and to provide analysis for this decision, as required by NEPA.

If, in fact, BLM's statements were accurate regarding no impacts to wilderness character areas from designated routes and ORV use, then any route, no matter the extent of vehicle use, would retain natural values and thus, and would not preclude an area from being identified as non-WSA lands with wilderness character. Obviously, that is not the case. Vehicle use on routes leads to a visual impact and impression on the "naturalness" of the area, which is described in the Wilderness Act as meaning affected primarily by the forces of nature and " . . . the imprint of man's work [is] substantially unnoticeable." 16 U.S.C. § 1131(c)(1). Designating routes in non-WSA lands with wilderness character will lead to increased use, which will lead to the routes becoming more noticeable and impacting the area's naturalness. Further, it has been documented that there is widespread non-compliance with ORV designations, and that such use results in impacts on the naturalness of the area. *See e.g. Off Highway Vehicle Uses and Owner Preferences in Utah (Revised)*, Prepared for Utah Dept. of Natural Resources, Div. of Parks and Recreation, Utah State Univ. (Jan. 18, 2002) at 20 (approximately 50% of ORV users state that they prefer to ride "off-trail" and on their most recent trip, did, in fact, ride off-trail); and *Forest Service Discusses ATV Damage During Archery Hunt,* Emery County Progress (Sept. 24, 2008) ("We discovered that a full 50 percent of ATV riders chose to ignore the signs and go around a closure."), attached as Exhibits T USU Survey and U Emery Co Progress article.

Clearly, not designating routes in wilderness character areas would minimize impacts from ORV use on wilderness characteristics, based on BLM's own acknowledgement

[11] This information is tucked away and mentioned casually in the SRMA and ERMA discussions. This information is not disclosed to the public and the decision-maker in a manner that is easy to discover or understand, or that facilitates public scrutiny in violation of NEPA. *See* 40 C.F.R. §§ 1500.1(b), 1500.2(d), and 1502.8.

that motorized uses impact opportunities for both solitude and primitive recreation. *See* PRMP at 4-243, -255. BLM must take a hard look and quantify the loss or the potential loss of naturalness due to the increased ORV use on these proposed routes.

Finally, the Redrock Heritage Proposal (RHP) would have provided more appropriate protection to non-WSA lands with wilderness character from ORV use and oil and gas development. BLM's failure to adequately consider the RHP fails to comply with NEPA.[12] BLM must comply with NEPA and consider the RHP in a supplemental PRMP prior to issuing the final Record of Decision.

3. FLPMA's Unnecessary or Undue Degradation Standard Applies to Wilderness Character Lands

Finally, as noted in SUWA's DRMP comments, until the question of wilderness on BLM lands in Utah is settled by legislative means, BLM must, at a minimum, manage *all* areas with identified wilderness characteristics in a manner so as to prevent actions causing *unnecessary or undue degradation* to those wilderness characteristics. This management strategy must apply to both non-WSA lands identified as possessing wilderness characteristics by the BLM and non-WSA lands with wilderness characteristics included in wilderness proposals that have been introduced before Congress (i.e. America's Red Rock Wilderness Act). This type of management would include oil and gas development restrictions that would preclude surface disturbing activities (such as non-waivable no surface occupancy stipulations) and would preclude motorized route designations in areas with wilderness characteristics. Routes greatly impact the sense of naturalness within wilderness character areas, and designating routes for motorized use within these areas will have grievous effects on the wilderness character, unnecessarily and unduly damaging this resource. BLM is proposing to designate 262 miles of ORV route in the areas the agency identified as non-WSA lands with wilderness character. Reducing the miles of proposed ORV route by 262 miles, or 9%, to avoid causing unnecessary and undue degradation to wilderness character resources is a reasonable alternative that BLM must consider and analyze before issuing the final Record of Decision.

[12] The PRMP's response to comments at 26-10 and 26-33, sorted by resource, and general statements in the PRMP fail to adequately address SUWA's concerns about appropriate management of non-WSA lands with wilderness characteristics. The PRMP failed to consider a reasonable range of alternatives that included the Redrock Heritage Plan as required by NEPA. 40 C.F.R. §§ 15-2.14(a), 1508.25(c).

V. ORV Area and Trail Designations and Travel Plan Decisions

A. Federal Law Governing Off-Road Vehicle Management Focuses on Protection of Resources

As SUWA noted in its comments on the DRMP, off-road vehicle (ORV) use on BLM lands is governed by FLPMA, its implementing regulations, and executive orders. Each of these governing authorities is based on concerns about the destructive effects of ORV routes and the use of ORVs, and the need to manage these impacts to protect the environment and other users of the public lands. *See, e.g.,* 43 C.F.R. § 8340.0-2 ("[t]he objectives of these regulations are to *protect* the resources of the public lands, to promote the safety of all users of those lands, and to minimize conflicts among the various users of those lands") (emphasis added). *Thus, the guiding principle of these authorities is built on the assumption that ORV use may only be approved under certain circumstances and based on specific analysis and findings*. Any presumption in favor of ORV use in a particular area, or the approval of ORV use without the requisite findings or analyses, violates the very foundation of these governing authorities.

Other laws and policies also come into play regarding BLM's management of off-road vehicles and the designation of ORV areas and trails, including NEPA, the National Historic Preservation Act, the Clean Air Act, the Clean Water Act, the Utah Riparian Management Policy, and the BLM's 2006 "Clarification Guidance" for the development of ORV areas and trails.

B. The Monticello PRMP Fails to Comply with FLPMA and its Implementing Regulations

FLPMA requires that "[i]n managing the public lands the [Secretary of Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." 43 U.S.C. § 1732(b). BLM's duty to prevent unnecessary or undue degradation (UUD) under FLPMA is mandatory, and BLM must, at a minimum, demonstrate compliance with the UUD standard. *See Sierra Club v. Hodel*, 848 F.2d 1068, 1075 (10th Cir. 1988) (FLPMA land use standards provide the "law to apply" and "imposes a definite standard on the BLM"). FLPMA also mandates that the public lands be managed "without permanent impairment of the productivity of the land or quality of the environment." 43 U.S.C. § 1702(c).

In addition, BLM's ORV regulations, which incorporate Executive Orders 11644 and 11989, state that the "objectives of these regulations are to *protect* the resources of the public lands . . . and to *minimize conflicts* among the various uses of those lands (emphasis added)." 43 C.F.R. § 8340.0-2. These regulations require BLM to ensure that areas and trails for ORV use are located "to minimize damage to soil, watershed, vegetation, air, or other resources of the public lands, and to prevent impairment of wilderness suitability." *Id.* § 8342.1(a). Areas and trails "shall be located to minimize harassment of wildlife . . . . Special attention will be given to protect endangered or threatened species and their habitats." *Id.* § 8341.2(b). Areas and trails "shall be located

to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands . . . taking into account noise and other factors." *Id.* § 8342.1(c). BLM's own 8340 manual explains that "minimizing" means that the agency should reduce impacts to the maximum extent feasible. *See* BLM Manual 8340 – Off-Road Vehicles (General) (1982).

Finally, BLM is obligated to close routes to ORV use if ORVs are causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, wilderness suitability . . . or other resources until the adverse effects are eliminated and measures implemented to prevent recurrence." *Id.* § 8341.2.

The PRMP states that all of the MFO's WSAs, two ACECs, and portions of two SRMAs will be closed to ORV use, with a note that BLM "would allow for temporary, conditional motorized use of several ways" in three WSAs to provide access to trailheads. PRMP at 2-77.[13] However, the PRMP misrepresents the route designation decisions for the WSAs, as it fails to disclose that approximately 19 miles of ways will be designated as open to motorized use in 3 WSAs (Grand Gulch, Road Canyon, and Fish and Owl Canyons).

Although this information is not disclosed in the PRMP, an analysis of BLM's GIS data for these WSAs indicates that approximately 19 miles of ways will be designated in these three WSAs, as shown on SUWA's Exhibits C and D. It is clear that none of these 19 miles of ways will be "closed and rehabilitated," as the PRMP states that the trails that will be closed and rehabilitated will not be "designated" in the PRMP. See id. at 1-25. Thus, the PRMP must be corrected to disclose that 19 miles of ways will be designated in three WSAs in order to provide accurate information to the public and decision-maker prior to the issuance of a final decision. See 40. C.F.R. §§ 1500.1(b) and 1502.8 (accurate data and analysis must be disclosed to public and decision-maker in a way that the public can easily understand, to allow for sufficient public scrutiny).

As discussed below in greater detail (*See* Section C.3), the PRMP fails to minimize impacts to natural and cultural resources and fails to minimize conflicts with other users of the public lands, specifically non-motorized recreationists. Although moving to a designated route system from a generally open system could, conceivably, decrease and/or minimize resource-use conflicts, there is no analysis in the PRMP to support the contention that this is the case in the MFO. Indeed, with nearly 3,000 miles of proposed designated route, there may be little beneficial impacts to non-motorized users, as the web of routes is so dense that there are few places that non-motorized users can go to escape the sights and sounds of motor vehicles, with approximately 80% of the MFO available to ORV use.

The Monticello PRMP transportation decisions and ORV area and trail designations of 2,820 miles of route, including 262 miles of route in agency-identified non-WSA lands

[13] The PRMP fails to report the number of miles of "ways" that would be closed and "rehabilitated" in these three WSAs in the future. *See* PRMP at 2-77.

with wilderness character, and approximately 19 miles of route in WSAs, and the 300-foot wide, cross-country corridor along designated routes to access dispersed camping, fail FLPMA's UUD standard. *See* PRMP at ES-5, 2-115, 4-243, 4-253, and -254.[14] The proposed transportation decisions and ORV designations will harm natural and cultural resources in a number of important ways, including: unnecessarily increasing fugitive dust and degrading air quality; unnecessarily damaging soils and vegetation and increasing the threat of non-native plant species; unnecessarily fragmenting wildlife habitat; causing unnecessary damage to riparian areas, floodplains, and cultural resources; unnecessarily reducing naturalness in areas with identified wilderness characteristics; and impairing Wilderness Study Areas.[15] (Elsewhere in this protest, we discuss the failings of the PRMP to consider how the proposed actions will exacerbate, and contribute to, the effects of climate change as well.)

The PRMP should explicitly include a provision in the Travel Management section for a "closed unless posted open" policy, to minimize adverse effects to resources and other users in areas that are not open for ORV use. Although BLM might issue route and ORV area designation maps, the agency must ensure that its ORV management decisions are being observed on the ground. Implementing a "closed unless posted open" policy will assist BLM in enforcing its area and route designations (ORV users will not likely be tempted to remove "open" signs), and contribute to BLM's mandate of minimizing impacts from ORV designations to natural and cultural resources.

For the reasons discussed above and detailed in Section C.2, below, for individual resources, the PRMP does not comply with FLPMA, the minimization requirements of

[14] The PRMP includes contradictory statements. It states that there are 173 miles of route in non-WSA lands with wilderness character that will be managed to protect the wilderness character and 175 miles of route in non-WSA lands with wilderness character that will be managed for other resource values (PRMP at 2-115), and it also states that there are -0- miles of route in non-WSA lands with wilderness character that will be managed to protect the wilderness character (PRMP at 4-254). According to SUWA's calculations based on BLM's GIS data that was used to produce the ORV route maps at Exhibit K, there are -0- miles of route in non-WSA lands with wilderness character that will be managed to protect the wilderness character and 262 miles of route in non-WSA lands with wilderness character managed for other resource values. Part of the difference between the 175 (p. 4-254) and the 262 (GIS calculation) is that the PRMP erroneously omitted from the list at PRMP p. 4-254 the portions of Dark Canyon, Grand Gulch, Mancos Mesa and Nokai Dome wilderness character areas that will not be managed to protect wilderness characteristics. For purposes of this protest, SUWA will use the 262-mileage figure for lands not managed to protect wilderness character, and -0- mileage figure for non-WSA lands with wilderness character managed to protect wilderness character. In addition, the PRMP fails to disclose the number of miles of way proposed to be designated open to motorized vehicles. SUWA calculated 19.1 miles from BLM's GIS data. NEPA requires BLM to provide correct and accurate information in the PRMP, and the Monticello PRMP fails to do so with respect to miles of route in WSAs and non-WSA lands with wilderness character. 40 C.F.R. §§ 1500.1(b), 1502,8.

[15] BLM is also obligated to manage WSAs in accordance with the Interim Management Policy (IMP) for Lands Under Wilderness Review (BLM Manual H-8550-1), and the IMP reiterates FLPMA's mandate that public lands, and specifically WSAs, be managed to prevent unnecessary or undue degradation. H-8550-1, Introduction at 2. The PRMP includes a management decision that states that BLM will "grant the State of Utah reasonable access to state lands for economic purposes, on a case by case basis." PRMP at 2-19. The PRMP should include a statement that BLM *must* comply with the Interim Management Policy (IMP) for wilderness study areas, as access can be provided that is consistent with the IMP as well as the *Cotter* decision which addresses access to State lands surrounded by public lands.

Executive Order 11644, and BLM's ORV regulations. Specifically, the PRMP fails to minimize impacts to riparian and wetland areas, cultural resources, soils, vegetation, air quality, water quality, wildlife and wildlife habitat, WSAs, wilderness character areas, and other users. The PRMP, including Response to Comments, fails to disclose the purpose and need for the specific ORV area designations and the individual route designations, and fails to provide BLM's analysis supporting a determination that each designated ORV area and trail and the transportation decisions minimize impacts to natural and cultural resources, and minimizes conflicts among users. BLM must conduct this analysis and make it available for public review before areas and routes are designated and determined available for use.

C. The Monticello PRMP Fails to Comply with NEPA

1. Alternatives

"An agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action." *Nw. Envtl. Defense Center v. Bonneville Power Admin.*, 117 F.3d 1520, 1538 (9th Cir. 1997). An agency violates NEPA by failing to "rigorously explore and objectively evaluate all reasonable alternatives" to the proposed action. *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1310 (9th Cir. 1990) (quoting 40 C.F.R. § 1502.14). This evaluation extends to considering more environmentally protective alternatives and mitigation measures. *See, e.g., Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1122–23 (9th Cir. 2002) (and cases cited therein).

NEPA requires that an actual "range" of alternatives is considered, such that the Act will "preclude agencies from defining the objectives of their actions in terms so unreasonably narrow that they can be accomplished by only one alternative (i.e. the applicant's proposed project)." *Colo. Envtl. Coal. v. Dombeck*, 185 F.3d 1162, 1174 (10th Cir. 1999) (citing *Simmons v. U.S. Corps of Eng'rs*, 120 F.3d 664, 669 (7th Cir. 1997)). This requirement prevents the EIS from becoming "a foreordained formality." *City of New York v. Dep't of Transp.*, 715 F.2d 732, 743 (2d Cir. 1983). *See also Davis v. Mineta*, 302 F.3d 1104 (10th Cir. 2002). The ORV area designations and the travel plan decisions included in this EIS are key examples of the aforementioned citations, with each alternative posing significant resource harms and no alternative that effectively mitigates those harms (i.e. all alternatives designate ORV areas and routes in riparian areas, culturally significant areas, proposed wilderness areas, etc). The alternatives in the PRMP are, as a group, so similar that there is no meaningful range.

BLM should have fully considered and analyzed more environmentally protective alternatives consistent with FLPMA's requirement that BLM "minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values (including fish and wildlife habitat) of the public lands involved." 43 U.S.C. § 1732(d)(2)(A). BLM should have fully analyzed the following three alternatives (or a combination of one or more alternatives that incorporated the resource protections inherent in each of these three alternatives): 1) the Redrock Heritage Proposal (RHP)

alternative designed to protect natural resources including wilderness character areas and WSAs, and minimize conflicts among users, submitted by SUWA during the public participation process; 2) an alternative that would have minimized impacts to riparian areas by not designating routes or ORV use areas in or near riparian areas; and 3) an alternative that would have minimized impacts to cultural resources by not designating ORV use areas and trails before completing comprehensive surveys for cultural resources for the proposed ORV use areas and routes.[16] Instead, the PRMP includes similar alternatives whose differences are not meaningfully distinct.

The PRMP fails to provide a rationale for refusing to include the RHP as an alternative. The PRMP merely states that it was "eliminated from detailed analysis" and alleges that "components of the plan were carried forward for analysis." PRMP Response to Comments at 293, sorted by Resource, and Appendix N at N-16 to -17. As noted above, NEPA requires the BLM to "rigorously explore" and evaluate a range of alternatives, which includes considering more environmentally protective alternatives. 40 C.F.R. §§ 1502.14(a), 1508.25(c). The RHP includes a proposed travel plan that would help correct the existing unplanned system of routes that are the result of historical mining, oil and gas, and grazing activities and uncoordinated user-created routes. The RHP would help protect scarce resources for future generations even after visitation levels have doubled and the public's desire for undeveloped places of respite has grown even stronger.

The Redrock Heritage Proposal's travel plan calls for:

- each route to serve an identifiable and compelling purpose;
- the closure (or non-designation) of ecologically damaging routes;
- adequate opportunities for both motorized and non-motorized recreation; and
- adequately sized areas in which to get out of earshot of motorized routes.

These principles are certainly reasonable, and meet NEPA's definition of a "reasonable alternative" that should have been analyzed in the DRMP and PRMP. Although BLM claims to have "taken into account" portions of the RHP in a couple of the PRMP's alternatives, the fact remains that the PRMP did not include the RHP in any meaningful way in any of its alternatives, nor did it include an alternative that would strikes the same balance of user needs and resource protections offered by the RHP. [17]

BLM must comply with NEPA's mandate to consider a reasonable range of alternatives, by including the RHP's route designations and travel plan proposals in its alternatives

[16] In the discussion of BLM's failure to analyze the impacts of climate change, we also argue in this protest that BLM should have developed an alternative that would have addressed the predicted impacts and challenges of climate change. Development of such an alternative should have included the protection of large tracts of undisturbed ecosystems, as recommended by a study by the Environmental Protection Agency, released in June of 2008. U.S. Climate Change Science Program Final Report, Synthesis and Assessment Product 4.4, "Preliminary Review of Adaptation Options for Climate-Sensitive Ecosystems and Resources" (June 2008), *available* at http://www.epa.gov/ord/npd/pdfs/gcrp-factsheet_SAP-4-4.pdf. Such an alternative may have resembled the CCHP in significant respects, and more effectively protected valuable riparian areas.

[17] SUWA incorporates into this protest our comments that were submitted for scoping and the DRMP, including our route-specific comments in SUWA's DRMP Comments.

analysis. BLM must issue a supplement that includes the RHP and alternatives that protect riparian areas and cultural resources from impacts from route designation and ORV use, and it must allow the public and the decision-maker to review and comment on these alternatives prior to issuing the Record of Decision.

2. NEPA's Hard Look

NEPA requires that BLM take a "hard look" at the environmental consequences of a proposed action and the requisite environmental analysis "must be appropriate to the action in question." *Metcalf v. Daley*, 214 F.3d 1135, 1151 (9th Cir. 2000); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989). In order to take the required "hard look, BLM must assess impacts and effects that include: "ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative." 40 C.F.R. § 1508.8. (emphasis added). The NEPA regulations define "cumulative impact" as

> the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7.

A failure to include a cumulative impact analysis of actions within a larger region will render NEPA analysis insufficient. *See, e.g., Kern v. BLM*, 284 F.3d 1062, 1078 (9th Cir. 2002). Additionally, indirect effects are those that are "caused by the action later in time or farther removed in the distance, but are still reasonably foreseeable," including related effects on air and water and other natural systems, and growth-inducing effects (i.e. the fact that publishing and distributing route maps will encourage increased ORV use on these designated routes, designating routes and ORV use areas in remote areas that have not been inventoried for cultural resources could be expected to increase damage and vandalism of cultural resources). 40 C.F.R. § 1508.8.

In the context of the Monticello PRMP, the decisions made with regard to designation of ORV areas and trails and travel management are not fully analyzed as to the effects of those decisions on riparian and wetland areas, cultural resources, soils, vegetation, air quality, water quality, wildlife and wildlife habitat, wilderness character areas, wilderness study areas, and other users, as discussed below.

3. NEPA's Hard Look and FLPMA's ORV Regulations "Minimization" in Relation to ORV and Travel Plan Decisions

a. Riparian Resources

Riparian areas account for approximately 20,912 acres and represent approximately 1.6% of the total area of the MFO. *See* PRMP at 3-100 to -101. They are one of the most critical components of the ecosystem, as they provide habitat for 75-80% of all wildlife species. FLPMA, the ORV regulations, and the Utah Riparian Policy require BLM to *protect and minimize* impacts to riparian areas. The goals and objectives listed in the PRMP, fails to specifically include the requirements of the ORV regulations (to minimize impacts to riparian areas), although the objective of avoiding or minimizing the destruction, loss or degradation of riparian habitats (*See* PRMP at 2-47) could be effective to protect the riparian resources and minimize impacts from ORV designation decisions if BLM's subsequent decisions were consistent with these objectives. However, the proposed decision to designate 2,820 miles of ORV route, some of which are in riparian areas such as Arch Canyon and Indian Creek, fails to comply with the stated objectives.

The PRMP fails to include critical baseline, objective analysis of impacts, and other information for the public and decision-maker, including: 1) a current listing of the PFO's perennial stream segments and their associated functioning conditions (i.e. proper, at risk, or not-in-functioning condition); the stream condition information in the PRMP is nearly 15 years old (*See id.* at 3-102 to -107); 2) the number of miles of route within and/or near riparian areas and the number of stream crossings by designated routes (this information should also be depicted on a map showing riparian areas and route designations); and 3) an objective, scientific analysis of the impacts to riparian areas of designating 2,820 miles of motor vehicle routes.

Although the PRMP acknowledges that riparian resources could suffer adverse effects from "OHV-caused stream bank vegetation trampling; soils compaction, sedimentation, erosion, and indirect spread of invasive species," (*id.* at 2-143), the PRMP's "analysis" of impacts is limited to the superficial comparison that restates the number of acres open, limited and closed under the No Action alternative and the PRMP. *See id.* at 4-411. This does not suffice for the hard look and rigorous quantitative analysis NEPA requires. In addition, the PRMP lacks any scientific analysis of the impacts of proposed routes and ORV use on individual riparian areas.

The PRMP also fails to demonstrate how its decision to designate nearly 3,000 miles of route would "minimize" the impacts to critically important riparian areas – the keystone to the ecological health of the public lands managed by the MFO. The designated route in Arch Canyon, alone, has over 100 creek crossings for a round trip up and down the canyon, and a route is located directly in Indian Creek's riparian zone.[18] Impacts from ORV area and route designations can be minimized and often avoided by prohibiting routes and ORV use in and near riparian areas. However, there is no indication that BLM complied with the minimization criteria of 43 C.F.R. § 8342.1. Although the PRMP

[18] The DRMP proposed to limit ORV use in Arch Canyon to the lower 3.8 miles of the canyon. However, the PRMP will allow ORV use for the entire length of Arch Canyon, even though BLM has acknowledged that there is MSO habitat in the canyon, and sensitive fish species (flannelmouth sucker) in the creek. The PRMP fails to provide an explanation of the purpose and need for this route, or an explanation as to why BLM increased the length of the route from the DRMP.

states that BLM will "[c]lose routes in [] selected riparian areas considered Functioning at Risk if site-specific analysis determines that OHV use is contributing to riparian degradation," (*id.* at 2-47), the PRMP should state clearly that it has a duty to minimize impacts to riparian areas, and that the best way to minimize impacts to riparian areas from ORV use, is to not designate routes in or near to riparian areas. In addition, the PRMP must also reflect the language in the ORV regulations which require that BLM close the area to ORV use if such use is "causing or will cause considerable adverse effects" upon the riparian resources. 43 C.F.R. §8341.2

SUWA applauds BLM's decision to close foot trails to protect riparian areas ("[s]ocial foot trails in Road Canyon, Fish Creek, and Mule Canyon would be closed to protect riparian resources." PRMP at 2-47), but SUWA questions why BLM would not do the same for the ORV route situated in the riparian area in Arch Canyon. The ORV route, which crosses the stream up to 60 times for a one-way trip to the USFS boundary, and it's associated use causes adverse impacts including rutting, channeling, bank deterioration, increased sedimentation, and water pollution from petroleum products. BLM is not only allowing ORV use in this riparian area, the agency extended ORV use from 3.8 miles in the DRMP to 8 miles in the PRMP – although the PRMP contains no compelling purpose or need for this decision, and fails to include an analysis of the potential impacts.

BLM must provide adequate baseline information on riparian areas' health and an objective, quantitative analysis of the PRMP's impacts to riparian areas from the ORV route designation and transportation decisions, and demonstrate how the ORV decisions are consistent with the ORV regulations before issuing its Final RMP.

b. Cultural Resources

The PRMP acknowledges that less that 10% of the MFO has been surveyed for cultural resources. PRMP at 3-24. Due to this scarcity of information, the "location and nature of all cultural resources in the area . . . are unknown, it is not possible to determine if there would be irreversible and/or irretrievable impacts to cultural resources and/or what they might be ." *Id.* at 4-62. Although the "Management Common to the Proposed Plan and All Draft RMP Alternatives" states that "all authorizations for land and resource use would comply with Section 106" of the NHPA (*id.* at 2-10), there is no indication in the PRMP that the agency will conduct intensive cultural inventories of the proposed routes before designating the routes open to ORV use. *See id.* at ES-5 and 4-595 (2,820 miles of route will be designated), and Map 63 (proposed travel plan depicting routes the PRMP will designate as open to ORV use).

The PRMP fails to disclose the routes or number of miles of route that have been previously surveyed for cultural resources, but it is very likely minimal, as less than 10% of the MFO has been surveyed for cultural resources. Designating routes that have not been previously surveyed, absent such inventories violates Section 106 of the NHPA, as well as BLM's duties under FLPMA (duty to protect resources) and the ORV regulations (duty to minimize impacts from ORV designations).

Although it might be cost-prohibitive to inventory the entire MFO during the RMP process, BLM must inventory all proposed routes prior to officially designating the routes in the RMP and transportation plan. If it is cost prohibitive to inventory all of the proposed routes, BLM must refrain from designating those routes that have not been inventoried in order to comply with FLPMA's UUD mandate, the NHPA, as well as the ORV regulations' minimization criteria. Moreover, if BLM is going to base its decision on cost, it must also weigh the high cost of the cultural artifacts that would be lost due to ORV access, damage, and looting.

The PRMP's "analysis" concludes that the proposed plan would not provide the most "beneficial" management to cultural resources (Alternative E would provide the most beneficial impacts, followed by Alternative B), but that the proposed plan would provide "the next greatest benefit to cultural resources." RMP at 4-61. The PRMP provides no quantitative analysis of impacts to support the contention that limiting ORV use to designated routes would have no adverse impacts (*See e.g.* 4-43), and fails to take into account undocumented sites in the path of designated routes, increased erosion, and increased access to more remote areas that increase the range of impacts to cultural resources. *See* PRMP at 3-100. The change from managing areas as open to cross-country travel to limited to designated routes might be expected to reduce the impacts from ORV use (*See Id.* at 4-58), however, the PRMP fails to provide objective analysis that confirms that designating nearly 3,000 miles of route will "minimize" impacts to uninventoried cultural resources..

Without first completing cultural resource surveys for each ORV area and trail that it proposes to designate in the plan, BLM lacks critical information on which to base ORV area and trail designation decisions, and the resulting PRMP is not in compliance with NEPA's hard look requirement, the NHPA (Sec. 106), and FLPMA's UUD and minimization mandates.

Moreover, BLM has failed to provide any basis for its decision not to inventory the cultural sites impacted by the ORV route designations. (This flaw runs through the BLM's analysis of many of the affected resources.) This violates NEPA regulations which require, with respect to incomplete or unavailable information, that BLM provide specified additional information. That provision, 42 C.F.R. § 1502.22 provides in full:

> When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.
>
> (a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

> (b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:
>
> 1. A statement that such information is incomplete or unavailable;
>
> 2. a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;
>
> 3. a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and
>
> 4. the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

The regulations require the BLM to adopt one of two courses of action depending on whether the cost of obtaining the information would be exorbitant. Here, BLM has not shown that the costs of trail inventories would be exorbitant, and as a result must conduct the studies and provide the information. Even if BLM were to show that the costs were exorbitant, it has not provided the information required by 43 C.F.R. § 1502.22.

c. Soil and Water

The goals listed in the PRMP for soils and water "[m]anage soils and water resources to maintain watershed health" (*Id.* at 2-48) could be effective to minimize impacts from ORV area and route designations if BLM's subsequent decisions were based on these goals. However, there is no supporting evidence that the travel decisions in the PRMP are consistent with these goals and statutory obligations. The lack of baseline information and analysis of the potential impacts make it impossible for the public and decision-maker to make informed decisions about the proposed actions and alternatives. For instance, the PRMP fails to disclose: 1) water quality conditions for water bodies, and the current conditions of sensitive soils and biological soil crusts; and 2) where, and how often designated ORV routes cross open waters (including streams, creeks and rivers), areas with biological soils crusts, and critical erosion areas.

The PRMP acknowledges that impacts will occur, "[p]otential short- and long-term impacts to soils and water resources associated with travel management decisions include damage to streambanks and associated vegetation, soil compaction, increased erosion and

sedimentation of surface waters." *Id.* at 2-154. However, the impacts analysis merely compares the acres of sensitive soils that would be available for ORV use on designated routes and in open areas between the proposed plan and Alternative A (*see id.*), and then concludes: "[l]imiting OHV use to designated routes would minimize adverse impacts to soils and water." *Id.* at 4-468. The PRMP's analysis fails on at least two counts. Merely reporting that the PRMP has more or less acres open, limited, or closed to ORV use than other alternatives completely fails to meet NEPA's hard look requirement, and does not comply with FLPMA and the ORV regulations' minimization requirement. Similarly, claiming that designating nearly 3,000 miles of route will minimize impacts to soils and water with no supporting analysis, fails the ORV regulations minimization requirement as well as NEPA's hard look requirement.

As with riparian areas discussed above, the PRMP fails to include a map that shows route designations on the same map as open waters, biological soil crusts, and highly erodible soils. This information is critical to the decision-maker and the public in assessing if the PRMP minimizes impacts to these resources, as required by FLPMA's ORV regulations.

The BLM should integrate the findings of the USGS ORV report, submitted as Attachment EE to SUWA's DRMP comments, into its impacts analyses, and provide quantitative analysis of the impacts of the ORV trail designations and travel management decisions on soils, including biological soil crusts, and water, including the impacts of these decisions to waters listed on the 303(D) list, to the public and decision-maker prior to issuing the Record of Decision.

d. Vegetation, Including Special Status Species

As with soils and water, discussed above, the PRMP has sound goals and objectives regarding management of special status species (maintain, protect, and enhance habitats), and vegetation (manage for desired future conditions thereby ensuring ecological diversity, stability and sustainability; prevent the introduction of new invasive species and control non-native invasive weed species). *See id.* at 2-73, and 2-79. However, the PRMP fails to provide supporting documentation that its ORV and travel plan decision are consistent with the goals and minimize impacts to vegetation and special status plant species.

In particular, the PRMP fails to include any analysis of the impacts that ORV routes and ORV use have on vegetation and the spread of invasive weeds. The PRMP's "analysis" of the impacts of ORV area and route designations is limited to the following general statements: "The Proposed Plan would close 393,895 acres to OHV use, which is 117,465 acres (42%) more than under Alternative A," (*id.* at 2-174) and the proposed plan has "fewer associated adverse impacts to special status species and their habitat" than Alternative A." *Id.* at 2-162. These statements of acreage comparisons are not analysis, yet the PRMP contains nothing more.

The PRMP would designate 2,820 miles of route, with no analysis (quantitative or otherwise) of the impacts of these routes or how the decision – in keeping with the goals

and objectives – will enhance native vegetation, or minimize the spread of noxious weeds. The PRMP contains no evidence that its ORV designations and the travel management decisions minimize impacts to vegetation, including special status plant species.

Not only does the PRMP fail to include any analysis of its ORV and travel plan decisions on vegetation and special status plant species, it misleads the decision-maker and the public. The PRMP states that there are "no acres open to OHV use under the Proposed Plan . . ." *Id.* at 4-663. However, this is incorrect. The PRMP allows travel off of designated routes along a 300-foot wide corridor in order to access dispersed camping. Although cross-country travel is not allowed off of designated routes in WSAs, non-WSA land with wilderness characteristics, and the Indian Creek SRMA, and perhaps a few other special areas, off-route travel is allowed on the majority of the routes in the PRMP. This effectively results in tens of thousands of acres that are open to cross country travel that the PRMP fails to disclose.[19] The PRMP has failed to analyze the impact of this decision on vegetation and special status plant species within this 300-foot wide corridor.

Reporting that the Proposed plan has more acres closed than the current plan and failing to analyze the impacts of the 300-foot wide cross country corridor along nearly 3,000 miles of route is clearly not adequate for NEPA's hard look requirement, does not comply with FLPMA and the ORV regulations' minimization requirement, and may violate the Endangered Species Act. The BLM must revise its impacts analysis, and include objective scientific analysis, and integrate the findings of the USGS ORV report, submitted as Attachment EE to SUWA's DRMP comments, into this analysis. BLM must disclose the quantitative impacts of the ORV and travel management decisions on vegetation, including special status species, and on the spread of invasive species to the public and decision-maker prior to issuing the Record of Decision.

e. Air Quality

As noted in Section II of this protest letter addressing Air Quality, BLM must perform comprehensive, complete modeling of the potential impacts associated with the PRMP's ORV route and travel decisions. The fact that the implementation of the PRMP will result in air pollution (e.g., through approval of motorized use on designated routes) requires that such modeling and quantification be undertaken now. The 2,820 miles of route identified for designation in this plan will be open to motor vehicle travel, and will never face further analysis whereby better estimates might be developed. As part of the "hard look" requirement, NEPA demands that BLM determine baseline conditions so that

[19] In addition to designating 2,820 miles of route open to motor vehicle use, the PRMP approves off-route travel within a 300-foot wide corridor to access dispersed camping areas along the majority of these routes (WSAs, non-WSA lands with wilderness character, Indian Creek SRMA and possibly a few other areas are exempt from this decision). *See* PRMP at 1-23, 4-243, and 4-361. The PRMP fails to disclose the number of miles of route on which off-route travel is prohibited, however, if 2,820 miles of route were included in this decision, it would result in over 102,000 acres of "open" ORV use areas.

it, and the public, can fully understand the implications of the ORV area and route designations and travel decisions. BLM has failed to do this here.

In addition, BLM must assess the fugitive dust and tailpipe emission from motor vehicle routes and ORV activities in the planning area. SUWA specifically addressed this deficiency in a letter to the BLM on June 18, 2008. SUWA provided documentation to support the type of emissions assessment that is needed for evaluating the impacts from this source category (e.g., one based on vehicle miles traveled and emission factors that do not employ dust suppression, and for the fugitive dust generated from the existence of nearly 3,000 miles of designated route). BLM has not addressed the potential impacts to air quality in the PRMP. In fact, the PRMP fails to even mention travel decisions and ORV area and trail designations in the section devoted to the impacts to air quality, other than to state that air quality concerns, as related to recreational uses include "particulate matter (PM10 and PM 2.5) hydrocarbons and combustion by-products." PRMP at 2-92.

The existence of designated routes will generate fugitive dust even when not being traveled by vehicles (e.g., by wind blown dust). The PRMP must estimate the rate at which the 2,820 miles of route being designated will generate fugitive dust when not being traveled by vehicles (including wind movement data from the local region and dust production data gathered at incremental distances from the routes), estimate the number of vehicles that will use each route, and the likely fugitive dust generation rate, and generate a model to include those variables to understand the true impacts of fugitive dust emissions – from both the designation of areas and trails, and the associated use of those areas and trails. Dust and emissions studies have been conducted on public lands in the Mojave Desert, and PFO should avail itself of these studies to assist in its analyses.

The PRMP's failure to include an analysis of impacts on air quality from its ORV designations and travel management decisions does not comply with FLPMA's mandate to comply with federal and state air quality standards, NEPA's hard look requirement (including baseline information as well as impacts analysis) or with the ORV regulations' minimization requirements. Implementation of the PRMP will result in air pollution (e.g., through designation of, and approval of motorized use on, designated open areas and routes), which requires that air quality modeling and quantitative analysis be undertaken before the Final RMP is issued.

f. Wildlife and Wildlife Habitat and Special Status Species

Although the PRMP's stated goals for wildlife include protecting and enhancing wildlife habitat (*See id.* at 2-82), it is not obvious that these goals are being carried out in the ORV route and transportation decisions, as the PRMP makes approximately 80% of the planning area available for ORV use, and will designate 2,820 miles of routes. These decisions leave few areas in which wildlife habitat will not be fragmented by ORV routes and in which wildlife will not be impacted by the disturbances caused by ORV use.

The PRMP reports that "OHV use can physically damage the vegetation in special status species habitat and cause noise disturbance, which could have direct, adverse impacts on

special status species, especially birds and big game . . . and that surface disturbance associated with OHV use can have direct and indirect adverse impacts on individual plants and animals as well as their habitat." *Id.* at 4-566. Although the PRMP acknowledges that ORVs and routes impact wildlife and special status species, there is no analysis (quantitative or otherwise) of the impacts of the travel decision to designate 2,820 miles of route to the wildlife resource, or how the decision – in keeping with the goals and objectives – will protect and enhance wildlife habitat. The PRMP merely provides superficial and analytically unhelpful statements of the acres being managed as open, limited or closed in the Proposed plan verses Alternative A. *See* PRMP at 2-162, and 2-184 to -185. All this leaves the reader with significant questions about the type of adverse impacts, and the particular species involved. The PRMP does not contain an analysis of the impacts of specific routes on wildlife species, other than the eight miles of proposed route in Arch Canyon, which "would potentially have long-term adverse impacts (related to noise and human presence) on the MSO since Arch Canyon is identified as containing suitable MSO nesting habitat." *Id.* at 4-569. In addition, although the PRMP decreases the bald eagle habitat and federally listed fish habitat that would be in "closed" areas by 2% and 15%, (from the current management), the PRMP fails to assess the impacts to the species from this decision. *See id.* at 4-570.

Moreover, the PRMP fails to disclose the number of miles of route designated in critical habitat, winter habitat, nesting sites, big-game parturition areas, omissions which makes it impossible for either the BLM or the public to determine whether impacts to wildlife are minimized. The PRMP should include a map that displays critical habitat and the other important wildlife avoidance areas with the proposed route designations. Without this information, it is impossible for the decision-maker and the public to determine if the PRMP minimized impacts to wildlife, as required by the ORV regulations.

The PRMP contains no evidence that its ORV designations and the travel management decisions (2,820 miles of route, with 80% of the MPA available to ORV use) minimize impacts to wildlife including the special status species. Reporting that the PRMP has less impacts than one or more alternatives considered, but more than other alternatives considered is not adequate for NEPA's hard look requirement, does not comply with FLPMA and the ORV regulations' minimization requirement, and may violate the Endangered Species Act. The BLM must revise its impacts analysis to include scientific, quantitative analysis, and must disclose the quantitative impacts of the ORV and travel management decisions on wildlife, including special status species, to the public and decision-maker prior to issuing the Record of Decision.

g. Non-WSA Lands with Wilderness Characteristics

Although the stated goals and objectives for managing non-WSA lands with wilderness characteristics are to "[p]rotect, preserve and maintain the wilderness characteristics," (*id.* at 2-26) the PRMP's ORV and transportation decisions are not consistent with protecting and preserving the wilderness characteristics of these areas. The PRMP will designate 262 miles of motor vehicle route within these areas even though the PRMP acknowledges

that ORV routes affect the naturalness of the areas:[20] " . . . designated routes for motorized vehicle use . . . would . . . result in irretrievable degradation of the natural characteristics of non-WSA lands with wilderness characteristics . . . [and] would change the natural, undeveloped setting to a more developed landscape that is not conducive to primitive recreation activities and experiences of solitude." PRMP at 4-291.

In an attempt to play down these impacts, the PRMP states that, "[l]imiting OHV use to existing routes would confine soil and vegetation disturbance caused by motor vehicles to existing routes, and result in no additional disturbance and change to the natural characteristics of the non-WSA lands with wilderness characteristics" Id. at 4-255. However, the PRMP fails to provide quantitative support for the conclusion that ORV use on existing routes will "result in no additional disturbance and change to the natural characteristics." BLM's conclusory statement is even more suspect given that the MFO has admitted that increased ORV use has "created several issues" for the MFO, as use of ORVs "allows easier access . . . to remote parts of the area, making management of this activity and the area utilized more difficult, while also increasing the potential range of impacts." PRMP at 3-100. Encouraging ORV use in remote, roadless areas that the BLM, itself, has identified as having wilderness characteristics while acknowledging that ORV use increases the risk of impacts to the resources clearly does not minimize the impacts to these wilderness character areas.

Surveys report that about half of ORV users ride ***off*** of designated trails, and that such use results in negative impacts on the naturalness of the area. *See e.g. Off Highway Vehicle Uses and Owner Preferences in Utah (Revised)*, Prepared for Utah Dept. of Natural Resources, Div. of Parks and Recreation, Utah State Univ. (Jan. 18, 2002) at 20 (approximately 50% of ORV users state that they prefer to ride "off-trail" and on their most recent trip, did, in fact, ride off-trail); and *Forest Service Discusses ATV Damage During Archery Hunt,* Emery County Progress (Sept. 24, 2008) ("We discovered that a full 50 percent of ATV riders chose to ignore the signs and go around a closure."), attached as Exhibits T (USU survey) and U (EmeryCo Progress article).

[20] The PRMP includes contradictory statements regarding miles of route in wilderness character areas. It states that there are 175 miles of route in non-WSA lands with wilderness character that will be managed to protect the wilderness character and 173 miles of route in non-WSA lands with wilderness character that will be managed for other resource values (PRMP at 2-115), while simultaneously, and confusingly, stating that there are -0- miles of route in non-WSA lands with wilderness character that will be managed to protect the wilderness character (PRMP at 4-254). According to SUWA's calculations based on BLM's GIS data that was used to produce the ORV route maps at Exhibit K, there are -0- miles of route in non-WSA lands with wilderness character that will be managed to protect the wilderness character and 262 miles of route in non-WSA lands with wilderness character managed for other resource values. Part of the difference between the two mileage figures is that the PRMP erroneously omitted from its list on page 4-254 the portions of Dark Canyon, Grand Gulch, Mancos Mesa and Nokai Dome wilderness character areas that BLM has decided not manage to protect wilderness characteristics. For purposes of this protest, SUWA will use the 262-mileage figure for lands not managed to protect wilderness character, and -0- mileage figure for non-WSA lands with wilderness character managed to protect wilderness character, even though the PRMP reports the figure as 348 miles (PRMP at 4-289). NEPA requires BLM to provide correct and accurate information in the PRMP, and in a manner that facilitates rather than impedes understanding. The Monticello PRMP fails to do so with respect to proposed miles of route in WSAs and non-WSA lands with wilderness character. *See* 40 C.F.R. §§ 1500.1(b), 1500.2(d), and 1502.8.

BLM's contention that allowing ORV use on existing trails within wilderness character areas will have no effect on the area's natural characteristics contradicts the agency's own 1980 wilderness inventory documentation that included numerous statements that the existence of ORV routes detracts from the naturalness of the area—which subsequently led BLM to drop areas from further wilderness consideration. BLM cannot have it both ways. Designating routes in wilderness character lands will encourage more motorized use of the trails and the existence of a well-used trail bare of vegetation affects the naturalness of the area and its future eligibility for wilderness designation.

In addition, the PRMP includes a decision (although not prominently displayed in any of Chapter 2's tables discussing the various decisions and potential impacts, but rather deeply hidden in the dense text of Chapter 4) that will allow off-route, cross-country travel in a 300-foot wide corridor along all designated routes, with a few small areas excepted from the general rule. *See* PRMP at 2-242. **Thus, the 262 miles of designated routes within wilderness character areas will result in 9,527 acres of designated "open" area within the wilderness character areas.** The PRMP fails to adequately disclose this information (the PRMP states that there are no "open" ORV areas in the proposed plan (PRMP at 2-76)) and fails to analyze the impacts from this decision, and the PRMP fails to present this decision in a way that the public can readily understand and comment on, in violation of NEPA's mandates. *See* 40 C.F.R. §§ 1500.1(b), 1500.2(d), and 1502.8.

The PRMP contains no evidence that its ORV designations and travel management decisions to designate 262 miles of route within wilderness character areas and to allow off-route travel minimizes impacts to the wilderness character lands. Stating that impacts from ORV use would be reduced as compared to the No Action alternative but would be more as compared with other alternatives (*id.* at 4-255) is not adequate for NEPA's hard look requirement, and does not comply with FLPMA's UUD provision or the ORV regulations' minimization requirement. The BLM must revise its impacts analysis to include quantitative scientific analysis of the impacts to non-WSA lands with wilderness characteristics from the ORV and transportation decisions for the various alternatives, and disclose this analysis of the impacts to wilderness character areas from the ORV and travel management decisions to the public and decision-maker prior to issuing the Record of Decision.

h. Wilderness Study Areas

As discussed in detail in Section XIII of this Protest letter, although the PRMP states that no routes will be designated in WSAs and that all WSAs will be closed (PRMP at 2-71 to -72), the PRMP proposes to designate approximately 19 miles of "ways" – and possibly trails that were not identified as "ways" in the BLM's wilderness inventory – as open to ORV use in the Grand Gulch, Fish and Owl, and Road Canyon WSAs. This is arbitrary, and a violation of the IMP and FLPMA.[21] Further, it appears that BLM is proposing to

[21] Although the PRMP states that the ways in the three Cedar Mesa WSAs will be conditional use and will not be designated, the PRMP fails to disclose the number of miles of way (or purported ways) that **are**

open ways that are currently closed, or are, at a minimum, in closed areas in the Road Canyon and Grand Gulch WSAs. *See* Exhibit K and Exhibits C, D, and E.[22]

The PRMP fails to state a purpose and need for designating these 19 miles of ways and possible non-ways as open to motor vehicle use, even though the PRMP Appendix N states that designating "ways" as open to motor vehicle use *should be avoided first and foremost*, and that designation requires a "very reasonable and clear justification." PRMP Appendix N, at 24.[23] The PRMP presents no documentation of the current appearance of either the closed or open ways, or evidence that current motorized use on these ways is not causing impairment to the WSAs.

The PRMP must disclose the adverse effects to the wilderness resources of naturalness, and opportunities for solitude and primitive recreation from its proposal to designate 19 miles of ORV routes in the Grand Gulch, Road Canyon and Fish and Owl Canyons WSAs, and must explain how designating 19 miles of ways (including ways that were previously closed or in closed areas) for ORV use "minimizes" impacts to wilderness suitability, as required by the ORV regulations. (We note, as well, that these canyons are in the heart of Cedar Mesa, which is particularly rich in cultural sites. Opening these routes poses an unnecessary risk of looting and damage to these invaluable sites.)

BLM's proposal to designate 19 miles of ways in the Grand Gulch, Road Canyon and Fish and Owl WSAs will certainly encourage motorized use, and such use will eventually denude the trails of all vegetation. As vegetation is worn away and trails become linear swaths of sand and dirt, these trails will become a noticeable impact to the casual visitor and will affect the naturalness of the areas – which could deprive these WSAs of future wilderness designation. *See Southern Utah Wilderness Alliance*, 164 IBLA 33 (2004) (even ongoing use of existing motorized recreational routes can lead to more damage to other resources, especially as interest in an area increases).

BLM is required under the IMP and under NEPA to analyze all direct, indirect, and cumulative impacts that may occur. BLM must analyze these impacts and provide the analysis to the public and decision-maker in a revised PRMP before issuing the Record of Decision. It is not enough to merely state that due to the "protective management requirement [of the IMP] there would be no impacts to WSAs" from the decisions in this

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proposed to be designated open to motorized vehicles. SUWA calculated 19.1 miles of way, based on BLM's GIS data. *See* Exhibit K, and Ex. C and D maps of GG and F&O and Road WSA routes. NEPA requires BLM to provide correct and accurate information in the PRMP, and the Monticello PRMP fails to do so with respect to miles of route in WSAs and non-WSA lands with wilderness character. 40 C.F.R. §§ 1500.1(b), 1500.2(d), and 1502.8.

[22] The PRMP fails to provide sufficient baseline information regarding currently closed ways, and fails to provide accurate data and analyses to the public as required by NEPA. 40 C.F.R. §§ 1502.15, 1502.8 and 1500.1(b).

[23] The PRMP states, "a limited number of "ways" were designated in all Cedar Mesa WSAs to provide access to trailheads and to remain in compliance with existing agreements with San Juan County." PRMP, Appendix N at N-24. The PRMP fails to include a description or explanation of what type of agreement the MFO has with San Juan County. However, BLM must comply with the IMP with respect to WSA management, and any "agreement" with a local county cannot take precedence over managing WSAs for non-impairment.

plan. Merely stating something does not make it true. BLM must make management decisions consistent with the IMP, and the designation of 19 miles of ways (and/or purported ways) is not the most reasonable decision to protect the WSAs from impairment from ORV use. Nor is it the most likely decision to minimize ORV impacts to these three WSAs

Importantly, the BLM must modify its ORV and travel management decisions in the Final RMP, to strictly prohibit driving 150 feet off of these designated ways to access campsites, in accordance with the IMP. *See* PRMP at 4-242.

Closure and restoration of all ways in WSAs is most consistent with the IMP and with protecting, and minimizing impacts to natural and cultural resources in the Monticello Field Office. The proposed plan fails to comply with the IMP and ORV regulations, and the PRMP's "analysis" fails to take a hard look at this management decision. BLM must revise the PRMP to disclose the potential impacts to WSAs.

i. Other Users

There is nothing in the PRMP that demonstrates that the ORV area and trail designations minimize conflicts with other users of the public lands, specifically non-motorized recreationists. The PRMP would allow ORV use in nearly 80% of the MFO, yet presents no survey data to support this misallocation of resources. Although moving to a designated route management strategy from a generally "open" management strategy might have "beneficial impacts on non-mechanized users because of the reduced likelihood for encountering OHV noise and users", the PRMP notes that there will continue to be an "adverse reduction in recreational opportunities for solitude and a sense of backcountry remoteness from noise-related OHV use if designated OHV routes were to lie near hiking trails." PRMP at 4-390.

Although closing a few areas to ORV use (22% of the planning area) *might* reduce user conflicts, there is no indication that this decision will minimize conflicts with other users, as required by the ORV regulations. With nearly 3,000 miles of proposed route – including 19 miles of designated route within WSAs and 262 miles in non-WSA lands with wilderness character – ORV use is allowed in nearly 80% of the MFO. There may be few, if any, beneficial impacts to non-motorized users as the web of routes is so dense that there are few places that non-motorized users can go to escape the sights and sounds of motor vehicles. Further, the BLM failed to conduct any qualitative or social research that would support the decision to allow ORV use in particular areas, or to manage particular areas primarily for non-motorized use. Thus, neither the BLM nor the public is equipped with information about which areas are particularly valuable to non-motorized recreationists, and whether these areas will instead be managed – wrongfully -- for ORV use.

The PRMP stated that ORV use is monitored at only four areas, in addition to monitoring the WSAs for ORV intrusions. *See* PRMP at 3-89. However, the PRMP fails to include a timetable, summary, and trend of these monitoring exercises. It merely states,

"[d]emand for OHV activities is expected to continue to increase." *Id.* Although "staff" in the MFO has concluded that ORV use will increase (*see id.*), the MFO must conduct a visitor survey, similar to the Moab National Visitor Use Monitoring survey before issuing the final RMP and Record of Decision. The MFO should pay particular attention to the relative use of non-motorized versus motorized recreation. *See* http://www.suwa.org./site/DocServer/BLMNVUMsurveyMoab.pdf?docID+2821. This study shows that non-motorized recreation is utilized by vastly more visitors to the Moab BLM-managed lands than motorized (ORV-based) recreation. **In fact, the Moab survey found that motorized use accounted for less than 7% of visitors' main activity**. Having actual visitor information is essential to guide BLM's long-term recreation management decisions and ORV area and route designation decisions. Merely stating in conclusory fashion that there will be beneficial impacts by moving from a predominantly "open" planning area to one that is managed predominantly as limited to designated routes, is not the equivalent of minimizing user conflicts. Undertaking a visitor survey to ascertain actual visitor preferences and uses (motorized and non-motorized) would provide MFO with information on which to base informed decision, and comply with the ORV regulations' minimization criteria. This data must be incorporated into the affected environment and environmental consequences analysis sections to more accurately depict the impacts to non-motorized users of BLM's ORV area and route designations and travel management decisions. There is no reason to believe that the cost of such as study would be exorbitant, especially since the Moab Field Office was able to do it, and BLM has provided no basis for such a conclusion.

BLM must comply with NEPA and analyze the impacts of its ORV area and trail, and travel management decisions -- including its decision to designate nearly 80% of the MFO available to ORV use, The analysis must include the impacts to non-motorized users from BLM's decision to designate 19 miles of ways in WSAs and 262 miles of route in wilderness character areas. BLM must make this information available to the public as well as present this information in a way that is easy for the public and decision-maker to understand. The PRMP must be amended to incorporate adequate analysis and accurate baseline information prior to BLM issuing the Record of Decision.

j. ORV Area and Route Designation Process

The PRMP fails to include in its goals (*see* PRMP at 2-75) the mandates of BLM's ORV regulations, which specifically require that ORV route designations be "based on the protection of the resources of the public lands . . . and the minimization of conflicts among various uses." 43 C.F.R. § 8342.1. In particular, BLM must locate ORV trails "to minimize damage to soil, watershed, vegetation, air, or other resources . . . and to prevent impairment of wilderness suitability . . . . minimize harassment of wildlife or significant disruption of wildlife habitats . . . [and] minimize conflicts between off-road vehicle use and other existing or proposed recreational uses . . ." Id.

Monticello PRMP Appendix N contains a description of the MFO's process of creating the ORV route designations and the travel plan proposal. The route identification and designation process was based on San Juan County's route inventory, San Juan County's

"purpose and need (P/N) determinations," and San Juan County "expertise and local knowledge" of the areas. PRMP App. N at N-13, N-14. BLM's subsequent process included verification of the county's P/N, photograph reviews, GPS/GIS analysis, and ID Team meetings to discuss potential conflicts. Appendix N fails to disclose the conflict analysis worksheets and the analysis for BLM's site-specific ORV area and trail designations and travel management decisions. Appendix N merely provides general background on how BLM *verified* route proposals submitted by counties and individuals or groups. There is no presentation of the purpose and need for particular open areas or routes, and no evidence that areas and routes were located so as to minimize impacts to resources and other users. The PRMP fails to disclose which areas and/or routes proposed for designation were found to have resource conflicts but were nevertheless included in the proposed plan. Further, this process amounts to an abdication of BLM's independent responsibilities to designated ORV trails based on its own guidance, federal laws, and regulations.

BLM Instruction Memorandum No. 2004-005 advises BLM to "*[c]hoose* individual roads and trails" for designation, "rather than using *inherited* roads and trails." IM Attachment 2-3 (emphasis added). The reason behind this recommendation is that "[m]ost existing roads and trails on public lands were created over time, rather than planned and constructed for specific activities or needs." *Id.* Although Appendix N does not provide information as to BLM's analysis for each route and travel plan decision, it appears that the MFO did exactly what the IM cautioned against -- it "inherited" the existing, haphazard jumble of routes, as BLM proposes to designate 2,820 miles of route out of the total inventory of 3,069 miles of route, or 92% of the inventoried routes.[24]

The PRMP fails to provide a statement of purpose and need for the various ORV area and route designations and fails to provide an explanation or analysis that indicates that MFO chose ORV use areas and/or individual routes that would protect and minimize impacts to resources and other users as mandated by the ORV regulations. *See* PRMP at 4-596 general comparison of miles designated and acres closed does not equate to a hard look).). In addition, The MFO is proposing to designate routes that were previously closed, or were in closed areas and thus, were theoretically closed to ORV use. These routes are highlighted on Exhibit E, and include routes in the following areas: Moqui Canyon, Mancos Mesa, Nokai Dome, Dark Canyon, San Juan River below Lime Ridge, Grand Gulch WSA and Road Canyon WSA. The PRMP fails to disclose this information, and fails to include a purpose and need discussion and an analysis of resource impacts due to designating these formerly closed routes.

As mentioned previously, the PRMP includes a decision to allow off-route, cross-country travel in a 300-foot wide corridor along all designated routes. PRMP at 4-242. Thus, the

[24] The PRMP at 2-3 misstates the number of miles of route designated, as it omits the roads BLM has labeled "Class B" roads (using the State of Utah's road classification description, even though these routes are on public lands, and are managed by BLM). This must be corrected prior to issuing the Final RMP and Record of Decision.

2,820 miles of designated routes will result in 102,545 acres of designated "open" area within the MFO. This is especially troublesome given that BLM acknowledges, "Cross-country OHV use . . . is creating additional resource damage and is an important issue for the Monticello FO." PRMP at 3-165. The PRMP fails to adequately disclose that over 100,000 acres will be effectively designated as open to off-trail riding (the PRMP states that there are no "open" ORV areas in the proposed plan (PRMP at 2-76)), fails to analyze the impacts to natural and cultural resources and to other users from this decision, and fails to present this decision in a way that the public can readily understand and comment on it in violation of NEPA's mandates. *See* 40 C.F.R. §§ 1500.1(b), 1500.2(d), and 1502.8.

Further, the PRMP states, "[n]umerous old airstrips located throughout the resource area on BLM, State, and private lands" will be open for use. PRMP at App. N N-27. However, the PRMP does not include an analysis of the impacts on WSAs, non-WSA lands with wilderness character, recreationists, and natural and cultural resources. As noted above with respect to route designations in closed areas, BLM must supplement its analysis to consider the impacts of this decision before the ROD is issued.

Finally, the PRMP fails to include an analysis of whether the proposed area and route designations are sustainable over the long term. To ensure that the agency has taken the required hard look, its analysis must be supplemented and provided for public review before the ROD is issued.

k. Incomplete Information

As noted above, the federal regulations address incomplete or unavailable information at 40 C.F.R. § 1502.22. In short, the regulations require that BLM do more than baldly assert that it lacks sufficient information to complete the NEPA analysis. The Monticello PRMP and DRMP's lack of information on the impacts from ORV area and trails designations and travel management decisions to air quality, water quality, soils, riparian areas, vegetation, wildlife, non-WSA lands with wilderness character, WSAs, cultural resources, and other users, cannot be used as an excuse by BLM for not providing analysis of the potential and expected impacts from its ORV area and trail designations, and transportation decisions. BLM must do more *before* it authorizes motorized use in designated areas and on designated trails. Were it otherwise, agencies could simply, and easily, undercut NEPA's insistence on informed decision making by failing to gather data relating to key determinative issues and then arguing that the information is unavailable or too difficult to obtain. That is precisely what BLM is attempting to do here.

Due to the lack of information, the PRMP fails to comply with NEPA's "hard look" requirement and fails to comply with the minimization criteria as required by FLPMA's ORV regulations.

4. The PRMP Fails to Adequately Assess the Indirect and Cumulative Impacts of ORV Area and Route Designations

The PRMP fails to adequately analyze and inform the public and the decision-maker as to the potential indirect and cumulative impacts to the natural and cultural resources from the ORV area and route designations and travel decisions. *See e.g.* PRMP at 4-773 (no discussion of ORV designations or ORV use in the air quality cumulative impacts analysis); 4-781(general statement that removing ORV open areas would be beneficial to riparian areas); 4-782 (general statement that past and present OHV use affects soil and water resources); 4-786 (general statement that past and present OHV use affects vegetation resources); 4-774 ("the advent of the Internet" combined with "substantial increase in OHV ownership and recreation use will continue to subject cultural resources in the region to heightened risk of damage, vandalism, and/or looting."); 4-786 (general statement that the Proposed plan could have adverse impact on visual resources); 4-445 (no discussion of cumulative impacts of ORV designations or ORV use on special status species); 4-446 (no discussion of ORV designations or ORV use in wildlife cumulative impacts analysis); 4-778 ("[m]ajor contributors to detrimental impacts [to non-WSA lands with wilderness characteristics] include OHV activities."); 4-4-779 (conclusory statement that "OHV travel management would have beneficial cumulative effects on recreational experience and resources by reducing surface impacts to soils, cultural resources, riparian areas and wildlife habitat by generally confining travel to designated routes."); 4-784 (general statement that the PRMP would "contribute no adverse cumulative impacts to WSAs).

Clearly these statements, or lack thereof, fail to adequately analyze and assess the cumulative impacts that the ORV designations and the dense network of proposed routes have on wildlife, soils, vegetation, riparian areas, air and water quality, WSAs, non-WSAs with wilderness character lands, visual and cultural resources, and other users, when taken in combination with other past, present and reasonably foreseeable actions, including oil and gas development, vegetation treatments, grazing, and climate change. BLM must supplement the PRMP and provide an unbiased, scientific and quantitative analysis of the cumulative and indirect impacts of the ORV designations and transportation decisions, and provide the public a chance to review and comment on the supplemental information before a decision is issued that could significantly affect the very resources BLM is entrusted to protect.

5. The PRMP Does Not Describe the Existing Baseline Conditions and the Impacts of ORV Use in the Monticello Field Office

In order to evaluate the broad range of impacts required by a NEPA analysis, it is critical that BLM adequately and accurately describe the environment that will be affected by the proposed action under consideration—the "affected environment." 40 C.F.R. § 1502.15. The affected environment represents the baseline conditions against which impacts are assessed.

As SUWA noted in its comments on the DRMP, an accurate description of the baseline conditions of the Monticello Field Office is crucial to BLM's analysis and description of the environmental impacts from the proposed action and various alternatives. *See* SUWA DRMP comments at 15-17. All management decisions and strategies flow from the

description of the current conditions. Unless BLM has an accurate, well-informed understanding of the current conditions, it cannot possibly begin to plan for future resource demands and needs. In particular, BLM cannot objectively decide how much ORV use to allow in the future, and which areas and routes to designate, if BLM does not know how much and what kind of damage such use has caused in the past, and is causing right now.

One of the most obvious and consequential flaws in the PRMP is its failure to assess the ongoing impact of existing ORV use in the Monticello Field Office. Instead of analyzing the current impacts of ORV use, BLM essentially treats existing ORV use as a given which it need not examine. BLM simply presumes that ORV use will continue and contends that such use will cause no damage over and above that which occurs now, and that the existing damage does not need to be studied. *In other words, BLM has concluded that current levels of ORV use and the existing trails are consistent with FLPMA, including the UUD and the minimization requirements, even though it does not know what the impacts are*. *See also Id.* at 4-255("[l]imiting OHV use to existing routes would confine soil and vegetation disturbance caused by motor vehicles to existing routes, and result in no additional disturbance and change to the natural characteristics of the non-WSA lands with wilderness characteristics"). This is a circuitous arguments, it is not analysis.

In addition the PRMP fails to disclose that ways previously closed in WSAs, and other routes that were in previously closed, and/or were in closed areas, are being designated as open to motorized use. This information is not obvious by merely reviewing the PRMP. One must compare PRMP Maps 58, 63, and 64, as well utilize and review BLM's GIS data to obtain this information – in other words, this information is not readily available to the general public and the decision-maker.

BLM must disclose accurate baseline information – concerning the natural and cultural resource – to the public and decision maker regarding the impacts of current ORV use and allow public comment *before* issuing final decisions for ORV area and trail designations and the travel plan.

6. Scientific Integrity and Public Scrutiny

The agency must "insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements." 40 C.F.R. § 1502.24. Information regarding reasonably foreseeable significant adverse impacts that is essential to a reasoned choice among alternatives shall be included in an EIS if the costs of obtaining it are not exorbitant. *Id.* § 1502.22(a). In addition, NEPA requires that environmental information be made available to the public. "The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." *Id.* § 1500.1(b). This type of information and analysis is wholly lacking with regard to off-road vehicle area designations and the travel plan decisions in the PRMP.

BLM must include site-specific documentation of the agency's own analysis of the purpose and need for the specific area and trail designations, as well as the potential impacts to resources associated with the *designation* and *use* of all proposed ORV areas and trails. This is critical information for the public and the decision maker to be able to determine if BLM's decisions comply with the mandates of FLPMA, the ORV regulations, and Executive Orders—all of which require that BLM locate ORV areas and trails to *minimize* damage to riparian areas and floodplains, soils, vegetation, wildlife and wildlife habitat, cultural resources, air and water quality, and to *minimize* conflicts with other recreationists—and BLM's obligations under the Clean Air Act, Clean Water Act, Endangered Species Act, and National Historic Preservation Act.

The DRMP failed to present this information with respect to the various ORV area and trail designations and the transportation decisions under consideration and the PRMP did not correct these gross omissions. Without this information and data, the public has no way of discerning the basis for BLM's decisions regarding the specific area and trail designations and travel plan, and cannot confirm that BLM has, in fact, ensured that these designations comply with the minimization requirements and other legal and policy obligations set out above.

To address these deficiencies, BLM must provide specific information on the purpose and need for the ORV area and route designations incorporated in each alternative, the potential impacts to natural and cultural resources, the potential conflicts with other users, how those impacts can be mitigated or avoided, enforcement and monitoring requirements and schedules, and the manner in which designation of the areas and routes for ORV use is consistent with the agency's obligations under FLPMA, CAA, CWA, ESA, NHPA and BLM's ORV regulations and policy.

In addition, the Monticello PRMP maps fail to adequately portray critical information to the public and decision maker. In order to provide high quality, easy to understand information for the public to review and assess, the PRMP's ORV area and route designation maps (Maps 63, 64) must be modified to display the proposed ORV area and route designations with other resource inventories and/or management decisions, such as riparian areas, potential ACECs, wildlife habitat, non-WSA lands with wilderness character areas, wilderness character areas proposed to be managed to protect wilderness character attributes, and WSAs. *See e.g.* SUWA's Monticello PRMP Route Impacts on Wildlands map, attached as Exhibit D. BLM has this information at its disposal, and must modify and re-issue the PRMP maps so that the public and decision-maker can better understand the impacts of the ORV area and route designations on various resources *before* issuance of a Record of Decision.

VI. Visual Resources

BLM is directed by federal statutes and BLM policies to protect visual resources. FLPMA compels BLM to prepare and maintain inventories of the visual values of all public lands, 43 U.S.C. § 1711(a), and manage public lands "in a manner that will protect the quality of . . . scenic . . . values," §1701(a)(8). NEPA requires BLM to "assure for all Americans . . . aesthetically . . . pleasing surroundings." 42 U.S.C. § 4331(b)(2). BLM has interpreted these mandates as a "stewardship responsibility" to "protect visual values on public lands" by managing all BLM-administered lands "in a manner which will protect the quality of the scenic (visual) values." BLM, BLM Manual 8400 – Visual Resource Management .02, .06(A).

BLM utilizes visual resource inventories during the RMP process to establish management objectives, organized into four classes. These objectives are as binding as any other resource objectives contained in the RMP. *See Southern Utah Wilderness Alliance*, 144 IBLA 70, 84 (1998). BLM may not permit any actions that fail to comply with these objectives. *See* PRMP at 4-677 ("[O]nce a VRM class designation has been assigned to an area, resource management and planning decisions that could impact visual quality are required to consider and to comply with the designated VRM class objectives of that area.").

These statutory and regulatory responsibilities are especially important to the areas managed by the Monticello Field Office, which includes lands world famous for their scenic vistas. *See* PRMP at 3-174 ("The Monticello PA contains an unusually large number of areas that possess a high degree of scenic quality and a high level of visual sensitivity."). BLM should establish Visual Resource Management (VRM) objectives that limit surface disturbance within these special viewsheds.

All WSA lands and non-WSA lands managed for wilderness characteristics should be managed as Class I and other non-WSA lands with wilderness characteristics, such as those contained in the proposed America's Red Rock Wilderness Act, should be managed as Class II. BLM guidelines for assigning VRM Inventory Classes clearly states that

> Class I is assigned to those areas where a management decision has been made previously to maintain a natural landscape. This includes areas such as national wilderness areas, the wild section of national wild and scenic rivers, and other congressionally and administratively designated areas where decisions have been made to preserve a natural landscape.

BLM, BLM Manual 8410 – Visual Resource Inventory at V(A)(1).

Lands with popular and easily accessible vantage points should be managed to protect visual resources, such as VRM Class II, to "retain the existing character of the landscape," including clear stipulations to mitigate the negative impacts from oil and gas development and other human disturbance. Indeed, the BLM guidelines for assigning

VRM Classes include distance zones as one of the three factors considered when assigning VRM Classes. *Id.*

ACECs and other special management designations and prescriptions should be used to protect scenic landscapes and viewpoints within the resource area with stipulations specifically addressing and managing human development impacts, including VRM Class I to "preserve the existing character of the landscape" or VRM Class II to "retain the existing character of the landscape" as appropriate. Without such classification assignments, the PRMP fails to protect the viewsheds in ACECs.

We commend BLM for designating Wilderness Study Areas and the wild segments of Wild and Scenic Rivers as Class I, and the scenic segments of Wild and Scenic Rivers as Class II. PRMP at 2-80, Table 2.1: Summary Table of the Proposed Plan and All Alternatives. However, BLM failed to adequately protect the visual resources in all ACECs, all non-WSAs with wilderness characteristics, and other areas throughout the Field Office. Overall, BLM's VRM decisions will allow for a decrease in the quality of visual resources in the Field Office. PRMP at 4-396.

Comparing Map 53: Area for Critical Environmental Concern (ACECs) – Proposed Plan and Map 71: Visual Resource Management Classes (VRM) – Proposed Plan reveals that only one ACEC is designated entirely as VRM Class I, two others are designated partly as Class I, several are designated, in whole or in part, as Class III, and one is partly designated as Class IV. Because Classes III and IV allow significant disturbance, they are improper classifications for areas within ACECs.

Also troublesome is the PRMP's treatment of non-WSAs with wilderness characteristics. The PRMP designates much of the Field Office's non-WSAs with wilderness characteristics as Classes III and IV, even when admitting that this would "not preserve an undeveloped setting, [and] opportunities for both solitude and primitive recreation would be diminished." PRMP at 4-273; 4-273 to -276, Table 4.98: VRM Classes in Non-WSA Lands with Wilderness Characteristics by Alternative. As SUWA and many others have done throughout the RMP process, we urge BLM to protect these rare and extraordinary landscapes, by designating them as at least Class II.

Additionally, the PRMP provides only minimal protections for visual resources outside of Wilderness Study Areas and non-WSA lands managed for wilderness characteristics. In response to a comment on the Vernal Draft RMP, BLM asserted

> VRM Class I can be designated for other areas that are not national wilderness areas, wild and scenic river segments, and other congressionally and administratively designated areas. The language of H-8410-1 states that in areas where the natural landscape is to be maintained includes areas such as WSAs, wild and scenic rivers, etc. This does not eliminate other naturally scenic areas from designation as VRM I. The BLM can designate other areas as VRM I . . .

Vernal PRMP, BLM Response to Comments, sorted by Commenter, Form Letters & Government, at 111. This assertion not only supports designating all Wild and Scenic River Segments as Class I—which BLM failed to do in the Monticello PRMP—but also suggests that BLM can and should provide stronger protections than it has selected in the Proposed Alternative. As BLM explained in another response to a comment on the Vernal Draft RMP, VRM Classes I and II merely "mean that the BLM has to try harder to accommodate both the visual concerns as well as the valid existing rights." *Id.* at 111–12. Given the unique, spectacular visual resources found in the Monticello Field Office, BLM has failed to adequately protect visual resources or explain why it has chosen against "trying harder" to protect such important resources. Moreover, the Monticello PRMP states that BLM is concerned with "[r]esolving the impact of surface disturbances . . . on other resources and uses (particularly . . . visual resources . . .) while remaining in compliance with federal energy policies." *See* PRMP at 1-5. It seems that this concern would have compelled BLM to maintain strong visual resource protections, that often allow surface disturbing activities when accompanied by strict mitigations, rather than choose weaker visual resource protections that do not require as strict mitigations.

In addition to expressing concerns about protecting visual resources from energy development, the PRMP also discusses the goal of "[s]tudying the impact of increasing OHV use on landscapes and visual resources." PRMP at 1-8. The PRMP later concludes that "rapid increases in recreational resource users are having an impact on visual resources" and "[t]hroughout the Monticello PA, impacts to the landscape are occurring from increased recreation and tourism, which include the impacts from increased OHV use." *Id.* at 3-177; *see also id.* at 3-178. Despite these conclusions, the PRMP allows OHV use in much of the Field Office, including several Class II areas. It seems contradictory that BLM would designate an area as Class II, with the goal of protecting its visual resources, yet open that area to OHV routes, which BLM understands to negatively impact visual resources. While activities in VRM Class II areas are subject to mitigations, BLM has not explained how it will sufficiently mitigate the negative impacts of OHV routes on the landscape.

Aside from Class designation decisions that fail to adequately protect visual resources, there are major deficiencies in how BLM conducted its analysis of visual resource management in the RMP process. First, the visual resource inventory on which BLM's visual resource management decisions are based is old and outdated. Responding to a comment submitted about the Draft RMP by the State of Utah, BLM explained that the "VRM inventory was completed in the late 1970s and early 1980s. These inventory classes were not changed." BLM Response to Comments of the Draft RMP/EIS, sorted by Resource, at unpaginated p. 273. While BLM states that "an interdisciplinary team of BLM resource specialists" worked together to designate management classes, BLM does not mention any update of the old inventory. *See id.* Without a new, updated inventory, all of BLM's visual resource management decisions are based on potentially inaccurate information. Much has changed in the past 25 years, including changes to the landscape as well as changes in the public's concern about particular areas. An accurate, recent inventory is necessary for BLM to make sound management decisions. Relying on an inventory conducted three decades ago to make management decisions that will impact

visual resources for the next several decades is arbitrary and capricious and violates FLPMA and NEPA. As the National Parks Service explained in their comments to the Draft RMP for the Richfield Field Office:

> This does not meet the requirements of FLPMA Sec 201. [43 U.S.C. 1711](a) which states that: "The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values." Much has changed in the past 30 years that would affect scenic values since the VRI was completed, including development, road paving or realignments, emergence of new recreation technologies such as OHVs, and much more. In order to properly evaluate impacts to scenic quality, an up to date visual resource inventory is needed to reflect the multitude of changes that have occurred since the 1970s throughout the RFO. Upon completion, an up to date map can be presented in a revised draft RMP so that the effects of proposed management actions on scenic resources adjacent to the parks and within their viewsheds can be properly evaluated.

National Park Service, comments submitted to the Richfield Draft RMP, at 4. Further, NEPA requires BLM to understand the consequences of the decisions it makes during the RMP process. BLM cannot possibly fully understand the consequences of its visual resource management decisions without knowing the current conditions of the Field Office's visual resources. BLM must conduct a new visual resources inventory to assess actual modern day conditions. Once BLM possesses such information, it can understand the real consequences of any future disturbance and can make new, informed visual resource management decisions.

Second, we share the State of Utah's "concerns that the BLM's identification of VRM inventory classes has led to a self-effectuating class protection scheme, rather than a source of information to be considered." BLM Response to Comments of the Draft RMP/EIS, sorted by Resource, at unpaginated p. 273. The manner by which the PRMP explains why certain VRM Classes were chosen infers that each VRM Class decision was made to simply conform to other management goals, without any weight given to the goal of protecting visual resources. For example, the PRMP states: "areas with high mineral resources potential may be designated as VRM Class III or IV to allow surface-disturbing minerals exploration and development" and "In areas available for oil and gas leasing . . . visual resources would be managed as VRM Class III or IV." PRMP at 4-677, 2-80.

VII. Wild and Scenic Rivers

The Wild and Scenic Rivers Act (WSRA) requires federal agencies, including BLM, to consider the potential for national wild, scenic and recreational river areas in all planning efforts, including in the Monticello RMP process. 16 U.S.C. § 1276(d)(1). During the first WSRA review phase, BLM must determine which river segments are "eligible" to be considered part of the National Wild and Scenic Rivers System (NWSRS). 16 U.S.C. § 1273(b). Eligible river segments are those that are free-flowing and have at least one outstandingly remarkable value, including but not limited to "scenic, recreational, geologic, fish and wildlife, historic, and cultural" values. 16 U.S.C. §§ 1271, 1273(b). Eligible segments are then given a tentative classification of "wild," "scenic," or "recreational," based on the level of human development associated with that segment. *Id.* § 1273(b)(1)–(3); BLM Manual § 8351.32 Wild and Scenic Rivers – Policy and Program Direction for Identification, Evaluation and Management (Dec. 22, 1993), *hereinafter* "BLM Manual." Eligibility involves solely river values; no other concerns, e.g. manageability or resource conflicts, are considered at this stage.

BLM has determined that twelve river segments within the Monticello planning area, totaling 115.3 river miles, are eligible for inclusion in the NWSRS. PRMP at 2-6. Once BLM determines that a river segment is eligible, "its identified outstandingly remarkable values shall be afforded adequate protection, subject to valid existing rights, and until the eligibility determination is superseded, management activities and authorized uses shall not be allowed to adversely affect either eligibility or the tentative classification." BLM Manual § 8351.32(C); *see also* BLM Manual § 8351.33(A).

After determining which river segments are eligible, and protecting them accordingly, BLM must then determine which eligible segments are "suitable" for inclusion in the NWSRS. The "suitability" determination considers tradeoffs between river protection and corridor development, including the environmental and economic results of designation. 16 U.S.C. § 1275(a); PRMP at Appendix H-75. The PRMP recommends four segments totaling 35.7 river miles as suitable. PRMP at 1-10, 2-6. Once BLM determines a segment is suitable, it must manage it so as to preserve the outstandingly remarkable values and not impair any future suitability decision. BLM Manual § 8351.32(C).

After BLM makes its suitability determinations, the agency must coordinate with the State of Utah, local and tribal governments, and other federal agencies to recommend segments to Congress for inclusion in the NWSRS. Only Congress can designate rivers as part of the NWSRS. 16 U.S.C. §§ 1273(a), 1275(a). To date, not a single river segment in Utah has been included in the NWSRS. Despite Utah's critical desert riparian habitats and stunning river corridors, Utah is one of only ten states without a single river in the NWSRS. In order to adequately protect Utah's valuable and spectacular rivers, BLM should emphasize the designation of suitable rivers.

A. BLM's Failure to Recommend River Segments That Are Regulated under Other Management Prescriptions, Such as ACECs, WSAs, and SRMAs, Violates the WSRA and the BLM Manual

BLM violates the WSRA and the BLM Manual by failing to recommend segments that otherwise qualify as suitable because they are supposedly protected by some other management prescription, including WSA status, ACEC designation, or SRMA designation. 16 U.S.C. § 1275(a); BLM Manual § 8351.33(A). The Monticello PRMP repeatedly justifies its failure to recommend suitable segments by stating that other means of protection, such as ACEC designation, SRMAs, and the IMP for WSAs will protect Indian Creek, Dark Canyon, Arch Canyon, Fable Valley, and various segments of the San Juan River. PRMP at Appendix H-103 to -107. However, these other management prescriptions are only temporary, and do not offer permanent protection specifically for the rivers' outstandingly remarkable values. PRMP at 1-10, 4-299. By failing to recommend segments that otherwise meet the suitability criteria as suitable, BLM violates the WSRA by applying criteria outside of those enumerated in the WSRA and the BLM Manual, and allows for the potential degradation of these rivers and their outstandingly remarkable values. 16 U.S.C. § 1275(a); BLM Manual § 8351.33(A). BLM's failure to recommend these otherwise-suitable sections defeats the purpose of the WSRA, which is to protect rivers and their outstandingly remarkable values. 16 U.S.C. §§ 1271, 1272, 1276(d).

As the Moab BLM stated, "BLM strives to ensure that the goals and objectives of each program (representing resource values and uses) [e.g. Wild and Scenic Rivers, ACECs, SRMAs, WSAs, etc.] are consistent and compatible for a particular land area." Moab PRMP, BLM Response to Comments, Sorted by Commenter, at 142. Thus, BLM works to protect separate values that are highlighted in separate acts and regulations, such as protecting "outstandingly remarkable values" of Wild and Scenic Rivers, versus "relevant and important values" of ACECs. *Compare* 16 U.S.C. § 1271 et seq., *and* BLM Manual § 8351 *with* FLPMA, 43 U.S.C. §§ 1702(a), 1712(c)(3), *and* BLM ACEC Manual § 1613. Regardless of whether the goals of the different regulations are complementary, the distinct values are best protected separately under different regulations. The Moab BLM Field Office uses the example of WSAs and ACECs to make this point:

> For example, the BLM has separate policies and guidelines as well as criteria for establishing Areas of Critical Environmental Concern (ACECs) as when the Wilderness Study Areas (WSAs) were established. These differing criteria make it possible that that same lands will qualify for both an ACEC and a WSA but for different reasons. The BLM is required to consider these different policies. The values protected by WSA management prescription do not necessarily protect those values found relevant and important in ACEC evaluation, and vice versa . . . The ACECs are evaluated and ranked based on the presence or absence of the stated relevant and important. None of these values include wilderness characteristics. Additionally, the management prescriptions for the ACEC are limited in scope to protect the relevant and important values.

Moab PRMP, BLM Response to Comments, Sorted by Commenter at 143. Thus, BLM admits that different designations serve different purposes, and that designations are limited to protect only those values relevant to those particular designations. Therefore, the fact that an eligible river segment lies within a proposed or existing ACEC, WSA, or SRMA is not a justification for finding the segment non-suitable.

Monticello BLM confirms Moab's position in its response to San Juan County's comment that a suitability recommendation for Dark Canyon is unnecessary because that segment is already within a WSA:

> The Wild and Scenic River suitability process and the WSA process differ. The outstandingly remarkable values found along Dark Canyon differ from the wilderness values found within the WSA. It is very common for rivers within Wilderness Areas to be designated as Wild and Scenic Rivers.

PRMP Response to Comments, Sorted by Resource, at unpaginated 367, Comment 7-52. As Monticello BLM explains, outstandingly remarkable values are different from wilderness values and the fact that an eligible segment is within a WSA is not a justification for failing to recommend that segment suitable. Thus, WSA protection under the IMP, ACEC designations, and other management prescriptions do not adequately protect the eligible river segments and their outstandingly remarkable values. As discussed elsewhere in this protest (*see, e.g.*, Water Quality section, Riparian section, and Travel Management section), designated routes and off-road vehicle travel on these routes, negatively impact water quality and riparian values, as well as the outstandingly remarkable values of eligible rivers. SRMAs, in particular, have nothing to do with protecting rivers. SRMAs are designated solely to provide recreation opportunities for users of different types, e.g. motorized, equestrian, biking, hiking, etc. BLM Land Use Planning Handbook, H-1601-1, Appendix C at 15-17 (March 2005). Therefore, BLM's reliance on other management prescriptions, such as SRMAs, ACECs, and WSAs to protect rivers' outstandingly remarkable values violates the management prescriptions of the WSRA and the BLM Manual, as well as the very purpose of the WSRA. 16 U.S.C. §§ 1271, 1272; 16 U.S.C. § 1275(a); BLM Manual § 8351.33(A).

B. BLM Should Recommend Additional Suitable Segments

SUWA supports BLM's decision to recommend Dark Canyon,[25] one segment of the San Juan River, and two segments of the Colorado River as suitable.[26] PRMP at 2-133 to -

[25] The Dark Canyon segment recommended suitable should be carried into the PRMP as a mineral withdrawal recommendation in order to protect, as BLM states, the outstandingly remarkable values of the river, its tentative classification as wild, and to limit the risks of "surface disturbance, habitat fragmentation, loss of visual integrity, and noise from construction and operation of mineral development infrastructure." PRMP at 4-515, 4-518; *cf.* PRMP at 1-22.

[26] There are discrepancies in the PRMP regarding the classifications of the suitable segments. Appendix H-83 indicates that Colorado River Segment 2 is "scenic," while Colorado River Segment 3 is "wild." However, Map 55 and pages 3-149 and 4-511 indicate that Segment 3 of the Colorado River is "scenic," not "wild." Because Segment 3 meets the criteria for a "wild" classification, as expressed in Attachment 3

137, 4-510, Map 55. However, BLM should also recommend additional suitable segments, namely Indian Creek, Fable Valley, Arch Canyon, one more segment of the Colorado River, and additional segments of the San Juan River. PRMP at Appendix H, Map 54. Failure to recommend these eligible segments as suitable is contrary to the findings expressed in Appendix H of the PRMP, which provides compelling documentation as to why these additional stream segments possess outstandingly remarkable values and otherwise meet suitability requirements. PRMP at Appendix H. Failure to recommend these segments suitable is also contrary to BLM's own admission that short-term surface-disturbance from mineral development, ORV use, or other activities would result in a long-term or irretrievable loss of outstandingly remarkable values. PRMP at 4-520 to -521. NWSRS inclusion is the best and only way to adequately protect the identified outstandingly remarkable values of all of these streams. BLM should recommend these segments suitable in order to better manage the ecosystems and protect watersheds of the planning area.

In conducting a suitability determination, BLM must use only the criteria listed in the WSRA and the BLM Manual. SUWA appreciates that BLM listed the suitability factors that it considered for each segment, in compliance with the WSRA and the BLM Manual. PRMP at Appendix H-75 to -76; 16 U.S.C. § 1275(a); BLM Manual § 8351.33(A). However, the PRMP does not explain how BLM evaluated the factors to determine whether or not to recommend a segment suitable. Based on the factors that BLM examined for each segment, it appears that all of the above-listed segments meet the suitability criteria.

The Colorado River is an internationally-important river that possesses outstandingly remarkable scenic, fish, recreation, wildlife, cultural, and ecological values, and all three eligible segments must be protected. PRMP at Appendix H-83. BLM admits that by failing to recommend Segment 1 as suitable, there will be long-term, adverse impacts on the river corridor due to mining and surface leasing that could impact the recreational and scenic outstandingly remarkable values of this segment. PRMP at 4-382. Given the importance of the Colorado River, the development threats that Segment 1 faces, the very positive descriptions of the River's outstandingly remarkable values, and the fact that most of the suitability factors, including land ownership status, support from organizations and the National Park Service, manageability, and costs, point in favor of suitability recommendation, BLM should recommend all three of the eligible Colorado River segments as suitable. *See* PRMP at Appendix H-83 to -84, H-101 to -102.

The San Juan River is also a very important river which possesses outstandingly remarkable fish, recreation, wildlife, cultural/historic, ecological, and geologic values which BLM describes in very positive terms. PRMP at Appendix H-86 to -88. In order to adequately protect these values, BLM should recommend all five segments of the San Juan River as suitable. BLM admits that these segments' recreational outstandingly remarkable values face long-term, adverse impacts due to BLM's failure to recommend

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of Appendix H, Map 55 and the classification on any pages in the PRMP that currently indicate "scenic" should be changed to indicate that Segment 3 of the Colorado River is classified as "wild." PRMP at Appendix H-91 to -92.

most segments of the San Juan River as suitable. PRMP at 4-386. Furthermore, most of the suitability factors, including land ownership, interest from groups, manageability, and costs point in favor of recommending suitability. PRMP at Appendix H-105 to -106. As discussed in Section A. above, the fact that the area is managed as an SRMA is not a justification for failing to recommend the segment suitable. *Cf.* PRMP at Appendix H-106. For the above-listed reasons, BLM should recommend all five segments of the San Juan River as suitable.

Indian Creek possesses outstandingly remarkable cultural values in the form of significant rock art that must be protected. PRMP at Appendix H-84. In addition, the Monticello eligibility study found that Indian Creek also possesses outstandingly remarkable recreation values. PRMP at 4-383. Based on the eligibility study, BLM must add recreation as an outstandingly remarkable value to Attachments 2 and 5 of Appendix H and Table 3.51 of the PRMP. As explained in the Section A. above, other management prescriptions, such as ACEC and SRMA designations are not a substitute for Wild and Scenic River suitability. *Cf.* PRMP at Appendix H-103. Furthermore, BLM admits that not recommending Indian Creek suitable "would have long-term, adverse impacts." PRMP at 4-383 to -384. To protect the outstandingly remarkable values of Indian Creek, BLM should recommend this segment suitable.

Fable Valley possesses outstandingly remarkable wildlife and ecological values, including threatened and endangered species, and habitat for migratory birds that must be protected. PRMP at Appendix H-85, H-103 to -104. Given that many of the suitability factors, including land ownership, uses, costs, and manageability point in favor of suitability recommendation, BLM should recommend this segment suitable. *See* PRMP at Appendix H-103 to -104. As discussed in Section A. above, the fact that the river lies with a WSA, an ACEC, and an SRMA is immaterial to a suitability recommendation. *Cf.* PRMP at 4-384, Appendix H-104. The best and only way to adequately protect Fable Valley's outstandingly remarkable values is to recommend the segment as suitable for inclusion in the NWSRS.

Dark Canyon is an internationally-recognized river segment that possesses outstandingly remarkable scenic, recreation, and wildlife values that must be protected through a suitability recommendation. PRMP at Appendix H-85, H-104. Given that many of the suitability factors, including land ownership, interest of other groups, manageability, and costs, point in favor of recommending the segment suitable, BLM should recommend Dark Canyon suitable. *See* PRMP at Appendix H-104 to -105. As explained in Section A. above, the fact that the segment is within a WSA, ACEC, and SRMA is not a justification for failing to recommend the segment suitable. *Cf.* PRMP at Appendix H-104 to -105.

Arch Canyon possesses outstandingly remarkable fish, recreation, wildlife, cultural, and ecological values about which BLM speaks approvingly. PRMP at Appendix H-88 to -89, H-106. BLM admits that not recommending Arch Canyon suitable would have long-term, adverse impacts on the recreational outstandingly remarkable values. PRMP at 4-383 to -385, 4-387 to -388. Given that many of the suitability factors, including land

ownership, uses, interest from groups, and costs point in favor of suitability, BLM should recommend Arch Canyon suitable. PRMP at Appendix H-106 to -107. As discussed in Section A. above, the fact that this segment lies within an ACEC and SRMA is not sufficient justification to fail to recommend the segment suitable. *Cf.* PRMP at H-106 to -107. In order to adequately protect this segment's outstandingly remarkable values, BLM should recommend Arch Canyon suitable.

For its suitability evaluation of Indian Creek, Fable Valley, and Dark Canyon, the San Juan River, and Arch Canyon, BLM considered factors outside of those enumerated in the WSRA and the BLM Manual, namely protection via other management prescriptions, such as WSA status, ACEC designation, and SRMA designation. 16 U.S.C. § 1275(a); BLM Manual § 8351.33(A); *see* PRMP at Appendix H-103 to -107. Because BLM considered factors outside of those it is directed to consider, and the other suitability factors tend point in favor of suitability recommendation, BLM should recommend these segments as suitable for inclusion in the NWSRS. Furthermore, the PRMP does not explain how BLM evaluated the suitability factors or why some segments, e.g. one segment of the San Juan River was recommended suitable, while other segments with comparable outstandingly remarkable values and a comparable set of suitability factors, e.g. the remaining four segments of the San Juan River, were not recommended suitable. *See* PRMP at Appendix H-105 to -106. In fact, the PRMP is not even clear about which segment of the San Juan River is

In addition, these rare desert streams will become increasingly important as the devastating effects of climate change progress. The outlook for the climate of the Colorado Plateau, in the context of global climate change, is warmer and drier. Watershed conservation is becoming a paramount concern and wild and scenic river protections are an important tool available to protect watersheds. Perennial and even intermittent streams are a rarity in the desert southwest. The presence of these streams and the riparian ecosystems they support are an outstandingly remarkable value that must be protected.

C. BLM's Decision-Making Process Is Opaque and Violates the Public Disclosure Requirements of NEPA and the BLM Manual

NEPA and the BLM Manual require that BLM fully disclose, summarize, and circulate for public review and comment (i.e. *before* the ROD is issued) all data and information that it used to determine eligibility and suitability. BLM Manual § 8351.06(C); 40 C.F.R. § 1500.1 *et seq.*; *Robertson v. Methow Valley Citizens Council*, 490 U.S. at 349; *Inland Empire Public Lands Council v. U.S. Forest Serv.*, 88 F.3d 754, 757 (9th Cir. 1996). The BLM Manual requires that, "[a]ll data and information upon which WSR river determinations (eligibility and suitability) are based shall be included in the planning records and summarized in documents circulated for public review in *sufficient detail to permit full disclosure and clear and widespread understanding*." BLM Manual § 8351.06(C) (emphasis added). BLM violates its own Manual by failing to present, in sufficient detail, and in a meaningful way that the public can understand, the documents upon which it bases its eligibility and suitability determinations. PRMP at Appendix H.

In addition to the BLM Manual, NEPA also requires agencies to fully disclose their decision-making process and present "high-quality" information to the public. 40 C.F.R. § 1500.1(b). Unclear and incomplete information is not "high-quality;" and BLM should adopt the suggestions in the following paragraphs to make the PRMP more accessible to the public.

BLM's reasoning for determining whether to recommend a segment as suitable is obscured. PRMP at Appendix H-101 to -107; 16 U.S.C. § 1275(a); BLM Manual § 8351.33(A). The PRMP does not explain what weight BLM gave to the different suitability factors or how BLM evaluated the factors to determine whether or not to recommend a segment as suitable. Because BLM did not explain its reasoning for finding that only four segments were suitable, despite comparable facts and values of other segments, BLM did not fully disclose its decision-making process, and the PRMP violates NEPA and the BLM Manual. BLM Manual § 8351.06(C); 40 C.F.R. § 1500.1(b). Although the PRMP discusses the eligibility values and suitability factors for each river, it does not distinguish between the different segments of the Colorado and San Juan Rivers in its analysis of suitability. PRMP at Appendix H-101 to -107. Thus, it is impossible for the reader to understand the differences between these segments in the suitability analysis, or for the reader to understand why some segments were recommended suitable but others were not. In order to present high-quality information to the public, BLM should clarify the weight given to various factors in the suitability analysis and should evaluate the suitability of each segment separately. 40 C.F.R. § 1500.1(b).

D. The PRMP Should Identify Additional Eligible Segments; Neither the WSRA Nor the BLM Manual Require Perennial Flow

BLM's decision to drop White Canyon, the upper reach of Dark Canyon, Grand Gulch, Slickhorn, Lime Creek, Comb Wash, Mule Canyon, and Fish/Owl/McLeod Canyons from eligibility based on their supposedly ephemeral natures is a misinterpretation of BLM Guidance. *See* Elena Daly, Instruction Memorandum No. 2004-196, Clarification of Policy in the BLM Manual Section 8351, Wild and Scenic Rivers, with Respect to Eligibility Criteria and Protective Management, (June 22, 2004). BLM's decision to drop these segments violates the WSRA and the BLM Manual and must be overturned. *See* PRMP at Appendix H-73; 16 U.S.C. § 1286(b); BLM Manual § 8351.31.(B). There is no requirement in the WSRA that a river be perennial to be eligible. PRMP at Appendix H-73, 2-65, Table 2.1. The WSRA requires only that rivers be free-flowing, which means "existing or flowing in natural condition without impoundment, diversion, straightening, rip-rapping, or other modification of the waterway." 16 U.S.C. § 1286(b). Furthermore, the BLM Manual states that river flows may be intermittent, seasonal, or interrupted, as long as rivers flow for more than a few days a year, and as long as volume of flow is sufficient to maintain the outstandingly remarkable values identified within the segment. BLM Manual §§ 8351.31(B). Finally, the Instruction Memorandum upon which the PRMP relies, states that,

> As a general rule, the segment should contain regular and predictable flows (even though intermittent, seasonal, or interrupted). This flow should derive from naturally-occurring circumstances, e.g. aquifer recharge, seasonal melting from snow or ice, normal precipitation, instream flow from spill ways or upstream facilities. Caution is advised in applying the . . . criterion to watercourses which only flow during flash floods or unpredictable years. The segment should not be ephemeral (flow lasting only a few days a year). Evaluation of flows should focus on normal water years, with consideration of drought or wet years during the inventory."

Elena Daly, Instruction Memorandum No. 2004-196, Clarification of Policy in the BLM Manual Section 8351, Wild and Scenic Rivers, with Respect to Eligibility Criteria and Protective Management, (June 22, 2004); PRMP at Appendix H-64. Thus, the Instruction Memorandum requires only that segments flow for more than a few days a year, and that they flow in response to natural circumstances. The Memorandum also indicates that flows should be evaluated in years of normal precipitation, not in drought years. BLM evaluated the above-listed streams in April/May 2004, which was the sixth year of a severe drought in Utah. Thus, the fact that no moving water was found in the above-mentioned river segments during a single evaluation period in a single dry year, does not mean that these segments flow only a few days a year and are not free-flowing. *See* PRMP at Appendix H-73. In order to comply with the Instruction Memorandum and to reliably determine whether these segments are free-flowing, further evaluations of the free-flowing nature of these streams should be conducted during normal precipitation years.

Given that perennial flow is not necessary to protect these segments' outstandingly remarkable values, BLM violates the WSRA and the BLM Manual by justifying its decision to downgrade the classification of the White Canyon river segment from eligible in the San Juan RMP to not eligible in the Monticello PRMP, and to identify the upper reach of Dark Canyon, Grand Gulch, Slickhorn, Lime Creek, Comb Wash, Mule Canyon, and Fish/Owl/McLeod Canyons as ineligible based on supposed lack of perennial flow. *See* PRMP at 1-24. Identifying these segments as eligible is the only and best way to protect their outstandingly remarkable values.

VIII. Water Quality

The Monticello PRMP fails to analyze and model the impacts of the activities that it permits on water quality in the planning area. Both FLPMA and NEPA require that BLM prepare such analysis. BLM must analyze and model pollutant concentrations in order to understand if the PRMP will comply with federal and state water quality standards, as required by FLPMA. Without conducting water quality analyses and modeling, BLM will not understand the effects of the pollutants generated from activities authorized by the PRMP, and will thereby violate NEPA and its requirement that BLM understand the environmental impacts of the activities it is permitting.

A. BLM's Failure to Analyze and Model Water Quality Violates FLPMA

FLPMA, and the Monticello PRMP, require that BLM manage the planning area according to federal and state water quality standards. PRMP at 2-46, 2-48, Table 2.1; 43 C.F.R. § 2920.7(b)(3) (requiring that every BLM "land use authorization shall contain terms and conditions which shall … [r]equire compliance with … *water quality standards* established pursuant to applicable Federal or State law") (emphasis added). *See also* 43 U.S.C. § 1712(c)(8) (requiring BLM in land use plans—which would therefore require implementation in daily management—to "provide for compliance with applicable pollution control laws, including State and Federal … *water … pollution standards* or implementation plans") (emphasis added).

The above-mentioned water quality standards and water pollution standards include the Clean Water Act's (CWA's) water quality standards (WQS) and accompanying Total Maximum Daily Loads (TMDL) limits for waters that do not meet WQS, as well as anti-degradation requirements for waters that do meet WQS. WQS are based on ambient water concentrations of various pollutants. Because the Monticello PRMP permits activities (e.g., off-road vehicle travel on designated routes) and analyzes potential future activities (e.g. oil and gas leasing etc.) without modeling the effect that these activities will have on concentrations of pollutants in water, the PRMP fails to satisfy its FLPMA obligation.

BLM knowingly increases impacts to water quality. Although BLM acknowledges that the activities authorized in the PRMP, including oil, gas, and mining development, and ORV use will adversely affect water quality, BLM fails to quantify the impact these activities will have on water quality. *See* PRMP at 1-161, Table 2.2, 3-37, 3-134, 4-450. Before permitting activities in the PRMP, and in order to comply with FLPMA, BLM must analyze the baseline water quality for all the water bodies in the planning area, and provide a summary in the PRMP of the water quality analyses and modeling for the water bodies in the planning area. The baseline analysis should provide monitoring of water quality indicators, including temperature, alkalinity, specific conductance, pH, dissolved oxygen, turbidity, hardness, dissolved solids, and suspended solids, as required by the CWA. Knowing the baseline water quality is essential to understanding whether the activities permitted in the PRMP will violate WQS, the CWA, and FLPMA. *See* 43 C.F.R. § 2920.7(b)(3); 43 U.S.C. § 1712(c)(8). For an example of appropriate analysis

and modeling, see West Tavaputs DEIS, Natural Gas Full Field Development Plan, February 2008, at 3-56 to -64 (attached as Exhibit V).

In order to comply with FLPMA, BLM must also analyze and model the various pollutant levels (e.g. phosphorus, dissolved oxygen, aluminum, nitrate, chloride, ammonia, selenium, etc.), as identified in the CWA, which will result from decisions made in the PRMP. These results should then be compared to the CWA standards for protection of WQS, including TMDLs and anti-degradation standards. *See, e.g.*, Exhibit V. The PRMP must also quantify contaminant levels to be expected from cumulative effects of any other activity that will cause fugitive dust, run-off, or erosion (e.g. mining, oil and gas development, grazing). BLM must analyze the baseline water quality in order to accurately estimate total dust emissions, run-off, and erosion concentrations that reach the water. Only in this way can BLM know whether it is complying with federal and state water quality standards, as FLPMA, and the Monticello PRMP, require. BLM must continue to monitor water quality throughout the life of the PRMP. If exceedances occur, BLM must prohibit the exceedance-causing activities until compliance with the CWA and other federal and state water quality standards is met and maintained.

By designating 2,820 miles of routes, BLM threatens to significantly degrade water bodies, even in disregard of its own statements in the PRMP that explain the devastating effects of ORV use on water quality. *See* PRMP at 4-450, 4-584. In the vast majority of situations, roads lead to increased erosion and reduced water quality (Froehlich 1978, Burroughs and King 1989). BLM must analyze the baseline water quality in order to accurately estimate total dust emissions, run-off, and erosion concentrations that reach the water. Then, BLM must monitor the water quality of streams and rivers that are located near roads, and that are crossed by roads. Finally, BLM must close routes to ORV traffic when violations of water quality standards occur. FLPMA, 43 U.S.C. § 1712(c)(8).

Because BLM failed to analyze water quality baselines and similarly failed to model the water-quality effects of activities in the PRMP, there is no evidence that the Monticello PRMP will comply with federal and state water quality standards, as required by FLPMA and the BLM itself.

i. BLM's Failure to Analyze and Model Water Quality Violates FLPMA and the Safe Drinking Water Act

Although the PRMP states that BLM will "apply and comply" with the Safe Drinking Water Act (SDWA), as required by FLPMA, BLM does not describe *how* it will comply with the SDWA, or how the public will know that BLM is complying with the SDWA. 43 U.S.C. § 1712(c)(8); 43 C.F.R. § 2920.7(b)(3); *See* PRMP at 4-453. BLM should list, in the PRMP, the water bodies in the Monticello planning area that are drinking water sources and determine whether any of these sources currently violate Federal Drinking Quality Standards Primary Maximum Contaminant Level and Federal Drinking Quality Secondary Standards as well as the accompanying Utah Drinking Water Standards. SDWA, 42 U.S.C. § 300(f), *et seq.*; Utah Admin. Code R309-200, *et seq.* BLM does not

provide any quantitative analysis demonstrating how it will comply with safe drinking water standards, and fails to ensure that drinking water supplies will not be contaminated by activities permitted in the PRMP. By designating 2,820 miles routes for ORVs, and permitting other activities like extensive oil and gas leasing, BLM will increase various water contaminants in the planning area that may exceed SDWA standards. To comply with the SDWA and FLPMA, BLM must analyze and disclose what the baseline drinking water quality is for every public drinking water source, and then model the anticipated impacts from activities permitted in the Monticello PRMP. 43 C.F.R. § 2920.7(b)(3); 43 U.S.C. § 1712(c)(8).

B. BLM's Failure to Analyze and Model Water Quality Violates NEPA

NEPA requires that BLM model the impacts from the various activities—and fully inventory the pollutants generated by these activities—permitted by the Monticello PRMP. "NEPA 'prescribes the necessary process' by which federal agencies must 'take a "hard look" at the environmental consequences' of the proposed courses of action." *Pennaco Energy, Inc. v. U.S. Dep't of the Interior*, 377 F.3d 1147, 1150 (10th Cir. 2004) (quoting *Utahns for Better Transp. v. U.S. Dep't of Transp.*, 305 F.3d 1152, 1162-63 (10th Cir. 2002)) (internal citation omitted). The fundamental objective of NEPA is to ensure that an "agency will not act on incomplete information only to regret its decision after it is too late to correct." *Marsh v. Or. Natural Resources Council*, 490 U.S. 360, 371 (1990) (citation omitted).

All of the shortcomings mentioned in the FLPMA section immediately above also constitute NEPA failures on the part of BLM because it does not understand the impacts of the activities it is permitting on water and water quality standards. Without analyzing baseline concentrations and preparing modeling to determine what impacts permitted activities will have, BLM cannot understand or disclose the impacts on water quality from new activities that will increase pollutants. (For an example of water quality analysis and modeling, *see* Exhibit V). Thus, BLM's lack of water quality analysis does not satisfy NEPA's hard look requirement.

The PRMP fails to provide either quantitative analysis of existing water quality or modeling for anticipated water quality impacts from the permitted activities. The PRMP must disclose baseline water quality measurements and then describe how it plans to monitor water quality so that BLM complies with WQS throughout the life of the plan. Furthermore, BLM has failed to discuss the impacts of fugitive dust, engine fluids, run-off, and erosion from increased travel of ORVs on nearly 3,000 miles of designated routes on water quality. A sizable number of the designated ORV routes in the PRMP are located near rivers and streams, and could significantly impair water quality. *See* PRMP at Map 63. The PRMP should explicitly state how many stream crossings BLM proposes to designate because stream crossings will have a devastating effect on water quality. *See, e.g.*, Richfield PRMP at 2-145- to -146. In addition, BLM must require that surface-disturbing activities stay a minimum distance, e.g. 660 feet, away from all waters. *See, e.g.*, Richfield PRMP at 2-145.

Although BLM understands that designating ORV routes will threaten water quality, BLM nonetheless proposes to designate 2,820 miles of routes. PRMP at 4-450, 4-584; *See* Monticello PRMP Route Impacts on Wildlands Map (attached as Exhibits B). When BLM designates routes, a certain proportion of users *will* violate posted closures and regulations. *See Southern Utah Wilderness Alliance*, 164 IBLA 33 (2004). Even without violations, the designation of nearly 3,000 miles of routes *will* increase runoff, erosion, sedimentation, the introduction of pollutants, etc. that will adversely affect water quality.

The PRMP has completely failed to consider the impacts of these pollutants on the local water bodies. Because dust, engine fluids, run-off, and erosion can all contribute to exceedances of total dissolved and suspended solids counts, as well as increased salinity, (which BLM has admitted is of particular concern in Monticello) it is vital that BLM determine the baseline water quality and quantitative levels of these contaminants, estimate the number of vehicles that will use the proposed designated routes, estimate the level of contaminants generated by that use, and then model those figures to understand the true impacts of fugitive dust emissions, engine fluids, run-off, and erosion on water quality. PRMP at 3-138. To comply with NEPA, BLM must take a hard look at the impacts of designating so many routes, and must provide quantitative water quality analysis and modeling to ensure that its actions will not violate federal and state water quality standards.[27] In addition to analyzing the baseline water quality, BLM must continue to monitor water quality throughout the life of the RMP. If monitoring demonstrates that permitted activities result in violations of WQS, TMDLs, or anti-degradation requirements, BLM must close the exceedance-causing areas to ORVs, oil and gas development, mining, or other activities until it can demonstrate that water quality standards are protected and maintained.

BLM admits that oil and gas leasing and subsequent development are damaging to water. PRMP at 4-781 to -782. Nevertheless, BLM chooses to open the vast majority of its land to either standard leasing or to leasing with only minor constraints. PRMP at Map 32; Monticello PRMP Oil & Gas Designation Impacts on Wildlands Map (attached as Exhibit G). Thus, BLM is aware of the impacts of oil and gas leasing on water quality, but chooses to ignore these impacts and instead refuses to close or to require No Surface Occupancy in places where water quality may be affected. This decision violates the CWA and NEPA and must be overturned. In addition, BLM must ensure that tailings water from various sites does not migrate beyond the seepage collection systems and into waters and thereby degrade water quality.

The PRMP will lead to vastly increased erosion and sedimentation. With modeling and analysis of water quality, BLM will not know when it is violating the CWA and, consequently, which activities it must defer or withdraw in order to regain compliance with WQS. In order to effectively reduce and/or halt surface-disturbing activities, BLM must provide analysis and modeling so that it knows when activities are violating the

[27] As discussed elsewhere in this protest, ORV impacts such as these are inconsistent with the protective objectives of BLM's Riparian Area Policy. At any rate, it is hard to see how BLM can judge the impact of ORV use on riparian areas without information about the existing and projected level of water contaminants they cause.

CWA and when reducing and/or halting these activities is necessary. Without providing quantitative analysis and modeling, there is no certainty that BLM will comply with the CWA and WQS.

SUWA supports BLM's decision to require best management practices (BMPs) and mitigation measures for mineral resource development. PRMP at 4-116, Appendices A and I. However, the PRMP and the Appendices entirely fail to discuss water quality or to explain how water quality will be protected. Without requiring modeling and analysis, BLM will not even know whether it will violate the CWA. The PRMP must address how BMPs and mitigation measures will assure compliance with WQS.

The implementation of the PRMP will result in water pollution; therefore, modeling and quantitative analysis must be undertaken to ensure compliance with NEPA and the CWA. BLM must prepare a comprehensive water pollutant analysis, which includes fugitive dust, engine fluids, run-off, and erosion rates that will impact water quality, and then model these figures to determine how water quality will be impacted. *See, e.g.*, Exhibit V. Without doing so, BLM cannot know what impacts these activities will have on water quality or whether it is complying with federal and state water quality standards. For these reasons, BLM violated NEPA by failing to take a hard look at how its activities will impact water quality.

C. BLM Must Provide a Current and Accurate List of TMDLs for All of the Water Bodies in the Planning Area and Ensure That Activities Permitted in the PRMP Do Not Violate TMDLs, WQS, or Anti-Degradation Standards

SUWA appreciates that BLM listed the water bodies in the Monticello planning area that are on Utah's 303(d) list of impaired waters as well as the watersheds with potential high salinity contributions. PRMP at 3-137 to -139, Tables 3.45 and 3.46. The PRMP should also list the EPA-approved TMDLs in the Monticello planning area, i.e. two segments of Cottonwood Wash for gross alpha.[28] *See* Utah Approved TMDL List, current as of September 2008 (attached as Exhibit W). BLM must conduct water quality analysis and modeling to ensure that the activities it permits in the PRMP do not violate the TMDLs for these two segments of Cottonwood Wash. BLM must likewise ensure that activities permitted in the PRMP do not violate the CWA by further degrading the water quality of the 303(d) water bodies listed in the PRMP. CWA. *See* PRMP at 3-138.

For each of the water bodies listed on the 303(d) Table on page 3-138 of the PRMP, including the segments of Cottonwood Wash with approved TMDLs, BLM should disclose in the PRMP what the quantitative TMDL limits are for each pollutant and what the baseline water temperatures and conditions are for the water bodies. For an example of appropriate disclosure, *see* Exhibit V. The PRMP should also address anti-degradation limits for water bodies that meet WQS. BLM must monitor and analyze water quality in

[28] A TMDL determines the amount of a specific pollutant that a water body can receive without exceeding water quality standards or impairing beneficial uses. 33 U.S.C. § 1313(d); Exhibit V at 3-63.

these river segments to ensure that PRMP activities do not violate the TMDLs or the anti-degradation requirements for the listed water bodies.

IX. Cultural Resources

As noted in SUWA's DRMP comments, we incorporated the comments submitted by the Colorado Plateau Archaeological Alliance (CPAA) for the DRMP into SUWA's DRMP comments. Based on CPAA's comments and the management decisions in the PRMP (which did not change significantly from the DRMP) and BLM's responses to CPAA's comments, SUWA has the following concerns regarding cultural resource management as proposed in the PRMP.

A. Section 106 Deficiencies and Transportation Plan

Of particular concern and as CPAA noted in its DRMP comments, the PRMP does not explicitly state that Section 106 compliance (e.g., Class III inventories) will be required *prior* to designation of routes currently in use. PRMP 2-10. As such, the Travel Plan is fundamentally flawed on two important points: (1) The failure of the BLM to conduct adequate analysis in the past related to ORV impacts along routes currently being used by motorized vehicles was and still remains an abrogation of the agency's Section 106 responsibilities, and the failure of the agency to recognize or correct this deficiency in the new Travel Plan appears to validate and perpetuate the agency's failure to comply with Section 106 requirements in the past; and (2) the failure to require Class III inventories along routes prior to designation suggests the agency official has already made a determination, as per 36 C.F.R. § 800.3(a), that travel route designations in such instances are not an undertaking as defined in 36 C.F.R. § 800.16(y).

SUWA disagrees with any determination that designations of existing routes are not a federal undertaking. Section 36 C.F.R. § 800.16(y) clearly states that an undertaking is "a project, *activity* or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency" (emphasis added). SUWA agrees with CPAA's position that ORV route designation is an activity managed by the BLM, and that BLM resources are being expended to plan for ORV route designation and use areas and to enforce ORV travel restrictions. It is an activity funded in whole or in part under the direct jurisdiction of a federal agency, and clearly meets the definition of an undertaking. As such, the agency official has a responsibility to determine whether this activity has the potential to cause effects on historic properties (36 C.F.R. § 800(a)) and to initiate the Section 106 process.

BLM's response to CPAA's concern states that the agency will follow the guidelines set forth in an internal memo (BLM IM-2007-030), and that according to the IM, a Class III inventory is not required prior to route designations on "existing" routes (Response to Comments, at 237, sorted by Commenter). It is important to note that the BLM's response, and the IM are silent as to whether the guidance set forth in the IM applies to all "existing routes" or only those that have been the subject of a Class III inventory in the past for a specific project that created the route in the first place (i.e. seismic exploration, oil and gas development, etc). If the BLM interpretation that no surveys are required on *all* existing routes, the IM would be in direct conflict with the mandates in

the statutes and federal regulations that require a Class III inventory for "undertakings." Route designations are certainly undertakings, and if the routes have not been surveyed prior to the designation, then BLM must conduct a Class III inventory.

Federal law takes precedence over BLM guidelines and state protocol agreements that are in direct conflict with federal laws and their implementing regulations. And, according to federal court decisions, the Advisory Council on Historic Preservation (ACHP), the independent federal agency created by Congress to implement and enforce the NHPA, has exclusive authority to determine the methods for compliance with the NHPA's requirements, not the BLM.

As with the DRMP, the PRMP is remarkably equivocal on exactly what Section 106 compliance would be required as part of the Travel Plan. There is no explicit statement that designation of existing or future ORV routes would require Section 106 compliance either prior to or subsequent to the designation. The PRMP also makes little effort to address Areas of Potential Effect outside of designated corridors. The mere fact the PRMP acknowledge these adverse effects but offers no management strategy to avoid, minimize or mitigate damage to cultural resources would appear to be a complete abrogation of BLM's NHPA and FLPMA responsibilities. Furthermore, it appears to extend preference to one user group (ORVs) over other resource values.

Improper ORV use constitutes perhaps the greatest single threat to the long-term preservation of cultural resources in the MFO and elsewhere in the West. The Draft EIS clearly recognizes that both legal and illegal ORV use are damaging resources and creating conflicts with other users. The PRMP also tangentially acknowledges that ORVs enhance the ability of users to penetrate farther into the backcountry where patrols are difficult. *See* PRMP 1-6, 1-7. Although BLM acknowledges that ORV "riders both create and follow trails that pass directly through cultural sites," and cause secondary impacts from erosion and dispersed camping (DEIS 3-79), the PRMP's impact analysis is limited to a comparison of acreage and mileage differences between the various alternatives. This does not constitute a careful consideration of those impacts. There is no question that ORVs have greatly enhanced the ability of the public to gain access to and enjoyment from cultural resources that have previously been protected by their isolation, lack of visibility or distance from an improved road. There is also little dispute that some individuals have utilized ORVs to facilitate damage to cultural resources, either directly or indirectly.

CPAA's research in eastern and southeastern Utah has demonstrated that damage to archaeological sites by ORVs can be both direct (driving vehicles through archaeological deposits) and indirect (using ORVs to gain access to topographic locations where sites are located). In Arch Canyon in southeastern Utah, indirect impacts were considered to be more common in that archaeological sites were being impacted by pedestrians who used mechanized vehicles to arrive at or near site locations. Research also found that sites with the greatest evidence of adverse human impacts were those visible from an existing ORV route (Spangler 2006).

Relevant to Arch Canyon, CPAA conducted surveys in Arch Canyon between two previously recorded sites in an area of the canyon about 0.7 miles long located between 1.1 and 1.8 miles up stream from the mouth of the canyon. This area of Arch Canyon had been the focus of a previous "clearance" survey that had not revealed additional sites (Davidson 1989). Yet CPAA surveys identified an additional nine new sites, all previously unknown to the BLM, on both sides of the canyon in this area, including an Ancestral Puebloan ceremonial site next to the route. In addition, previously undocumented features were identified at both previously recorded sites (Spangler 2006). This research demonstrated the BLM does not know the location, character or density of cultural resources in Arch Canyon. Yet the PRMP designates the entire length of Arch Canyon as an open ORV route with no limits on group size, placing high numbers of unknown and undocumented sites at risk. This is a significant and potentially detrimental reversal from the Draft RMP wherein ORV travel would be allowed only in the lower 3.8 miles and limits would be placed on group size.

Unrestricted vehicular access increases the probability that unknown and undocumented archaeological sites will be vandalized. Recent research in Range Creek in eastern Utah demonstrated a direct relationship between vehicle access and frequency of vandalized sites. Sites within 200 meters of an existing vehicle route were more likely to have been vandalized, as were sites visible from a vehicle route regardless of distance (Spangler, Arnold and Boomgarden 2006). These findings are consistent with other vandalism studies in the Southwest. Nickens et al. (1981) found that archaeological sites within 100 meters of an existing dirt road that were more than 20 miles from a town were more likely to have been vandalized; these findings were supported by interviews with known artifact collectors. Simms (1986) also observed a correlation between vandalism and visibility from the road, distance from the road and ease of access; all alcoves and rockshelters in that sample had been vandalized. Ahlstrom et al. (1992) found site type to be a major factor in vandalism.

In Tenmile Canyon near Moab, CPAA studies demonstrated a prevalence of direct and indirect impacts from both legal and illegal ORV activities. Most ORV users observed during the four-day study remained on the signed trail, which directly impacts only one of 21 sites investigated. However, large numbers of individuals left the signed trail, using vehicles to gain access to bench areas above the trail where they directly impacted cultural deposits at four sites. Indirect impacts were observed at 12 other sites where vehicle tracks were observed within 50 meters of archaeological sites with significant potential for subsurface deposits associated with the identified site. At least 12 of 21 sites had been maliciously vandalized, presumably by individuals using motorized vehicles to gain access to the remote site locations at some point in the past (Spangler and Boomgarden 2007).

Given the thousands of miles of existing ORV trails currently being utilized within the MFO, it is highly probable that significant impacts to historic properties have already occurred throughout the planning area, although there is little or no baseline data currently available to validate this assumption. Unlike permitted uses, no cultural resource inventories were conducted in association with the development of these

existing ORV trails. Given that many of the BLM lands are currently open to cross-country travel, these activities have likely already impacted historic properties, although the extent of these impacts are not quantifiable due to the fact that most cultural resources remain unknown and undocumented.

One of the most significant concerns is that ORVs allow greater public access to archaeological sites, and that this access facilitates adverse effects. Increased access to cultural sites could increase contact by visitors who could intentionally damage sites by collecting artifacts, vandalizing, illegally digging or otherwise excavating the sites, and that reducing such access by restricting travel and, where appropriate, closing routes would significantly enhance the protection of cultural resources.

As discussed above, damage to or destruction of archaeological sites is most prevalent along existing routes, usually within 200 meters of an existing route (cf. Spangler, Arnold and Boomgarden 2006). Hence, the limitation of ORV travel to existing or designated routes may not significantly reduce impacts to cultural resources adjacent to those routes. There is no discussion or analysis included in the travel plan that addresses Areas of Potential Effect (APE), either an acknowledgment that impacts occur beyond the area of disturbance or an indication of what the APE could or should be.

There seem to be inherent assumptions throughout the PRMP that (1) all ORVs will remain on the designated trail, and hence there would be no vehicular damage to sites adjacent to the trail; and (2) that designated ORV trails would not facilitate pedestrian access to archaeological sites that could be subjected to illegal looting, vandalism, improper surface collection of artifacts and increased erosion and structural degradation caused by public visitation. Both assumptions are in conflict with data elsewhere that demonstrate a significant portion of ORV users do not remain on designated trails (Spangler and Boomgarden 2007), that vehicular routes facilitate greater pedestrian access to archaeological sites that are then subjected to direct and indirect impacts (Spangler 2006) and that archaeological sites within 200 meters of a vehicle route are far more likely to be vandalized (Spangler, Arnold and Boomgarden 2006; see also Nickens et al. 1981 and Simms 1986). It must be considered probable that such damage has already occurred along existing routes, and that damage to known and unknown sites will continue in the future.

Direct damage to archaeological sites from motorized vehicles using established routes appears to be a much greater problem in the Monticello Field Office than elsewhere in Utah. This is likely attributable to the exceptionally high number of prehistoric sites in open settings that are increasingly accessible to motorized vehicles. The BLM acknowledges that direct impacts have occurred and that trails have been illegally constructed through significant archaeological sites. Historically, damage to historic properties along vehicle routes has not been well documented, and there has been little effort by the MFO to identify sites along the almost 3,000 miles of ORV routes that have already been damaged or are vulnerable to ongoing or future damage. In effect, there are no baseline data to evaluate the nature and extent of that damage. BLM's development of a major travel plan without basic information about the impacts of existing ORV use in

these places puts the cart before the horse. It is difficult to see how the BLM can meet its statutory duties with respect to cultural properties if it has no or little information about how one of the major uses it proposes to authorize would affect these sites.

Limiting motor vehicle access is an effective management tool to further the long-term preservation and protection of archaeological sites. The paucity of existing roads in wilderness character and roadless areas has facilitated a much higher level of protection of cultural resources and a corresponding minimization of impacts to such resources (see Spangler et al. 2006; Spangler et al. 2007; Spangler et al. 2008). As such, the management of these lands as roadless areas would greatly enhance the protection of cultural resources and minimize future impacts through prohibitions on ORV use. However, the PRMP fails to consider an alternative that would minimize impacts to the cultural resources in these roadless areas by not designating routes in the roadless areas.

The PRMP should be modified so that:

- Designation of all ORV routes must be based on full Section 106 reviews of all direct and indirect adverse effects resulting from increased availability of route maps, and the associated increased access to backcountry areas and increased use of travel corridors resulting from formal designations.
- The PRMP should clearly state that Class III inventories, site assessments and site mitigations will be completed prior to the designation of ORV routes, including existing routes and open ORV areas that have not been surveyed, and that cultural resource protection will be a fundamental goal of any transportation planning.
- The PRMP should articulate that Class III inventory and site evaluations along designated routes will include all areas of indirect impacts, with specific focus on cultural resources in adjacent topographic settings that could be impacted by increased vehicular access. This should include, but not be limited to, the identification of sites with potentially intact cultural deposits that are visible from a designated route regardless of distance, and to all localities within 200 meters of an existing route or camp area (cf. Spangler, Arnold and Boomgarden 2006). The BLM's response to CPAA that areas of potential effect (APE) will be determined in consultation with the SHPO is disingenuous given that the PRMP states that Section 106 clearances of existing routes is not required and hence no consultation with the SHPO is required.
- Route or area closures are an appropriate and proven management tool to mitigate the adverse impacts of ORVs on and around archaeological sites. The plan should clearly specify such a management strategy, pursuant to 83 C.F.R. § 8341.2.
- The site monitoring program must include a uniform statewide database whereby impacts to cultural resources can be accurately and consistently measured and documented, and site conditions compared and contrasted over time in a manner that will facilitate more informed management decisions.

- Route or area closures are a required management strategy to mitigate the adverse impacts of ORVs on and around archaeological sites. As demonstrated in Range Creek in eastern Utah, these closures are most effective when accompanied by an administrative commitment to maintain a visible law enforcement presence (Spangler, Arnold and Boomgarden 2006). The plan should clearly specify such a management strategy.
- If the BLM persists with its plan to designate the entire length of Arch Canyon as an ORV route, the plan should also articulate its intent to require a complete Class III inventory of the canyon prior to the route designation to determine the nature, distribution and density of archaeological sites at risk from this action.

B. Insufficient Data

BLM admits that there are "large unsurveyed areas where there is no current knowledge about cultural resources, gaps in the database of particular site types, and research-related data limitations." PRMP at 3-24. Specifically, the PRMP acknowledges that (1) less than 10 percent (probably much less) of the MFO lands have been subjected to Class III surveys, (2) that the location of these surveys was driven by Section 106 compliance and do not constitute a valid sample of all environments or ecological niches, and (3) that large areas of the planning area remain uninvestigated and unknown archaeologically. PRMP at 3-24, 4-37. The PRMP is fundamentally flawed in that previous archaeological surveys collectively constitute an inadequate and statistically invalid sample, and hence the management alternatives are based on incomplete and inadequate data related to the nature, diversity and distribution of cultural resources. In addition, there is no indication in the PRMP that the predictive model used by BLM was tested with on-the-ground Class III surveys, but that planners relied on 21 previous small block surveys conducted in the Moab and Monticello Field Offices from 1975 to 2005 (Appendix L-4). It must therefore be assumed that the location of the quadrants selected to test the model were driven by Section 106 compliance, and consequently do not represent a valid statistical sample of all environmental ranges within the planning area.

As CPAA noted in its DRMP comments, cultural resources remain largely unknown even in those areas where previous Class III surveys have been conducted, and that the quality of surveys conducted prior to 1990 is particularly suspect. And, although BLM developed a model (acknowledged by BLM as "not perfect," PRMP 4-37), the accuracy of any predictive model is contingent upon an adequate sample size, something that has not been demonstrated in the PRMP. As discussed above, there is no argument that the data BLM used in its model is insufficient to allow accurate predictions. In addition, there is no indication in the DEIS or the PRMP that the predictive model was tested with on-the-ground Class III surveys, but that planners relied on 21 previous small block surveys conducted in the Moab and Monticello Field Offices from 1975 to 2005 (Appendix L-4). It must therefore be assumed that the location of the quadrants selected to test the model were driven by Section 106 compliance, and consequently do not represent a valid statistical sample of all environmental ranges within the planning area.

In addition to the Arch Canyon surveys discussed above, ongoing Class II surveys in the Butler Wash area have demonstrated large numbers and high densities of sites (ca. 90 to 100 sites per square mile) in areas where only a few sites had been formally documented through the course of previous archaeological research (Winston Hurst, personal communication 2008). These surveys demonstrated what archaeologists and BLM officials have intuitively assumed, that site density is exceptionally high, ranging to more than 100 sites per square mile. This density is clearly not reflected in the sample blocks used by BLM planners to develop the PRMP.

CPAA also noted in its DRMP comments that the RMP was prepared without a comprehensive overview (Class I) of cultural resources in the planning area, and this was not corrected in the PRMP. Cultural resource management considerations articulated in the PRMP are not based on a comprehensive understanding of the nature, distribution or density of sites within the planning area. Class I overviews provide the basic foundation for management decisions and objectives, and they are typically completed at the beginning of the RMP process to provide planners with all relevant data as management alternatives are developed. In this case, BLM planners had the benefit of no such analysis.

CPAA is currently conducting a Class 1 overview of a small portion of the MFO – the Cedar Mesa area – where more than 2,000 sites have been identified and documented. This area is projected to have the same site density identified in Butler Wash. Although the results of this review are preliminary, CPAA has found that the vast majority of sites (ca. 80 percent) were documented prior to 1990 and that site forms are grossly inadequate, containing only one or two lines of description, very little location information and little or no relevant data whereby adverse impacts over time can be determined. In effect, the BLM database is grossly incomplete and incapable of providing detailed information to planners as to the potential impacts of the activities it proposes in that archaeologically sensitive area.

The cultural resources found within the jurisdiction of the MFO constitute some of the most aesthetically appealing and scientifically significant resources anywhere on the Colorado Plateau. The more than 26,000 documented archaeological sites in the area, the majority on BLM-administered lands, constitute the most significant concentration of cultural resources in the state of Utah. The extraordinary number and density of sites makes the region among the most significant concentrations of archaeological sites anywhere in the western United States. We reiterate CPAA's comments that were not addressed and/or accommodated in the PRMP:

- A comprehensive Class I analysis must be initiated and completed prior to issuing the Record of Decision so that relevant cultural resource data can be incorporated into the planning decisions.
- The PRMP should clearly specify plans to correct deficiencies in its current database, including efforts to re-identify and evaluate previously recorded sites where the data is insufficient.

C. Section 110 Responsibilities

The paucity of baseline cultural resource data through which informed management decisions could be made is a direct consequence of the MFO failure to embrace its Section 110 responsibilities in the past. Section 110 of the National Historic Preservation Act unequivocally specifies the responsibilities of federal agencies to proactively identify, evaluate and nominate National Register-eligible historic properties under their jurisdiction or control. Although the formal listing of sites on the National Register occurs for a small portion of the total sites in any given county or state, the paucity of listed sites is actually a reflection of the failure of the federal agencies over the past 40 years to prepare and submit nominations to the Keeper of the Register. Only seven localities within the MFO have been listed on the National Register: Alkali Ridge (a National Historic Landmark designated in 1985), Big Westwater Ruin (designated in 1974), Hole-in-the-Rock Trail (designated in 1980) Sand Island Petroglyphs (designated in 1980), Newspaper Rock (a state park designated in 1976), Butler Wash (designated in 1981) and Grand Gulch (designated in 1982).

The archaeological resources of the MFO include archaeological sites that are visually spectacular, as well as significant sites that are admittedly not as visually remarkable, although visual appeal is not a definitive standard whereby National Register sites or districts are deemed appropriate for listing (see *National Register Bulletin 16A*). There are likely thousands of known archaeological sites in the MFO eligible under Criterion A in that the are associated with broad patterns of human prehistory on the Colorado Plateau (e.g., Basketmaker and Anasazi); are eligible under Criterion C in that they embody distinctive characteristics of type, period or method of construction, or represent a significant and distinguishable entity, even if the individual sites lack distinction (e.g., rock art); and most importantly are eligible under Criterion D in that they have yielded or are likely to yield important information about the prehistory of the region. Euroamerican historic sites in the MFO could also be eligible under these three criteria, and potentially under Criterion B if they are associated with important individuals. It is emphasized that some of the most important sites in the history of Southwestern and Utah archaeological research are located within the boundaries of the MFO in the greater Cedar Mesa area.

The PRMP inadequately recognizes the agency's mandates under Section 110 of NHPA to identify, evaluate and nominate, instead implying that "proposal" of cultural sites to the National Register is an administrative action that does "not require a planning decision to implement." PRMP at 1-10. As noted in CPAA's DRMP comments, the nomination of archaeological sites or archaeological districts to the National Register is a fundamental component of land use planning, and that National Register eligibility must be a consideration in all of the action alternatives whereby special management of National Register resources can be analyzed. Indeed, at least one other Utah BLM field office has resisted the nomination of an archaeological district to the National Register because the proposed district was not part of its current Resource Management Plan. It should also be noted that some draft plans (e.g., Moab, Little Snake) identified priority lists of sites they intend to nominate under different alternatives.

The Monticello PRMP repeatedly acknowledges the agency has Section 110 responsibilities to identify, evaluate and nominate properties to the National Register; however, the PRMP is remarkably vague as to what Section 110 initiatives would be undertaken. The failure of the PRMP to clearly articulate the agency's intent to aggressively embrace its Section 110 responsibilities is a fundamental failure. The PRMP offers no clear indication that Section 110 responsibilities extend to those areas of the MFO that remain unknown, or to Class II and Class III surveys to investigate the broad suite of environmental ranges that remain unstudied. PRMP 2-10. Any Section 110 initiatives that focus exclusively on areas of high site density do little to ameliorate longstanding data gaps as to human utilization of entire landscapes.

Likewise, the PRMP offers no indication that Section 110 initiatives will extend to inventories that would identify sites in areas of high recreational use, along ORV routes, hiking and equestrian trails, areas lacking existing inventories, ACECS and buffer zones around communities. Furthermore, the identification of historic properties is only one component of the agency's responsibilities in this regard. Section 110(2)(a) also mandates the agency implement a program to ensure "that historic properties under the jurisdiction or control of the agency are identified, *evaluated and nominated* to the National Register" (emphasis added). There is no indication the MFO intends to fully embrace its responsibilities under Section 110. It is indeed a sad commentary on the MFO's abrogation of its Section 110 responsibilities in the past that none of the eight sites identified in the 1991 RMP for National Register nomination have been submitted or listed (PRMP 3-28), and no site has been listed on the National Register in the past 23 years. *See* PRMP 3-24. The Draft EIS offers little encouragement that that trend will improve during the life of the new RMP.

The absence of a stated strategy to actually nominate sites to the National Register would appear to reflect a common misperception that National Register designations are accompanied by greater levels of protection for listed resources. Under provisions of the National Historic Preservation Act, sites *eligible* for listing are afforded the same protection as sites actually listed on the National Register. Consequently, any eligible properties identified in the past or during the course of future inventories that are deemed eligible for listing would be afforded the same degree of protection as if they were actually listed. Given the federal agency's mandate to actually "nominate" properties to the register, the PRMP must more clearly reflect the commitment of the BLM to actually nominate eligible sites and archaeological districts where the cultural resources have been determined eligible for National Register listing.

Given these considerations, the PRMP must be modified:

- To articulate the MFO commitment to its Section 110 responsibilities, including proactive Class III and Class II inventories of different ecological ranges (see discussion above), areas impacted by increased recreational activities and areas with special management designation (see discussion below).

- To explicitly recognize that proactive cultural resource work is a critical need accentuated by increased ORV use. The level of proactive cultural resource program work to be performed annually should be specifically stated in the RMP, and funding for such work should be prioritized within the MFO budget.
- To expressly state that MFO will aggressively pursue the nomination to the National Register of historic properties under its jurisdiction, including archaeological sites and archaeological districts of local, regional and national significance. These efforts should explicitly reflect the agency's commitment to Section 110 compliance regardless of which alternative is chosen.
- To state that BLM will aggressively seek public input regarding which sites should be prioritized for nomination. This could include discussions with interested Native American tribes, the Utah Professional Archaeological Council, local and statewide historical societies, and historic preservation advocacy organizations such as the National Trust for Historic Preservation.

D. Recreation Concerns

As stated in the Draft EIS and the PRMP, the Monticello FO is renowned for its recreational opportunities that draw about 2 million visitors a year and comprise a significant portion of the San Juan County economy. The planning document acknowledges that a major reason individuals visit the region is to observe and enjoy archaeological sites.

As noted in CPAA's DRMP comments, overnight camping is a critical concern that can impact the integrity of nearby cultural sites. Ongoing studies in Desolation Canyon, a high recreational-use wilderness study area in east-central Utah, have demonstrated a correlation between overnight camping localities and adverse impacts to adjacent archaeological sites, mostly graffiti but in some cases illegal digging and site dismantling (Spangler et al. 2007, Spangler et al. 2008).

Although preliminary, these data suggest that adverse impacts to archaeological sites are more common when individuals remain at one location (e.g. campsite), thereby allowing more time to visit adjacent archaeological sites. Researchers elsewhere have likewise documented a relationship between camping and degradation of adjacent cultural resources. As articulated by Sullivan et al., recreational users of public lands may not know or understand what constitutes heritage resources, and that cultural resources are being damaged by "people who are unaware that they are behaving destructively in an archaeologically rich landscape" (2002:42). Inadvertent vandalism to heritage resources could result from camping on or around archaeological sites, construction of hearths within cultural deposits, harvesting of prehistoric wood construction beams for fire pits, removal of culturally rich soils to extinguish fires, burying of modern human trash and waste in archaeologically rich soils, and removal of surface vegetation for fires, thereby enhancing erosion that could impact archaeological sites (see also Hartley and Vasser 2004; Uphus et al. 2006).

Although BLM proposes to limit camping to designated sites in some areas with sensitive resources, the PRMP curiously fails to limit camping to designated sites on Cedar Mesa, allowing "dispersed camping except in areas where cultural resources are at risk." PRMP at 2-33. Since the PRMP fails to disclose where cultural resources "are at risk" on Cedar Mesa – and it does not have the data to even know which sites are at risk – the PRMP essentially makes the entire area open to dispersed camping. This proposal fails to acknowledge that the mesa tops have had little or no archaeological survey, and in fact are rich in archaeological sites that have not been documented. In addition, in other areas where camp areas are formally designated, cultural sites in proximity to the camps would be extremely vulnerable to surface collection of artifacts, improper ORV use and even looting; however, allowing dispersed camping in this area is entirely unsupportable.

In light of these concerns:

- The PRMP must restrict camping to designated campsites on Cedar Mesa.
- The PRMP should clearly state the intent of the BLM to initiate Section 106 (e.g. Class III inventories) of all designated camping and parking/staging areas, including an adequate Area of Potential Effect that includes all sites visible from that location regardless of distance and all other areas in close proximity to the camp (CPAA research elsewhere on the Colorado Plateau suggests the minimum APE should be at least 200 meters).
- The PRMP should more clearly state the intent of the BLM to more proactively educate recreational users as to proper camping behavior in archaeologically rich and sensitive areas.
- The PRMP should mandate the removal of all human waste, the use of fire pans and proscriptions on burning local fuel wood to protect cultural resources across the MPA.

E. Special Management Designations

As noted in CPAA's DRMP comments, designation of special management areas, including ACECS, Wild and Scenic River segments, Special Recreation Management Areas (SRMA), and management of lands with wilderness qualities are effective management tools to foster greater on-the-ground management and protection of *all* affected resources in a sensitive area, including cultural resources that may or may not be known. Landscapes with exceptionally high densities of cultural resources warrant special management attention better addressed through ACEC designations that could result in greater management focus, priority funding for those areas most at risk, and limitations on ground-disturbing activities that could result in damage to cultural resources.

SUWA concurs with CPAA and supports the retention or establishment of Areas of Critical Environmental Concern for Alkali Ridge, Hovenweep, a portion of Indian Creek, and the San Juan River. *However, SUWA questions BLM's proposal to un-designate the existing 295,336 acre Cedar Mesa ACEC and nearly 3,500 acres of the Shay Mountain ACEC that are currently being managed for cultural and scenic values, and to*

undesignated nearly 5,000 acres of the Indian Creek ACEC. ACEC designations would greatly enhance proactive management and protection of the substantial and remarkable cultural resources known to exist in those areas. In addition, other ACEC designations based on scenic and biological values could foster greater protection for cultural resources that currently are unknown due to the paucity of baseline inventories in those locations. ACEC designation would also allow for priority funding within the field office budget.

The PRMP reclassifies Cedar Mesa from ACEC status to Special Recreation Management Area status. The justification for this change is not clearly stated in the planning document, nor does it articulate why management and protection of the abundant and spectacular cultural resources there would be more aggressively facilitated through SRMA designation than through ACEC designation. Likewise, the planning document does not explain why management of archaeological sensitive areas in the Comb Ridge/Butler Wash, Tank Bench, Beef Basin and McLoyd Canyon areas would be better facilitated through "Special Recreation Management Area" designations than through ACEC designation.

As with ACEC designations, the designation of river corridors as Wild and Scenic offer additional protections to cultural resources found along those water sources. In water-stressed environments, such as those found in the MFO, human populations were tethered to a greater or lesser degree to permanent water sources, in particular perennial and ephemeral streams, springs and rivers (Spangler 2001). In addition river corridors have been the focus of significant human adaptations throughout prehistory, and the nature of these resources remains largely unknown due to the absence of baseline data. It is emphasized that evidence of prehistoric adaptations of exceptional high density and quality will likely be found along most, if not all water sources in the MFO, and these warrant aggressive BLM management regardless of the WSR designations in the PRMP.

In summary, the risk to cultural resources is more than a hypothetical possibility. Ongoing research across the northern Colorado Plateau has demonstrated that increased ORV use over the past two decades has resulted in significant degradation of cultural sites, and that these impacts are accelerating. Impacts to cultural resources from surface disturbance are long-term in nature; once a site has been impacted, the effect typically cannot be reversed. However, damage to archaeological sites may not be coequal with the destruction of archaeological sites, and we emphasize that sites previously damaged by ground-disturbing activities, vandalism and looting may retain scientific values that could be further degraded by continued non-management of those resources.

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X. Climate Change

The PRMP Violates NEPA in Several Respects By Failing To Analyze the Impacts of Climate Change

Because BLM chose to treat this issue with such a superficial and abbreviated discussion, important information about the effects of climate change, and the management options available to BLM in this changing environment, are missing from the PRMP. The PRMP provides no estimate of how much temperatures will increase in the Monticello Resource Area, or even in the Colorado Plateau generally, or how that increase may affect natural resources such as water, vegetation, wildlife, or any other resource managed by BLM. It is reasonable to expect, given that the area will get even hotter under credible climate predictions, that water will become more scarce, native plant and animal life will suffer, and wildfire will become more prevalent. And in light of those consequences, BLM should have provided management alternatives which addressed these predicted impacts.

The PRMP addresses climate change for the first time—the draft resource management plan did not discuss climate change or its impacts on the public lands within the Monticello Field Office at all. However, the extent of the discussion of this important issue in the proposed plan is superficial at best. In a total of just a few paragraphs, the PRMP simply provides a generalized description of the phenomenon and notes that the Intergovernmental Panel on Climate Change predicted global increases of 1 to 4.5 degrees Fahrenheit over the next 50 years. *See* PRMP, at 3-14. There is no discussion of climate trends in Utah, although such information is available from a variety of common sources of weather data. *See e.g.* http://www.wrcc.dri.edu/cgi-bin/cliMAIN.pl?ut5805 **(**climate data for Monticello from 1908 to 2007**);** http://www.met.utah.edu/news/global_warming_2007 **(**hereinafter "Utah Climate Change Report"**)(**report by University of Utah meteorologists and others showing climate warming in Utah, with more drought conditions expected).

The PRMP attempts to explain away its lack of analysis by noting that "BLM does not have an established mechanism to accurately predict the effect of resource management-level decisions from this planning effort on global climate change." PRMP, 4-8. However, the PRMP makes no attempt to utilize existing studies as the basis for any further information about how climate change—with expected warmer weather—may affect the resources of the Monticello Field Office, noting only that drier soils may be less stable and that species ranges may move north or to higher elevations in response to climate stress. *Id.*

SUWA provided BLM with comments on the Draft RMP that highlighted this gap in the climate information, and included studies with specific information about the impacts of climate change on the Colorado Plateau—which includes the Monticello Field Office. These impacts are described more fully below, but include shrinking water resources; dust-covered snowpack causing earlier, faster snowmelt; invasion of more flammable

non-native plant species; soil erosion; loss of wildlife habitat; and larger, hotter wildfires. As discussed below, BLM ignored these studies in the Monticello PRMP.

Since the deadline to submit comments on the draft Monticello RMP and the release of the Monticello PRMP, several federal entities have published additional studies that confirm and reinforce the impacts discussed in SUWA's comments on the draft and the studies cited in those comments. These recent studies include: 1) U.S. Climate Change Science Program Final Report, Synthesis and Assessment Product 4.4, "Preliminary Review of Adaptation Options for Climate-Sensitive Ecosystems and Resources" (June 2008), *available* at http://www.epa.gov/ord/npd/pdfs/gcrp-factsheet_SAP-4-4.pdf; 2) Committee on Environment and Natural Resources, National Science and Technology Council, "Scientific Assessment of the Effects of Global Change on the United States" (May 2008), *available at* http://www.climatescience.gov/Library/scientific-assessment/; and 3) U.S. Climate Change Science Program, Synthesis and Assessment Product 5.2, "Best Practice Approaches for Characterizing, Communicating and Incorporating Scientific Uncertainty in Climate Decision Making," (April 2008), *available at* http://www. climatescience.gov/Library/sap/sap5-2/public-review-draft/default.htm. These studies provide significant new information about the impacts of climate change on lands like those in the Monticello Planning Area, as well as emerging new best management practices to employ in the face of climate change.

The June 2008 report, prepared by the Environmental Protection Agency, specifically "identifies strategies to address management challenges posed by climate change for a subset of federally protected lands and waters. These strategies can also be broadly applied to other lands and waters managed by governmental or nongovernmental entities." U.S. Climate Change Science Program Final Report, Synthesis and Assessment Product 4.4, "Preliminary Review of Adaptation Options for Climate-Sensitive Ecosystems and Resources" (June 2008), *available at* http://www.epa.gov/ord/npd/pdfs/gcrp-factsheet_SAP-4-4.pdf. This information should have been included in the analysis of the RMP alternatives in order to adequately address climate change.

A. Failure to Take a Hard Look

As the U.S. Geological Survey explains, "understanding interactions of landscape with changing environmental conditions, and their relative influence on the severity of drought, are important for natural resources planning and land use sustainability." USGS, Drought Conditions, 1996 to 2006: USGS Navajo Nation Studies, http://geomaps. wr.usgs.gov/navajo/drought.html (last visited Sept. 1, 2008). Yet, despite the brief acknowledgment in the PRMP that the existence of climate change is no longer a matter of debate but a matter of scientific consensus, the PRMP does not take the logical—and required—next step and analyze what this means for the Monticello Field Office.

This is an important step. A description of the effects of climate change on existing conditions such as the prevalence of exotic plant species, the availability of water, the health of riparian areas, zones of soil erosion or vulnerability to erosion all provide

critical baseline information necessary to BLM's ability to determine whether the resources can withstand any of the proposed alternatives. Without this basic foundational information about the existing health of the land, it is impossible to make any informed decision about the level, location, and kind of activities it can support in the future.

The Intergovernmental Panel on Climate Change noted in 2001 that:

> for the future of rangelands, it is important to reduce the vulnerability of these systems to climate change. This is likely to be achieved by considering social and economic factors that determine land use by human populations . . . . Soil stability and thus maintenance of water and nutrient cycles are essential in reducing the risk of desertification. Any changes in these processes could make rangelands particularly vulnerable to climate change.

Intergovernmental Panel on Climate Change, Climate Change 2001: Impacts, Adaptation and Vulnerability, *available at* http://www. grida.no/climate/ipcc_tar/wg2/241.htm (internal citations omitted).

SUWA's comments on the draft RMP provided specific information about federal studies that had been recently published about the impacts of climate change on public lands and grasslands like those in the Monticello Field Office. For example, the U.S. Climate Change Science Program working group published a report on September 11, 2007 which predicts and elaborates on the widespread impact of climate change on public lands in areas like the cold deserts of the Colorado Plateau. *See* U.S. Department of Agriculture, *The effects of climate change on agriculture, land resources, water resources and biodiversity*, *available at* http://www.climatescience.gov/Library/sap/sap4-3/default.php. That report notes that "the climate changes that we can expect are very likely to continue to have *significant effects* on the ecosystems of the United States." *Id*. at 3 (emphasis added). These significant impacts include:

- Climate effects on disturbances such as fire, insect outbreaks and wind and ice storms are very likely important in shaping ecosystem structure and function;
- Grasslands will transform into woody shrublands with reduced capacity for water absorption and greater vulnerability to channelization and erosion;
- Droughts early in the 21st Century are likely to increase rates of perennial plant mortality in arid lands, accelerate rates of erosion and create opportunities for exotic plant invasions;
- Proliferation of non-native annual and perennial grasses are virtually certain to predispose sites to fire. The climate-driven dynamics of the fire cycle is likely to become the single most important feature controlling future plant distribution in U.S. arid lands;
- Climate change is likely to result in shrinking water resources and place increasing pressure on montane water sources to arid land rivers, and

increase competition among all major water depletions in arid land river and riparian ecosystems;

- Major disturbances like floods and droughts that structure arid land river corridors are likely to increase in number and intensity (with associated increases in erosion and native plant loss);
- Land use change, increased nutrient availability, increasing human water demand and continued pressure from exotic species will act synergistically with climate warming to *restructure* the rivers and riparian zones of arid lands;
- Climate change will increase the erosive impact of precipitation and wind;
- Surface soils will become more erodible;
- Increases in wind speed and gustiness will likely increase wind erosion.

The report also notes that

> [g]iven that many organisms in arid lands are near their physiological limits for temperature and water stress tolerance, slight changes in temperature and precipitation . . . that affect water availability and water requirements could have substantial ramifications for species composition and abundance, as well as the ecosystem goods and services these lands can provide for humans.

Id. at 9. While these findings are dramatic, the report further notes that "[i]t is likely that these changes will increase over the next several decades in both frequency and magnitude, and it is possible that they will accelerate." *Id.* at 23.

Further, a report released this year by the Bipartisan Policy Center and edited by the Wildlife Management Institute, provides detailed information about the impacts of climate change on fish and game. *See* http://www.seasonsend.org/downloads/SeasonsEnd.pdf
The Season's End report is not only edited by the Wildlife Management Institute,[29] but quotes a number of biologists in various state fish and game agencies.

BLM should have discussed all of these predicted effects of climate in Chapter 3's assessment of existing conditions and in Chapter 4's discussion of the impacts of the various alternatives. Instead, BLM fails completely to describe the current and predicted impacts of climate change in Chapter 3, and attempts to characterize the state of knowledge regarding the impacts of climate as too thin to require analysis. PRMP, at 4-8 ("[t]he assessment of climate change pollutant emissions and climate change is in its formative phase; therefore, it is not yet possible to know with confidence the net impact

[29] According to its website, the Institute's work is done by "resource personnel [who] are highly trained and experienced wildlife science and management professionals, typically working away from the public limelight to catalyze and facilitate strategies, actions, decisions and programs to benefit wildlife and wildlife values." www.wildifemanagementinstitute.org. It has been in existence for nearly 100 years.

to climate. . . .The lack of scientific tools designed to predict climate change on regional or local scales limits the ability of quantify potential future impacts").

However, at a minimum, a description of the effects of climate change on existing conditions such as the prevalence of exotic plant species, the availability of water and the health of riparian areas, zones of soil erosion or vulnerability to erosion, all provide critical baseline information necessary to BLM's ability to determine whether public land resources can withstand any of the proposed management alternatives, including thousands of miles of newly-designated ORV routes and roads, and new mining and oil and gas development. Moreover, while wildfires have put unprecedented stress on BLM's firefighting resources, there is no analysis in the PRMP of the costs of increased wildfire due to the altered conditions that come with climate change. An obvious place for this discussion is the PRMP's section on the impacts of travel decisions on fire management. PRMP, at 4-73. Here, BLM should have noted that the impacts of thousands of miles of newly-designated ORV trails disturbs soils and facilitates the spread of non-native, highly flammable plant species, and increases the risk of wildfire. Without this basic foundational information about the existing impacts of climate change on the land, and future expected impacts, it is impossible to make informed decisions about the level, location, and kind of activities the land and its ecosystems can support in the future.

This omission is a significant oversight given that federal departments and agencies including the Department of Interior, the Environmental Protection Agency, and U.S. Geologic Survey have all published documents and/or provided public statements and even congressional testimony acknowledging the impacts of climate change on public lands resources. A 2007 study, referred to herein as the "Utah Climate Change Report," notes that the western United States is warming at about twice the rate of the rest of the globe. *Id*. at 2.1. All of this information was readily accessible to BLM. Together with the failure to incorporate the newer studies cited above, this oversight amounts to a failure to take the necessary "hard look" at the challenge of resource management in the MFO, and an important aspect of that challenge.

Importantly, leaders of both the Department of Interior and BLM have elsewhere gone further than simply acknowledging that climate change is a well-accepted phenomenon. On April 26, 2007, over a year before BLM released the Monticello PRMP, Department of Interior Deputy Secretary Lynn Scarlet testified before the House Interior Appropriations Subcommittee that global climate change could dramatically reshape America's public lands with increased species extinctions and wildfire. As she put it, "On the ground, we're seeing a lot of changes . . . some of them dramatic." Dan Berman, *'Dramatic' effects of rising temps being seen on public lands*, Earthnews, http://www.earthportal.org/news/?p=93. Ron Huntsinger, BLM's own science coordinator, said,

> [w]e can anticipate further reductions in the level of allowable uses on public lands due to the loss of productivity and capacity . . . . The results are more fragile ecosystems, a greater susceptibility to the outbreaks of

> attacks by parasites and disease, increased vulnerability to wildland fire and erosion and an overall reduction in the carrying capacity of the land.

Id.

Clearly, information about the impacts of climate change and the need to make adjustments in land use plans to address climate change were circulating in the Department of Interior and available to BLM at the same time it was developing the Monticello PRMP. Failure to incorporate this information in the PRMP amounts to a failure to take a hard look at a crucial aspect of the land use plan.

BLM's bare statement regarding the presence of a level of uncertainty about the precise degree of future change in climate conditions in the Monticello Field Office does not excuse this failure. First, some degree of uncertainty does not justify a wholesale failure to address an issue. As the EPA report explained:

> It is not possible to *predict* the changes that will occur, but managers can get an indication of the *range* of changes possible. By working with a range of possible changes rather than a single projection, *managers can focus on developing the most appropriate responses* based on that range rather than on a 'most likely' outcome.

U.S. Climate Change Science Program Final Report, Synthesis and Assessment Product 4.4, Preliminary Review of Adaptation Options for Climate-Sensitive Ecosystems and Resources 9-14 (June 2008) (emphasis added), *available at* http://www.epa.gov/ord/npd/pdfs/gcrp-factsheet_SAP-4-4.pdf.

Further, in the Season's End report, discussed above, it is clear that it is indeed possible to use modeling to determine losses of stream habitat for various temperature and climate scenarios. *Id*. at 31. The BLM has not explained why such modeling cannot be used in the PRMP. And with respect to big game, the report notes that "global warming will stress big game populations in several ways:

- Big game health will decline and mortality will rise as infestations of parasites, pests and disease-carrying insects, no longer held in check by cold, increase in severity and geographic range.
- Across the continent, deer, elk and other big game populations will shrink as high levels of greenhouse gases make the plants they eat less nourishing and tougher to digest.
- Desert shrub zones, pinyon-juniper woodlands and numerous other big game ecosystems will be increasingly at risk from wildfires, which will burn with greater intensity and frequency as invasive species replaces less fire-prone native plants.
- Pronghorn, elk and mule deer will lose vital habitat in many regions of the American West as rising temperatures allow trees and shrubs to overwhelm sagebrush ecosystems. . .

Further, scientists predict that for every increase of 1.8 degrees Fahrenheit, approximately 33,350 square miles of sagebrush –12 percent of present coverage – will be lost. Season's End, at 52. Both mule deer and elk depend on sagebrush habitats to survive.

Along with habitat fragmentation, these are only part of the problems expected for game species as a result of climate change. And there will be, accordingly, impacts on hunters and anglers which are also ignored in the PRMP. We emphasize that none of this information is obscure or difficult to locate, or particularly controversial.
Additionally, NEPA contains specific requirements governing the treatment of uncertain conditions and imposes an obligation to state that existing evidence is inconclusive and to summarize the conclusions of that evidence. With respect to incomplete or unavailable information, 42 C.F.R. § 1502.22 provides in full:

> When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.
>
> (a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.
>
> (b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:
>
> 1. A statement that such information is incomplete or unavailable;
>
> 2. a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;
>
> 3. a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and
>
> 4. the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts

> is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

Given these regulations, BLM cannot rely on the so-called "uncertainties" relating to the impacts of climate change on the area to end the analysis with a simple acknowledgement of the phenomenon and a passing reference to BLM's claimed inability to "predict the effect of resource management-level decisions from this planning effort on global climate change." PRMP, 4-8. BLM must do more, even where information is uncertain (and in this case, SUWA emphasizes that the information, with the detailed studies cited above, is not particularly uncertain).

But even BLM's bare-bones excuse has it backwards. The point is not that BLM should predict how "management-level decisions" affect global climate change, but that *BLM should factor how climate change affects the Monticello Field Office and develop management options that reflect the reality of the dramatic change that warming will cause all the resources in the Monticello Field Office.* In other words, the predicted warmer, drier conditions will create fundamental change to the Monticello Field Office and BLM has simply ignored those coming changes, choosing instead to manage for the past, rather than for the future.

Further, NEPA regulations require that NEPA documents address not only the direct effects of federal proposals, but also "reasonably foreseeable" indirect effects. These are defined as:

> Indirect effects, which are caused by the action and are later in time or farther removed in distance, *but are still reasonably foreseeable*. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems."

40 C.F.R. § 1508.8(b).

Again, the impacts of climate change were simply not discussed; such an omission violates this section of the NEPA regulations. Thus, it is clear that BLM has failed to take a hard look—or virtually any look—at the impacts of climate change on the public lands resources in the Monticello Field Office, and how ongoing and foreseeable climate change will affect the uses, health and sustainability of those resources.

We have noted elsewhere that the PRMP has not discussed the cumulative effects of various uses like ORV area and route designations, motorized recreation, and grazing on important components of the Monticello Field Office's native ecosystems like riparian areas. These cumulative effects should be considered in the context of climate change and how these uses act synergistically with climate change to impact the resources of the Monticello Field Office.

B. Failure to Include an Alternative that Captures Mitigation Options for Climate Change

An understanding of the predicted impact of climate change should, in turn, shape in important ways the various alternatives under consideration by BLM. For example, given that so many of the predicted outcomes of climate change center on increased soil erosivity, dust storms, shrinking water resources, drier riparian areas, invasion of exotic plants, and the spread of hotter, larger wildfires, it is entirely reasonable to expect BLM to design alternatives that minimize soil disturbance as much as possible. And given that ORVs are associated with both the ignition of wildfires and the spread of exotic weeds, it is likewise reasonable to expect that BLM would design—and even designate as preferable—an alternative with far fewer than the three thousand miles of backcountry ORV routes that the PRMP contains. As noted above, BLM's own science coordinator noted that the effects of climate change should result in a reduction in the allowed use of certain activities on BLM lands—yet such an option was not presented in management plan options.

Instead, without information about the effects of climate change in the area, the plan proposes a mix of exactly the kinds of actions that would *compound* the deleterious effects of a warming climate. This is most notable in BLM's overly-expansive network of roads and ORV trails, which was adopted without objective analysis after county officials and ORV groups presented the agency with trail map "wish lists." Yet experts note that the "response of arid lands to climate change will be strongly influenced by interactions with non-climatic factors at local scales" including pressure related to the use of motorized off-road vehicles and grazing. *See* Ryan, MG "Land Resources" Section of the Climate Change working group report at 8, Attachment P to SUWA's comments of the DRMP; *See also id*. at 35 (noting that grazing may reinforce and accentuate the effects of climate change, a result that is probably true for ORV use as well).

In this regard, BLM's failure to consult the scientific literature, and in particular EPA's report, resulted in a fatally flawed document with none of the required alternatives for managing a significant impact that will likely have systemic effects throughout the Monticello Field Office. U.S. Climate Change Science Program Final Report, Synthesis and Assessment Product 4.4, Preliminary Review of Adaptation Options for Climate-Sensitive Ecosystems and Resources 9-14 (June 2008), *available at* http://www.epa.gov/ord/npd/pdfs/gcrp-factsheet_SAP-4-4.pdf. BLM should have drawn on EPA's own research and consulted with EPA staff whose report "provides information on how existing practices could be adjusted, or new strategies developed, to address the effects of climate change on natural resources." EPA, Global Change Research Program, Science in Action: Building a Scientific Foundation for Sound Environmental Decisions, *Assessment Provides Strategies for Managing Natural Resources in a Changing Climate: Findings of the U.S. Climate Change Science Program Synthesis and Assessment Product 4.4* at 2, *available at* http://www.epa.gov/ord/npd/pdfs/gcrp-factsheet_SAP-4-4.pdf.

According to the report itself, these strategies involve increasing the resilience of ecological systems to climate change. Specific strategies include:

- Identifying and protecting key ecosystem features;
- Reducing anthropogenic stresses like developments which affect native vegetation and cause erosion;
- Protecting a "portfolio" of several slightly different species or ecosystems, which increases these chances that one or more will be suited to the new climate conditions;
- Protecting more than one example of a particular kind of ecosystem, which increases the chance of survival of that type if one or more others are lost in a catastrophic event;
- Restoring key intact ecosystems with important functions, like wetlands or riparian areas which confer resilience to flooding and provide necessary habitat for most native plants and wildlife;
- Identifying refugia where key species and ecosystem types have the highest likelihood of survival of climate change.

U.S. Climate Change Science Program Final Report, Synthesis and Assessment Product 4.4, Preliminary Review of Adaptation Options for Climate-Sensitive Ecosystems and Resources 9-18 to -21 (June 2008), *available at* http://www.epa.gov/ord/npd/pdfs/gcrp-factsheet_SAP-4-4.pdf.

Importantly, the first option, reducing human-caused stressors, was judged to be the most effective strategy for increasing resilience to climate change among the three types of terrestrial ecosystems studied in the report. *Id.* at 9-61. This is also a defining aspect of the plan's purpose—to manage human impact on the resources in the Monticello Field Office.

Other management strategies for the protection of riparian areas and water resources are discussed in the Season's End report, discussed above. It notes, "[a]ctions to stabilize fisheries in light of the consequences of global warming include . . . promoting water use and water allocation measure to protect critical fish habitats [and] enhancing habitat to improve fish recruitment during periods of low water." *Id*. at 29. *See also, id*. at 32 ("[m]anagement practices that maintain riparian flora could mitigate the floods and high temperatures expected to occur under global warming"); *see also id.* at 95 *et seq*. for further management recommendations. Unfortunately, the PRMP's neglect of the issue has led to ORV trail designations in important fish habitat in places like Arch Canyon. BLM has simply abdicated an important part of its responsibilities by failing to present valid management options that can, over the long term, best ensure the sustainability of the full range of resources in the Monticello Field Office.

C. Violation of Secretarial Order 3226

Secretarial Order No. 3226 specifically requires BLM

> *to consider and analyze potential climate change impacts when undertaking long-range planning exercises*, when setting priorities for

> scientific research and investigations, when developing multi-year management plans, and/or when making major decisions regarding the potential utilization of resources under the Department's purview.[30]

Section 3 of Secretarial Order No. 3226 is comprehensive and includes every type of land management activity under the Interior Department's jurisdiction. In addition to the provision cited above, the order defines the activities that will trigger a climate change analysis:

> Departmental activities covered by the Order include, but are not limited to, programmatic and long-term environmental reviews undertaken by the Department, *management plans and activities developed for public lands*, planning and management activities associated with oil, gas and mineral development on public lands, and planning and management activities for water projects and water resources.

Id. (emphasis added).

As noted above, no analysis of potential climate change impacts to the Monticello Field Office was provided in the PRMP. BLM simply ignored the Secretarial Order, opting instead for the boilerplate insertion of superficial and incomplete information regarding climate change.

D. BLM Must Prepare a Supplemental Draft Which Addresses the Issue of Climate Change and its Impacts on the Monticello Planning Area

As noted above, BLM briefly discussed climate change in the PRMP, but entirely failed to mention it in the Draft RMP. But 40 C.F.R. § 1502.9(c)(1) requires BLM to prepare an SEIS if "[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impact." The new climate change information should warrant an SEIS because it meets the threshold for "significant" new information, as outlined in 40 C.F.R. § 1508.27.

Whether new information is significant is a function of both context and intensity. 40 C.F.R. § 1508.27. Context means that:

> the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather

[30] *See* http://elips.doi.gov/app_so/act_getfiles.cfm?order_number=3226 (emphasis added). By its terms the "Order is effective immediately and will remain in effect until its provisions are converted to the Departmental Manual or until it is amended, superseded or revoked, whichever comes first." *Id*. at Section 4. The Order has not been amended, superseded, or revoked.

> than in the world as a whole. Both short- and long-term effects are relevant.

40 C.F.R. § 1508.27(a).

Intensity refers to "the severity of impact," and should take into account several factors:

> (1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.
>
> (2) The degree to which the proposed action affects public health or safety.
>
> (3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
>
> (4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.
>
> (5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
>
> (6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
>
> (7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
>
> (8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.
>
> (9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
>
> (10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

40 C.F.R. § 1508.27(b).

In a recent Ninth Circuit case, *Center for Biological Diversity v. National Highway Traffic Safety Administration*, 508 F.3d 508, 555 (9th Cir. 2007), involving an NHTSA rule for corporate average fuel economy standards for light trucks, the court found that climate change satisfied several of the "intensity" factors in 40 C.F.R. § 5108.27(b). First, the court found that although the NHTSA rule at issue may have an "individually insignificant" effect on climate change, it may nonetheless have a "cumulatively significant" impact, thereby satisfying 40 C.F.R. § 1508.27(b)(7). In addition, the court found that climate change will affect public health and safety, satisfying 40 C.F.R. § 1508.27(b)(2).

Caselaw underscores the importance of agency disclosure and public participation in an agency's decision-making process. *See, e.g.*, *Wilderness Watch v. Mainella*, 375 F.3d 1085, 1094 (11th Cir. 2004); *Am. Iron and Steel Inst. v. U.S. Envt. Prot. Agency*, 568 F.2d 284, 291 (3d Cir. 1977) (emphasizing that public participation "enables the agency . . . to educate itself before establishing rules which have a substantial impact on those regulated"); *Big Hole Ranchers Ass'n, Inc. v. U.S. Forest Service*, 686 F. Supp. 256, 260 (D. Mont. 1988); *North Buckhead Civic Ass'n v. Skinner*, 903 F.2d 1533, 1540 (11th Cir. 1990). If a proposed action does not fully undergo the NEPA process, NEPA's purpose is undermined and the agency decision is insulated because final NEPA documents are not subject to a comment period. *California v. Block*, 690 F.2d 753, 771 (9th Cir. 1982).

Here, BLM introduced an important issue concerning the future management of the Monticello Field Office for the very first time at the very last minute -- in the final plan. The public, interested parties, and those with expertise in climate change had no reason to know that climate change was an important aspect of the BLM's future planning environment, and no opportunity to review the information before the release of the final plan and provide input to BLM about its accuracy or completeness. This is a violation of NEPA's objective to educate both the public and the decision maker, and as a result, the climate information should be improved and released for public comment in a revised draft plan and EIS. *See Westlands Water Dist. v. U.S. Dep't of Interior*, 275 F. Supp. 2d 1157 (E.D. Cal. 2002) (NEPA process "broke down" where agency's discussion of impact was not presented until after closure of comment period on draft EIS). *See also* 40 C.F.R. §§ 1500.2(d), 1503.1(a)(4), 1506.6 (2007) (all requiring public notice and availability of environmental documents so that interested persons and the agencies can be informed); *Anderson v. Evans*, 371 F.3d 475, 487 (9th 2004) (CEQ regulations require that the "public must be given an opportunity to comment on draft EAs and EISs, and public hearings are encouraged to facilitate input on the evaluation of proposed actions").

XI. Socioeconomic Impacts

The socioeconomic analyses in the Monticello Proposed Resource Management Plan are inadequate. Several notable deficiencies in the Draft RMP were brought to the attention of BLM in our comments. These deficiencies have not been addressed in the PRMP, nor does BLM's response adequately address the issues raised in our comments.

Several specific areas of concern are listed below and addressed in detail in the following sections:

- The PRMP does not account for errors and inadequacies of the Draft RMP/EIS that were identified in comments addressed to BLM.
- The range of alternatives proposed shows a bias toward off-road motorized recreation and oil and gas development.
- The PRMP does not account for the non-market values associated with undeveloped wild lands.
- The PRMP does not address the potential benefits to the local area economies from management to protect the natural amenities of the Monticello Field Office.
- The PRMP does not take a hard look at a realistic assessment of current recreation impacts and trends or an adequate assessment of the potentially significant impact that such an emphasis is likely to have.
- The PRMP does not address the potential socioeconomic costs associated with mining and oil and gas drilling.
- Activities on BLM lands, especially oil and gas operations, will likely result in air quality impacts, which in turn will result in socioeconomic costs which must be accounted for.

A. The PRMP does not account for errors and inadequacies of the Draft RMP that were identified in comments addressed to BLM.

The Southern Utah Wilderness Alliance and others (SUWA) provided BLM with substantive comments on the Draft RMP. However, the agency has severely abridged the provided information and issues, and has only responded to these truncated comments, often asserting that they are unsubstantiated or lack documentation. In most cases, the documentation to support requested analyses has been provided to BLM and would be apparent if the comments were reproduced in their entirety.

In other instances BLM cites a lack of available data as a rationale for ignoring the requested analysis. This disregards the fact that in most cases, the commenter realizes and acknowledges that BLM lacks the appropriate data. Therein lies the issue. BLM must *acquire* the data necessary to do a full evaluation of the socioeconomic impacts of the proposed plan. To do otherwise is to proceed without complete information on the impacts of the propose plan.

Examples include comments on non-market values, comments concerning impacts on local economies, comments on oil and gas development, and comments on the costs

associated with off-road motorized recreation. BLM was supplied with several examples of non-market valuation techniques and methods, ample documentation of the changes in Western economies, citations of considerable research on the negative socioeconomic impacts of oil and gas development and a list of literature documenting the costs of off-road motorized recreation. BLM chose to ignore these portions of the comments from SUWA.

In several cases BLM has referred the commenter to certain pages in the document, where the issue in question is said to have been addressed. Upon turning to the identified pages, however one finds that the issue is not addressed on the pages cited, but rather, that the pages often refer to altogether different sections of the document.

1. Comments regarding non-market values

Specifically, SUWA asked that BLM analyze the impacts on non-market values:

> The Draft EIS does not account for the non-market values associated with undeveloped wild lands. Non-market values have been measured and quantified for decades. There is a well established body of economic research on the measurement of non-market values, and the physical changes (decreases in the source of these values) brought about by oil and gas development and motorized recreation are very easy to measure quantitatively.
>
> One of the most important purposes of public lands, including those of the BLM in the Monticello Field Office, is the provision of public goods. Non-market goods often fall into the category of public goods. These are things like opportunities for solitude, outdoor recreation, clean air, clean water, the preservation of wilderness and other undeveloped areas that would be underprovided if left entirely to market forces. The BLM has an inherent responsibility to see that these public goods are provided and in quantities that meet the demand, not just of local residents, but of every U.S. citizen.
>
> This analysis is especially important when considering the protection lands with wilderness characteristics since these lands produce benefits and values that are seldom captured in the existing market structure. The literature on the benefits of wilderness is well established and should be used by the BLM to estimate the potential value of the lands with wilderness characteristics in the Monticello Field Office. Krutilla (1967) provides a seminal paper on the valuation of wilderness lead the way for countless others who have done research all providing compelling evidence that these lands are worth much more in their protected state. Morton (1999), Bowker et al. (2005) Krieger (2001) and Loomis and Richardson (2000) provide an overviews of the market and non-market, use and non-use values of wilderness and wildlands. See Walsh et al.

> (1984), Bishop and Welsh (1992), Gowdy (1997), Cordell et al. (1998), Loomis and Richardson (2001) and Payne et al (1992) for several more examples.
>
> Peer reviewed methods for quantifying both the non-market and market costs of changing environmental quality have been developed by economists and are readily applicable to the present case. For a catalog of these methods see Freeman (2003). For a complete socioeconomic analysis, BLM should adapt these methods to conditions in the Monticello Field Office to obtain a complete catalog of estimates of the economic consequences of the proposed Alternatives.
>
> ***Recommendations:*** The BLM must measure and account for changes in non-market values associated with the level of off-road motorized recreation, oil and gas drilling and other development proposed in this RMP. To do otherwise omits a very important socioeconomic impact that is the direct result of management actions. The BLM must assess the non-market economic impacts on the owners of the lands in the Monticello Field Office – all Americans. This analysis must include the passive use values of undeveloped lands such as the lands with wilderness characteristics.

Southern Utah Wilderness Alliance Comments on Monticello Draft RMP/EIS at 90-91.

BLM proceeded to abridge this comment section:

> The draft EIS does not account for the non-market values associated with undeveloped wild lands.

BLM Response to Comments, Sorted by Commenter Type at 305.

The agency then responded to the truncated comment:

> The non-market values to which the commenter refers are not available to the BLM. The studies of which the BLM is aware are based on designated wilderness, the results of which may or may not be generalized to other "wild lands". Even if the studies are generalizable to Wilderness Study Areas (WSAs), the impacts are irrelevant, since WSA management is outside the scope of the current planning effort. The BLM is unaware of any evidence that such studies are generalizable to non-WSA lands with wilderness characteristics
>
> The BLM does recognize the potential importance of non-market values relative to managing for wilderness characteristics. The lack of available data makes quantification outside the scope of the DRMP/EIS.

BLM Response to Comments, Sorted by Commenter Type at 305-306.

BLM's haste to dismiss our request shows the agency's disregard for this issue and a lack of willingness to meaningfully respond to the substantive comment at hand.

Furthermore, this response ignores decades of peer-reviewed, widely-accepted economic research on the non-market values associated with wildlands. The research addresses wilderness quality lands, and the concepts can be easily extended to a variety of wildlands, many of which are present in the Monticello Field Office. Researchers can and do often apply values estimated in other studies for other areas to new areas. This technique, called "benefit transfer," has been widely accepted for policy analysis and should be applied to BLM land management decisions given the importance of non-market values as discussed above.

BLM attempts to dismiss the relevance of the referenced literature by citing a clause of FLPMA. However, within the very section cited by BLM, FLPMA directs that in developing land use plans, the Secretary shall rely on *other values*, as well as inventories of public lands and their resources. 43 U.S.C. § 1712(c)(4). Non-market values would certainly fall in this category of *other values*. Non-market values can also be said to be emerging, both as an increasingly important value associated with public lands, and in terms of the sophistication and accuracy with which they can be measured. To continually insist that non-market values are "not available" to the agency, BLM reveals that it has failed to fulfill this particular duty under FLPMA.

The BLM asserts that the agency does recognize the "potential importance" of non-market values. However, there is a significant difference between recognizing non-market values and quantifying them. By failing to do so, BLM has made an improper assumption that these values are negligible

If “suitable data” are not available to BLM, then such data should be collected by BLM. To refuse to do an analysis because of a lack of data is inappropriate. These values are likely to be large and should be estimated. Furthermore, studies on the non-market values of designated wilderness can and have been generalized to assess the benefits of lands that have the characteristics of wilderness without the designation (as noted above Walsh et al. 1984 did exactly this).

2. Comments regarding impacts on the local economy

Comments from SUWA to BLM requesting that the agency extend the analysis of the impacts on the local economy beyond those resulting from the extraction of natural resources were quite extensive and incorporated extensive recommendations in additional documents which were also supplied to the agency:

> We commend the BLM for noting the potential long-term beneficial impacts that will arise from the protection of the cultural resources in the Monticello planning area. Not only will the protection of these cultural

resources benefit the local economy, the overall protection of the lands in the planning area, especially those with wilderness characteristics (both inside and outside of WSAs) will also have long-term beneficial impacts. The economic impact that wilderness and wilderness quality lands have on local economies is well documented and has grown in importance as the U.S. moves from a primary manufacturing and extractive economy to one more focused on service sector industries. This shift means that many businesses are free to locate wherever they choose The "raw materials" upon which these businesses rely are people, and study after study has shown that natural amenities attract a high-quality, educated, talented workforce – the lifeblood of these businesses. To narrow the range of alternatives and the analysis of the potential impacts of land management on the local communities fails to address this important facet of today's economy.

For alternatives A - D the Draft EIS states, "No actions to maintain wilderness characteristics on lands outside of WSAs are proposed under this alternative, resulting in no additional impacts on socioeconomics (p. 4-344)." This is patently false. Study after study has shown that the presence of protected public lands has a positive impact on local economies – strongly correlated with growth in both jobs and income. It stands to reason that the converse is also true. Leaving these lands unprotected will likely have long-term negative impacts on the local economies. The Draft EIS does mention the potential benefits of protected public lands, but does so in a superficial way, and further states, "It is difficult to predict whether the potential socioeconomic gains described above will outweigh the socioeconomic losses which could result from this alternative (p. 4-345)." One can make a reasonable estimation about these tradeoffs by looking at the relative contribution of extractive industries to the economy of San Juan County. The professional and service sector accounts for 17% of total personal income, while oil and gas extraction accounts for only 3%. At least some of the income and employment in the professional and service sector is attributable to the natural amenities provided by protected public lands such as the BLM lands managed by the Monticello Field Office.

More and more evidence has accrued indicating that the West is not a resource-dependent region. The public lands, including those managed by the BLM in the Monticello Field Office are increasingly important for their non-commodity resources – scenery, wildlife habitat, wilderness, recreation opportunities, clean water and air. A vast and growing body of research indicates that the economic prosperity of rural Western communities depends more and more on these amenities and less and less on the extraction of natural resource commodities. See Bennett and McBeth 1998, Deller et al. 2001, Duffy-Deno 1998, Johnson and Rasker 1993 and 1995, Johnson 2001, Lorah 2000, Lorah and Southwick 2003,

McGranahan 1999, Morton 2000, Nelson 1999, Power 1995 and 1996, Rasker et al. 2004, Reeder and Brown 2005, Rudzitis 1999, Rudzitis and Johansen 1989, Shumway and Otterstrom 2001, Snepenger et al 1995 and Whitelaw and Niemi 1989 for some examples.

The Center for the Study of Rural America, at the Federal Reserve Bank of Kansas City (the Rural Center) has developed a set of Regional Asset Indicators that are linked to the potential for economic growth in rural counties (Weiler 2004). The Rural Center describes the regional asset indicators as providing "…new, forward-looking metrics that regions can use to better understand their economic assets and to help inform private, public, and nonprofit regional development strategies." [31] These Regional Asset Indicators often corroborate and extend the findings of Rasker et al (2004).

An area's amenities often act as a key driver of economic prosperity. The Rural Center has developed an index to measure the level of human amenities for each county, which includes a measure of natural amenities (developed by the U.S. Department of Agriculture), access to healthcare, innovation (which is also measured separately as an additional Regional Asset Indicator below), recreation areas and restaurants. These are then standardized into one index for each county (Center for the Study of Rural America 2006a).

As the Rural Center points out, the human amenity index is highest in coastal and mountain regions. This helps to explain the high score for San Juan County as well as the state of Utah (Table 2). The scores may well reflect the presence of the protected lands in the Monticello Field Office as well as the many other scenic amenities and recreation opportunities available on other nearby public lands including National Parks and Monuments, state parks, other BLM lands in the surrounding area and nearby National Forests.

One of the facets that the Rural Center includes in its Human Amenities Index is the Natural Amenities score calculated by the U.S. Department of Agriculture. It is instructive to pull this score out by itself. The index is based on climate factors (warm winters and mild summers), proximity to water bodies and varied topography. San Juan County has a Natural Amenity Scores that is much higher than the U.S. average and slightly higher that the state average (Table 1).

[31] Federal Reserve Bank of Kansas City, Regional Asset Indicators. The Regional Asset Indicators for every U.S. County can be downloaded here, along with documentation on the development of the Indicators and additional research showing their importance to rural economies. http://www.kansascityfed.org/home/subwebnav.cfm?level=3&theID=9602&SubWeb=12

Table 1. Amenity Indicators for San Juan County		
	Human Amenities Indicator [a]	Natural Amenities Scale [b]
San Juan County	35	3.6
Average of all Utah Counties	31	3.4
Average of All U.S. Counties	29	0.06

[a] Calculated by the Center for the Study of Rural America, Summer 2006
[b] U.S. Department of Agriculture, Economic Research Service, Natural Amenities Typology

Other Regional Asset Indicators reflect the quality of a region's workforce. Because areas which have abundant amenities are more able to attract and retain a high quality workforce, the Human Amenity Index is very important for the region as it may well be the key to enhancing and maintaining the other important workforce and demographic indicators discussed below. Human amenities have been found to be positively correlated with both income and employment growth (Center for the Study of Rural America 2006a).

Workforce indicators include the entrepreneurship, the general availability of skilled workers and the proportion of a region's workforce in creative occupations. A creative work force increases a region's human capital and its level of innovation and entrepreneurship - this index measures the level of specialized, highly creative occupations that are unique to an area, making a distinction between these unique concentrations and creative jobs that can be found in almost any location. Research has shown that both a highly creative workforce and a high level of entrepreneurship are correlated with economic growth (Low 2004, Thompson et al. 2006). The management actions outlined in Alternative E are more likely to result in the kinds of local natural amenities, scenic values and recreation opportunities that will attracts the kinds of workers and entrepreneurs that can have a beneficial impact on the economy of San Juan County.

The Draft EIS states "Population changes in San Juan County that could be associated with the implementation of alternatives under consideration of this EIS would likely be linked to employment changes (p. 4-331)." While this may sometimes be the case, more and more in communities in the Intermountain West that are rich in natural amenities (such as those in the Monticello planning area), people move to the area either bringing jobs with them or creating new businesses – "jobs follow people" as noted by Vias (1999) who found that employment growth followed population growth in this region. The influence of amenities in the West's economies is discussed in more detail above and in the attached documents: "*Socio-Economic Framework for Public Land Management Planning: Indicators*

for the West's Economy." See also Haefele et al (2007) for an additional discussion of the amenity economy.

New residents in the rural West often bring new businesses, and more and more of these are not tied to resource extraction. Some are dependent directly on the recreation opportunities on the surrounding public lands. Other entrepreneurs are attracted to the area for the same resources. The Federal Reserve Bank of Kansas City has found that the level of entrepreneurship in rural communities is correlated with overall economic growth and prosperity (Low 2004). These businesses may be harmed or deterred if the quality of the scenic and natural amenities is harmed due to the high levels of motorized off-road recreation and industrial uses allowed under the preferred alternative in the Draft EIS.

Retirees and other who earn non-labor income are also important to rural western communities. This income is important for San Juan County – making up 23% of total personal income. This makes investment and retirement income one of the largest sources of income in the planning area.[32] Retirees are attracted by natural amenities that are available on undeveloped public lands. The potential impact that a management plan which is so heavily weighted toward development and motorized recreation will have on this source of income and economic activity must be accounted for.

The Draft EIS also states, "Overall, the local socioeconomic conditions would not experience substantial adverse impacts from BLM resource management under Alternatives A-D (p. 4-355)." As the preceding discussion makes clear, this statement is false. The relatively modest protections of lands with wilderness characteristics and other natural and cultural amenities proposed in Alternative E (a) will not have adverse impacts on the socioeconomic conditions in the planning area and (b) are much more likely to have positive socioeconomic impacts.

Recommendations: The BLM must collect and analyze actual data on the economic impacts of the alternatives, including Alternative E. Some suggested analyses and sources of data can be found in *"Socio-Economic Framework for Public Land Management Planning: Indicators for the West's Economy"* (attached).

The BLM must make a thorough examination of the full socioeconomic impacts likely to occur if the management alternatives are implemented. These analyses must take into account the impacts that BLM land management actions will have on the surrounding communities, including the added cost of providing services and infrastructure, the long-term costs

[32]U.S. Department of Commerce, Bureau of Economic Analysis, Regional Economic Information System (http://www.bea.gov/)

> of the likely environmental damage, and the impacts on other sectors of the economy. The BLM must examine the role that protected public lands (including lands with wilderness characteristics) play in the local economy.

Southern Utah Wilderness Alliance Comments on Monticello Draft RMP/EIS at 91-94.

BLM truncated nearly four pages of detailed comments to the following one sentence: "The BLM must make a thorough examination of the full socioeconomic impacts likely to occur if the management alternatives are implemented." BLM Response to Comments, Sorted by Commenter Type at 308.

BLM's response to this truncated comment follows:

> The CEQ Guidelines for Implementation of the Procedural Provisions of the NEPA does not require preparation of a cost-benefit analysis for all EISs. The regulations state that "If (emphasis added) a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences (40 CFR 1502.23 Cost-benefit analysis).
>
> The Federal Land Policy and Management Act (FLPMA) requires that BLM manage the public lands for Multiple Use. Section 103(c) of FLPMA defines Multiple Use as follows: "The term 'multiple use' means . . . harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output." Additionally, given that the implementation schedule for the RMP will vary in the future based on national priorities, available workforce, and funding, etc., there is no way to meaningfully evaluate costs and benefits of the alternatives. Therefore, a cost benefit analysis is not central to the planning effort and is not required for consideration of multiple-use planning alternatives.
>
> After selection of an alternative to establish multiple use, costs and benefits of management actions may be considered, depending on priorities and funding. The BLM's National Planning Handbook (H1601-1) notes that even during implementation of land use plans "there is no requirement to develop a cost/benefit analysis, but management actions that have a high likelihood of improving resource conditions for relatively small expenditures of time and money should receive relatively higher

> priority (BM H-1601, IV. E. Developing Strategies to Facilitate Implementation of Land Use Plans).

BLM Response to Comments, Sorted by Commenter Type at 308-309.

The agency's response to this comment claims that they are not obligated to perform a cost-benefit analysis. However, if one reads the comments provided in full, that is not exactly what SUWA have requested. Rather, we requested that the agency extend its analysis of the socioeconomic impacts of management of the lands in the Monticello planning area beyond the very narrow range that has been included in the Draft RMP/EIS.

The manner in which BLM ignores the substance of the comment is unacceptable. The response fails to address or respond to the concerns raised in substantive comments by SUWA, and is inadequate as a response under 40 C.F.R. § 1503.4. The analysis performed by BLM actions examines only the economic impacts from oil/gas development, grazing, and mining. Economic impacts on recreation, ecological services, and economic diversification have been ignored.

This pattern of the agency presenting abbreviated comments to which it then refuses to respond is a violation of the BLM's responsibilities to consider and respond to public comments, as well as to ensure that those comments inform the ultimate management decisions. Taken in their entirety, the comments above do in fact offer specifics to support SUWA's requests, suggested data sources, existing methodologies, and peer-reviewed literature; these comments must be substantively addressed and the PRMP corrected.

3. Comments regarding the costs associated with oil and gas development

The comments submitted to BLM by SUWA requested that the agency extend the analysis of the economic impacts from oil and gas development and included specific recommendations as well as additional documents which were also supplied to the agency:

> While the Draft EIS asserts that the potential oil and gas development will likely be small the alternatives almost all open nearly the entire planning area for leasing (Figure 3). Even Alternative E, the most protective still makes almost half the planning area available for this industrial use. Opening these vast acreages to oil and gas drilling will have costs for the communities in the planning area and these costs must be analyzed and addressed in the Final EIS.
>
> The boom and bust cycles which are a well-know feature of the resource extraction industries have well documented negative impacts. In fact the Draft EIS notes that San Juan County is already quite familiar with the

problems of boom and bust cycles (p. 3-98). The alternatives proposed in the Draft EIS are all heavily weighted toward energy extraction and are likely to have long-term negative impacts on local communities. There is a considerable body of peer-reviewed academic literature on the social structure and economic performance of resource dependent communities. This research has indicated that an emphasis on resource extraction results in inherently economically unstable communities (Fortmann et al. 1989, Freudenburg 1992, Freudenburg and Gramling 1994). This instability in income and employment is usually a result of labor saving technological improvements and fluctuations in world resource markets - macroeconomic forces completely outside local control. Such economic instability and lack of local control can be expected with both coal and oil and gas development.

Other communities within Utah and throughout the region have been experiencing rapid oil and gas development that has confirmed the observations in the research noted above. Smith (1986) observed that oil and gas drilling booms extend drilling into marginal areas that were abandoned when prices dropped – leading to the bust portion of the boom-and-bust cycle. Smith also noted that the areas with the largest rate of growth also experienced the largest rate of decline. Goldsmith (1992) and Guilliford (1989) have also documented the problems associated with the boom and bust nature of resource extraction.

Another major concern is the relatively higher risk of death or injury in extractive industry jobs versus jobs in the service sector or in tourism and recreation (Loomis et al. 2007). While jobs in the oil and gas industry do in fact pay more than many in the service sector, this higher wage reflects the greater risk. The authors also note that the higher wages in oil and gas extraction may also be necessary in part to compensate workers for the greater probability of job loss due to market fluctuations. Finally, many of the jobs in tourism and services offer other forms of compensation such as pleasant work and flexible hours.

Other negative impacts include changes in the local social and cultural make up of communities as drilling crews and workers migrate into the area (Merrifield 1984, Davenport and Davenport 1980), changing populations and often leading to increased demand for housing which raises prices (Brabant and Gramling 1997). In addition to the social and economic instability, natural resource extraction also has negative impacts on the landscape (Morton et al. 2004). The attached brief, *"The Economic & Social Impacts of Oil and Gas Development,"* discusses some of these costs in more detail, which while focused on oil and gas drilling, can certainly be experienced with other resource extraction.

> ***Recommendations:*** We recommend that the BLM to consider the long-term negative impacts associated with over-dependence on the resource extraction sectors and approve a plan which protects the area's lands with wilderness characteristics to the fullest, as these are much more likely to be the stable, long-term source of the region's economic prosperity.

Southern Utah Wilderness Alliance Comments on Monticello Draft RMP/EIS at 102-103.

BLM reduced these substantial comments to the following statement: "The draft EIS does not address the potential socioeconomic costs associated with coal mining and oil and gas drilling." BLM Response to Comments, Sorted by Commenter Type at 307. BLM then responded to this truncated comment: "The socioeconomic cost associated with oil and gas drilling is discussed in detail on pages 4-340-344. BLM Response to Comments, Sorted by Commenter Type at 307.

First of all the pages to which we are referred *do not contain any discussion whatsoever of the socioeconomic costs associated with oil and gas drilling or mining*. However, it is more important that *nowhere* in the analysis of the impacts of the proposed plan are the sorts of costs detailed in the comments by SUWA ever discussed. Instead, the only detailed quantitative analysis was performed for the market benefits of energy development and grazing. This narrow view is completely inadequate to address all potential impacts to socioeconomic conditions for local communities.

4. Comments regarding the costs associated with off-road motorized recreation

SUWA presented BLM with an extensive review of peer-reviewed literature on the costs associated with the impacts of off-road motorized recreation. This comment was *several pages long,* and included numerous examples of studies of the costs of off-road motorized recreation and/or its impacts:

b. Cost of Off-Road Motorized Recreation

> The Draft EIS does not mention, let alone analyze the well-documented and potentially significant costs associated with off-road motorized recreation. Ouren et al. (2007) provide a comprehensive synthesis of the literature on the environmental impacts of off-road motorized recreation on BLM lands. These impacts and others will have significant economic costs to the American public. The following section presents an additional sampling of the vast body of research which provides evidence of these costs.
>
> - **Increased soil compaction and erosion and disrupted hydrologic function**

A study of the impacts of recreation use on trails (Mortensen 1989) found that off-road vehicle use produced the most serious trail impact, and was "too widespread and pervasive to be assigned individual impact areas." Results indicated that off-road motorized recreation was associated with tread widening, loss of ground vegetation, increased soil exposure, and entrenchment erosion. The trail tread had been widened to more than 40 m (130 ft) in some places, indicating that off-road recreationists had taken different routes to the top (in effect, becoming scramble runs). [Normal tread width is about 1 m (3.3 feet).] Mortensen also notes major implications for soil erosion and esthetic characteristics. Compaction can lead to a loss of pore space for air infiltration, reduced water infiltration, increased erosion and runoff, and reduced germination of woody seedlings. Additionally, vegetation in disturbed areas was also harmed. Areas with moderate to severe disturbance had, on average, 50% as much healthy understory vegetation. It is interesting to note that even though off-road vehicles are prohibited except on current and old logging roads in the particular area studied, the author found pervasive intrusion of off-road vehicles and noted that their impacts were more pronounced than other recreational uses.

Less obvious but equally damaging is the soil compaction caused by off-road vehicles. Studies have shown that soils are far more compacted in disturbed areas than in undisturbed regions (Raghavan et al. 1976). Soil erosion is another result of off-road motorized recreation. Kalisz (1996) studied the impacts of off-road motorized recreation in the mountains of Kentucky and found that such use resulted in increased erosion which undermines the biological capability of the soil, results in the loss of valuable topsoil, and leads to increased streambed siltation. OHV trails also serve as corridors for invading exotic plants and animals, and as attractive dumps for human trash. Areas with OHV disturbance have three times as many damaged overstory trees as undisturbed sites. Predictably, loss of vegetation results in further erosion, thus perpetuating the cycle of desolation.

Riparian areas are also impacted by off-road motorized recreation. Chin et al (2004) assessed the effects of all-terrain vehicle (ATV) trails on stream characteristics. The authors compared selected pool characteristics in two watersheds with ATV trails to those in two control watersheds without ATV trails. They found that the watersheds with ATV trails had pools with higher percentages of sands and fines (siltation), lower depths, and lower volumes. Effects of sedimentation were visibly apparent in the ATV-affected stream pools. Median pool depths were about 20-25cm in the affected pools and nearly 50cm in the unaffected. Pools serve as the primary habitat for many fish; lower pool depths and volumes suggest possible damage to ecological function in areas affected by ATV use.

- **Air pollution**

An often overlooked effect of off-road motorized recreation is the air pollution and fossil fuel demand created by such types of recreation. The Environmental Protection Agency (Fritsch 1994) estimates that small engines account for 5% of total air pollution, with a significant portion of this being contributed by off-road vehicles. In addition, one study estimated the yearly national fuel expenditure for OHV operation to be roughly half a billion gallons.

Durbin et al. (2004) found that off-road vehicles make a disproportionately high contribution to the emissions inventory. The authors found that hydrocarbon (HC) emissions from 2-stroke engine-equipped motorcycles are about 10 times greater than those from a comparable 4-stroke engine on a per-mile basis. Cramer (1998) studied population growth and air quality in California and found that population growth has a significant and large effect on all types of emissions from off-road vehicles. Air pollutants from off-road vehicles include reactive organic gases (ROG) and oxides of nitrogen (Nox), the precursors of ozone; oxides of sulfur (Sox); and carbon monoxide (CO).

- **Impacts on vegetation**

Another impact of the use of off-road vehicles is the spread of invasive species. A single ATV can disperse over 2,000 knapweed seeds in a 10-mile radius. Knapweed seeds are more likely to germinate and crowd out native plants in areas where soil has been compacted (Montana State University Extension Service 1992). The economic impact to agriculture and wildlands from these weeds is substantial. The potential annual loss to Montana's economy from spotted knapweed alone is estimated to be $42 million (Duncan et al. 2001). If knapweed continues to invade highly vulnerable lands, the potential annual loss to Montana's livestock industry would be $155 million each year. In a planning area such as the Monticello Field Office, where the livestock industry is presumed to be an important part of the local culture, similar losses might be expected and should be analyzed in the Final EIS.

Invading non-indigenous species in the United States cause major environmental damages and losses adding up to more than $138 billion per year (Pimentel et al. 1999). There are approximately 50,000 foreign species and the number is increasing. About 42% of the species on the Threatened or Endangered species lists are at risk primarily because of non-indigenous species. Non-native weeds cause at least $25 billion in crop and forage losses annually. Noxious weeds are estimated to have a direct cost to all Idaho lands of $300 million annually (Idaho Department of Agriculture 2007).

Vegetation suffers directly and indirectly from the passage of off-road vehicles. The effects can last decades or even centuries. Compaction and erosion impair the ability of plants to absorb nutrients and carbon dioxide and experience proper root growth. Disturbance of soils by off-road vehicles has long-term effects that favor the establishment of weedy species (Blackburn et al. 1994).

- **Impacts on wildlife**

Losos et al. (1995) classified threats to species endangerment and found that 69% of federally-listed species were known to be threatened at least in part by resource extraction and recreation activities. They found recreation threats to 23-26% of species. The most destructive recreational practices were off-road vehicle use (motorcycles, four-wheel drive vehicles, snowmobiles, dune buggies, all-terrain vehicles, and other vehicles with high ground clearance) and general recreation (all unspecified recreation threats). Stritthold and Dellasala (2001) study the importance of roadless areas on biodiversity and find that these areas are important for species protection.

- **Foregone passive use benefits**

Jerrel (1995) estimated the benefits of protecting 6.9 million acres of desert land in California. The value to California residents of designating 76 new wilderness areas and creating three new national parks was found to be between $177 and $448 million per year. The 1993 version of the California Desert Protection Bill restricted vehicle access in the parks and prohibited motorized and mechanized recreation in the wilderness areas. Similar benefits can be expected to accrue to undeveloped lands protected from off-road motorized recreation in the Monticello Field Office. Conversely, the failure to protect these lands will result in the loss of passive use benefits.

- **Foregone wilderness/roadless recreation benefits**

Swanson and Loomis (1996) used a benefit-cost analytical method that translates recreation use into economic benefits. Recreation in 1990 on public lands (USFS and BLM) in the Pacific Northwest (western Washington, western Oregon, northern California) generated public benefits of $1.6 billion. Recreation demand exceeded supply in some areas—the greatest gap was in "semi-primitive non-motorized" recreation. Authors measured the effects of four alternative management scenarios to estimate their ability to meet demand. Economic benefits were maximized under a redistribution that shifted acres from "semi-primitive motorized" to "semi-primitive non-motorized." This scenario resulted in an additional

$916 million in public benefits. Authors found that existing public land allocations in the region provided excess supply for roaded recreation. The proposed alternatives for the Monticello Field Office most likely also provide excess supply for roaded recreation given the relatively small proportion of use by motorized recreationists. Even the most protective alternatives makes nearly half of the planning area available for a recreation activity engaged in by only a small proportion of total participants.

- **Foregone psychological benefits**

In addition to traditional economic benefits, undeveloped lands have important psychological benefits. One study points out the well established link between urban stressors such as air and noise pollution and negative psychological consequences (Mace et al. 2004), noting that these stressors have "…short- and long-term consequences for psychological well-being, social relationships and human performance." They also note that there are proven therapeutic benefits to being away from these stressors in areas free of noise and air pollution – such as parks and wilderness areas. Increased visitation and motorized recreation create air pollution and noise and are thus are degrading the experience and the potential benefits for visitors to undeveloped lands.

- **Personal safety and injury**

According to the Consumer Product Safety Commission (CPSC 2005), there have been 7,188 ATV-related deaths since 1982 – 2,178 of these were children under the age of 16. In addition, over 1.8 million ATV-related injuries were treated in hospitals and doctors' offices in the same time period. The CPSC reports that in 2005 children under the age of 16 accounted for 30% of annual ATV-related injuries. These deaths and injuries impose costs on society, according to Helmkamp (2002), the average annual comprehensive economic loss resulting from ATV deaths in West Virginia through the 1990's was estimated to be between $10 million and $34.2 million. Similar costs can be expected with off-road motorized recreation in the Monticello Field Office and these costs must be estimated and included in the economic impact analysis for the RMP. Moore and Magat (1997) and Heiden and Lenard (1995) offer additional information on the costs and risks associated with all-terrain vehicle injuries and deaths.

- **Law enforcement**

The Draft EIS details a number of horrifying illegal actions by OHV users in the Monticello Field Office and/or local governments (p. 3-87). which

indicate that the need for enforcement of OHV rules and regulations may be particularly great in the area.

The need for law enforcement to ensure that OHV rules and regulations are followed and are effective imposes costs on society as well. The General Accounting Office (1995) studied the use and impacts of off-highway vehicles after their increasing use lead to damage to natural or cultural resources, or their use clashed with other forms of outdoor recreation (e.g., hiking, picnicking, horseback riding). The report found that agencies (BLM and Forest Service) gave lower priority to monitoring off-road motorized recreation than to other programs, that they relied heavily on states for financial support of law enforcement, that off-road motorized recreation was being monitored casually rather than systematically and that levels of compliance were mixed. The report also found that adverse effects were seldom documented.

The states of Michigan and Washington both document spending on OHV enforcement. The State of Michigan appropriated $1,374,500 in fiscal year 2003 to support county sheriff's departments for enforcing OHV laws (State of Michigan, Department of Natural Resources 2003). The State of Washington (Interagency Committee for Outdoor Recreation) administers the Non-Highway and Off-Road Vehicle Activities (NOVA) Program, which funds grants to counties to support maintenance, education, and enforcement activities. Washington spent over $1.8 million on non-highway and off-road vehicle road projects, and education and enforcement in 2003 (Interagency Committee for Outdoor Recreation 2004).

Mortensen (1989) found that off-road motorized recreationists intruded into areas where their access was prohibited. Not only do these intrusions extend the physical impacts of off-road motorized recreation, they imply that enforcement of closures is necessary and will certainly lead to increased law-enforcement costs.

- **Costs to taxpayers**

OHV activity on public lands can be costly to taxpayers who subsidize the basic construction, maintenance, and management of the required infrastructure and the restoration and repair of damaged lands and who pay the price for ecotourism opportunities lost because of degraded habitat (Defenders of Wildlife 2002). For example, Defenders of Wildlife found that OHV damage in the Chattahoochee/Oconee National Forest (Georgia) is estimated at $990,000 ($1,800 per acre) to repair 550 miles of illegal trails.

> ***Recommendations:*** BLM must develop recreation management directives which reflect the proportional use of the area by non-motorized and/or non-OHV users.
>
> BLM must collect and analyze more thorough and accurate data on the costs of off-road motorized recreation in order to make an accurate assessment of the impacts of the alternatives. BLM must recognize that increasing off-road motorized recreation implies the need for increased restrictions, and increased law enforcement, not opening more land for open cross-country travel.

Southern Utah Wilderness Alliance Comments on Monticello Draft RMP/EIS at 96-101.

BLM reduced our comment to the following single sentence: "The draft EIS fails to address the potential significant costs associated with off-road motorized use."

BLM Response to Comments, Sorted by Commenter Type at 306.

BLM responded to this comment as follows:

> As described in detail in Chapter 4, the BLM addressed the impacts from travel management to a wide variety of resources under its management. The impacts on resources analyzed in Chapter 4 of the DRMP/EIS included many of the resources enumerated by SUWA, including soils, air quality, hydrology, riparian, vegetation, wildlife, and wilderness characteristics. The BLM has never suggested that any of its management decisions are without impacts, including OHV and travel management decisions. The BLM believes that its action alternatives, which greatly reduce both miles of motorized routes and open areas, should have a positive impact on the resources cited. The BLM's responsibility is to disclose and analyze the effects of those decisions; the BLM has fulfilled this responsibility in the analysis disclosed in Chapter 4.

BLM Response to Comments, Sorted by Commenter Type at 306-307.

This response misses the point. BLM was presented with a review of pertinent literature on the impacts associated with off-road motorized recreation. Many of these impacts have easily quantifiable economic consequences (*see infra* for a discussion of the economic impacts of deteriorations in air quality for just one example). BLM has never done an analysis of these economic impacts as requested.

This lack of response indicates a general disregard for the science provided by SUWA, and public opinion in general. NEPA requires that BLM discuss "any responsible opposing view which was not adequately discussed in the draft statement and indicate the agency's response to the issue raised" in preparing a final EIS. 40 C.F.R. § 1502.9. The Council on Environmental Quality interprets this requirement as mandating that an

agency respond in a "substantive and meaningful way" to a comment that addresses the adequacy of analysis performed by the agency.[33] As such, the agency has violated NEPA's requirements.

BLM does single out a few specific issues raised by SUWA: "The BLM must recognize that all recreation participation (and use of public lands) has been increasing and is likely to continue to increase." BLM Response to Comments, Sorted by Commenter Type at 310. Again the response inaccurately refers to a page in the PRMP/FEIS: "The DRMP addresses increasing recreational use. Refer to pages 3-84 and table 3.21 in the DRMP."

BLM Response to Comments, Sorted by Commenter Type at 310.

However, when BLM discusses the increasing use of public lands for recreation, the agency again focuses solely on off-road motorized recreation citing the increase in vehicle registration as evidence. This is in no way adequate. First OHV registration alone is not evidence of increasing off-road motorized recreation. Furthermore, all recreation has been increasing, and despite evidence that off-road motorized use is increasing, non-motorized users still comprise the vast majority of recreation visitors to public lands.[34]

Another specific issue which the BLM highlights from the comments by SUWA is that of enforcement: "Personal safety and injury – The BLM must analyze the cost associated with off-road motorized recreation. The BLM must consider the need for law enforcement to ensure OHV rules and regulations are followed and the cost this imposes on society." Southern Utah Wilderness Alliance Comments on Monticello Draft RMP/EIS at 99-100. BLM's response to this issue is to dismiss it as "… administrative in nature and outside the scope of the document." BLM Response to Comments, Sorted by Commenter Type at 310. Again the agency's response misses the point of the comment. It is clear that off-road motorized recreation leads to higher costs for law enforcement, both for the agency and for the local communities. This is a socioeconomic impact that is the direct result of the proposed plan, and as such it must be addressed in the analysis of the impacts.

Finally, regarding recreation and public lands in the area, SUWA provided BLM with a discussion of the research regarding the interactions among the various lands in the region:

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[33] The U.S. Court of Appeals for the Tenth Circuit has held that the "Forty Questions" are "persuasive authority offering interpretive guidance" on NEPA from CEQ. *Davis v. Mineta*, 302 F.3d 1104, 1125 (10th Cir. 2002).

[34] National Forest Visitor Use Monitoring Program National Project Results, January 2000 through September 2003. http://www.fs.fed.us/recreation/programs/nvum/national_report_final_draft.pdf
National Survey on Recreation and the Environment: http://www.srs.fs.usda.gov/trends/Nsre/nsre2.html
U.S. Department of the Interior, Bureau of Land Management, Public Lands Statistics: http://www.blm.gov/wo/st/en/res/Direct_Links_to_Publications/ann_rpt_and_pls/2006_pls_index.html

c. Public Land Visitation Benefits

As noted in the Draft EIS, the Monticello planning area is surrounded by a number of other public lands and natural attractions. This rich collection of recreational opportunities and the natural amenities provided by these lands are an economic asset for San Juan County.

Much research has been done on the recreation behavior and preferences of visitors to public lands. Kaval and Loomis (2003) examine the values associated with recreation in National Parks. This analysis compiles estimates of the per day value to recreation users for 30 activities. While these studies do not address visitor numbers or visitor days, they do provide estimates of the value recreation visitors place on various forms of recreation, and they find that on average non-motorized recreation activities (backpacking, hiking, horseback riding, mountain biking, rock climbing and river rafting/floating) are worth about twice as much per day than off-road vehicle driving ($42 per day compared to $19 per day). In a similar study Rosenberger and Loomis (2001) compile an extensive review of the literature and the economic valuation of recreation and present methods that can be employed to apply these estimates for various other locations.

While the previous two studies focused on consumer surplus values, it should be noted that non-motorized recreation also has more tangible economic impacts. According to the Outdoor Industry Foundation, 162 million Americans participate in non-motorized outdoor recreation each year (Outdoor Industry Foundation 2006a), spending more than $298 billion on gear and recreation annually (Outdoor Industry Foundation 2006b). This spending spurs other spending in local economies that generates significant local tax revenue—making the total national economic contribution of outdoor recreation more than $730 billion (Outdoor Industry Foundation 2006b). More than three-quarters (78 percent) of Americans living in the West participate in non-motorized outdoor activities (Outdoor Industry Foundation 2006a). In Utah, activities like hunting and fishing, hiking, bicycling, and skiing contribute $5.8 billion to the state's economy, generating 65,000 jobs. Outdoor recreation by residents and tourists alike is an important component of western economies.

Recent research has shown that public land visitation is increased when the recreation and scenic values of the land is recognized through official designations. Weiler (2005) found that over the course of 20 years National Park Service Monuments that were re-designated to National Parks saw an increase in of nearly 13,000 annual visits. Furthermore, the increase in visitation came mostly from those traveling large distances to visit the new National Parks. These visitors are likely to stay longer in the

> area, especially if surrounding BLM lands can provide increased opportunities for the types of recreation they are seeking. It is also interesting to note that visitation to the National Parks in the study increased even in times of economic downturn, indicating that the presence of highly visible public lands may be an asset to communities that can help mitigate the vagaries of the national economy. As people's income contracts, such natural areas may be seen as affordable family vacation destinations, while other, more expensive, options may suffer.
>
> ***Recommendations:*** The BLM should examine and acknowledge the benefits of public land recreation, especially in the context of the surrounding National Parks, National Monuments, State Parks, Forest Service lands and other BLM lands in the planning area.

Southern Utah Wilderness Alliance Comments on Monticello Draft RMP/EIS at 101-102.

BLM truncated this discussion to: "The BLM should examine and acknowledge the benefits of public land recreation, especially in the context of surrounding National Parks, National Monuments, State Parks, Forest Service lands and other BLM lands in the planning area." BLM Response to Comments, Sorted by Commenter Type at 310. BLM goes on to dismiss the comment: "The commenter has not provided enough information in this comment to formulate a response." BLM Response to Comments, Sorted by Commenter Type at 310.

BLM lands in the Monticello Field Office are among many public lands in the region, including national parks, state parks and an iconic Navajo Tribal Park, all of which will attract tourists and potentially "amenity migrants." The management of the BLM lands as primarily industrial and/or for motorized recreation may impact the potential "value added" benefit that spillover tourism may have for the local economy in San Juan County. BLM analysis of the impacts is incomplete and inaccurate without an analysis of the impacts on these other lands.

5. Requested Remedy

BLM must complete a conforming NEPA analysis that fully considers the opposing scientific opinion and justifies its contradicting conclusions. BLM must take into account the full scope of the comments, and not specific points taken out of context. The agency must then revise the Proposed Plan as needed.

B. The alternatives proposed shows a bias toward off-road motorized recreation and oil and gas development.

In comments on the Draft RMP, SUWA pointed out BLM that the alternatives all fall within a very narrow range. For example, all but one of the alternatives make the majority of the planning area available for oil and gas leasing, varying only in the

amount of lands in the various stipulation categories. The same is true for off-road motorized recreation (Tables 1 and 2).

Table 1. Percentage of Total Acreage Available for Oil and Gas Leasing						
	Alternative A	Alternative B	Alternative C	Alternative D	Alternative E	Proposed Plan
Open for Oil & Gas Drilling Under Standard Lease Terms	32%	20%	35%	54%	12%	28%
Open for Oil & Gas Drilling with Timing Limitations and/or Controlled Surface Use	37%	49%	40%	24%	31%	41%
Open for Oil & Gas Drilling with No Surface Occupancy	9%	7%	2%	1%	3%	4%
Total open for oil and gas	78%	77%	78%	78%	45%	72%
Closed	22%	23%	22%	22%	55%	28%

Table 2. Percentage of Total Acreage Available For Off-Highway Motorized Recreation						
	Alternative A	Alternative B	Alternative C	Alternative D	Alternative E	Proposed Plan
Open	34%	0.00%	0.13%	0.13%	0.00%	0.00%
Limited-seasonal restrictions	30%	0.00%	0.00%	0.00%	0.00%	0.00%
Limited -existing roads/trails	32%	0.00%	0.0002%	0.00%	0.00%	0.0004%
Limited-designated roads/trails	12%	76%	76%	100%	46%	77%
Total open for OHV	84%	76%	77%	100%	46%	77%
Closed	16%	24%	23%	0.00%	54%	23%

BLM's response to the issue of a reasonable range of alternatives ignores this lack of variability. There really is no *range* per se, but rather a token protective alternative which was never really seriously considered (for evidence see the discussion of the lack of analysis on non-market values and the impacts to non-extractive economic sectors). None of the elements of Alternative E have been incorporated into the PRMP. It is incorrect for BLM to claim:

> While there are many possible management prescriptions or actions, the BLM used the scoping process to determine a reasonable range alternatives that best addressed the issues, concerns, and alternatives identified by the public. Public participation was essential in this process and full consideration was given to all potential alternatives identified.

BLM Response to Comments, Sorted by Commenter Type at 307.

Again we reiterate that BLM must consider a no-leasing alternative. The current draft of the RMP fails to consider such an alternative. Federal courts have made clear that a no leasing alternative should be a vital component in ensuring that agencies have all possible approaches before them. *See, e.g., Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228 (9th Cir. 1988)). BLM responds to this request by referring the commenter to the agency's justification for eliminating a no leasing alternative from detailed analysis. This is inadequate. A no-leasing alternative should have been among the final set examined and furthermore, no additional leasing in the Monticello planning area should have been considered as an element of the PRMP.

1. Requested Remedy

Because BLM has never fully evaluated the no-leasing alternative there is no earlier analysis that BLM can rely upon for this analysis. BLM must therefore fully analyze and consider the no-leasing alternative, which would provide for no more leasing in the Monticello Field Office – as opposed to simply the maintenance of the status quo of making lands available for leasing in the no-action alternative – in the EIS accompanying the Monticello RMP. BLM must also revise the RMP to give more than merely token treatment to Alternative E.

C. The PRMP does not account for the non-market values associated with undeveloped wild lands.

One of the most important purposes of public lands, including those managed by BLM in the Monticello Field Office, is the provision of public goods. Non-market goods often fall into the category of public goods. These are things like opportunities for solitude, outdoor recreation, clean air, clean water, the preservation of wilderness and other undeveloped areas that would be underprovided if left entirely to market forces. BLM has an inherent responsibility to see that these public goods are provided and in quantities that meet the demand, not just of local residents, but of every U.S. citizen.

This analysis is especially important when considering the protection of lands with wilderness characteristics since these lands produce benefits and values that are seldom captured in the existing market structure. The literature on the benefits of wilderness is well established and should be used by BLM to estimate the potential value of the non-WSA lands with wilderness characteristics in the Monticello Field office. Krutilla (1967) provides a seminal paper on the valuation of wilderness lead the way for countless others who have done research all providing compelling evidence that these lands are worth much more in their protected state. Krieger (2001) and Loomis and Richardson (2000) provide an overviews of the academic literature on market and non-market, use and non-use values of wildlands. *See* Walsh et al. (1984), Bishop and Welsh (1992), Gowdy (1997), Cordell et al. (1998), Loomis and Richardson (2001) and Payne et al (1992) for several more examples. Swanson and Loomis (1996) discuss the importance of non-market values specifically for public lands. This body of literature is well established and

credible and BLM should not persist in overlooking these important aspects of multiple use management.

Peer reviewed methods for quantifying both the non-market and market costs of changing environmental quality have been developed by economists and are readily applicable to the present case. For a catalog of these methods see Freeman (2003). For a complete socioeconomic analysis, BLM should adapt these methods to conditions in the Monticello Field Office to obtain a complete catalog of estimates of the economic consequences of the proposed Alternatives.

1. Requested Remedy

BLM must measure and account for changes in non-market values associated with the level of oil and gas drilling and motorized recreation proposed in this RMP. To do otherwise omits a very important socioeconomic impact that is the direct result of management actions. BLM must assess the non-market economic impacts on the owners of the lands in the Monticello Field Office – all Americans. This analysis must include the passive use values of all lands with wilderness characteristics.

D. The PRMP does not address the potential benefits to the local area economies from management to protect the natural amenities of the Monticello Field Office.

Despite the fact that SUWA pointed out the glaring fallacy, the PRMP/FIES reiterates that for alternatives A - D, "No actions to maintain wilderness characteristics on lands outside of WSAs are proposed under this alternative, resulting in no additional impacts on socioeconomics." PRMP at 4-436. This is patently false. Study after study has shown that the presence of protected public lands has a positive impact on local economies – strongly correlated with growth in both jobs and income. It stands to reason that the converse is also true. Leaving these lands unprotected will likely have long-term negative impacts on the local economies. The PRMP does mention the potential benefits of protected public lands (with regard to Alternative E), but does so in a superficial way, and further states, "It is difficult to predict whether the potential socioeconomic gains described above will outweigh the socioeconomic losses which could result from this alternative." PRMP at 4-437. One can make a reasonable estimation about these tradeoffs by looking at the relative contribution of extractive industries to the economy of San Juan County. The professional and service sector accounts for 17% of total personal income, while oil and gas extraction accounts for only 3%. At least some of the income and employment in the professional and service sector is attributable to the natural amenities provided by protected public lands such as the BLM lands managed by the Monticello Field Office.

Furthermore, as discussed above, protecting natural amenities and undeveloped lands will have considerable non-market values. These values are consistently ignored by BLM further eroding the credibility of statements such as the one above and indeed the entire conclusion of the socioeconomic impact analyses.

1. Requested Remedy

The BLM must make a thorough examination of the full socioeconomic impacts likely to occur if the management alternatives are implemented as described in detail in the comments submitted by SUWA on the Draft RMP/EIS. These analyses must take into account the impacts that BLM land management actions will have on the surrounding communities, including the added cost of providing services and infrastructure, the long-term costs of the likely environmental damage, and the impacts on other sectors of the economy. The BLM must examine the role that protected public lands (including lands with wilderness characteristics) play in the local economy.

E. The PRMP does not take a hard look at a realistic assessment of current recreation impacts and trends or an adequate assessment of the potentially significant impact that such an emphasis is likely to have.

While it is a step in the right direction to close most of the planning area to *cross-country* motorized recreation, it by no means sufficiently reduces the potential costs associated with this recreation. Repeating the error in the Draft EIS, the PRMP cites OHV registration as evidence that motorized recreation has been increasing in recent years. It is highly likely that some of these registrations are for work or farm vehicles in which case these numbers may overstate the amount of OHV use. In any case, the BLM must recognize that *all* recreation participation (and use of public lands) has been increasing and is likely to continue to increase.

1. The realities of recreation participation trends are overlooked in the formulation of alternatives and in the analysis of the impacts of the alternatives.

Study after study of Americans' recreation activities shows that the vast majority of people participate in non-motorized recreation – not motorized. A national study by Roper (2003) looked at participation rates over time (1995-2003) and found that off-road vehicle activities consistently ranked below non-motorized activities with walking, hiking and backpacking accounting for two-thirds or more of recreation visits, while OHV driving accounted for less than ten percent.

Data from several states as well as national studies (the USDA Forest Service National Visitor Use Monitoring Program, the National Survey on Recreation and the Environment [see Cordell et al. 2004], and BLM's Public Lands Statistics)[35] all show that motorized use is consistently a small portion of total public lands recreation visits. A study using NVUM data for the BLM Moab Field Office (U.S. Forest Service 2007)

[35] National Forest Visitor Use Monitoring Program National Project Results, January 2000 through September 2003. http://www.fs.fed.us/recreation/programs/nvum/national_report_final_draft.pdf
National Survey on Recreation and the Environment: http://www.srs.fs.usda.gov/trends/Nsre/nsre2.html
U.S. Department of the Interior, Bureau of Land Management, Public Lands Statistics: http://www.blm.gov/wo/st/en/res/Direct_Links_to_Publications/ann_rpt_and_pls/2006_pls_index.html

shows that non-motorized recreation far outweighs OHV use, and it seems unlikely that the use patterns for the Monticello Field Office would significantly differ. Data from the Recreation Management Inventory System (RMIS) for the state of Utah show that in Fiscal Year 2006 motorized recreation accounted for just 20% of total visits, while non-motorized recreation visits were 52% of the total.[36] Finally, the PRMP presents recreation data for the field office which also shows that non-motorized users account for a much larger proportion of the total visitor days than motorized users.

Furthermore, Stynes and White (2005) have shown that motorized and non-motorized visitors spend the same amount per day on tourism-related services. Given the preponderance of evidence that most visitors are engaging in non-motorized recreation, it is likely that most of the benefit to the local communities from hotel and restaurant spending, as well as other spending by visitors is due to the non-motorized recreation opportunities in the area. It is also likely that as the landscape becomes degraded and overrun by off-road vehicles the "cash cow" tourists seeking non-motorized opportunities are likely to choose other destinations. The impact on the local economy of this shift must be assessed in the EIS.

Even the most protective alternative examined by the BLM (Alternative E) would have made nearly half of the planning area available to a group which represents only a small proportion of total users. The PRMP makes over three-quarters of the planning area available for off-road motorized recreation. This is inappropriate given the important values which will be lost to all Americans and the potential high costs that will be imposed on Utah and the rest of the region from higher levels of off-road motorized recreation in the Monticello Field Office.

2. The PRMP fails to address the potentially significant costs associated with off-road motorized recreation.

We have reproduced *supra* in its entirety the section on the potential socioeconomic costs associated with off-road motorized recreation from the comments of SUWA on the Draft RMP in an earlier section of this protest. Please refer to that section of our comments on the Draft RMP for that discussion as it pertains to the issues here.

Off-road motorized recreation is likely to impose socioeconomic costs on the communities in the Monticello Planning Area. These costs are not addressed in the analysis of the socioeconomic impacts. They include, but are not necessarily limited to: increased soil compaction and erosion and disrupted hydrologic function, air pollution, impacts on vegetation and wildlife, foregone passive use benefits, foregone wilderness/roadless recreation benefits, foregone psychological benefits, costs associated with personal safety and injury, increased law enforcement costs, costs to taxpayers for

[36] Source: Tina McDonald, Outdoor Recreation Planner, Recreation Management Information System (RMIS) Project Manager, USDI Bureau of Land Management, 2850 Youngfield St., Lakewood, CO 80215, Email Tina_McDonald@blm.gov

the basic construction, maintenance, and management of the required infrastructure and the restoration and repair of damaged lands.

3. The PRMP does not discuss the benefits of non-motorized recreation on public lands outside the planning area.

BLM fails to acknowledge the synergistic relationship among the lands in the Monticello Field Office and the other important public lands in the vicinity. The management actions proposed in the PRMP may impact these other lands, may impair their desirability as recreation or tourist destinations, and may result in other socioeconomic impacts to the local area. BLM has not analyzed the interrelationship among the various lands in the region of the planning area.

4. Requested Remedy

BLM must take a hard look at current socioeconomic data in relation to recreational uses in the planning area and develop recreation management directives which reflect the proportional use of the area by non-motorized and/or non-ORV users in order to be in compliance with NEPA.

In addition, BLM must collect and analyze more thorough and accurate data on the costs of off-road motorized recreation in order to make an accurate assessment of the impacts of the alternatives. BLM must recognize that increasing off-road motorized recreation implies the need for increased restrictions, and increased law enforcement, not opening more land for open cross-country travel.

F. The PRMP does not address the potential socioeconomic costs associated with mining and oil and gas drilling.

The PRMP would make over three-quarters of the planning area available for oil and gas drilling. Opening these vast acreages to oil and gas drilling will have costs for the communities in the planning area and these costs should have been analyzed and addressed in the PRMP. However, the PRMP is deficient in not analyzing these significant impacts.

These costs include the socioeconomic impacts associated with the boom and bust cycles which are a well-know feature of the resource extraction industries and which have well documented negative impacts. In fact the PRMP notes that San Juan County is already quite familiar with the problems of boom and bust cycles:

> Mining in San Juan County has also seen several booms and busts. Beginning in the late nineteenth century people seeking gold and silver entered the area, but the inability to "strike it rich" in the area prompted their departure. Copper became the next sought-after mineral and in 1918 the first copper mill began operating. Oil drilling operations were also occurring around this time, but did not prove fruitful for many operators.

> Mining operations slowed significantly by the mid-1920s and it was not until demand for uranium in World War II revived the mining industry. The Monticello Mill and the Rio Algom Mill were established in the County to process uranium and vanadium (McPherson 1995). By the early 1980s, demand for uranium decreased and both of the mills had closed.

PRMP at 3-112.

The PRMP is heavily weighted towards energy extraction and is likely to have long-term negative impacts on local communities. There is a considerable body of peer-reviewed academic literature on the social structure and economic performance of resource dependent communities. This research has indicated that an emphasis on resource extraction results in inherently economically unstable communities. (Fortmann et al. 1989, Freudenburg 1992, Freudenburg and Gramling 1994). This instability in income and employment is usually a result of labor saving technological improvements and fluctuations in world resource markets - macroeconomic forces completely outside local control. Such economic instability and lack of local control can be expected with both mining and oil and gas development.

Other communities within Utah and throughout the region have been experiencing rapid oil and gas development that has confirmed the observations in the research noted above. Smith (1986) observed that oil and gas drilling booms extend drilling into marginal areas that were abandoned when prices dropped – leading to the bust portion of the boom-and-bust cycle. Smith also noted that the areas with the largest rate of growth also experienced the largest rate of decline. Goldsmith (1992) and Guilliford (1989) have also documented the problems associated with the boom and bust nature of resource extraction.

Another major concern is the relatively higher risk of death or injury in extractive industry jobs versus jobs in the service sector or in tourism and recreation (Loomis et al. 2007). While jobs in the oil and gas industry do in fact pay more than many in the service sector, this higher wage reflects the greater risk. The authors also note that the higher wages in oil and gas extraction may also be necessary in part to compensate workers for the greater probability of job loss due to market fluctuations. Finally, many of the jobs in tourism and services offer other forms of compensation such as pleasant work and flexible hours.

Other negative impacts include changes in the local social and cultural make up of communities as drilling crews and workers migrate into the area (Merrifield 1984, Davenport and Davenport 1980), changing populations and often leading to increased demand for housing which raises prices (Brabant and Gramling 1997). In addition to the social and economic instability, natural resource extraction also has negative impacts on the landscape (Morton et al. 2004). In comments on the Draft RMP, SUWA included a brief titled *"The Economic & Social Impacts of Oil and Gas Development,"* which discusses some of these costs in more detail. We incorporate by reference and refer BLM again to this document as supporting our request that these potential negative

socioeconomic impacts be analyzed as part of the NEPA process for the Monticello RMP.

1. Requested Remedy

In order to take the requisite hard look at socioeconomic impacts under NEPA, BLM must consider the long-term negative impacts associated with over-dependence on the resource extraction sectors and approve a plan which protects the area's lands with wilderness characteristics to the fullest, as these are much more likely to be the stable, long-term source of the region's economic prosperity.

G. Activities on BLM lands, especially oil and gas operations, will likely result in air quality impacts, which in turn will result in socioeconomic costs which must be accounted for.

As noted in the comments by Megan Williams submitted by SUWA, oil and gas development is likely to have cumulative impacts on air quality under new standards for both particulate matter and ozone. BLM notes that the oil and gas and OHV activities in the Monticello Field Office under the Proposed Plan will result in increases in emissions of criteria pollutants. BLM must assess the socioeconomic costs associated with increased emissions of pollution and reduced air quality in the Monticello planning area.

There is a well-established case in support of the economic benefits of clean air and, by symmetry, the economic costs of deteriorating air quality. This case is demonstrated by a review of three major studies of the economic benefits of air quality improvements. These studies indicate that improvements in air quality have resulted in significant benefits, well in excess of the costs of achieving the improvements. The studies, released in 1997, 1999, and 2005, show five patterns clearly, each of which is explained below.

Substantial economic costs are likely to occur if air quality in the areas surrounding BLM lands continues to deteriorate as the result of proposed actions and developments such as increased oil and gas exploration and production. There are tools readily available to assist BLM in conducting a thorough analysis of the health-related costs of increased ozone exposures for citizens living near and visitors to BLM lands, so that these costs can be given due consideration in land management decisions.

1. Improvements in air quality result in substantial economic benefits well in excess of economic costs

Considering only the health-related benefits of reduced ozone pollution, estimated benefits range from $409 billion over a single decade for ozone reductions resulting from initial implementation of the Clean Air Act (EPA 1997) to $7 billion in benefits for a single year from simply meeting the .80 ppm NAAQS standard for ozone (Hubbell *et al.* 2005). By symmetry, it is likely that deteriorating air quality resulting from accelerated oil and gas development and other pollution-generating activities will result in substantive economic costs

2. **The range of known and scientifically-valid health consequences from polluted air in general, and elevated ozone levels in particular, is increasing.**

Especially notable is the attribution of some premature mortality to elevated ozone exposure. Premature mortality was attributed solely to elevated particulate matter in both EPA studies reviewed here (EPA 1997 and EPA 1999). Yet, improved understanding of the adverse consequences of ozone exposure, and the associated economic costs, has led the EPA to promulgate increasingly strict ozone standards and prompted Hubbell *et al.* (2005) to include reductions in premature mortality as one of the health consequences of meeting the 8-hour NAAQS ozone standard.

3. **The increasing breadth and depth of valuation research in economics provides evidence that can be used to quantify and monetize the health-related benefits of reduced air pollution.**

The research increasingly allows monetization to be specifically targeted to affected populations, both in terms of age and location.

4. **High levels of inflation for goods and services related to health care suggest that the economic costs of ozone exposure will grow rapidly in the future, even if NAAQS standards are not further tightened.**

While all of the monetized values reported here are in constant 2005 dollars, it should be noted that in 2005 the Consumer Price Index for all medical services stood at 323.2 compared to 162.8 in 1990, an increase of nearly 100 percent (U.S. Census Bureau 2008). The costs of medical care are increasing much faster than the costs of other consumer items.

5. **There is a well-stocked tool box available to BLM to use in estimating the economic costs of the increased air pollution likely to result from accelerated energy development.**

Although they differ in details, all three papers use a common methodology to arrive at an estimate of monetized benefits of improved air quality. The methodology consists of four steps (see EPA 1997, p. 29): 1) estimate changes in air quality between a control scenario (e.g. the status quo) and an alternative scenario (e.g. reductions in ozone; 2) estimate the human population exposed to the change in air quality; 3) apply a series of concentration-response equations which translate changes in air quality to changes in physical health and health endpoints (e.g. asthma attacks); and 4) multiply changes in health endpoints aggregated over the affected population by an estimate (or range of estimates) of the monetized value of the health endpoints. BLM could apply the four steps outlined above to estimate the economic costs of its proposed actions. The studies, especially the 2005 study, show how BLM would be able to apply existing and proven methodologies to estimate the economic costs any proposed implementation or expansion

of oil and gas development on BLM lands. The software necessary to conduct a simulation of increased ozone levels (BenMAP) is available from EPA and discussed in Hubbell *et al.* (2005).

6. Detailed review of three studies of the economic benefits of air quality improvements

While improvements in the nation's air quality have been expensive, it is well established that the economic benefits of improving air quality have exceeded the costs of those improvements, in many cases by large multiples. As mandated by Congress in Section 812 of the 1990 Clean Air Act Amendments, EPA has produced two studies examining the benefits and costs of wrought by the Clean Air Act and its later amendments. The first study, EPA (1997) found that the benefits resulting from air quality improvement engendered by the Clean Air Act between 1970 and 1990 totaled $5.6 to $49.4 *trillion*, with a central tendency of $22.2 trillion. The costs of compliance with the Clean Air Act were estimated to be $523 billion. This yields a benefit cost ratio between 10.7 and 94.5.

The measured ozone-related health and worker productivity benefits found in EPA (1997) are summarized in Table 1.

Table 1 Economic Benefits of Ozone-Related Health and Worker-Productivity Effects of the Clean Air Act 1970-1990

Health Consequence*	Affected Population	Number of Cases Prevented	Value Per Case (2005 dollars)	Present Value (billions of 2005 dollars)
Hospital Admissions				
All Respiratory	≥65	89,000	$16,081	$17.9
Cardio Pulmonary and Pneumonia	≥65	62,000	$15,684	$17.9
Respiratory Related Ailments				
Any of 19 Acute Symptoms	18-65	130,000,000	$10.52-$89.34	$91
Asthma Attacks	Asthmatics	850,000	$63.5	$107
Minor Restricted Activity Days (MRAD)	18-65	125,000,000	$75.4	$169
Decreased Worker Productivity	Those in the labor force	Not given	$1.98 per hour for each 10 % reduction in ozone	$5.95
Total Economic Benefits				$408.75

Source: Tables 6, 10, 13, and I-3 of EPA 1997; U.S. Census Bureau, 2008.
*EPA 1997 also attributes improvements in all listed health consequences to reductions in particulate matter (PM) and ozone.

In its 1999 peer-reviewed study, EPA used sophisticated computer models and the latest epidemiological research. EPA (1999) finds that the 1990 Clean Air Act Amendments will prevent 23,000 Americans from dying prematurely, avert over 1,700,000 incidents of asthma attacks and aggravation of chronic asthma, 67,000 incidents of chronic and acute bronchitis, 91,000 occurrences of shortness of breath, 4,100,000 lost work days, 31,000,000 days of restricted physical activity, due to pollution related illnesses. Moreover, EPA expects the Act to avert 22,000 respiratory-related hospital admissions, 42,000 cardiovascular hospital admissions, and 4,800 emergency room visits related to asthma.

EPA (1999) also used the latest economic research on measuring costs and benefits to conclude that the total benefits of the 1990 Clean Air Act Amendments from 1990 to 2010 would be $110 billion, while the costs of applying the Amendments would be $27 billion. Thus the benefit/cost ratio is 4.07.

The measured ozone-related health and worker productivity benefits found in EPA (1999) are summarized in Table 2.

Table 2 Economic Benefits of Ozone-Related Health and Worker-Productivity Effects of the Clean Air Act 1990-2010

Health Consequence*	Affected Population	V Number of Cases Prevented	Value per Case (2005 dollars)	Annual Value (millions of 2005 dollars)
Chronic Asthma	NA	7,200	$49631	$357.3
Hospitalizations				
All Respiratory	NA	22,000	$13,698	$258.1
All Cardiovascular	NA	42,000	$18,850	$774.3
Asthma Attack	NA	1,700,000	$64	$109.2
Acute Respiratory Symptoms	NA	NA	$36	$2.2
Minor Restricted Activity Days	NA	31,000,000	$75	$2,382.3
Emergency Room Visits for Asthma	NA	4,800	$385	$2.0
Total Economic Benefits				$3,885.4

Source: Tables 5-3, 6-1, 6-3 of EPA 1999; U.S. Census Bureau, 2008.
*EPA 1997 also attributes improvements in some listed health consequences to reductions in particulate matter (PM) and ozone.

EPA (1999) quantified and monetized health benefits related to respiratory symptoms, minor restricted activity days, hospital admissions, asthma-related emergency room visits, and asthma attacks. However, EPA was not able to quantify ozone-related benefits from reduced premature mortality, lung inflammation, chronic respiratory damage, increased susceptibility to respiratory infection, and non-asthma related emergency room visits (EPA 1999, Table 5.1, p. 53). In addition, EPA (1999) included discussions of both

monetized and non-monetized benefits accruing from increased agricultural productivity, increased forest productivity, and improved ecological outcomes.

Hubbell, *et al.* (2005) estimate the economic benefits of reducing ozone levels in such manner that there would be compliance with the then-existing NAAQS of .80 ppm for the 4th highest maximum 8-hour ozone concentration at all the >1000 monitoring stations throughout the country. The Hubbell, *et al.* methodology includes spatial modeling of the effects of reduced ozone, allowing for the estimation of ozone exposure for various segments of the population (e.g. ≥ age 65).

Hubbell *et al.*'s quantification of economic benefits is summarized in Table 3 below.

Table 3 Economic Benefits of Attaining the 8-Hour Ozone Standard

Health Consequence	Affected Population	Economic Value per Case (2005 dollars)	Number of Cases Avoided	Economic Value (2005 dollars)
Premature Mortality	All	$8,055,000	750-840	$5.8-$6.8 billion
Respiratory Hospital Admissions	≥65 years	$22,744	2000-2300	$43-$53 million
	0 to <2 years	$9593	1900-2100	$15-$20 million
Asthma Related Emergency Medical Visits	All	$354.43	460-510	$150,000-$190,000
Minor Restricted Activity Days (MRAD)	Aged 18-65	$64	1,200,000-1,400,000	$64-$84 million
School Days Lost	Aged 5-17	$93	890,000-970,000	$72-$84 million
Total Economic Value				$6.7-$7.1 billion

Source: Hubbell *et al.* (2005) Tables 4 and 6; U.S. Census Bureau, 2008.

As seen in Table 3, the major contributor to the total economic benefits of meeting the former NAASQ ozone standard is the reduction of premature mortality following reduced ozone exposure. The monetized value of the 750-840 cases of premature death avoided as a result of meeting the .80 ozone standard makes up 87 to 96 percent of total monetized health benefits. This health benefit has been not been included as a benefit of reduced ozone in the previous EPA studies (EPA 1997 and EPA 1999).

However, Hubbell *et al.* are convinced that the weight of scientific evidence supports the inclusion of the monetized value of this health consequence:

> Although particulate matter is the air pollutant most clearly associated with premature mortality, recent research suggests that repeated ozone exposure likely contributes to premature death…. Although [recent scientific studies] do not constitute a database as extensive as that for

> particulate matter, these recent studies provide supporting evidence for including mortality in ozone health benefits analysis

Hubbell et al. 2005 at 75.

The weight of scientific evidence supporting this conclusion has been confirmed in a recent study released by the National Research Council (2008).

Hubbell *et al.* (2005) also note limitations to their study which tend to understate the economic benefits of meeting the ozone standard. First, the authors do not include monetized benefit estimates for endpoints that are not health relate but

> …may significantly contribute to monetized benefits. These include decreased outdoor worker productivity, decreased yields for commercial and noncommercial crops, decreased commercial forest productivity, damage to urban ornamental plants, impacts on recreation demand from forest aesthetics, and damage to ecosystem functions.

Hubbell et al. 2005 at 75.

Second, the authors note that benefits associated with reduced mortality may be much higher than they report.

> Our estimates of mortality-related benefits of attaining the standards may change, based on emerging meta-analyses of the ozone mortality literature. If these meta-analyses confirm [emerging results]…the mean mortality benefits may increase by a factor of 2, suggesting that reductions in premature mortality associated with attainment of the ozone standards might be as high as 1,600 premature deaths avoided annually. This increase would substantially increase the economic value of health impacts as well, potentially up to $10 billion [$12.4 billion in 2005 dollars]

Hubbell *et al.* 2005 at 81.

Also, the authors note that recent research suggests that reduced ozone exposure would increase the monetized benefits of reduced emergency room care by a factor of 4.5 (Hubbell *et al.* 2005, p. 81).

Third, the estimates used to monetize the value of avoided hospital admissions and emergency room visits are downward biased. In the absence of estimates of willingness to pay to avoid these events, Hubbell *et al.* (2005) used estimates of total medical costs plus the value of lost productivity. These are lower bound estimates of the proper measures, which are willingnesses to pay to avoid the pain and suffering (see Hubbell *et al.* 2005, p. 78).

This review clearly shows that there are readily available tools to assist BLM in conducting a thorough analysis of the health related economic costs of increased ozone exposures for citizens living near and visitors to BLM lands. It also shows that substantial economic cost are likely to occur if air quality in the areas surrounding BLM lands continues to deteriorate as the result of proposed actions and developments such as increased oil and gas exploration and production. BLM should take advantage of the existing tools and scientific research to conduct the proper analysis.

7. Requested Remedy

BLM should apply all available tools and analyses, including the studies reviewed above, to assess the cost of increased air pollution associated with the proposed plan and to adjust the proposed management approach to minimize these costs.

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XII. Habitat Fragmentation and Wildlife Protection

A. BLM must not only conduct a thorough analysis of the impacts of habitat fragmentation, but also use this information to adopt a management alternative that mitigates these impacts.

Roads and ORV routes are now widely recognized in the scientific community as having a range of direct, indirect and cumulative effects on habitats and wildlife (Trombulak and Frissell 2000, Wisdom 2004). Effects range from direct removal of habitat to long-term displacement of species from preferred habitat. The indirect and cumulative effects are hardest to measure, but are increasingly studied through analysis of habitat fragmentation.

Habitat fragmentation has been defined as the "creation of a complex mosaic of spatial and successional habitats from formerly contiguous habitat" (Lehmkuhl and Ruggiero 1991). Habitat fragmentation alters the distribution of wildlife species across the landscape and affects many life functions such as feeding, courtship, breeding, and migration. Transportation networks are one of the most significant causes of habitat fragmentation, and negatively impact wildlife well beyond the surface area disturbed by an actual road or motorized trail. In fact, habitat fragmentation from roads and other human infrastructure has been identified as one of the greatest threats to biological diversity worldwide (Wilcove 1987).

The adverse effects of routes on wildlife have been well documented in several extensive literature reviews (Trombulak and Frissell 2000, Gucinski et al. 2001, Gaines et al. 2003, Wyoming Game and Fish Department 2004, New Mexico Department of Game and Fish 2005, Confluence Consulting 2005). The hundreds of scientific papers in these literature reviews illustrate the preponderance of evidence that routes ranging from narrow dirt tracks to paved roads can and do cause adverse affects on wildlife. This volume of science simply cannot be ignored in a major land management planning effort such as this RMP (or any travel management planning effort). We incorporate by reference the additional literature on habitat fragmentation that we provided the BLM through our comments on the Draft RMP and reiterate our recommendation that BLM consider incorporating the findings of this information in the RMP.

Examples of direct, indirect and cumulative impacts of roads on wildlife and their habitats identified in the biological literature include (Trombulak and Frissell 2000, New Mexico Department of Game and Fish 2005):

- **Fragmentation of connected habitats** including the loss of core habitat areas and habitat connectivity for wildlife movements and dispersal
- **Adverse genetic effects** such as reducing genetic diversity by isolating populations
- **Increased potential for extirpation of localized populations** or extinction of narrowly distributed species from catastrophic events

- **Modifications of animal behavior** through reductions in habitat use due to human activity and interference with wildlife functions such as courtship, nesting, and migration
- **Disruption of the physical environment** in many ways including direct removal of habitat due to route construction, reduction of cover and habitat security, increasing dust and erosion
- **Alteration of the chemical environment** through vehicle emissions and herbicides
- **Changes in habitat composition** by direct loss of vegetation from road construction and changes in microclimates in road edge habitats potentially resulting in changes in type and quality of food base and reduction in habitat cover
- **Spread of exotic species** that may lead to competition with preferred forage species
- **Degradation of aquatic habitats** through alteration of stream banks and increased sediment loads
- **Changes to flows of energy and nutrients** such as changes in temperatures in microclimates created at road edges
- **Increased alteration and use of habitats by humans** through activities including increased unethical hunting practices and increased dispersion of recreation impacts, particularly by off-road vehicles due to a proliferation of roads
- **Mortality from construction of roads**
- **Mortality from collisions with vehicles**

As documented by the comprehensive literature reviews cited above, the existence of motorized routes can result in habitat fragmentation and, depending on the use of the route, have impacts extending well into surrounding habitats. Such fragmentation from transportation networks is immediate and can lead to a range of risks to the survival of wildlife. Sound science and spatial analysis must be used to evaluate impacts from any network of travel routes before its adoption through a planning process. There are many ways to measure habitat fragmentation to determine where and how corrective action should be taken. Three of the most useful metrics for their ease in calculation and direct connection to biological field research on wildlife impacts are road density, number and size of core areas, and distance to a road. *Road density* can be calculated by measuring the length of road divided by the area in a given region and reported as miles of road per square mile (mi/mi^2). *Core areas* are defined as the area of land beyond a given distance, or road effect zone, from transportation routes (Forman, 1999). The number and sizes of core areas can be measured, as can the *total amount of core area beyond a given distance or effect zone from road*s. Because wildlife species respond at varying distances to road disturbances (and depending on the road type and activity level), it is important to determine measures of core area for a range of effect zone widths associated with disturbances for specific species (e.g., of 100 ft., 500 ft. and 1320 ft.). Measuring the

amount of land within a given distance to a road or within an effect zone is the inverse of measuring the acreage of core areas, and represents a measure of the affected habitat.

While we appreciate BLM's use of scientific data and methodology to provide analysis of habitat fragmentation, none of the alternatives include any specific fragmentation metrics as part of their management prescriptions. In our comments on the Draft RMP, we recommended BLM more thoroughly analyze the impacts to wildlife from habitat fragmentation caused by oil and gas development and ORV routes. Such an analysis would provide BLM and the public with the necessary information to adopt a management alternative that mitigates impacts on wildlife from these uses.

In response to this comment, BLM states, "The fragmentation analysis is not an attempt to quantify the specific impacts from the fragmentation that has or will result . . . Site specific impacts from future activities will be analyzed and when applicable, stipulations and mitigation measure may be implemented" BLM Response to Comment No. 26-112.

It is inappropriate to defer this analysis; avoidance and mitigation of habitat fragmentation are by necessity landscape-level management decisions. In order to mitigate the negative impacts of fragmentation, tracts of habitat must be set aside, and this must be done at the RMP level to ensure its effectiveness. Only by thoroughly analyzing reasonably foreseeable future impacts can BLM take protective measures to preserve habitat.

Furthermore, we reiterate our comments on the Draft RMP that none of the alternatives presented would provide sufficient unfragmented habitat. We realize it may not be feasible to produce an alternative that provides completely unfragmented habitat. However, it is necessary for BLM to provide sufficient favorable habitat for the species it is charged with managing and to take steps to reduce and mitigate fragmentation where possible.

Simply identifying impacts as probable or unavoidable is not sufficient for habitat fragmentation analysis. BLM must take steps to mitigate these impacts so as to ensure that species within the Monticello FO have adequate habitat, including unfragmented tracts and corridors where necessary.

1. Requested Remedy

In order to comply with the requirements of NEPA to conduct a thorough analysis of impacts of the management alternatives and to facilitate meaningful public participation and review of the RMP, the BLM must thoroughly analyze the specific impacts of habitat fragmentation on affected species and provide a comparison of the management alternatives. This analysis should include the impacts of ORVs and motorized routes, as well as roads. The public should be provided with an opportunity to review and comment on a compliant analysis of habitat fragmentation *before* the record of decision is issued.

In addition, BLM must use the latest available scientific literature and spatial analysis of habitat fragmentation on the impacts of ORVs and roads on wildlife to craft road network alternatives and to evaluate the direct, indirect and cumulative impacts of road networks. BLM should act based on the best available information to fulfill their obligations to protect wildlife habitat.

B. BLM should protect wildlife habitat and reduce fragmentation by managing more lands to protect wilderness characteristics.

The Monticello FO proposes to manage only 15% of non-WSA lands with wilderness characteristics to protect these resources. PRMP at 2-26. Furthermore, the proposed plan makes available 99% of non-WSA lands with wilderness characteristics to ORV use and makes available 75% of the entire planning area to oil and gas development, despite the fact that roads and ORV routes are widely recognized in the scientific community as having a range of direct, indirect, and cumulative effects on habitats and wildlife. This does not represent a balanced approach to land management, and does not fulfill FLPMA's multiple use mandate.

The PRMP acknowledges the many benefits to wildlife, including special status species, from managing areas to maintain wilderness characteristics, including by reducing fragmentation. However, the proposed plan protects a small fraction of these lands. BLM should take advantage of protective management prescriptions, such as designating lands with wilderness characteristics, to reduce habitat fragmentation and its impacts on wildlife in the Monticello planning area.

BLM should also increase protection for lands with wilderness characteristics by improving the management prescriptions for these areas. Lands being managed to preserve their wilderness characteristics should be closed to ORV use and new road construction, and should be exclusion areas for ROWs, as opposed to avoidance areas. Allowing ORVs in areas managed for wilderness characteristics, even if they are limited to designated routes, greatly distresses wildlife and contributes to habitat destruction and fragmentation. In addition, these lands must be managed as VRM Class I, which BLM describes as intended to "preserve the existing character of the landscape" PRMP at 3-175. The fact that Monticello FO proposes to manage a mere 5% of its lands to protect wilderness characteristics makes these prescriptions plausible, and all the more important. Only by adopting the more rigorous management prescriptions set out in Alternative E will BLM truly be able to carry out its stated goal of protecting, preserving, and maintaining the undeveloped character of these lands (PRMP at 2-26).

1. Requested Remedy

The RMP should include managing more lands outside of WSAs to protect wilderness characteristics, thereby improving habitat and reducing fragmentation. The management prescriptions for these lands should be those listed in Alternative E.

XIII. Recreation

A. General Recreation Management

Recreation on public lands comes in a variety of forms, and over time, an increasing number of users seek to use these lands. On a limited quantity of terrain, only so many types of recreation can feasibly coexist without impairing the natural habitat and the qualities that attract users. The PRMP inadequately addresses recreational use within the Monticello Field Office. BLM fails to fully analyze impacts from ORV use and does not take into account how different uses impact the land and conflict with each other.

By allowing a disproportionate level of ORV use within the management planning area, BLM is not maximizing the *net* benefits that will be received by recreational users of all types. A national study by Roper (2003) looked at participation rates over time (1995-2003) and found that off-road vehicle activities consistently ranked below non-motorized activities with walking, hiking and backpacking accounting for two-thirds or more of recreation visits, while OHV driving accounted for less than ten percent. Data from several states as well as national studies (the USDA Forest Service National Visitor Use Monitoring Program, the National Survey on Recreation and the Environment [see Cordell et al. 2004], and BLM's Public Lands Statistics)[37] all show that motorized use is consistently a small portion of total recreation visits to public lands. In addition, the Recreation Management Inventory System (RMIS) for the state of Utah show that in Fiscal Year 2004, non-motorized visits made up more than 50 percent of all visits. Motorized recreation visits only made up 20 percent.[38]

Throughout Utah BLM field offices, recreation trends have continually shown that a significant majority of recreation is non-motorized. Motorized recreation, despite the evident bias exhibited by the BLM through decisions made in the PRMP, tends to make up less than a quarter of all recreation. Nationally, regionally, and locally, the trend of recreational use is constant; the majority of recreation occurring on public lands is non-motorized. Stynes and White (2005) have shown that motorized and non-motorized visitors spend the same amount per day on tourism-related services. Therefore, due to higher rates of non-motorized recreation, it is easily extrapolated that traditional recreation forms create greater injections for local economies. Another study has shown that the economic value of a day of non-motorized recreation is, on average, higher than the value for the same day of motorized recreation. *See* Kaval and Loomis (2003).

As discussed below, the Monticello Field Office is no exception to these general statistics when it comes to recreational uses. The PRMP is deficient in striking a balance for the

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[37] National Forest Visitor Use Monitoring Program National Project Results, January 2000 through September 2003. http://www.fs.fed.us/recreation/programs/nvum/national_report_final_draft.pdf
National Survey on Recreation and the Environment: http://www.srs.fs.usda.gov/trends/Nsre/nsre2.html
U.S. Department of the Interior, Bureau of Land Management, Public Lands Statistics: http://www.blm.gov/wo/st/en/res/Direct_Links_to_Publications/ann_rpt_and_pls/2006_pls_index.html

[38] Source: Tina McDonald, Outdoor Recreation Planner, Recreation Management Information System (RMIS) Project Manager, USDI Bureau of Land Management, 2850 Youngfield St., Lakewood, CO 80215, Email Tina_McDonald@blm.gov

management of the recreation needs in the planning area. Not only has BLM failed to adequately provide current recreation data for the area, but also the agency does not minimize conflicts among recreational users as required by law.

1. BLM has not taken a hard look at recreational use in the planning area as required by NEPA

In the PRMP, BLM is relying on flawed data that inaccurately portrays the amount of recreational ORV use in violation of NEPA's requirement that decisions be based upon accurate, high quality data and analysis. This compromises BLM's ability to conduct a thorough analysis of direct, indirect, and cumulative environmental impacts from its recreation management decisions.

The recreation analysis in the PRMP focuses disproportionately on ORV use. Non-motorized use is described, but severely underemphasized in terms of importance. By managing around 78 percent of total land area as available to ORV use, BLM has ignored its own multiple-use mandate intended to benefit all stakeholders. Based upon the MFO's own statistics, the number of visitor days logged for non-motorized use exceeds visitor days logged for motorized use. PRMP at 3-98, Table 3.22.

In our comments on the Draft RMP, we recommended that the MFO perform its own analysis of visitor use similar to the adjacent Moab Field Office with a particular focus on non-motorized and motorized uses:

> The existing relative demand for various recreation opportunities is poorly defined. Here, BLM cites the questionable Recreational Management Information System (RMIS) data on this point, and as a result, relies on objectively unverifiable estimations about the demand for motorized recreation. BLM should have conducted a new study, similar to the Moab National Visitor Use Monitoring survey which it conducted on the different types of use in the Moab Field Office, especially the relative use of non-motorized versus motorized recreation. That study showed that non-motorized recreation is utilized by vastly more visitors to the Moab BLM-managed lands than motorized (ORV-based) recreation. This type of study would greatly improve the credibility of baseline use within the Monticello Field Office when creating the Analysis of the Management Situation (AMS). Because hard information on visitation was missing from the AMS and Affected Environment section of the DRMP/EIS, the BLM has created a potentially false impression that the Monticello Field Office is a location in which ORV use is more popular than every other recreation pursuit.

SUWA comments on Draft RMP/EIS at 17.

In response to this comment, BLM provides that "[t]he commenter does not provide BLM with any information or data; they suggest the Monticello FO should conduct a

survey similar to Moab's. However, a range of alternatives for various recreational opportunities is presented by the BLM." BLM Response to Comment No. 26-18.

There are several troubling aspects of the BLM's response. First, it is not necessary that comments provide BLM with newly generated data in order for the BLM to adequately respond under 40 C.F.R. § 1503.4. Instead, substantive comments, which merit a thorough response, are those that raise questions regarding the accuracy of information or the adequacy of methodology for or assumptions used for the environmental analysis. BLM NEPA Handbook, H-1790-1 at 66. Our comments, and those of other commenters, have identified specific inaccuracies and inadequacies that require an equally substantive response.

Second, providing a range of alternatives without providing adequate baseline data for those alternatives does not give the BLM and the public an accurate view of conditions in the field office, violating NEPA's hard look requirement.

BLM has also not performed an adequate socio-economic analysis with respect to recreational uses. Different types of recreation have been examined to derive estimates of the economic value derived from a single user day. According to Kaval and Loomis (2003), the average value of a day of non-motorized recreation is worth more than twice the value derived from a day of motorized use. So, even if it is assumed that motorized and non-motorized recreational use is roughly equal, the economic value derived from traditional forms of recreation exceeds that of motorized-recreational users.

2. BLM has failed to minimize conflicts between ORV use and other uses

BLM's ORV regulations require the agency to designate areas and trails for ORV use "to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors" (43 C.F.R. § 8342(c)), but the PRMP fails to take that into account in analyzing and selecting alternatives.

Motorized users are affected minimally by non-motorized users. In contrast, non-motorized recreational users often feel displaced by motorized users. The physical impacts that motorized users leave on the land are far more noticeable and the noise that ORVs produce severely disrupts the natural experience. As a result, many traditional recreational users avoid areas where ORV use is known to occur. In areas open to both motorized and non-motorized recreation, this can largely exclude the latter. Therefore, not only are potential benefits to traditional non-motorized recreationalists reduced in the PRMP, but conflicts are also increased.

The PRMP demonstrates clearly that BLM is well aware of recreation conflicts in the planning area. The PRMP states, "[t]he BLM has also received numerous complaints about OHV use, misuse, and illegal trail building. There is a growing level of conflict

between motorized and nonmotorized users of the PA." PRMP at 3-89. The PRMP also provides the following statement on conflicts:

> When recreational use reaches a certain threshold, user groups start to resent the multi-use nature of public lands. For example, some hikers resent mountain bikers and motorized users on shared trails, while mountain bikers may seek some trails free from motorized use. Conflicts are known to exist between:
>
> - recreation and grazing users;
> - nonmotorized recreation and motorized recreation users;
> - rock-climbing and grazing (specifically in Indian Creek) users;
> - commercial vs. private users (related to San Juan River users as well as backpackers throughout the resource area, especially in Dark Canyon); and
> - river runners and OHV users.

PRMP at 3-99.

Such conflicts exist not from some form of "resentment" of the multiple uses for public lands, but rather from the mismanagement of those uses when the land management agency does not analyze and take into consideration the actual uses of the lands in the planning area. Making the majority of lands available to ORV use when most of the recreational users are non-motorized will undoubtedly lead to more conflicts between these users. This is not a balance of multiple uses nor is it minimizing conflicts among users as required by the ORV regulations.

a. Requested Remedy

BLM should consider in greater depth the impacts of different recreation types on one another, in addition to the land itself. This includes studying the actual recreational uses of the land in the planning area. Statistics collected by the agency itself should be considered in the development and analysis of alternatives within the context of BLM's multiple-use mandate, as well as the directive to designate areas for motorized use that avoid conflict with other users of the public lands. Alternatives should be examined fully to assess the tradeoffs between all economic values (both market and non-market) for all alternatives. The economic analysis should consider the net (rather than gross) benefits of a full range of management alternatives. BLM needs to refer to available literature on these economic impacts. The RMP should adopt alternatives that best meet the goal of minimizing conflict amongst users.

B. Special Recreation Management Areas (SRMAs)

1. BLM has not responded to comments leaving errors in the PRMP in need of correction

In comments provided to the BLM on the Draft RMP, we recommended the BLM correct errors in the recreation section that may lead to confusion among the public. Our comments stated the following:

As an initial matter, there are several discrepancies between the total acreage provided in the summary of SRMAs on page 2-3 and the actual total acreage as added up in each of the alternatives. The following specific inconsistencies need to be corrected in the proposed final RMP, both in describing the SRMAs and responding to comments:

	Alt. A	Alt. B	Alt. C	Alt. D	Alt. E
SRMA Actual in Alternatives	229,490 ac.	508,856 ac.	508,512 ac.	505,018 ac.	508,856 ac.
SRMA Summary on p. 2-3	15,100 ac.	528,856 ac.	525,512 ac.	525,018 ac.	528,856 ac.
Difference Between Summary and Actual	- 214,390 ac.*	+ 20,000 ac.	+ 17,000 ac.	+ 20,000 ac.	+ 20,000 ac.

* Canyon Basin SRMA (214,390 ac.) not included in the summary for Alt. A.

SUWA Comments on Draft RMP at 74.

The PRMP does not contain a direct response nor were any changes made in the plan to address these errors. BLM was required to address this comment and correct these discrepancies before issuing the PRMP.

Furthermore, in the PRMP, BLM continues to make errors in summary of SRMA acreage by showing the proposed alternative with a total of 554,721 acres. PRMP at 2-4, Summary Table B. The true total acreage according to other sections of the PRMP is 562, 824 acres. PRMP at 2-29 – 2-23, Table 2.1; PRMP at 4-338, Table 4.116. Thus, there is an 8,103 acre discrepancy for total SRMA acreage between two sections of the PRMP.

It is clear that BLM has ignored our comments on this point and because of this, continues to make careless errors in summarizing management decisions, failing utterly to provide clear and accurate information as required by NEPA. The incomprehensibility of the information provided in both the Draft RMP and the PRMP substantially interferes with the ability of reviewers to effectively comment in further violation of NEPA.

a. Requested Remedy

BLM must provide a response and corrections to these errors before the Record of Decision is issued.

2. BLM must provide a supplemental EIS for the new alternative presented for Tank Bench and Beef Basin SRMAs

Both the Tank Bench and Beef Basin SRMAs were not included in the alternatives for the Draft RMP. Instead, these areas were proposed to be designated as *cultural* special management areas. Draft RMP at 2-9 – 2-10. Thus, the goals and objectives for management of these areas has shifted significantly from cultural values to recreation values with little explanation as to why.

The decision to shift the focus of management from cultural to recreation is of particular concern for the Beef Basin area. The PRMP specifically names the Dark Canyon-Beef Basin area as one of the seven areas where "OHV designations need to be addressed due to a variety of resource use conflicts." PRMP at 3-166. The PRMP goes on to state, "[t]hese conflicts have the potential to bring harm to users as well as the resources potentially impacted. At the very least, user conflicts may potentially degrade user satisfaction." *Id*.

The PRMP describes the impacts from *not* designating Tank Bench and Beef Basin for cultural resources (Alternative D) as follows:

> The Comb Ridge/Butler Wash, the Tank Bench, and Beef Basin areas would not be managed as CSMAs. Because fewer acres of high site-density areas are designated for special management of cultural resources, the opportunities for long-term benefits would be reduced, and the risk that cultural resource sites in these areas could be impacted would increase.

PRMP at 4-53. Yet these same impacts would occur and perhaps even intensify if these areas are designated and managed with a focus on recreation. This is especially true in Beef Basin where the area will be open to ORV use and there are already known conflicts that exist from such use.

Management for recreation instead of for cultural resources in a high site-density area is a significant change in focus from the Draft RMP to the PRMP. The public should have the opportunity to comment on this before the record of decision is issued.

The regulations implementing NEPA require a supplemental environmental statement when "(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." 40 C.F.R. § 1502.9(c). In addition, BLM must supplement the EIS when the agency adds "a new alternative that is outside the spectrum of alternatives already analyzed." *See* BLM NEPA Handbook H-1790-1 at 29; *see also* Question 29b, CEQ, *Forty Most Asked Questions Concerning CEO's NEPA Regulations, March 23, 1981*.

a. Requested Remedy

Because no such alternative was offered during the comment period for the Draft RMP, BLM must supplement the EIS and allow for a comment period addressing the changed impacts and management resulting from designating Tank Bench and Beef Basin as SRMAs.

C. Special Recreation Permits (SRPs)

1. BLM has failed to take a hard look at the impacts of issuing SRPs, as required by NEPA.

BLM did not assess cumulative impacts stemming from the issuance of SRPs; this renders the analysis incomplete. The PRMP states that "[t]he issuance of a SRP is a site-specific implementation level authorization." BLM Response to Comment No. 26-86. However, site-specific projects will tier to the NEPA analysis performed in the RMP and thus will never be fully analyzed. The possibility of future analysis does not justify BLM avoiding an assessment of the potential environmental consequences of the action that it is approving in the RMP. As a matter of NEPA policy, compliance with the Act must occur "before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b). For purposes of NEPA compliance, "it is not appropriate to defer consideration of cumulative impacts to a future date when meaningful consideration can be given now." *Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1075 (9th Cir. 2002).

Furthermore, depending solely on site-specific analysis does not allow for cumulative impact analysis as required by NEPA. The NEPA regulations define "cumulative impact" as:

> the impact on the environment which results from the *incremental impact of the action when added to other past, present, and reasonably foreseeable future actions* regardless of what agency (Federal or non-Federal) or person undertakes such other actions. *Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.*

40 C.F.R. § 1508.7. (emphasis added). A failure to include a cumulative impact analysis of actions within a larger region will render NEPA analysis insufficient. *See, e.g., Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1078 (9th Cir. 2002) (analysis of root fungus on cedar timber sales was necessary for entire area)

The impact analysis in Chapter 4 of the PRMP is woefully inadequate. Section 4.3.10.3.6.8, which is intended to examine environmental consequences of the proposed plan, states that the plan would have "beneficial, long-term impacts on recreation resources because it proposes specific SRP permit criteria…that could be used to more finely manage and limit the adverse impacts of large recreation private and commercial groups or events" PRMP at 4-362. While it is true that the established SRP criteria can help mitigate impacts of SRPs, there are also potential negative consequences of issuing SRPs. The RMP must not only acknowledge and analyze these impacts, but also seek to avoid and/or mitigate them.

Additionally, the discussion of potential impacts to non-WSA lands with wilderness characteristics lists some possible negative impacts, but immediately dismisses them by claiming that "most of these impacts would be short-term" PRMP at 4-243. However, the RMP does not explain which of these harmful effects would, in fact, be long-term or how or why these could be avoided, mitigated or otherwise found acceptable. The analysis of SRPs must include these potentially long-term impacts and mitigation measures, including acknowledging the potential benefits of issuing fewer SRPs.

b. Requested Remedy

BLM must fully and critically analyze impacts from SRPs, including cumulative impacts and reasonably foreseeable future actions, in the RMP. Because BLM will use the criteria in the RMP for processing SRPs, the RMP must provide meaningful analysis of the environmental impacts of SRPs, including cumulative impacts and consideration of the benefits of issuing less SRPs, in order to fulfill the agency's obligations under both FLPMA and NEPA.

2. There is no evidence to support BLM's assertion that increasing the issuance of SRPs will increase environmental protection.

In response to our comment on the Draft RMP that should choose the most protective criteria for SRPs, the PRMP states:

> The DRMP/DEIS analyzed a range of alternatives in issuance of SRPs. SRPs allow the BLM to impose protective stipulations on users, thereby protecting the resources present and reducing user conflicts. As the permits issued are increased, resource protection would also be enhanced. Increasing the number of SRPs with specific stipulations to protect and preserve cultural and natural resources would result in more protection and a less likelihood of impact.

BLM Response to Comment No. 26-84.

While it is true that SRPs are intended to provide protective stipulations for public land users, it is a fallacy to assert that therefore more permits will lead to more resource protection. BLM does not substantiate this claim with any data or evidence, and does not discuss environmental or cultural impacts of increasing SRP issuance, which obviously corresponds to more large-scale activities.

In actuality, it is not that the stipulations associated with SRPs will lead to more protections. Rather, because activities requiring SRPs are naturally more destructive, they require these stipulations to justify their approval and ensure that they do not have unacceptable impacts on the land. Because SRPs are issued only for large group activities, which have more adverse environmental impacts than those of small groups or single individuals, the fewer SRPs that are issued, the more protected the area's resources

will be. In fact, the reason SRPs are necessary is to mitigate the negative impacts from large group activities.

c. Requested Remedy

BLM must go back and look at a reasonable range of alternatives for limiting SRPs issued for the Monticello Field Office and base the selected alternative on an accurate and realistic discussion of the impacts of activities that will occur based on the issuance of SRPs.

3. BLM should establish more definitive criteria for issuing SRPs.

BLM should adopt unambiguous, protective criteria for SRP issuance in order to effectively manage the increase in commercial and competitive group activities that can have a significant impact on the lands in the Monticello FO. Simply establishing thresholds for the number of individuals allowed for different types of activity does not provide sufficient criteria for issuing SRPs. The PRMP generically states, "Activities or events with the potential to conflict with existing resource management guidelines/prescriptions [will require an SRP]" PRMP at 2-45. This does not provide the authorizing officer with any criteria by which to determine if this conflict exists, and does not account for the varying sensitivity of different areas within the ERMA.

The Price Field Office Draft RMP provides an excellent example for evaluating SRP applications and issuing such permits. It categorizes SRPs into four distinct classes, ranging from least intensive to most intensive, based on specific factors such as type of equipment, size of area used, number of participants, et cetera. Because the RMP is very specific (for example, surface disturbance of 5-40 acres ranks as "medium intensity"), BLM can easily determine whether to issue an SRP and where, and can better estimate cumulative impacts from such permits.

The approach described above also fulfills BLM's obligations to consider potential impacts and manage that public lands to avoid adverse environmental impacts and unnecessary or undue degradation. As can be seen from the Price Draft RMP, not only does BLM have the discretion to establish SRP guidelines, but it has the obligation to do so in order to protect the resources that the RMP is intended to protect and sustain.

d. Requested Remedy

BLM must provide clear guidelines for issuing SRPs in the Monticello RMP. BLM should use the Price Draft RMP as a model for processing SRPs.

XIV. Livestock Grazing

This Proposed Resource Management Plan and Final Environmental Impact Statement ("PRMP/FEIS") for the management of public lands within the Monticello Field Office planning area ("Monticello PA") fails to adequately address livestock grazing issues. In particular, the PRMP/FEIS fails to comply with the clear statutory mandates concerning the authorization of livestock grazing on public lands set forth in the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.*, and the Federal Land Policy and Management Act ("FLPMA"), 43 U.S.C. § 1701 *et seq*.

In *National Wildlife Federation v. BLM* ("Comb Wash decision"), Administrative Law Judge Rampton clearly defined these NEPA and FLPMA requirements in the context of livestock grazing. *Nat'l Wildlife Fed'n v. BLM*, No. UT-06-91-1 (U.S. Dep't of the Interior, Office of Hearings and Appeals, Hearing Div. Dec. 20, 1993). Specifically, Judge Rampton held that: (1) NEPA requires that the BLM prepare a site-specific environmental impact statement ("EIS") prior to the authorization of grazing on public lands and (2) FLPMA requires that the BLM make a reasoned and informed decision that the benefits of grazing on a particular allotment outweigh the harms of grazing prior to authorizing grazing on public lands. *Id.* at 22-23. The Interior Board of Land Appeals upheld these two holdings on appeal. *See Nat'l Wildlife Fed'n v. BLM*, 140 I.B.L.A. 85 (1997). Thus, the Comb Wash decision sets the minimum threshold for NEPA and FLPMA compliance with respect to authorizing livestock grazing on public lands and under what conditions. This PRMP/FEIS plainly fails to meet this standard.

Of course, the PRMP/FEIS notes its adherence to the Comb Wash decision by closing a portion of the Comb Wash allotment to livestock grazing at page 3-53. Yet, the PRMP/FEIS otherwise completely disregards NEPA and FLPMA compliance on the remaining allotments within the Monticello PA. These remaining allotments which are available for livestock grazing account for 93% of the total acreage within the Monticello PA. The vast majority of these allotments share similar environmental, physical, cultural, and aesthetic characteristics with the Comb Wash allotment. By failing to implement the necessary NEPA and FLPMA requirements on this overwhelming percentage of the Monticello PA with similar attributes to the Comb Wash allotment, the BLM is essentially duplicating the factual record that led to the Comb Wash litigation. The PRMP/FEIS nearly guarantees future litigation because the BLM has authorized livestock grazing on the majority of the Monticello PA without first discharging its statutory duties under NEPA and FLPMA.

The following comments identify the specific reasons why the PRMP/FEIS fails to implement the requirements of NEPA and FLPMA in the context of livestock grazing. Furthermore, these comments caution against accepting the PRMP/FEIS "as is" for its invitation of future litigation for failure to comply with NEPA and FLPMA on the grazing allotments within the Monticello PA.

A. NEPA and FLPMA Requirements in the Context of Livestock Grazing

1. NEPA Requires Site-Specific Assessment of Environmental Impacts

NEPA requires the BLM to prepare EISs that assess "the specific environmental effects of the [grazing] permits issued, and to be issued, in each district." *Natural Resources Defense Council, Inc. v. Morton*, 388 F. Supp. 829, 841 (D.D.C. 1974), *aff'd per curiam*, 527 F.2d 1386 (D.C. Cir. 1976), *cert. denied*, 427 U.S. 913 (1976). A general overview is not sufficient. Rather, the EIS must include "the detailed analysis of local geographic conditions necessary for the decision-maker to determine what course of action is appropriate under the circumstances," *id.* at 838-39, and the "actual environmental effects of particular [grazing] permits or groups of permits in specific areas." *Id.* Judge Rampton applied this reasoning in the Comb Wash decision to hold that the final EIS in that case failed to comply with NEPA because it completely lacked site-specific environmental analysis. *See Nat'l Wildlife Fed'n v. BLM*, No. UT-06-91-1, 20-21 (U.S. Dep't of the Interior, Office of Hearings and Appeals, Hearing Div. Dec. 20, 1993).

In sum, prior to authorizing livestock grazing on public lands, NEPA demands that the BLM engage in a 2-prong site-specific environmental analysis. The BLM must assess both the specific conditions of the proposed grazing allotment and the environmental effects of livestock grazing upon those specific conditions.

2. FLPMA Requires a Reasoned and Informed Decision That Grazing Benefits Outweigh Grazing Harms

FLPMA requires that the BLM use and observe the principle of multiple use in the development and revision of its land use plans. 43 U.S.C. § 1712(c)(1). "Multiple use" means "the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people." *Id.* at § 1702(c). It includes "the use of some land for less than all of the resources" and requires that "consideration [be] given to the relative values of the resources." *Id.*

Implicit in FLPMA's definition of multiple use is the requirement "that the values in question be informedly and rationally taken into balance" to determine whether the proposed activity is in the public interest. *See Nat'l Wildlife Fed'n v. BLM*, No. UT-06-91-1, 23 (U.S. Dep't of the Interior, Office of Hearings and Appeals, Hearing Div. Dec. 20, 1993) (citing *Sierra Club v. Butz*, 3 Envt'l L. Rep. 20,292, 20,293 (9th Cir. 1973)). Judge Rampton relied on this implicit requirement to reject the BLM's decision to graze the five canyons on the Comb Wash allotment. *Id.* Specifically, he noted that the "BLM's decision to graze the [Comb Wash] canyons was not reasoned or informed, but rather, based upon . . . a totally inadequate investigation and analysis of the condition of the canyons' varied resources and the impact of grazing upon those resources." *Id.* at 25.

Thus, prior to authorizing livestock grazing on public lands, FLPMA demands through its multiple use principle that the BLM engage in a "reasoned and informed decision-making

process . . . show[ing] that BLM has balanced competing resource values to ensure that the public lands in the [grazing allotment in question] are managed in the manner that will best meet the present and future needs of the American people." *Nat'l Wildlife Fed'n v. BLM*, 140 I.B.L.A. 85, 101 (1997). Simply stated, FLPMA imposes upon the BLM a duty to weigh the benefits of grazing a particular allotment against the harms as part of its management of public lands. *See Nat'l Wildlife Fed'n v. BLM*, No. UT-06-91-1, 23 (U.S. Dep't of the Interior, Office of Hearings and Appeals, Hearing Div. Dec. 20, 1993).

B. The PRMP/FEIS Fails to Comply with the NEPA and FLPMA Requirements in the Context of Livestock Grazing

1. Since the PRMP/FEIS Does Not Assess the Site-Specific Impacts of Livestock Grazing, the PRMP/FEIS fails to comply with NEPA

As discussed in the previous section, legal authority clearly dictates that the BLM analyze *both* the local conditions on the allotments and the impacts of livestock grazing upon these conditions prior to a decision to authorize grazing on public lands. The PRMP/FEIS lacks both of these required components. First, the PRMP/FEIS does not assess the condition of the specific riparian, cultural, soil, or vegetation resources that occur on each individual allotment. Second, the PRMP/FEIS does not assess the environmental impacts of livestock grazing upon these specific resources.

In the Comb Wash decision, Judge Rampton found that the BLM had failed to consider a range of specific conditions occurring on the Comb Wash allotment as well as the impact of grazing upon these conditions. *See Nat'l Wildlife Fed'n v. BLM*, No. UT-06-91-1, 11-15 (U.S. Dep't of the Interior, Office of Hearings and Appeals, Hearing Div. Dec. 20, 1993). For example, he highlighted the ecological value of the riparian areas and vegetation in the canyons as well as the "outstanding scenic and recreational potential" and the archaeological significance of the canyons. *Id.* at 15. Judge Rampton also discussed at length the adverse impacts of grazing upon these resources, including but not limited to the following: removal of riparian vegetation; excessive erosion; exposure of soil to flooding effects; disappearance of native grasses; degradation of water sources for recreational users; trampling of hiking trails; spoilage of available campsites due to cow manure, foul smells, and flies; destruction of archeological artifacts at the surface and canyon walls; and interference with accurate carbon dating of artifacts. *Id.* at 12-15. Since the BLM had completely omitted this site-specific assessment prior to authorizing grazing in the Comb Wash canyons, he held that the agency clearly violated NEPA. *Id.* at 22.

The 74 allotments within the Monticello PA mirror the geological, environmental, cultural, and scenic formations and characteristics of the Comb Wash allotment, and yet, the BLM boldly ignores the precedent set by the Comb Wash decision. The PRMP/FEIS that is the focus of this administrative protest avoids the same site-specific inquiry of local conditions and grazing impacts that led to the Comb Wash litigation. The PRMP/FEIS plainly fails to comply with NEPA in the context of livestock grazing.

To begin, the PRMP/FEIS does not identify local conditions on each grazing allotment. Appendix D, which provides the only complete list of the individual grazing allotments, completely lacks any reference to, let alone any assessment of the conditions of, particular riparian, cultural, soil, or vegetation resources existing upon those allotments. At best, the PRMPR/FEIS notes the occurrence of these other resources as a percentage of the total acreage in the Monticello PA. For example, the PRMP/FEIS states at page 3-101 that riparian resources occur on 1.6% of the total planning area. Yet, without an indication of where these resources overlap with grazing allotments, this numerical data is useless in a site-specific analysis of grazing impacts. Since the PRMP/FEIS fails to clarify where fragile resources intersect with grazing allotments (a likely scenario given the richness of the lands within the Monticello PA), the BLM has not complied with the first part of the NEPA requirement in the context of grazing.

As to the second part of the NEPA requirement, the PRMP/FEIS contains virtually no site-specific information about the impacts of livestock grazing on riparian, cultural, soil, vegetation, or recreation resources within the Monticello PA. At best, the PRMP/FEIS summarily and generally addresses adverse impacts of grazing upon non-livestock resources. This is exactly why Judge Rampton held that the proposed plan in the Comb Wash decision failed to comply with NEPA. In that case, he stated that the plan was "simply devoid of . . . analysis regarding the impacts of grazing on the resource values of the particular allotment in question [and a]t best, it contains some general information regarding the impacts of grazing on the entire [planning area] as a whole." *Nat'l Wildlife Fed'n v. BLM*, No. UT-06-91-1, 9 (U.S. Dep't of the Interior, Office of Hearings and Appeals, Hearing Div. Dec. 20, 1993). This PRMP/FEIS repeatedly fails to comply with NEPA for the same reason.

For instance, the PRMP/FEIS avoids any significant discussion of adverse grazing impacts upon riparian areas by noting at page 4-403 that "proper herd management would provide long-term protection and enhancement of riparian areas" and "proper grazing practices would ensure protection of riparian areas through maintenance of vegetative cover leading to riparian area health." It is important to note that the grazing practices employed on the Comb Wash allotment prior to the Comb Wash decision were "proper" by BLM's standards, yet as discussed above, they still had enormous environmental impacts. But the PRMP/FEIS's only mention of adverse impacts to riparian resources is attributed to drought conditions, without any concession that grazing contributes to degradation of riparian resources in the first place. While extensive literature exists documenting the significant and irreparable harm of grazing to fragile riparian areas, the PRMP/FEIS fails to address any such harms. Furthermore, the PRMP/FEIS closes only 2,800 acres of riparian area to grazing while leaving open to grazing 17,200 acres of riparian area. This gross disparity reflects a complete disregard for the substantial adverse impacts of livestock grazing on riparian resources.

Likewise, the PRMP/FEIS avoids any significant discussion of how livestock grazing adversely affects soil resources. The PRMP/FEIS only indirectly hints at these adverse impacts by stating at page 4-458 that a reduction in AUMs will increase ground cover

and soil productivity. Otherwise, the PRMP/FEIS fails to discuss the types and conditions of soils, rates of erosions, and grazing impacts on any particular allotment. The fact that the acreage of "limited soils" open to grazing remains constant among all of the alternatives shows a complete lack of attention to grazing impacts on the more fragile soils. Table 4.126 on page 4-459 reflects this disregard. The numbers show that the bulk of lands with wind, water and reclamation-limited soils remain open to grazing, yet the PRMP/FEIS fails to assess the impacts of grazing on these soils in any specific locations within the planning area.

The PRMP/FEIS's treatment of grazing impacts on other resources such as cultural resources (page 4-46), paleontological resources (page 4-303), and non-WSA lands with wilderness characteristics (page 4-196) is equally deficient. With respect to cultural resources, the PRMP/FEIS notes "potentially adverse" trampling effects by livestock, but it still keeps 90% of high site-density and 93% of medium site-density lands open to grazing without any assessment of the impacts of livestock grazing on any of these sites. As to non-WSA lands with wilderness characteristics, the PRMP/FEIS dares to state at page 4-196 that with proper grazing practices, "it is not anticipated that livestock grazing would have impacts on the natural characteristics of the non-WSA lands with wilderness characteristics" because following these practices "would maintain healthy vegetation communities and watershed condition on the land." This unsupported assertion is completely contrary to Judge Rampton's findings, in the Comb Wash decision, that livestock grazing was having enormous impacts on the natural characteristics of the lands on the Comb Wash allotment. The BLM offers no reason to believe that grazing is not having, and will not have, similar impacts on the natural characteristics of the lands in other grazing allotments within the planning area.

In its discussion of grazing impacts on recreation resources in the Monticello PA, the PRMP/FEIS does list specific types of adverse impacts to recreational users, but it fails to assess the extent of such impacts in particular grazing allotments. Instead, the PRMP/FEIS simply assures recreational users that proper grazing practices will reduce the disruptions of livestock grazing. This assurance is unsupported by any evidence or analysis. It is also illogical since "proper" grazing practices are rarely, if ever, designed to lessen impacts on recreationists. *See* Joseph M. Feller and David E. Brown, *From Old-Growth Forests to Old-Growth Grasslands: Managing Rangelands for Structure and Function*, 42 ARIZ. L. REV. 319, 330-31 (2000).

In sum, the PRMP/FEIS lacks the actual site-specific and grazing-specific analysis necessary to comply with NEPA in the context of livestock grazing.

2. The PRMP/FEIS's Use of Livestock-Specific Quantitative Units to Compare Grazing Impacts Between the Proposed Plan and Alternatives Does Not Satisfy the NEPA Requirement for Site-Specific Environmental Analysis

At page 4-87, the PRMP/FEIS identifies the three quantitative units that were used to compare grazing impacts among the proposed plan and alternatives: (1) acreage available to livestock grazing, (2) AUMs available to livestock grazing, and (3) length of grazing

season. Clearly, these units are livestock-specific. They were used to determine reasonable impacts upon the grazing resource itself and to identify the percentage of the Monticello PA closed to grazing. Yet, these units do not give any indication of local conditions existing on the allotments. The PRMP/FEIS should have considered additional non-livestock measurement units such as riparian acreage or wildlife habitat in its analysis of the grazing resource. This failure to consider non-livestock indices is another reason why the PRMPR/FEIS fails to meet the NEPA requirement for detailed environmental analysis.

3. The PRMP/FEIS's Use of Allotment Management Categories to Evaluate Conditions on the Allotments Does Not Satisfy the NEPA Requirement for Site-Specific Environmental Analysis and Plainly Defies the FLPMA Requirement for Reasoned and Informed Decision-making

The PRMP/FEIS uses a system of allotment management categories. As described at page 3-51 and D-6, the PRMP/FEIS designates each allotment into one of three categories: (1) Maintain ("M"), (2) Improve ("I), or (3) Custodial ("C"). M category allotments are in generally good condition with minimal resource conflicts while I category allotments are in unsatisfactory range condition with moderate to high resource conflicts. Similarly, C category allotments have resource use conflicts and generally low resource production potential. The PRMP/FEIS states at page 3-51 that only 9 allotments fall into the M category while 29 allotments fall into the I category and 36 allotments fall into the C category.

This use of allotment management categories to evaluate rangeland conditions blatantly fails to comply with NEPA and FLPMA in two ways. First, this classification system cannot stand in for the required site-specific environmental analysis. Simply labeling an allotment as either Maintain, Improve, or Custodial, is not the site-specific *analysis* of rangeland conditions required by NEPA. Second, the PRMP/FEIS's allowance of grazing to continue unabated on allotments in the I or C category is fundamentally unreasonable and contrary to FLPMA's requirements to avoid permanent impairment of the productivity of the land or the quality of the environment, 43 U.S.C. § 1702(c), and to prevent unnecessary or undue degradation of the land, 43 U.S.C. § 1732(b). If the BLM has already recognized the unsatisfactory range conditions on the I allotments, then livestock grazing must be reduced or other management changes implemented that will restore the degraded and unsatisfactory conditions. Similarly, if the BLM has recognized low resource production potential on the C allotments, then grazing should not be authorized on these allotments if it is degrading other more valuable resources unless greater production potential can be shown.

4. Since the PRMP/FEIS Does Not Balance the Benefits of Grazing Against the Harms on the Allotments Open to Grazing, the PRMP/FEIS Fails to Comply with the FLPMA Requirement for Reasoned and Informed Decision-making

Implicit in FLPMA's multiple use principle is the requirement that the BLM engage in a

reasoned and informed decision-making process prior to authorizing livestock grazing on public lands. The BLM must weigh the benefits of grazing against the harms in order to satisfy this statutory mandate. In the Comb Wash decision, the BLM violated FLPMA by failing to engage in such a balancing exercise prior to authorizing grazing on the Comb Wash allotment. *Nat'l Wildlife Fed'n v. BLM*, No. UT-06-91-1, 23 (U.S. Dep't of the Interior, Office of Hearings and Appeals, Hearing Div. Dec. 20, 1993). Neither the proposed land use plan nor additional documentation in that case referenced the relative resource values of the Comb Wash canyons. *Id.* Judge Rampton even illustrated several examples of factual inquiries that should have taken place prior to grazing the canyons in order to comply with FLPMA, such as whether grazing tramples archaeological artifacts or whether the recreational and scenic values of the canyons provide greater local economic benefit than livestock grazing in the canyons. *Id.* at 24.

Unfortunately, this PRMP/FEIS repeats the errors highlighted by the Comb Wash decision. Since the PRMP/FEIS fails to assess the relative resource values prior to authorizing grazing on the 74 allotments in the Monticello PA, the BLM has again ignored its FLPMA duty. In particular, the PRMP/FEIS does not evaluate the contribution that grazing each allotment makes to the local economy and does not attempt to compare that contribution with the value of scenic, recreational, ecological, or cultural resources on the allotment. Furthermore, the PRMP/FEIS fails to explain why grazing continues on I category allotments where "serious resource use conflicts" exist and C category allotments where "low resource production potential exists." See PRMP/FEIS Appendix D. These classifications imply not only that other resources exist on these allotments, but that these other resources may have a greater value than grazing on the allotments. Regardless of this implication, the BLM fails to inquire into the relative resource values on the I and C category allotments and instead simply opens them to grazing.

Given the sheer percentage of the Monticello PA available for livestock grazing, the PRMP/FEIS should discuss why grazing consistently outweighs other resources on these lands. The document should provide some analysis to support the conclusion that 93% of the planning area is suitable for livestock grazing. Instead, the PRMP/FEIS completely avoids this discussion and ignores FLPMA's requirement to balance the relative resource values on grazing allotments.

5. Since the PRMP/FEIS Allows Grazing on an Unreasonable Proportion of the Total Acreage Within the Monticello PA without the Requisite Environmental Analysis, the PRMP/FEIS Fails to Comply with the FLPMA Requirement for Reasoned and Informed Decision-making

The PRMP/FEIS opens 1,633,253 acres within the Monticello PA to livestock grazing while closing only 128,098 acres to the activity, or 7% of the total planning area. This scant 7% raises a concern that points to the BLM's failure to fulfill its statutory duties. When the justifications for the specific closures are analyzed, it becomes clear that a portion of the closed acreage is not due to a specific analysis of grazing impacts on other fragile resources. Table 4.51 on page 4-89 notes that some of the closures stem from

inaccessibility to livestock and sparse vegetation. In addition, this table attributes some of the closed acreage to the court order in the Comb Wash decision. When these justifications are subtracted, only a portion of the 7% of acres closed to grazing results from resource conflicts and concerns. With such a minimal percentage of the planning area closed to grazing for the protection of other resources, the BLM can hardly contend that it engaged in the requisite environmental analysis under NEPA or the reasoned and informed decision-making process under FLPMA.

6. Since the PRMP/FEIS Does Not Consider an Adequate Range of Alternatives, the PRMP/FEIS Fails to Comply with NEPA and FLPMA

All of the alternatives listed in the PRMP/FEIS include a similar ratio of acres open to acres closed to grazing. In fact, as illustrated in Table 4.59 on page 4-108, the total acreage open to grazing in the alternatives never deviates more than 1% from the proposed plan. Since each alternative hovers near a total of 93% of the Monticello PA remaining open to grazing, the PRMP/FEIS fails to consider an adequate range of alternatives as required by NEPA. Furthermore, since the PRMP/FEIS is devoid of any assessment of relative resource values on the allotments, this blanket presumption to keep open such a large majority of the Monticello PA to grazing under every alternative violates FLPMA.

7. The PRMP/FEIS Incorrectly Asserts that Adherence to the Standards for Rangeland Health and Guidelines for Grazing Management ("Standards and Guidelines") Will Eliminate Adverse Impacts to Other Resource Values on the Grazing Allotments

The PRMP/FEIS assumes that following the standards and guidelines will eliminate or significantly reduce adverse impacts to other resources within the allotments. This assumption is expressly discussed with respect to grazing impacts on riparian resources and non-WSA lands with wilderness characteristics and also indirectly raised throughout the PRMP/FEIS. However, the standards and guidelines cannot substitute for the thorough environmental analysis required by NEPA or the assessment of the relative harms and benefits of grazing required by FLPMA. The standards and guidelines are *minimum* standards that every grazing allotment should meet, and environmental impacts may exist even where the standards are attained. Also, the standards and guidelines overlook entire classes of environmental impacts such as the impacts of grazing on archaeological sites and wilderness values and the impacts of grazing-related facilities (fences, corrals, water developments, etc.) on scenery, recreation, and wildlife habitat. The standards and guidelines in no way rival the detailed environmental analysis required by NEPA. Thus, the BLM incorrectly relies on the standards and guidelines in the PRMP/FEIS to carry out its statutory duties.

8. The PRMP/FEIS Incorrectly Asserts that Proper Herd Management and Grazing Practices Will Eliminate Adverse Impacts to Other Resource Values on the Grazing Allotments

The PRMP/FEIS assumes that proper herd management and grazing practices will reduce or eliminate the adverse impacts on livestock grazing on other resource values. Yet, even the most "proper" grazing practices often result in very large environmental impact. For example, forage utilization standards determine the permissible level of grazing on a particular allotment. Accordingly, grazing at or below the utilization standard constitutes a "proper" grazing practice. Still, this "proper" practice results in considerable environmental impacts because the utilization standards themselves fail to address environmental concerns such as soil erosion, destruction of wildlife cover, damage to archaeological resources, and degradation of recreational resources. *See* Joseph M. Feller and David E. Brown, *From Old-Growth Forests to Old-Growth Grasslands: Managing Rangelands for Structure and Function*, 42 ARIZ. L. REV. 319, 330-31 (2000). Properly grazing at or below the utilization standard may still lead to soil compaction which increases surface runoff and resultant soil erosion. *Id.* It may also lead to the destruction of microbiotic soil crusts and the increase in water pollution due to livestock manure and urine. *Id.* Since the utilization standards typically allow grasses to be closely-cropped to the surface, properly grazing at or below the utilization standard may still jeopardize plant regrowth and regeneration and increase the proliferation of invasive plant species. *Id.* Thus, even when proper herd management and grazing practices are employed, livestock grazing can still adversely impact the environment, and the PRMP/FEIS's assumption to the contrary violates NEPA and FLPMA's requirement for comprehensive environmental analysis.

9. Since the PRMP/FEIS Asserts that BLM Monitoring Data Will Sufficiently Inform Grazing Management Decisions on Allotments, the PRMP/FEIS Fails to Comply with the FLPMA Requirement for Reasoned and Informed Decision-making

The PRMP/FEIS states at page 4-86 that rangeland monitoring data will inform the BLM's rangeland management decisions. The data will be used to change to livestock grazing levels as needed to meet resource objectives, restore rangeland health, and maintain sustainable livestock levels. However, monitoring studies narrowly address the availability of forage. They do not concern or directly measure other environmental impacts such as soil erosion, loss of soil nutrients, or water pollution. *See* Joseph M. Feller and David E. Brown, *From Old-Growth Forests to Old-Growth Grasslands: Managing Rangelands for Structure and Function*, 42 ARIZ. L. REV. 319, 334-35 (2000). The BLM's monitoring studies also do not measure the condition of wildlife habitat, archaeological resources, or recreational resources. Moreover, monitoring often informs management decisions when it is "too late" because the studies fail to detect changes in rangeland conditions from prior to the study period to the point of monitoring. *Id.* Often the environmental degradation has progressed too far by this point and simple changes in allotment management will not suffice to correct the conditions. Lastly, monitoring studies are inadequate to inform management decisions because they are too limited in spatial scope. Due to a limited number of sample locations spread over a very large and diverse allotment, it is often inaccurate to infer larger trends regarding the rangeland health from the samples. *Id.* "Grazing impacts typically vary dramatically from place to place within an allotment, depending on distance to water, terrain features, slope,

elevation, exposure, soil type, and pasture movements." *Id.* at 335. Judge Rampton noted the shortcomings of monitoring data as well in the Comb Wash decision. He pointed out that "trend data . . . cannot reliably or accurately, measure the following impacts of grazing: soil erosion, reduced water infiltration and increased surface runoff due to soil compaction and loss of vegetative cover, trampling and erosion of streambanks, degradation of stream channels, trampling of archaeological sites, contamination of archaeological sites with cattle manure and urine, and degradation of wildlife habitat." *Nat'l Wildlife Fed'n v. BLM*, No. UT-06-91-1, 25 (U.S. Dep't of the Interior, Office of Hearings and Appeals, Hearing Div. Dec. 20, 1993).

Therefore, the BLM's decision in this PRMP/FEIS to rely on monitoring data as the sole indicator for adjusting livestock grazing levels without considering additional environmental impacts of grazing is neither reasoned nor informed. In addition, the reliance on forage-specific monitoring data does not square with FLPMA's overarching requirement to balance relative resource values prior to any decisions to authorize grazing on public lands.

XV. Riparian Resources

We incorporate by reference the comments to the Draft RMP and the protest to the PRMP submitted by ECOS Consulting into our protest, and we also discuss our further concerns below.

The important role riparian and wetland areas occupy in the health and integrity of ecosystems throughout Utah and the West is recognized by the special protection conferred on them by several Executive Orders and the Utah BLM Riparian Management Policy. As the Utah BLM Riparian Policy explains, "[r]iparian areas comprise less than one percent . . . of public lands . . . in Utah . . . these small but unique areas are among the most important, productive, and diverse ecosystems in the state." Utah BLM Riparian Management Policy, Instruction Memorandum No. UT 2005-091 at 1; *see also* PRMP at 3-100 to -101 ("Riparian areas and wetlands are some of the most diverse and productive ecosystems in Utah, but on the landscape level they typically compose very little of the total land area."). The Utah BLM Riparian Policy continues:

> The objective of the policy is to establish an aggressive riparian area management program that will *identify, maintain, restore, and/or improve riparian values* to achieve a healthy and productive ecological condition . . .

Utah BLM Riparian Management Policy, Instruction Memorandum No. UT 2005-091 at 1 (emphasis added).

To meet this objective, field offices are responsible for "ensuring that all new or revised management plans contain objectives and management actions to maintain or improve riparian resources," and to the extent possible, "[m]aintain and/or improve riparian areas to Proper Functioning Condition (PFC) by incorporating riparian resource needs in Resource Management Plans (RMPs)." Utah BLM Riparian Policy at 2–3. This policy is binding on the BLM Monticello Field Office and provides the framework for the RMP process.

Further, Executive Order 11990 mandates that BLM "shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities." Exec. Order No. 11,990, 42 Fed. Reg. 26,961 (May 24, 1977).

In addition to required substantive protections, BLM also must provide certain information and analysis, as required by NEPA, FLPMA, and the Utah BLM Riparian Policy. NEPA requires that the environmental assessment process reveal the information required for the public to understand the current condition and proposed management of each riparian area. FLPMA, 43 U.S.C. §§ 1701–1785, § 1701(a)(2) (2000), declares that "the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried." The Utah BLM Riparian Policy explains that each field office is "responsible for . . . mapping and inventorying all riparian areas

in [its] jurisdiction" and "will, to the extent possible . . . [i]nventory and map riparian areas within each office." Utah BLM Riparian Policy at 3. The policy further explains that this responsibility:

> will normally be completed during the Resource Management Planning (RMP) process. In order to be useful, the RMP, at a minimum will:
>
> - Contain the Field Office riparian area priority list.
> - Identify key riparian areas using PFC inventory and determine whether or not they are properly functioning systems.
> - Identify riparian areas for possible acquisition.
> - Identify riparian areas which meet policy tests for disposal or exchange.
> - Identify easement acquisition which will improve Bureau management of existing riparian areas.
> - Identify riparian areas with outstanding qualities to be considered for special designation or management.
> - Contain planning and monitoring objectives for riparian area management.

Utah BLM Riparian Policy at 7–8.

The Monticello PRMP fails to provide much of the required information and analysis, and accordingly fails to reveal to the public the full impact of the Monticello Field Office's riparian resource management decisions. In addition to omitting much of the information required by BLM's own policy, the PRMP also lacks the information necessary to understand the location of each riparian area and how it will be managed under the RMP. We commend BLM for the level of detail provided in Table 3.24: Riparian Functioning Condition, Monticello PA (BLM Lands Only), as it informs the public of the condition status of each riparian area in the Monticello Field Office. *See* PRMP at 3-104 to -107. However, while this information is helpful, it does not explain to the public the location of each of the listed riparian areas and whether they will be subject to OHV use or other surface disturbing activities. Although the PRMP provides maps of Livestock Grazing Allotments, Livestock Grazing Restrictions, and Designated Routes, the PRMP does not provide a map of riparian areas or a map indicating how grazing and OHV management decisions will impact riparian areas. *See* Map 11: Livestock Grazing Allotments; Map 16: Livestock Grazing Restrictions Proposed Plan; Map 63: Travel Plan – Proposed Plan. While the PRMP does identify some protective management efforts, such as listing in which riparian areas riparian/wetland exclosures have been constructed and which riparian areas will "receive no livestock grazing," the

PRMP does not explain exactly which riparian areas will be subject to OHV use and leaves the public to assume that all riparian areas other than those specifically excluded will be subject to grazing. *See* PRMP at 3-108.

Importantly, although Map 63 illustrates the location of each OHV designated route, the PRMP does not show on a map where OHV routes are located in riparian areas. Map 63: Travel Plan – Proposed Plan. The Utah BLM Riparian Policy disallows "new surface disturbing activities . . . within 100 meters of riparian areas unless it could be shown that: a.) there are not practical alternatives or, b.) all long term impacts can be fully mitigated or, c.) the activity will benefit and enhance the riparian area." Utah BLM Riparian Policy at 4; *see also* PRMP at 2-47, Table 2.1: Summary Table of the Proposed Plan and All Alternatives. The PRMP, however, does not discuss where OHV routes are located within 100 meters, or 330 feet, of a riparian area and if so, whether the OHV use meets one of the three criteria that would allow such an intrusion into the protected riparian zone.

Further, the PRMP provides no indication of the cause of the current status of each riparian area. Nor does the PRMP explain how it will ensure that all riparian areas either attain or are maintained at a Proper Functioning Condition status. Without this information, the public cannot fully understand whether BLM's proposed management of riparian areas sufficiently addresses the threats to that area such that the management scheme will "maintain, restore, and/or improve" the riparian area. *See* Utah BLM Riparian Policy at 1. Until BLM provides this information, the public cannot discern whether BLM has implemented aggressive, protective riparian management decisions, as required by the Utah BLM Riparian Policy. Inclusion of such information in the PRMP is required by statute, the Utah BLM Riparian Policy, and judicial review standards against agency action that is arbitrary, capricious, and contrary to law.

Even with the information BLM does provide in the PRMP, BLM does not appear to have complied with its own policy to aggressively protect riparian areas. The Utah BLM Riparian Policy clearly states that "[r]iparian areas are to be improved at every opportunity." Utah BLM Riparian Policy at 4. The Monticello Field Office, however, fails to utilize most of the opportunities before it in this RMP process to improve riparian areas. While the Monticello PRMP explains the benefits of protecting riparian areas, it fails to adequately impose such protections on riparian resources in the Monticello Field Office. The PRMP repeatedly explains the serious damage OHV use, grazing, and other interference inflict on riparian areas, but still allows such activities in many riparian areas. These failures demonstrate that BLM is falling short of meeting its responsibility to "maintain or improve riparian resources" and to "provide leadership . . . to preserve and enhance the natural and beneficial values of wetlands." *See* Utah BLM Riparian Policy at 1; Exec. Order No. 11,990, 42 Fed. Reg. 26,961 (May 24, 1977).

For example, BLM highlights the importance of riparian areas, explains how OHV use negatively impacts these ecosystems, asserts goals of maintaining and restoring riparian areas, and yet authorizes OHV use in and near riparian areas in the Monticello Field Office. Despite the PRMP's demonstration that the Monticello Field Office understands

the fragile ecological state of riparian areas and the importance of protecting them, the PRMP allows a great deal of disturbance and repeatedly prioritizes other conflicting uses that damage riparian resources. The PRMP describes riparian areas as "essential to both humans and wildlife" and accounts how "the lifecycles and migration routes of many mammals, birds, amphibians, and fishes rely partially or wholly on riparian habitat." PRMP at 3-100 to -101. The PRMP explains that "BLM acknowledges that routes in riparian areas can have adverse impacts" and "OHV use would potentially impact riparian resources through disturbance of riparian vegetation, streambank destruction, and a subsequent increase in sedimentation." Comments and BLM Responses, sorted by Resource, at unpaginated p. 159; PRMP at 4-406. The PRMP asserts that its objectives include to "manage riparian resources for desired future conditions, ensuring ecological diversity, stability, and sustainability" and "[a]void or minimize destruction, loss or degradation of riparian, wetland and associated floodplains, and preserve and enhance natural and beneficial values." PRMP at 2-47, Table 2.1: Summary Table of the Proposed Plan and All Alternatives. Focusing on particular negative impacts, the PRMP claims that it will "[m]aintain and/or restore overall watershed health and reduce erosion, stream sedimentation, and salinzation of water" and notes that the "[b]enefits of riparian/wetland ecosystems include . . . enhancing soil stability and reducing sediment loads." PRMP at 2-48, 3-101. Yet despite the known, negative impacts OHV use has on riparian areas and BLM's stated intentions to protect these areas, the PRMP allows OHV routes to cross and run near riparian areas. While the PRMP did not provide the means to clearly see the relationship between OHV routes and riparian areas, Map 63: Travel Plan – Proposed Plan seems to indicate much overlap between riparian areas and OHV routes. For example, the PRMP authorizes OHV routes in the riparian areas in Arch and Cottonwood Canyons.

Contrary to claims made in the PRMP, because of the overlap between riparian areas and OHV routes, limiting OHV use to designated routes does not do enough to protect riparian areas. BLM justifies allowing designated OHV routes in riparian areas by arguing that "the majority of the impacts occur when the route was constructed." Comments and BLM Responses, sorted by Resource, at unpaginated p. 159. BLM also argues that because the Utah BLM Riparian Policy bars new surface disturbing activities, "new route construction in riparian areas would very seldom occur." *Id.* This reasoning, however, is unfounded. BLM's argument disregards the fact that continued use of a designated route inflicts significant negative impacts on the riparian area, by continuing to disturb the soil, vegetation, and the streambed structure, increasing erosion, sedimentation, salinization, and the opportunities for invasive species, and by precluding the ability for the ecosystem to regenerate. BLM's argument also disregards that many designated routes in riparian areas were created by OHV users riding in streambeds, sometimes unknowingly mistaking them for trails; this trend would render some inappropriately created routes "previously created" and therefore designated under the PRMP. The PRMP does not discuss this possibility. Furthermore, the fact that an area has already been affected does not necessarily justify subjecting it to further disturbance. BLM's responsibility is not just to maintain existing conditions, but also to "protect" and "restore;" allowing OHV use in and near riparian areas does not meet this standard.

An additional deficiency in BLM's justification of allowing previously created OHV routes in riparian areas is BLM's assumption that OHV users will not create new routes in riparian areas because of the prohibitions found in the Utah BLM Riparian Policy. It is highly unlikely that all, or even a majority, of OHV users are aware of the Utah BLM Riparian Policy. Preventing new routes in riparian areas requires consistent monitoring and strict enforcement. The PRMP mentions protective measures that the Monticello Field Office would take if "long-term damage to riparian resources by recreational users is observed or anticipated," if "site-specific analysis determines that OHV use is contributing to riparian degradation," and "[w]here the authorized officer determines that off-road vehicles are causing or will cause considerable adverse affects." PRMP at 4-405, 2-48; Comments and BLM Responses, sorted by Resource, at unpaginated p. 159. However, the PRMP does not explain whether the Monticello Field Office or other BLM personnel will regularly conduct such observation and monitoring. The PRMP merely asserts that if problems happen to be observed, then protective measures will be implemented.

Given the importance of riparian resources and the damage OHV use inflicts on these sensitive areas, BLM's proposed management scheme allowing OHV use in riparian areas, failing to assert concrete monitoring, and promises to implement protective measures only when an official happens to observe "long-term damage" is unacceptable and in violation of BLM's policy to aggressively restore riparian ecosystems. Nationwide, we have lost far too many riparian and wetland ecosystems; the Monticello Field Office has the responsibility to protect the riparian resources that still remain.

XVI. Oil and Gas Development

A. BLM must analyze a "no leasing" alternative

BLM has failed to consider a no leasing alternative in the Monticello PRMP. As part of its analysis BLM must consider a no leasing alternative—in addition to a no action alternative. Federal courts have made clear that a no leasing alternative should be a vital component in ensuring that agencies have all reasonable approaches before them. *See, e.g., Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228 (9th Cir. 1988). The Monticello PRMP does not analyze the possibility of a no leasing alternative. Any brief mention and rejection in the 1975 Oil and Gas Program Environmental Analysis Record (EAR) of the no leasing alternative was facially insufficient and cannot be relied upon now for that necessary analysis. S*outhern Utah Wilderness Alliance v. Norton*, 457 F. Supp. 2d 1253, 1262–64 (D. Utah 2006) (explaining that such non-NEPA analyses with cursory or inadequate analysis do not satisfy BLM's NEPA obligation); *see also* PRMP at 2-195 (relying on this EAR for its no leasing alternative analysis). In addition, if there were any management framework plans upon which BLM hoped to rely, these documents are not NEPA documents and thus do not constitute adequate pre-leasing analyses that consider a no leasing alternative. *See Southern Utah Wilderness Alliance*, 164 IBLA 118, 123-24 (2004). Hence, the BLM has *never* had before it the possibility of totally abandoning oil and gas leasing in the Monticello planning area, something it is required to consider. *See Bob Marshall Alliance*, 852 F.2d at 1228.

The Monticello PRMP appears to ignore the difference between a no action alternative and a no leasing alternative. The no action alternative evaluated in the Monticello Draft RMP, Alternative A, would simply be a continuation of the existing management plans. Monticello PRMP at 2-1 to -2. The PRMP dismisses the no leasing alternative by mischaracterizing its implications and conflating it with the no action alternative. *See* Monticello PRMP at 2-194 to -195. The no leasing alternative does not require BLM to buy back all existing leases. *See* Monticello PRMP at 2-194. It simply requires that BLM analyze a program in which no future leases are offered. This is not a useless exercise; it allows BLM to compare the difference in impacts between the no leasing alternative and the development alternatives. BLM must fully analyze the no leasing alternative. The present analysis is insufficient and fails the Tenth Circuit's "rule of reason" requirement.

B. The RFD is inaccurate

BLM must also modify its reasonably foreseeable development (RFD) scenario figures in the Monticello PRMP to accurately reflect historical rates of development. As SUWA demonstrated in its comments on the Monticello Draft RMP, the RFD rate is improperly high. As discussed above, the agency is required to use high quality data and methods for its analyses and also to respond to substantive comments; the inaccurate RFD must be corrected and BLM's analysis updated. The PRMP completely ignored SUWA's comments and recommendations in this regard. *See* BLM Response to Comments, sorted by Resource, at 100 of 378 (responding only to SUWA's request that BLM consider the

no leasing alternative). SUWA's comments pointed out how this RFD scenario was improperly inflated and that an accurate assessment of oil and gas potential would allow for significant protections in the western half of the planning area while still allowing for oil and gas development at rates comparable to the historic rates of development in the planning area. SUWA now repeats and reiterates all of its comments provided to BLM regarding its RFD scenarios. *See* SUWA, Comments on Monticello Draft RMP at 68-74 (Feb. 2008). BLM must rework its RFD scenarios to match geological potential and historic trends.

C. BLM must thoroughly consider SUWA's proposed alternative to protect sensitive and important areas in light of the revised RFD

Changing the RFD scenario to a more historically and geologically accurate level would highlight the fact that BLM could easily close more areas to oil and gas leasing or impose non-waivable no surface occupancy (NSO) stipulations without limiting likely and realistic development. To this end, in its comments on the Draft RMP SUWA proposed a reasonable, feasible alternative that would have closed numerous sensitive areas or imposed non-waivable NSO stipulations on oil and gas leasing in the planning area, particularly in the western portion of the planning area. BLM has refused to fully analyze this alternative; rather, it has completely ignored it. Analysis of this alternative is consistent with BLM's obligation under NEPA to consider a reasonable range of alternatives and to thoroughly assess more environmentally protective alternatives. BLM did not fully analyze SUWA's proposed alternative, but must do so.