

*Director's Protest Resolution Report*

**Proposed Tres Rios Field  
Office Land and Resource  
Management Plan  
& Final Environmental  
Impact Statement**

February 6, 2015



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## Reader's Guide

### How do I read the Report?

The Director's Protest Resolution Report is divided into sections, each with a topic heading, excerpts from individual protest letters, a summary statement (as necessary), and the Bureau of Land Management's (BLM) response to the summary statement.

### Report Snapshot

**Issue Topics and Responses**  
NEPA

**Topic heading**

**Submission number**

**Issue Number:** PP-CA-ESD-08-0020-10

**Protest issue number**

**Organization:** The Forest Initiative

**Protesting organization**

**Protester:** John Smith

**Protester's name**

**Issue Excerpt Text:**

Direct quote taken from the submission

Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.

**Summary**

General statement summarizing the issue excerpts (optional).

There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

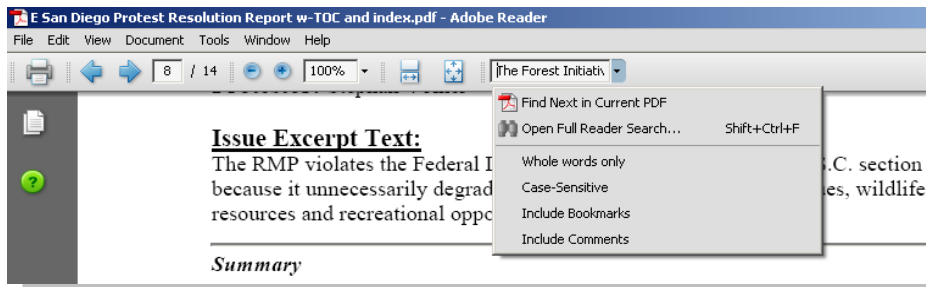
**Response**

BLM's response to the summary statement or issue excerpt if there is no summary.

Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a

### How do I find my Protest Issues and Responses?

1. Find your submission number on the protesting party index which is organized alphabetically by protester's last name.
2. In Adobe Reader search the report for your name, organization or submission number (do not include the protest issue number). Key word or topic searches may also be useful.



## List of Commonly Used Acronyms

<b>ACEC</b>	Area of Critical Environmental Concern	<b>IB</b>	Information Bulletin
<b>BA</b>	Biological Assessment	<b>IM</b>	Instruction Memorandum
<b>BLM</b>	Bureau of Land Management	<b>KOP</b>	Key Observation Points
<b>BMP</b>	Best Management Practice	<b>LRMP</b>	Land and Resource Management Plan
<b>BO</b>	Biological Opinion	<b>MOU</b>	Memorandum of Understanding
<b>CAA</b>	Clean Air Act	<b>NEPA</b>	National Environmental Policy Act of 1969
<b>CEQ</b>	Council on Environmental Quality	<b>NHPA</b>	National Historic Preservation Act of 1966, as amended
<b>CFR</b>	Code of Federal Regulations	<b>NOA</b>	Notice of Availability
<b>COA</b>	Condition of Approval	<b>NOI</b>	Notice of Intent
<b>CSP</b>	Concentrated Solar Power	<b>NRHP</b>	National Register of Historic Places
<b>CSU</b>	Controlled Surface Use	<b>NSO</b>	No Surface Occupancy
<b>CWA</b>	Clean Water Act	<b>NTT</b>	National Technical Team
<b>DEIS</b>	Draft Environmental Impact Statement	<b>OHV</b>	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
<b>DM</b>	Departmental Manual (Department of the Interior)	<b>ORV</b>	Outstandingly Remarkable Value
<b>DOI</b>	Department of the Interior	<b>PA</b>	Preliminary Assessment
<b>EA</b>	Environmental Assessment	<b>PPA</b>	Power Purchase Agreement
<b>EIR</b>	Environmental Impact Report	<b>RFDS</b>	Reasonably Foreseeable Development Scenario
<b>EIS</b>	Environmental Impact Statement	<b>RMP</b>	Resource Management Plan
<b>EO</b>	Executive Order	<b>ROD</b>	Record of Decision
<b>EPA</b>	Environmental Protection Agency	<b>ROW</b>	Right-of-Way
<b>ESA</b>	Endangered Species Act	<b>SO</b>	State Office (BLM)
<b>FEIS</b>	Final Environmental Impact Statement	<b>T&amp;E</b>	Threatened and Endangered
<b>FEIS</b>	Final Environmental Impact Statement	<b>USC</b>	United States Code
<b>FLPMA</b>	Federal Land Policy and Management Act of 1976	<b>USGS</b>	U.S. Geological Survey
<b>FO</b>	Field Office (BLM)	<b>VRM</b>	Visual Resource Management
<b>FWS</b>	U.S. Fish and Wildlife Service	<b>WA</b>	Wilderness Area
<b>GIS</b>	Geographic Information Systems	<b>WSA</b>	Wilderness Study Area
<b>HRV</b>	Historic Range of Variability	<b>WSR</b>	Wild and Scenic River(s)

## Protesting Party Index

<b>Protester</b>	<b>Organization</b>	<b>Submission Number</b>	<b>Determination</b>
Douglas Kemper	Colorado Water Congress	PP-CO-TresRio-14-01	Denied – Issues and Comments
Wayne Allard	American Motorcycle Association	PP-CO-TresRio-14-02	Denied – Issues and Comments
Braden Van Matre	Individual	PP-CO-TresRio-14-03	Dismissed – No Standing
Bruce Haase	Individual	PP-CO-TresRio-14-04	Dismissed – No Standing
Charles Burton	Individual	PP-CO-TresRio-14-05	Dismissed – Late Submission
Scott Jones, et al.	COHVCO, et al.	PP-CO-TresRio-14-06	Denied – Issues and Comments
Patricia Dorsey	Colorado Parks and Wildlife	PP-CO-TresRio-14-07	Denied – Issues and Comments
Constance Smith	Individual	PP-CO-TresRio-14-08	Dismissed – No Standing
Mike King	Colorado Department of Natural Resources	PP-CO-TresRio-14-09	Denied – Issues and Comments
Douglas Stowe, et al.	Dolores County Board of County Commissioners	PP-CO-TresRio-14-10	Dismissed – Only Comments
Mike Hawkins	Individual	PP-CO-TresRio-14-11	Dismissed – No Standing
Steve Chappell, et al.	Montezuma County Board of County Commissioners	PP-CO-TresRio-14-12	Denied – Issues and Comments
Lesli Allison	Chama Peak Land Alliance	PP-CO-TresRio-14-13	Denied – Issues and Comments
Kyle Tisdell	Western Environmental Law Center	PP-CO-TresRio-14-14	Denied – Issues and Comments
Nada Culver	The Wilderness Society, et al.	PP-CO-TresRio-14-15	Granted in Part
Joseph Kerby	La Plata County	PP-CO-TresRio-14-16	Denied – Issues and Comments
Joan May	San Miguel County Board of Commissioners	PP-CO-TresRio-14-17	Dismissed – Only Comments

Eric Kuhn	Colorado River District	PP-CO-TresRio-14-18	Dismissed – Only Comments
Don James	Individual	PP-CO-TresRio-14-19	Dismissed – No Standing
Kathleen Sgamma	Western Energy Alliance	PP-CO-TresRio-14-20	Denied – Issues and Comments
Mike Dow	Individual	PP-CO-TresRio-14-21	Dismissed – No Standing
Till Von Ruexleben	Individual	PP-CO-TresRio-14-22	Dismissed – No Standing
Charles Burton	Individual	PP-CO-TresRio-14-23	Dismissed – No Standing
Maynes, Bradford, Shipp & Sheftel, LLP	Dolores Water Conservancy District	PP-CO-TresRio-14-24	Denied – Issues and Comments
Maynes, Bradford, Shipp & Sheftel, LLP	Southwestern Water Conservation District	PP-CO-TresRio-14-25	Denied – Issues and Comments
Kinder Morgan CO2 Company, L.P.	Valerian Brock	PP-CO-TresRio-14-26	Denied – Issues and Comments
Beatty & Wozniak, P.C. - Attorneys for Bill Barrett Corporation	Bret A. Sumner	PP-CO-TresRio-14-27	Dismissed – Late Submission

## **Issue Topics and Responses**

### **Protest Period Extensions**

**Issue Number:** PP- CO-TresRio-14-02-2

**Organization:** American Motorcycle Association

**Protestor:** Wayne Allard

**Issue Excerpt Text:** The AMA has requested that Sec. Jewell extend all deadlines from October 1, 2013 until the end of the government shutdown be extended to 30 days from the /date funding is restored. Additionally, the AMA has requested that all impending deadlines, including this one, be given a 30-day extension because documents for these notices could not be accessed during the lapse in appropriations. We believe the deadline for comments on the Tres Rios Field Office and San Juan National Forest Land and Resource Management Plan/Final Environmental Impact Statement should be extended for an additional 30 days.

**Issue Number:** PP- CO-TresRio-14-07-2

**Organization:** Colorado Parks and Wildlife

**Protestor:** Patricia Dorsey

**Issue Excerpt Text:** In order to allow sufficient time to evaluate the new information and substantial changes incorporated into the Final LMPIEIS, CPW requests that the protest period be extended until November 1 or such time deemed necessary to allow the public equivalent opportunity to access the Bureau's resources that were unavailable during the Federal shutdown.

**Issue Number:** PP-CO-TresRio-14-09-2

**Organization:** Colorado Department of Natural Resources

**Protestor:** Mike King

**Issue Excerpt Text:** The deadline for filing a protest to apprise the BLM of ongoing issues and concerns to consider before issuing a Record of Decision is October 21, 2013. Had the federal government not been forced to shut down for the two weeks prior to the deadline for lodging any protest, DNR would have actively sought to address the issues and concerns identified herein before and/or in lieu of submitting any protest. We understand that BLM is considering an extension to this protest period in light of the federal government shutdown and appreciate any additional time to discuss our concerns. Since formal notification of any such extension has not yet been provided, we are filing this protest in order to preserve our administrative remedies. With additional time, and now that the federal agencies are back to full staff capacity, DNR is ready and willing to work with the BLM and USFS to resolve these and other matters. Should we be able to resolve satisfactorily the issues raised herein, along with any other issues that arise between now and the close of an extended protest period, we would look to rescind the protest as appropriate.

**Issue Number:** PP-CO-TresRio-14-12-2

**Organization:** Montezuma County Board of County Commissioners

**Protestor:** Steve Chappell

**Issue Excerpt Text:** We must object to the protest period timeframe. This LRMP took the SJNF/TRFO over 10 years to complete and the BLM allows only 30 days for review, and to prepare a protest. This is an unreasonable timeframe under normal conditions. To expect a review and protest to be formulated during a period when the US Government was shut -down for 16 of those 30 days is unreasonable. During this protest period BLM Line Officers were unavailable to take questions, which has seriously

compromised the public's ability to protest this LRMP.

**Summary:**

The protest period for the LRMP/FEIS should be extended because the public was not given enough time to evaluate the documents or even access them during the government shutdown.

**Response:**

Due to the lapse in appropriations and the resulting Federal Government shutdown, the documents providing information for comments/protests were not available on the Bureau of Land Management (BLM) website from October 1 through October 16, 2013. Accordingly, the BLM announced new dates through the issuance of a press release for each of the comment periods and protest periods identified in *Federal Register* notice 78 FR 67392. The protest periods that were set to conclude during the shutdown were adjusted by adding the number of days from the beginning of the shutdown to the original due date. These additional days were added to the date of the press release notifying the public of the new dates. Comment periods and protest periods that were originally set to close after the shutdown were adjusted by adding 16 days, the number of the days of the shutdown. For the Tres Rios LRMP/FEIS, the original protest period ended on October 21, 2013. Per 78 FR 67392, the protest period was extended to November 6, 2013.

**Editorial Concerns**

**Issue Number:** PP-CO-TresRio-14-14-26

**Organization:** Western Environmental Law Center

**Protestor:** Kyle Tisdell

**Issue Excerpt Text:** The maps for NSO, CSU, and TL stipulations include lands within the Southern Ute Indian Reservation. As the FEIS and LRMP deal with lands outside this boundary, it is unclear if these maps indicate a change in lease stipulations for the mapped parcels. As such, it is difficult for the public to discern whether the agencies have required the protections necessary to manage this area for its many multiple use values.

**Issue Number:** PP-CO-TresRio-14-16-6

**Organization:** La Plata County

**Protestor:** Joseph Kerby

**Issue Excerpt Text:** In Appendix D, page D-38 the LRMP references the incorrect version and section of the La Plata County Land Use Code. It should reference La Plata County Land Use Code Section 106-151 and the North County Land Use District Plan.

**Issue Number:** PP-CO-TresRio-14-14-45

**Organization:** Western Environmental Law Center

**Protestor:** Kyle Tisdell

**Issue Excerpt Text:** Regarding monitoring pressure, in the response to comments, the TRFO/SJNF state: "a new guideline has been added creating a requirement for monitoring pressures in adjacent abandoned wells during high volume hydraulic fracturing operations." FEIS Appendix S at S-J06 (Response WA 53). We support such



a requirement but could not locate this

guideline in the LRMP.

### **Summary:**

The following clarifications need to be made in the LRMP/FEIS:

- Whether maps for NSO, CSU, and TL stipulations indicate a change in lease stipulations.
- Incorrect references related to the La Plata County Land Use Code in Appendix O.
- Failure to include the new guideline that requires monitoring in adjacent abandoned wells during high volume hydraulic fracturing operations (which was articulated in the response to comments).

### **Response:**

The protester is correct that the Ute Mountain Ute and Southern Ute Indian Reservations were not labeled on the LRMP/FEIS maps provided in Appendix V, specifically those that relate to oil and gas leasing (Maps 49-61). Both the Ute Mountain Ute and Southern Ute Indian Reservations lie directly outside of the planning area. The BLM's Tres Rios Field Office does not have leasing jurisdiction within the boundaries of these reservations. The parcels identified on Map 49-61 with leasing stipulations applied to them, within the reservation boundaries, were mapping errors. This correction will be noted in the Record of Decision. When comparing existing management (Alternative A) to the proposed plan (Alternative B) for BLM managed parcels just north of these reservations, there has been a moderate increase in NSO areas, a large increase in CSU areas, and little to no change in TL areas around the Indian Reservations.

The protester is correct that the La Plata County Land Use Code reference on page D-38 of Appendix D is incorrect. The BLM will reference the correct section (Section 106-151 and the North County Land Use District Plan) in the Record of Decision (ROD) and will make this modification the LRMP.

Protesters accurately point out that the BLM did not include a new guideline in the LRMP that would create a requirement for monitoring pressures in adjacent abandoned wells during high volume hydraulic fracturing operations, as mentioned in the response to comments. The response to comment in the LRMP was in error. This was never meant to be added as a guideline as it is considered the responsibility of the State of Colorado, which is considering a similar draft policy for consideration state-wide.

## **NEPA**

### *Range of Alternatives*

**Issue Number:** PP-CO-TresRio-14-14-48

**Organization:** Western Environmental Law Center

**Protestor:** Kyle Tisdell

**Issue Excerpt Text:** Throughout the document, the agencies consistently dismiss the benefits of Alternative C -an alternative that, from the beginning, it never intended to select. In close review of the Alternatives, there is little difference between

Alternatives A, B, and D; and C presents the only real difference of an alternative that attempts to sufficiently protect critical resource values. For example, outside of congressionally-designated wilderness, which remains consistent across all Alternatives, only Alternatives B and C contemplate the protection of any additional wilderness areas. However, whereas Alternative C suggests an additional 535,269 acres of designated protections based on the preservation of critical wild areas and surface resource values the agencies chosen Alternative B proposes to protect only an additional 54,886 acres, significantly constraining protection and analysis to only 4 of a possible 20 deserving areas. See FEIS at 34. Further, where Alternative C makes 644,113 acres administratively unavailable for oil and gas leasing, chosen Alternative B makes only 73,636 acres unavailable - a difference of 570,477 acres. Id. at 42. By comparison, the agencies development Alternative D makes 14,896 acres unavailable. This type of narrowing of the alternatives, until all that remains is the agencies chosen plan, fails to satisfy the critical function of NEPA's alternatives analysis and fails to sufficiently balance the BLM and USFS's multiple use mandate.

**Issue Number:** PP-CO-TresRio-14-15-25

**Organization:** The Wilderness Society, et al.

**Protestor:** Nada Culver

**Issue Excerpt Text:** Because BLM has not identified the lands with wilderness characteristics in the field office, the agency has not considered a reasonable range of alternatives for managing lands with wilderness characteristics.

**Issue Number:** PP-CO-TresRio-14-15-55

**Organization:** The Wilderness Society, et al.

**Protestor:** Nada Culver

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

**Issue Number:** PP-CO-TresRio-14-15-57

**Organization:** The Wilderness Society, et al.

**Protestor:** Nada Culver

**Issue Excerpt Text:** Following publication of the Draft RMP, industry notified the BLM that it had not accounted for an emerging oil and gas play in the western portion of the planning area known as the Gothic Shale. This play includes approximately 646,403 acres of land, 39 percent of which is managed by the U.S. Forest Service and 16 percent of which is managed by the BLM. RFD Addendum at 5.

The federal government also owns 57 percent of the mineral estate within the play, only 35 percent of which is currently leased. Id. In response, the BLM updated the RFD and prepared the SEIS, both of which focus on development within the Gothic Shale Play. Not surprisingly, the estimated number of wells increased dramatically by almost 150 percent. See RFD Addendum at 6 (estimating that industry would drill "an additional 1,769 Gothic shale gas wells"). This would disturb over 250 percent more land than originally forecasted" and result in "potentially significant environmental effects...." Final EIS at 372; see also, e.g. id. at 190 (discussing the "potential for increased impacts to elk winter ranges" from drilling in the Gothic Shale Play). Additionally, "even with the implementation of BMPs", the BLM has concluded that the cumulative impacts of drilling in portions of the Gothic Shale Play has "the potential to increase soil surface erosion and runoff" and "degrade water quality conditions potentially to the point of not meeting water quality standards." BLM, Tres Rios February 2013 Oil and Gas Lease Sale Final EA at 71 (Nov. 2012) (emphasis added), " Yet, see RFD Addendum at 6 (estimating that drilling would disturb 10,919 acres under the updated RFD). Available at [http://www.blm.gov/pgdata/etc/medialib/blm/co/information/nepa/san\\_juan\\_public\\_lands/February\\_2013\\_lease\\_Par.38830.File.dat/Tres\\_Rios\\_Feb\\_2013\\_lease\\_EA\\_Final\\_111612.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/co/information/nepa/san_juan_public_lands/February_2013_lease_Par.38830.File.dat/Tres_Rios_Feb_2013_lease_EA_Final_111612.pdf). in spite of the potential for these "significant" and unresolvable impacts, the BLM did not fully consider alternatives that reduced the amount of land available to leasing or "phased" leasing. Both alternatives were specifically recommended in comments from the public. TWS et al., Comments on the SEIS at 21-29.

**Issue Number:** PP-CO-TresRio-14-15-58  
**Organization:** The Wilderness Society, et al.

**Protestor:** Nada Culver

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

**Issue Number:** PP-CO-TresRio-14-15-60  
**Organization:** The Wilderness Society, et al.

**Protestor:** Nada Culver

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

**Issue Number:** PP-CO-TresRio-14-15-62  
**Organization:** The Wilderness Society  
**Protestor:** Nada Culver

**Issue Excerpt Text:** When alternatives are proposed by the BLM or the public, but do not receive "detailed" consideration, the BLM must provide a brief explanation. 40 C.F.R. § 1502.14; see also BLM NEPA Handbook, H-1790-1.6.6.3. In comments on the SEIS, the public notified the BLM that the range of alternatives for leasing within the Gothic Shale Play was inadequate and that it needed to consider additional alternatives. TWS et al., Comments on the SEIS at 21-29. Yet, in the Final EIS, the BLM did not discuss this recommendation and explain why it was not feasible or consistent with the project's "purpose and need." See Final EIS at 21-22 (listing alternatives eliminated from detailed study);

id. at App. S (responding to comments). Thus, the BLM violated NEPA by failing to discuss why reduced leasing alternatives were not considered.

**Issue Number:** PP-CO-TresRio-14-24-14  
**Organization:** Dolores Water Conservancy District

**Protestor:** Maynes, Bradford, Shipps & Sheftel, LLP

**Issue Excerpt Text:** As detailed in the SWCD Protest, the Plan violates NEPA because BLM failed to develop and evaluate reasonable alternatives in the FEIS concerning the desired conditions, objectives, standards, and guidelines that govern the use and development of water resources in the Planning area.

**Issue Number:** PP-CO-TresRio-14-25-13  
**Organization:** Southwestern Water Conservancy District  
**Protestor:**

**Issue Excerpt Text:** Nowhere in the Plan or the FEIS do the Agencies analyze any alternatives for meeting the objectives of the Bypass Flow Standard.

**Issue Number:** PP-CO-TresRio-14-25-6  
**Organization:** Southwestern Water Conservation District  
**Protestor:** Maynes, Bradford, Shipps & Sheftel, LLP

**Issue Excerpt Text:** The Agencies purport to have developed and analyzed four "alternatives" in the FEIS. However, insofar as the management of water resources is concerned, no alternatives were analyzed. That is, the description and comparison of the alternatives (i.e., pp. 23 to 47; tables 2.4.1 to 2.4.26; App. F) addresses differences in the activities that may be

authorized or prohibited on certain lands under each alternative. But no differences in desired conditions, objectives, standards, or

guidelines among alternatives are discussed, because none were analyzed.

### **Summary:**

The FEIS violated NEPA because it did not provide an adequate range of alternatives by:

- Failing to analyze an alternative that allows oil and gas leasing, but ensures necessary protections for water resources.
- Failing to analyze an alternative in which all fluids are contained in tanks.
- Narrowing down the alternatives until all that is left is the agencies' proposed plan.
- Failing to identify the lands with wilderness characteristics in the field office, thus not considering a reasonable range of alternatives for managing lands with wilderness characteristics.
- Failing to analyze an alternative that phases out or reduces oil and gas leasing.
- Failing to analyze an alternative that closes additional lands to leasing.
- Failing to discuss why a reduced leasing alternative was not considered.
- Not developing a reasonable range of alternatives in the FEIS concerning the desired conditions, objectives, standards, and guidelines that govern the use and development of water.
- Failing to analyze an alternative that meets the objectives of the Bypass Flow Standard.

### **Response:**

The BLM developed and analyzed a reasonable range of alternatives in the FEIS, including alternatives relating to the management of oil and gas leasing and water resources, pursuant to the requirements of NEPA and BLM's land use planning regulations at 43 C.F.R. § 1610.4. As discussed in the FEIS, the agencies developed the alternatives based on "the Analysis of the Management Situation; federal, state, local, and other governmental agency input and consultation; Native American tribal agency input and consultation; and public scoping." FEIS at ii. The LRMP clearly states the process by which management direction was established early in the planning process, noting:

"Alternatives were developed using a community participation process that centered on a series of meetings held in local communities" and "participants identified outstanding features, primary uses, concerns with current management, and opportunities for improvement for each landscape. Alternative development was also influenced by consultation and discussions with other federal agencies, state and local governments, cooperating agencies, Native American tribal agencies, CPW, Colorado's Roadless Areas Review Task Force, the Governmental Water Roundtable (a group convened to give water input specific to the LRMP), and local recreation organizations, as well as written comments from all interested parties" (FEIS, page 18).

Furthermore, “[t]he interdisciplinary team and staff created a preliminary draft of MA allocations by translating the BLM Emphasis Areas and SJNF management prescriptions found in the two existing land management plans into MAs. These preliminary land allocations were used as a starting point for community study group discussions about their preference for how areas should be managed. Using a spectrum of MAs ranging from MA 1 (Natural Processes Dominate, i.e., very little if any management or uses allowed) to MA 5 (Working Forest and Rangelands, i.e., areas where management and uses are likely, evident, and encouraged) to MA 8 (Permanently Developed Lands, i.e., applied to areas with dams or downhill ski areas), the public expressed their preference for how areas should be managed. A description of the MAs used in the community study groups is provided in Chapter 3 of the LRMP” (FEIS, page 18).

In the LRMP/FEIS, the Management area (MA) designations have been removed from the BLM lands to be consistent with the BLM planning guidance. While MAs no longer apply to the TRFO, the related resource-specific land allocations (i.e., lands available for grazing, available for lease, off-highway vehicle designations, etc.) are reflective of the MA preferences that were expressed by the public for each alternative. The land allocations and uses in the LRMP are consistent with the Draft and Supplement. “For many areas within each landscape, participants agreed with the proposed land allocations; for other areas, people suggested changes and described their rationale for the changes. Areas with varying preferences for management and allowable uses were used to develop the alternatives analyzed in this FEIS” (FEIS, page 18).

The BLM is not required to present and analyze a range of alternative for desired conditions, objectives, standards, and guidelines in a land use plan. The development of alternatives in the land use plan is designed to meet the conditions and objectives previously identified by the BLM. Specifically, 43CFR 1610.4-7 states: “The Field Manager, in collaboration with any cooperating agencies, will evaluate the alternatives, estimate their effects according to the planning criteria, and identify an alternative that best meets Director and State Director guidance.” Chapter 2 of the FEIS presents a brief discussion of alternatives considered but eliminated from further analysis (FEIS Section 2.3, page 21). Chapter 2 of the LRMP presents detailed discussion of desired conditions, objectives, standards, and guidelines for a full range of resources within the planning area. Specific to water resources issues, the LRMP presents a detailed discussion of desired conditions, objectives, standards, and guidelines at Section 2.6. This section concludes with a list of the many and varied laws, regulations, and policies by which water resources are managed. With respect to water resource protection and fluids related to oil and gas development, the LRMP specifies the following:

“2.6.35 As a general practice non-toxic fluid, additives, and other materials should be used for well drilling to protect surface water and groundwater quality.

2.6.36 Exploration and production waste should be disposed of using BMPs that meet state regulations and specific BLM or USFS requirements. Exploration and production waste should be disposed of in such a manner as to not to inhibit reclamation success of the site.

2.6.37 Operators should use proven technologies for the recycling of fresh water, drilling fluids, and produced water for reuse in drilling and completion operations or other beneficial purposes whenever possible.

2.6.38 As individual fields are developed, centralized liquid gathering systems should be used for the delivery and gathering of drilling, completion, and produced fluids such as fresh water, waste/produced water, and condensate.

2.6.39 Water Use and Disposal Management Plans should be included in Plans of Development for fluid minerals projects and solid minerals projects” (PRMP, Appendix J-103).

Furthermore, the plan calls for both no-surface occupancy and controlled surface use lease stipulations to buffer water resources and riparian areas from the effects of oil and gas development and notes that: “The impacts related to oil and gas leasing and development on water quantity and water quality are discussed in the Water Resources Section in the LRMP” (PRMP, Appendix J, page J-121).

There is no regulatory requirement that the BLM propose or analyze alternatives that include either storage tanks for drilling fluids or phased oil and gas development. Nonetheless, as presented in the FEIS, “The TRFO and SJNF both considered a phased leasing approach to fluid mineral leasing. The BLM’s analysis of the feasibility of a phased leasing approach revealed that a majority of TRFO lands with medium to high potential for oil and gas production are already leased, leaving limited flexibility to guide future leasing patterns. Past leasing and development activity demonstrates that a natural progression would typically occur around areas that are already developed; e.g., areas with an existing infrastructure would be initially developed and outlying areas would be developed at the pace that existing infrastructure is expanded. Therefore, leasable mineral development should continue to be focused within current production areas first” (FEIS, Appendix S, page S-56).

With regard to phased leasing on SJNF lands, the FEIS clearly notes that “Through its analysis, the SJNF determined that it would be appropriate to manage SJNF lands for orderly development of oil and gas resources in order to better address the resource tradeoffs that occur with oil and gas production on public lands. However, this type of approach does not need to be incorporated as part of the leasing decision; rather, it is best applied to the subsequent, discretionary implementation steps of offering available lands for lease and permitting drilling operations because the agency can consider new information as it becomes available through ongoing development and monitoring of resources. A proposed strategy for orderly leasing and development, outlining the SJNF’s approach to ‘phased leasing and development,’ is included in the Minerals and Energy section of the LRMP” (FEIS, Appendix S, page S-57), but such strategy would only apply to leasing on USFS lands.

FEIS Section 3.19 (pages 480-520) presents a thorough analysis of oil and gas development under Alternatives A-D and a no leasing alternative (also see FEIS Section 2.4.6.e). Although establishment of additional lease stipulations can only be applied to new lease sales, a variety of

protective measures (including containment of drilling fluids) can be required at project implementation that provide for environmentally-responsible development while accommodating valid existing rights of lessees.

The FEIS discusses analyses of lands with wilderness characteristics at length. Please see the applicable section of this report below.

### *Public Participation*

**Issue Number:** PP-CO-TresRio-14-06-4

**Organization:** COHVCO

**Protestor:** Scott Jones

**Issue Excerpt Text:** Prior to addressing the specific merits of the appeal, the Organizations must note that no public comment period has been provided on two of the major appeal points. The conclusions of the SJ/TR FEIS regarding recreational spending profiles, which directly conflict with the alleged source of the information were not provided in the DEIS. As such public comment was not received during the comment process. Under the Section of the Economic analysis there is an undesignated section entitled "changes since the draft Environmental Impact Statement and supplemental "Recreation use and spending profiles were updated, but they remain constant across alternatives."

**Issue Number:** PP-CO-TresRio-14-15-2

**Organization:** The Wilderness Society

**Protestor:** Nada Culver

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

Tres Rios RMP includes: New climate change strategies, Incorporating BLM off-highway vehicle designations, instead of only using Forest Service terminology, Incorporating a visual resources inventory, Removal of management areas designations from BLM lands, which are now limited to the Forest Service, Inventory of lands with wilderness characteristics on BLM lands, as well as management for certain lands. The public has not had an opportunity to comment on the data generated, the manner in which it has informed BLM's management alternatives, or the agency's analysis of environmental consequences associated with those decisions.

**Issue Number:** PP-CO-TresRio-14-15-2

**Organization:** The Wilderness Society

**Protestor:** Nada Culver

**Issue Excerpt Text:** NEPA requires that "environmental information is available to public officials and citizens before decisions are made and before actions are taken" to allow the "public scrutiny" that is "essential to implementing NEPA." 40 C.F.R. § 1500.1(b). However, no lands with wilderness characteristics inventory was included in either the Draft RMP/EIS for the Tres Rios Field Office or the Supplemental EIS. The first lands with wilderness characteristics inventory for the Tres Rios Field Office was completed and released as



the "Wilderness Characteristics Assessment for the BLM Portions of the San Juan Public Lands" in November 2012, after the closing of the comment periods for the Draft RMP/EIS and supplemental EIS. In addition, this inventory was simply published on the BLM TRFO website and contained only very generic maps and no photographs or road determination forms with which the public could adequately analyze how and why the BLM made the boundary and wilderness characteristics determinations it made for the units analyzed. BLM has not provided a formal comment period on its wilderness inventory, which violates NEPA's requirement to provide for public comment on information and analysis. In addition, both the data provided and the analysis of environmental consequences made available is incomplete.

**Issue Number:** PP-CO-TresRio-14-15-5

**Organization:** The Wilderness Society

**Protestor:** Nada Culver

**Issue Excerpt Text:** Moreover, the public has not had a previous formal opportunity to comment on the evaluation of potential lands with wilderness characteristics or on BLM's decisions to manage some of those lands to protect or minimize impacts to wilderness characteristics.

Finally, the public has not had the opportunity to review and comment on the BLM's application of the "master leasing plan" ("MLP") criteria, set forth in Instruction Memorandum ("IM") 2010-117 and Chapter V of the BLM's Handbook on Planning for Fluid Mineral Resources ("Chapter V")' to areas within the Tres Rios Field Office.

**Issue Number:** PP-CO-TresRio-14-24-10

**Organization:** Dolores Water Conservancy District

**Protestor:** Maynes, Bradford, Shipp & Sheftel, LLP

**Issue Excerpt Text:** Following the closure of the comment period for the Draft Plan and DEIS, ELM did not engage the District or any other local governmental entities concerning any of the water resource issues of concern in the Draft Plan. Yet the Plan includes significant revisions to the most controversial provisions governing water resources with almost no explanation of those changes and limited, non-substantive responses to comments. For example, as discussed below a "minimum flow" guideline was changed to a standard with no explanation, concerns about requiring a "minimum flow" under any guise were not seriously addressed, see App. S at pp. 5-10 justifying instream flow requirement that conflicts with Colorado water law because it "is intended to be responsive to federal laws, policies, and regulations" and "state law may or may not be applicable"), and ORVs were added 10 Wild and Scenic River suitability determinations with no genuine analysis or justification.

**Issue Number:** PP-CO-TresRio-14-24-12

**Organization:** Dolores Water Conservancy District

**Protestor:** Maynes, Bradford, Shipp & Sheftel, LLP

**Issue Excerpt Text:** Approval of the proposed Plan would be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law because Dolores Water Conservancy District BLM failed to meet the requirements of 43 U.S.C. § 1712(c)(9) that it "coordinate" with, provide for "meaningful" involvement of, and provide "early public notice of proposed decisions which may have a

significant impact on non-Federal lands" to state and local governments. BLM also failed to follow its own guidance that provides for "ongoing, long-term relationships where information is continually shared and updated." BLM Handbook H-1601-1 at 6.

**Issue Number:** PP-CO-TresRio-14-25-2

**Organization:** Southwestern Water Conservation District

**Protestor:** Maynes, Bradford, Shipps & Sheftel, LLP

**Issue Excerpt Text:** Following the closure of the comment period for the Draft Plan and DEIS, ELM did not engage the District or any other local governmental entities concerning any of the water resource issues of concern in the Draft Plan. Yet, as detailed in this Protest, the Plan includes significant revisions to the most controversial provisions governing water resources with almost no explanation of those changes and limited, non-substantive responses to comments. For example, as discussed below a "minimum flow" guideline was changed to a standard with no explanation, concerns about requiring a "minimum flow" under any guise were not seriously addressed, see App. S at pp. S-101 (WA2L justifying in stream flow requirement that conflicts with Colorado water law because it "is intended to be responsive to federal laws, policies, and regulations" and "state law may or may not be applicable"), and ORVs were added to Wild and Scenic River suitability determinations with no genuine analysis or justification.

**Issue Number:** PP-CO-TresRio-14-25-4

**Organization:** Southwestern Water Conservation District

**Protestor:** Maynes, Bradford, Shipps & Sheftel, LLP

**Issue Excerpt Text:**

Approval of the proposed Plan would be arbitrary, capricious, an abuse of discretion, .. Ironically, Mark Stiles, Forest Supervisor and Manager of the SJPLO, noted at its final meeting that the prior U.S. Forest Service and BLM plans, which this Plan is to replace, contain elements that no one initially realized would have a major impact on water-users and that the Roundtable was designed to help avoid such "sleepers" in the Revised Plan. See Summary of San Juan National Forest/Public Land Management Plan Revisions Governmental Water Roundtable meeting of March 12, 2008, attached as Ex. K, at p. 1. He also indicated his belief that the subject of water is so complex that the average citizen cannot provide the detailed comments required to make this the best Plan possible, while the members of the Roundtable had the needed expertise. BLM failed to meet the requirements of 43 U.S.C. § 1712(c)(9) that it "coordinate" with, provide for "meaningful" involvement of, and provide "early public notice of proposed decisions which may have a significant impact on non-Federal lands" to state and local governments. BLM also failed to follow its own guidance that provides for "ongoing, long-term relationships where information is continually shared and updated." BLM Handbook H-1601-1 at 6.

**Issue Number:** PP-CO-TresRio-14-15-31

**Organization:** The Wilderness Society

**Protestor:** Nada Culver

**Issue Excerpt Text:** NEPA requires that "environmental information is available to public officials and citizens before decisions

are made and before actions are taken" in order to fulfill the "public scrutiny" that is "essential to implementing NEPA." 40 C.F.R. § 1500.1(b). Regulations also state that: "To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and

related surveys and studies required by... the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)" 40 C.F.R. § 1502.25(a). The Biological Assessment (BA) of impacts of the proposed RMP to Gunnison sage-grouse has not been done in time to inform the NEPA review.

### **Summary:**

The PRMP/FEIS violated NEPA because the public was not provided with the opportunity to comment on the data generated, management alternatives, and environmental consequences associated with the changes made between the draft and final EIS. These changes include:

- Conclusions regarding recreational spending profiles.
- Evaluation of potential lands with wilderness characteristics and decisions to manage some of those lands to protect or minimize impacts to wilderness characteristics, in light of the updated land with wilderness characteristic inventories provided to the public between draft and final.
- Impacts to Gunnison Sage-grouse as articulated in the Biological Assessment (BA).
- Application of the "master leasing plan" ("MLP") criteria.
- Inclusion of the suckers as an outstandingly remarkable value (as they related to Wild and Scenic River eligibility).
- Change the "minimum flow" requirement from a guideline to a standard.

### **Response:**

The protester is correct that recreation use estimates and spending profiles were updated after the release of the Draft EIS. In addition to this change, willingness-to-pay values by recreationists used in the calculation of present net values were updated to the most current values used by the agency. All updates were made in the analysis of current conditions and impacts of alternatives. However, as articulated in Appendix S (page S-37) of the FEIS, the recreation specialists in the planning area "determined that recreation use would not change among alternatives [as a result of these modification], and the impact analysis reflects this determination." As mentioned in 43 CFR 1502.9, agencies are only required to supplement an EIS and provide a public comment period when an agency (1) makes substantial changes in the proposed action that are relevant to environmental concerns; or (2) when there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. These modifications do not fall into either one of these categories.

Regarding the protesters claim that the public did not have a formal opportunity to comment on the evaluation of potential lands with wilderness characteristics or on BLM's decisions to manage some of those lands to protect or minimize impacts to wilderness characteristics, please refer to the *Lands with Wilderness Characteristics Impacts section* of this report.

The protesters also claim that the BLM has violated NEPA due to the fact that the Biological Assessment (BA) of impacts of the proposed RMP to Gunnison sage-grouse was not completed in time to inform the NEPA review. However, while the public did not have an opportunity to review the BA as part of the DEIS's public comment period, the public did have an opportunity to review the impact analysis and findings for Gunnison Sage-grouse in the DEIS, which is commensurate with the analysis and findings presented in Appendix J of the FEIS (Biological Assessment). The USFS BA (see Volume III, Appendix J) determined "that the Preferred Alternative of the LRMP is not likely to jeopardize the continued existence of Gunnison sage-grouse, or adversely modify proposed critical habitat. Because none of the LRMP alternatives are likely to jeopardize the continued existence of Gunnison sage-grouse, or destroy or adversely modify proposed critical habitat, conferencing with the USFWS on the effects of plan implementation to sage-grouse is not required." This statement from the BA is supported in Section 3.3 of the FEIS on page 167, which found that "regardless of the alternative selected, LRMP standards and guidelines and referenced documents and manuals would ensure that sage-grouse habitats and sagebrush shrubland habitats remain available and well distributed across the planning area." Section 3.3 of the FEIS outlines the direct, indirect, and cumulative impacts on Gunnison sage-grouse from related influential program areas like recreation, fluid minerals development, and mechanical fuels treatments to name a few.

The protester is correct that the public was not provided with the opportunity to review and comment on the BLM's application of the "master leasing plan" ("MLP") criteria. As mentioned in 43 CFR 1502.9, agencies are only required to supplement an EIS and provide a formal public comment period when an agency (1) makes substantial changes in the proposed action that are relevant to environmental concerns; or (2) when there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Because the application of the MLP criteria does not change any of the proposed actions in the LRMP or provides significant new circumstances that would change the analysis provided in FEIS, there is no rationale for the BLM to supplement this document. The information used to inform whether or not the Paradox Leasing Analysis Area met all of the criteria for determining whether or not a MLP is required was similar to the information presented in Chapter 3 of the DEIS (presented for the entire planning area), which the public was able to make comments during the 90-day public comment period. For example, one of the criteria from BLM IM WO-2010-117 is to determine that "There is a majority federal mineral interest." Based on the baseline information provided in the Section 3.15 of the DEIS (specifically table 3.15.1 – Potential for Occurrence of Oil and Gas Resources by Mineral Estate), only 27% of Federal estate throughout the entire planning area has moderate to high oil and gas potential. Further, the DEIS states in Section 3.15 that "528,000 acres of public land (439,000, BLM and 89,500, NF) are already leased for oil and gas development."

Regarding the reference to Flannelmouth and Bluehead suckers as an outstandingly remarkable value, please refer to the response provided in *Special Status Species section* of this report.

The protester has pointed out that the "minimum flow" guideline was changed to a standard between draft and final, with only a minor explanation in Appendix S (response to public comments). According to the protester, this instream flow requirement conflicts with Colorado

water law. During the Governor's Consistency review process (a 60 day period after the LRMP/FEIS was published), the BLM consulted with the Colorado Department of Natural Resources, the Colorado Water Conservation Board, and local water districts regarding this proposed standard and other water related management concerns the State had with the LRMP/FEIS. Based on these discussions, the BLM intends to modify the approved RMP language to reinforce the preferred collaborative approach, as articulated in the DEIS and will address this modification in the ROD. Specifically, the BLM will change the aquatic habitat requirements found in Section 2.5.18 (a)-(d) and minimum reservoir levels found in Section 2.5.22-23 from "standards" to "guidelines." This modification is consistent with Volume 2, Part 3, Design Criteria of the Draft LRMP on page 252 which states, "cooperative and collaborative efforts are the preferred approach to sustaining aquatic ecosystems and ensuring that viable populations of aquatic species are maintained or improved." The BLM believes this approach will retain the critical outcomes found within the standards, including the re-establishment of native fish populations in appropriate locations, while allowing significant flexibility in arriving at those outcomes. The BLM believes that a strong commitment to improved stream conditions, along with flexibility and innovation, will be critically important for meeting the requirements of federal law during the process of renewing federal authorizations for existing water facilities. The BLM also will describe in the ROD that it is including a reference to the preferred collaborative approach with the Colorado Water Conservation Board as part of the change in the description of minimum flow from "standards" to "guidelines."

### *Water Impacts*

**Issue Number:** PP-CO-TresRio-14-14-39

**Organization:** Western Environmental Law Center

**Protestor:** Kyle Tisdell

**Issue Excerpt Text:** While the FEIS stipulations and the LRMP resource direction contain important provisions to reduce risk to water resources from oil and gas operations, the agencies have failed to analyze an alternative that provides needed protections for water. These safeguards include improved site characterization to look for pathways by which contaminants may reach groundwater, stronger well design and construction standards, stimulation operation monitoring and reporting requirements, and improved waste water handling planning and practices. These necessary protections were documented in our comments on the SDEIS, and are incorporated herein. The

TRFO/SJNF declined to incorporate these protections, stating: "The exact specifics of well design, construction, and monitoring of potential environmental impacts involve issues that would be considered during subsequent project-level NEPA analysis and does not involve analysis at the BLM/USFS planning level." First, the FEIS and LRMP do contain specific standards, guidelines, and stipulations for well design, construction, and monitoring, as cited below, indicating that such requirements can be set at the planning level. Moreover, the agencies' NEPA analysis must fully consider the environmental benefits of additional protections for water resources, as detailed below. These additional protective measures represent reasonable alternative standards and stipulations with clear environmental benefits, which the TRFO/SJNF should have analyzed.

**Issue Number:** PP-CO-TresRio-14-14-43

**Organization:** Western Environmental Law Center

**Protestor:** Kyle Tisdell

**Issue Excerpt Text:** The BLM and USFS fail to analyze an alternative in which all fluids are contained in tanks. Because such a requirement could substantially reduce the risks of environmental contamination while imposing low costs on oil and gas producers, the agencies should have analyzed the environmental benefits of this reasonable alternative course of action.

**Issue Number:** PP-CO-TresRio-14-24-16

**Organization:** Dolores Water Conservation District

**Protestor:**

**Issue Excerpt Text:** The FEIS characterizes that provision of the Draft Plan as a "guideline" and discloses that it has been changed to a presumptive, non-discretionary "standard." However, nowhere in the Plan or FETS does a rationale or explanation for the Bypass Flow Standard appear, nor is any explanation or justification provided to support making it a presumptive standard that must be applied to every project everywhere in the Planning Area.

**Issue Number:** PP-CO-TresRio-14-24-18

**Organization:** Dolores Water Conservation District

**Protestor:**

**Issue Excerpt Text:** As detailed in the SWCD Protest, approving the proposed Bypass Flow Standard and Minimum Pool Guideline would violate the NEPA because

the BLM, in the FEIS, failed to take a "hard look" at the factual and policy bases underlying the proposals. No reasoned basis for imposing the Bypass Flow Standard or Minimum Pool Guideline is provided anywhere in the FEIS or Plan. Further, the agency failed to disclose or analyze a great deal of information vital to its proposed decision to impose a bypass flow requirement on all water diversions in the planning area. The agency further failed to disclose or analyze information vital to its proposed decision to impose a "minimum pool level" on reservoirs in the Planning Area. For example, there is no specific information anywhere in the Plan concerning environmental impacts of existing reservoirs in the Planning Area. There is not even a summary of existing reservoirs and storage water rights. The Plan and FEIS include no discussion of existing operational constraints for reservoirs in the Planning Area or the need for this additional one.

**Issue Number:** PP-CO-TresRio-14-24-22

**Organization:** Dolores Water Conservancy District

**Protestor:** Maynes, Bradford, Shipp & Sheftel, LLP

**Issue Excerpt Text:** There is no disclosure or analysis of what the impacts of the Bypass Flow Standard and Minimum Pool Guideline might be to local economies and the uses of adjacent and nearby non-federal lands.

**Issue Number:** PP-CO-TresRio-14-25-10

**Organization:** Southwestern Water Conservation District

**Protestor:** Maynes, Bradford, Shipp & Sheftel, LLP

**Issue Excerpt Text:** The FEIS characterizes that provision of the Draft Plan as a "guideline" and discloses that it has been changed to a presumptive, non-discretionary "standard." However, nowhere in the Plan or FEIS does a rationale or explanation for the Bypass Flow Standard appear, nor is any explanation or justification provided to support making it a presumptive standard that must be applied to every project everywhere in the Planning Area.

**Issue Number:** PP-CO-TresRio-14-25-12

**Organization:** Southwestern Water Conservation District

**Protestor:** Maynes, Bradford, Shipp & Sheftel, LLP

**Issue Excerpt Text:** The FEIS provides no analysis or explanation to support including the Bypass Flow Standard and to justify the particular criteria selected for the standard. Nowhere in the Plan or the FEIS do the Agencies disclose and analyze the factual and policy bases for selecting the Bypass Flow Standard and for selecting the "options" for meeting it.

**Issue Number:** PP-CO-TresRio-14-25-15

**Organization:** Southwestern Water Conservation District

**Protestor:** Maynes, Bradford, Shipp & Sheftel, LLP

**Issue Excerpt Text:** Approving the proposed Bypass Flow Standard and Minimum Pool Guideline violates NEPA because the BLM, in the FEIS, failed to take a "hard look" at the factual and policy bases underlying the proposals. No reasoned basis

for imposing the Bypass Flow Standard or Minimum Pool Guideline is provided anywhere in the FEIS or Plan. Further, the agency fails to disclose or analyze a great deal of information vital to its proposed decision to impose a bypass flow requirement on all water diversions in the planning area. For example, there is no specific information anywhere in the Plan concerning environmental impacts of particular water diversions in the Planning Area. There is not even a summary of existing diversions or water rights that affect water resources in the Planning Area. The agency further fails to disclose or analyze information vital to its proposed decision to impose a "minimum pool level" on reservoirs in the Planning Area. For example, there is no specific information anywhere in the Plan concerning environmental impacts of existing reservoirs in the Planning Area. There is not even a summary of existing reservoirs and storage water rights. The Plan and FEIS include no discussion of existing operational constraints for reservoirs in the Planning Area or the need for this additional one.

**Issue Number:** PP-CO-TresRio-14-25-19

**Organization:** Southwestern Water Conservation District

**Protestor:** Maynes, Bradford, Shipp & Sheftel, LLP

**Issue Excerpt Text:** there is no disclosure or analysis of what the impacts of the Bypass Flow Standard and Minimum Pool Guideline might be to local economies and the uses of adjacent and nearby non-federal lands.

**Summary:**

BLM failed to take a "hard look," at:

- Important provisions to reduce risk to water resources from oil and gas operations.
- Baseline conditions identifying the need to implement the bypass flow standard and minimum pool guideline.
- Impacts on operations to reservoirs in the Planning Area.
- Impacts to local economies and the uses of adjacent and nearby non-federal lands.

**Response:**

While the BLM does recognize that there will be some adverse impacts to water resources as a result of oil and gas operations throughout the life of the plan in the planning area, the BLM believes the LRMP also proposes several actions that will significantly reduce risks to water resources in the planning area, while still allowing leasing to occur in the planning area. For example, of the 760,853 acres of the BLM estate available for oil and gas leasing, the BLM is proposing that 282,838 acres would require new leases to account for a No Surface Occupancy stipulation, 616,071 acres of a Controlled Surface Use stipulation, and 482,736 acres of Timing Limitations (these acreages are totals for each stipulation, so they do not account for overlap). Areas where the NSO stipulation will be applied are areas where sensitive water resources will be protected through this stipulation, including the Dolores River Canyon, areas managed to protect lands with wilderness characteristics, areas to protect T&E species, steep slopes, unstable soils, the Mesa Verde Escarpment, and the Perins Peak wildlife area.

The BLM will modify the approved RMP language to reinforce the preferred collaborative approach and will articulate this change in the ROD. Specifically, the BLM will change the aquatic habitat requirements found in section 2.5.18 (a)-(d) and minimum reservoir levels found in section 2.5.22-23 from “standards” to “guidelines” consistent with what was presented in the Draft LRMP/FEIS. The BLM approach will retain the critical outcomes found within the standards, including the re-establishment of native fish populations in appropriate locations, while allowing significant flexibility in arriving at those outcomes. The environmental effects on fisheries from water use and development remains unchanged between the analyses found on page 69 of Chapter 3 in the DEIS compared to the analysis found in the Final EIS on page 238 of Section 3.5.4, thus indicating that the adjustments of the aquatic habitat requirements from standards to guidelines did not substantially change the findings reported in either document.

The BLM maintains a strong commitment to improved stream conditions, along with flexibility and innovation that is critically important for meeting the requirements of federal law during the process of renewing federal authorizations for existing water facilities. The BLM also will describe in the ROD that it is including a reference to the preferred collaborative approach with the Colorado Water Conservation Board as part of the change in the description of minimum flow from “standards” to “guidelines.”

Contrary to the protester’s claims regarding a lack of the impacts and analysis of proposed minimum flow guidelines, the BLM does describe in the Proposed RMP the affected environment for aquatic habitat and for water resources, noting multiple times that historic water development has significantly altered the extent and quality of aquatic habitat on public lands, that future population growth and climate change would likely increase demand for water



development on public lands, and that standards and guidelines were necessary tools for streams to meet the desired conditions and objectives. In addition, the BLM disclosed in the FEIS (page 274) and Proposed RMP (page 63) that water users can expect terms and conditions in new authorizations and renewed authorizations for water facilities that will allow the facility to meet the guidelines adopted in the Final Plan. However, the BLM is unable to predict the exact impacts of potential terms and conditions to operations and local economies, because each facility will be analyzed on a case-by-case basis, and impacts may be largely avoided by collaborative efforts envisioned in the plan.

### *ORV Impacts*

**Issue Number:** PP-CO-TresRio-14-24-4

**Organization:** Dolores Water Conservancy District

**Protestor:** Maynes, Bradford, Shipp & Sheftel, LLP

**Issue Excerpt Text:** The Draft Plan and DEIS did not propose or analyze the impacts of including the suckers, or any fish species besides the roundtail chub, as a wildlife ORV of the Lower Dolores River.

Accordingly, no opportunity to comment on this significant proposal was afforded.

Approving the suckers as ORVs for the Lower Dolores River would violate NEPA because the BLM, in the FEIS, failed to take a "hard look" at the factual and policy bases underlying the proposal. See New Mexico, 565 F.3d at 704. BLM also failed to consider important aspects of the problem, as required by the APA, by failing to disclose and analyze whether the suckers actually meet the definition and requirements of an ORV pursuant to the Wild and Scenic Rivers Act and BLM guidance.

**Issue Number:** PP-CO-TresRio-14-24-6

**Organization:** Dolores Water Conservancy District

**Protestor:** Maynes, Bradford, Shipp & Sheftel, LLP

**Issue Excerpt Text:** The agency failed to disclose or analyze information vital to its

proposed decision to designate the suckers as ORVs, information that would demonstrate (1) that the suckers are "unique, rare, or exemplary feature that is significant at a comparative regional or national scale" for this reach of the Dolores River, (2) that the Lower Dolores River itself is "nationally or regionally an important producer" of the species, and (3) that the flows in the Lower Dolores River are considered sufficient "to sustain" the sucker.

**Issue Number:** PP-CO-TresRio-14-24-8

**Organization:** Dolores Water Conservancy District

**Protestor:** Maynes, Bradford, Shipp & Sheftel, LLP

**Issue Excerpt Text:** Nowhere does the FEIS disclose and analyze the physical, biological, economic, and social effects of designating the ORVs.

**Issue Number:** PP-CO-TresRio-14-25-21

**Organization:** Southwestern Water Conservation District

**Protestor:** Maynes, Bradford, Shipp & Sheftel, LLP

**Issue Excerpt Text:** Approving the suckers as ORVs for the Lower Dolores River would

violate NEPA because the BLM, in the FEIS, failed to take a "hard look" at the factual and policy bases underlying the proposal. BLM also failed to consider important aspects of the problem, as required by the APA, by failing to disclose and analyze whether the suckers actually meet the definition and requirements of an ORV pursuant to the Wild and Scenic Rivers Act and BLM guidance.

**Issue Number:** PP-CO-TresRio-14-25-22

**Organization:** Southwestern Water Conservation District

**Protestor:** Maynes, Bradford, Shipp & Sheftel, LLP

**Issue Excerpt Text:** The Plan and FEIS provide no reasoned basis for designating the suckers as ORVs aside from the recommendations of commenters. These ORVs were never identified, proposed, or analyzed in the Draft Plan and DEIS, so there has been no opportunity for the public to comment on the proposal. The agency

failed to disclose or analyze information vital to its proposed decision to designate the suckers as ORVs, information that would demonstrate (1) that the suckers are "unique, rare, or exemplary feature that is significant at a comparative regional or national scale" for this reach of the Dolores River, (2) that the Lower Dolores River itself is "nationally or regionally an important producer" of the species, and (3) that the flows in the Lower Dolores River are considered sufficient "to sustain" the suckers.

**Issue Number:** PP-CO-TresRio-14-25-24

**Organization:** Southwestern Water Conservation District

**Protestor:** Maynes, Bradford, Shipp & Sheftel, LLP

**Issue Excerpt Text:** Nowhere does the FEIS disclose and analyze the physical, biological, economic, and social effects of designating the ORVs.

### **Summary:**

The PRMP/FEIS violated NEPA because the BLM did not disclose the designation of suckers as an ORV or analyze the impacts associated with ORV designations.

### **Response:**

As stated on page D-14 of Appendix D of the LRMP/FEIS, "the flannelmouth and bluehead suckers have been added to the ORVs since the Draft EIS based on comments that suggested the three species should be considered together, as they are in the Range-wide Conservation Agreement and Strategy (Utah Department of Natural Resources 2006) signed by six state wildlife agencies, the BLM State Directors of Colorado and Wyoming, the National Park Services Intermountain Region, and the Jicarilla Apache Nation. Comments were also received from multiple other interests, suggesting that the three species should be considered together based on the scientific information that has been compiled." Additionally, the BLM made a decision to add the bluehead and flannelmouth sucker in compliance with Section 3.E.4.i of the BLM Wild and Scenic Rivers Manual, which states that "fish values include either indigenous fish populations or habitat or a combination of these river-related conditions...the river is nationally or regionally an important producer of indigenous resident and/or anadromous fish

species. Of particular significance is the presence of wild stocks and/or Federal or state listed or candidate, threatened, endangered, or BLM sensitive species.”

The BLM did not violate NEPA by including the bluehead and flannelmouth suckers as ORVs. The identification of the approximate 109 mile segment of the Dolores River as “suitable” was never modified between the Draft and Final EIS, therefore, the public had the ability to provide input for this designation during the 90-day public comment period. These additions did not modify the Dolores River segments suitable for Wild and Scenic River status.

Under Section 5(d)(1) of the Wild and Scenic Rivers Act (WSRA), federal agencies undertaking land management planning are required to assess whether any of the rivers and streams in the planning area would be appropriate for an addition to the National Wild and Scenic Rivers System. The BLM’s RMPs determine which streams are “suitable,” prior to the federal agency considering whether to send the nomination to Congress for legislative consideration. The land use planning level analysis associated with the Wild and Scenic Rivers in the Tres Rios PRMP articulated environmental effects from the decision made by the BLM to find these river segments suitable (see Section 3.23 of the FEIS). Specifically, BLM’s Wild and Scenic Rivers Manual, Section 3.1, states, “the eligibility of a river for potential inclusion in the National System is determined by applying the following inventory criteria from the WSRA (further described in the Interagency Guidelines). The inventory criteria are: the river must be free flowing and, with its adjacent land area, possess one or more outstandingly remarkable values No other factors are considered in determining the eligibility of a river. The determination of eligibility is part of the inventory process and does not require a decision or approval document.”

### *Lands with Wilderness Characteristics Impacts*

**Issue Number:** PP-CO-TresRio-14-15-23

**Organization:** The Wilderness Society

**Protestor:** Nada Culver

BLM has not adequately analyzed the direct, indirect and cumulative impacts of management decisions on these lands.

**Issue Excerpt Text:** Because the BLM has not accurately evaluated or acknowledged the presence of lands with wilderness characteristics (as described in detail above),

### **Summary:**

The BLM did not accurately and completely identify lands with wilderness characteristics. In doing so, the BLM was not able to adequately analyze the direct, indirect and cumulative impacts of management decisions on lands with wilderness characteristics, thereby violating NEPA.

**Response:**

The BLM Tres Rios Field Office issued the Draft LRMP/EIS in 2007. The BLM issued new Lands with Wilderness Characteristics policy on July 26, 2011 ([BLM IM-2011-154](#)). On August 30, 2011, the BLM and USDAFS issued a supplement to the Draft LMP/EIS for the purposes of updating oil and gas development projections in the Gothic Shale Play Area and to disclose results of an air quality model ([Supplement to the Draft EIS for the San Juan Plan Revision FAQs](#)). This supplement did not address new information with respect to wilderness character. The BLM Tres Rios Field Office completed its [Wilderness Characteristics Assessment](#) in November of 2012. The PRMP/FEIS was released in September of 2013.

While the public was not afforded the opportunity to review and comment on the alternatives or impacts analysis that were informed by the 2012 *Wilderness Characteristics Assessment*, the vast majority of these lands were identified for similar protective management in the Draft LRMP; thus, management as proposed and analyzed in this LRMP and FEIS does not differ significantly from what was disclosed in the Draft documents, and NEPA supplementation was not found to be necessary by the BLM.

In the Draft LRMP, the majority of the areas inventoried as part of the 2012 *Wilderness Characteristics Assessment* were classified as Management Areas (MA) that included protective measures similar to those identified for lands with wilderness characteristics. MA-1 and MA-3, as described in the Draft RMP on pages 75 and 76 both discuss the opportunities for primitive and semi-primitive recreation in pristine or relatively un-altered landscapes. Management restrictions were proposed for these areas that would preserve these opportunities. These opportunities are substantially the same as those managed for Lands Managed for Wilderness Characteristics as described in the Final LRMP. In the Draft EIS, Coyote Wash, Snaggletooth, McKenna Peak, and Menefee were all analyzed in at least one alternative as MA-1 or MA-3.

MA-2 areas in the Draft LRMP are managed for the special features or characteristics possessed by a particular landscape. In the case of the Snaggletooth unit, wilderness characteristics (outstanding solitude and primitive/semi-primitive recreation), are identified among other characteristics listed for the corridor.

In all of the proposed lands with wilderness characteristics units, the public was made aware in the Draft LRMP and/or Draft EIS of management potential focusing on pristine or relatively unaltered landscapes, primitive or semi-primitive recreation, and/or outstanding opportunities for solitude. In the Final LRMP, the management name of these areas changed from USFS nomenclature of 'MA 1, 2, or 3', to BLM-centric 'Lands Managed for Wilderness Characteristics', but the scope of management activities remains primarily unchanged from the Draft.

The only exception is the North Menefee Mtn. (CO-030-251-a) unit which was identified as an MA-7 in the Draft EIS (Alternative C) and identified as an MA-3 in the Draft EIS (Alternative A). The unit is 1,157 acres and did include restrictions to resources uses similar to those prescribed for the management for lands with wilderness characteristics. The unit is adjacent to the existing Menefee Mtn. Wilderness Study Area. In addition, in the Proposed LRMP, the

Menefee Mtn Area is not proposed to be managed for lands with wilderness character under Alternative B.

Under the Proposed RMP the two areas proposed to be managed for lands with wilderness character are a portion of Coyote Wash Unit and a portion of Snaggletooth (east) Unit under Alternative B.

All areas in the Final EIS that are managed for lands with wilderness characteristics (despite the alternative in which they are presented) have the follow prescriptions:

- No new ROWs
- No new Road Construction
- Closed to Motorized and Mechanized
- Closed to Mineral Material Sales
- Extractive Commercial Uses Prohibited
- Personal product removal restricted
- Construction of new facilities restricted
- Minerals leasable (oil and gas and other): Not Available for Lease (Map 51, Append. V) (Except for Menefee Mtn which is No Surface Occupancy)
- VRM Class II (Map 42, Append. V) (Except for Menefee Mtn which is VRM Class III)

### *Gunnison Sage-grouse Habitat Impacts*

**Issue Number:** PP-CO-TresRio-14-15-35

**Organization:** The Wilderness Society

**Protestor:** Nada Culver

**Issue Excerpt Text:** Though the plan describes a variety of activities that will result in loss, degradation and fragmentation of Gunnison sage-grouse habitat (e.g. FEIS, Chapter 3 pgs. 166-167 & 211-214), the plan does not contain an adequate analysis of the likely cumulative effects of these and other past and present actions on Gunnison sage-grouse, particularly in light of the fact that the Dove Creek and San Miguel Basin populations have declined to such low numbers that they are already at risk of extirpation even in the absence of additional impacts, due to small population size and isolation (78 FR 2530-2531). The FWS notes that the Dove Creek population may soon be extirpated due to low current population estimates and an overall declining population trend, even in the

absence of further impacts. (78 FR 2531). Further the FWS notes that the San Miguel Basin population has declined by 40% since 2004, and states that cumulative factors may combining to cause its future extirpation (78 FR 2531). The BLM fails to adequately analyze the cumulative impacts of management decisions in the proposed RMP given this information.

**Issue Number:** PP-CO-TresRio-14-15-37

**Organization:** The Wilderness Society, et al.

**Protestor:** Nada Culver

**Issue Excerpt Text:** The BLM's analysis of the impacts of the management decisions made by the proposed plan on Gunnison sage grouse is inconsistent with the best available science. We hereby incorporate the USFWS proposed rule to list the Gunnison

sage-grouse as endangered (FWS proposed rule), and the 2011 Bureau of Land Management Technical Report, titled "A Report on National Greater Sage-grouse Conservation Measures" (NTT Report) by reference. The BLM fails to consider the impacts of plan decisions on Gunnison sage-grouse in light of the information on the status of the Dove Creek and San Miguel Basin populations, relevant research on the impacts of energy development and other actions on sage-grouse outlined in the FWS proposed rule and NTT Report.

**Issue Number:** PP-CO-TresRio-14-15-40  
**Organization:** The Wilderness Society  
**Protestor:** Nada Culver

**Issue Excerpt Text:** Second, the FEIS states that LRMP implementation "may affect, is likely to adversely affect" Gunnison Sage-grouse, and the USFWS identifies oil and gas development as a threat to the species. Thirteen percent of the federal minerals underlying the San Miguel Basin Gunnison sage-grouse population are leased. The LRMP proposes to lease the remainder with a No Surface Occupancy stipulation that is subject to exceptions, modifications and waivers at BLM's discretion, resulting in little certainty that the NSO stipulation will prevent adverse impacts to Gunnison sage-grouse. The BLM does not compare the likely effectiveness of the no lease option for new leases with the likely effectiveness of the NSO stipulation, given BLM's discretion in allowing exceptions, modifications and waivers.

**Issue Number:** PP-CO-TresRio-14-15-41  
**Organization:** The Wilderness Society  
**Protestor:** Nada Culver

**Issue Excerpt Text:** Further, the NSO stipulation will encourage development of roads and placement of well pads just outside but adjacent to occupied critical habitat. The best available science indicates that Gunnison sage-grouse can be negatively impacted by roads and energy development structures that are several miles from leks and occupied habitat. For example, declines in male greater sage-grouse lek attendance were reported within 1.9 mil of a well or haul road with a traffic volume exceeding one vehicle per day (Holloran 2005, p. 40 in 78 FR 2512). The BLM does not provide an analysis of the likely effectiveness of the NSO stipulation given this fact.

**Issue Number:** PP-CO-TresRio-14-15-43  
**Organization:** The Wilderness Society  
**Protestor:** Nada Culver

**Issue Excerpt Text:** Current BLM policy is to maintain sustainable sage-grouse populations and to manage sage-grouse to promote conservation and minimize the need for listing of sage-grouse under the Endangered Species Act. See, Instruction Memorandum (IM) 2010-071), The Tres Rios RMP does not include an objective to maintain sustainable Gunnison sage-grouse populations or to manage Gunnison sage-grouse to promote conservation and minimize the need for listing Gunnison sage-grouse under the Endangered Species Act. Lack of such an objective makes the plan inconsistent with IM 2010-071.

**Issue Number:** PP-CO-TresRio-14-15-45  
**Organization:** The Wilderness Society  
**Protestor:** Nada Culver

**Issue Excerpt Text:** See IM 2010-071 ("In RMP revisions and amendments, analyze one or more alternatives that would exclude priority habitat from energy development

and transmission projects." ). Further, the IM outlines actions to protect sage-grouse from a variety of different types of energy development, including not only oil and gas development, but also geothermal development, oil shale development, wind and solar energy development and associated site testing, and transmission. The proposed RMP fails to adequately consider actions to protect Gunnison sage-grouse

from non-oil and gas related energy development. The BLM has failed to analyze one or more alternatives that exclude priority Gunnison sage-grouse habitat from energy development and transmission projects and has failed to consider conservation measures necessary to protect Gunnison sage-grouse from all types of energy development.

### **Summary:**

The BLM violated NEPA because the LRMP/FEIS:

- Did not contain adequate analysis of the likely cumulative effects on Gunnison sage-grouse.
- Did not compare the impacts from Alt C (no oil and gas leasing alternative) with Alternative B or D (application of NSO stipulation) for Gunnison sage-grouse habitat.
- The analysis is inconsistent with the best available science (specifically the USFWS proposed rule to list the Gunnison sage-grouse as endangered the BLM's NTT Report.
- Did not analyze a no lease option to oil and gas leasing alternative for the San Miguel Basin.
- Did not analyze the impact from oil or gas development adjacent to occupied critical habitat.

The LRMP is inconsistent with IM 2010-071 because it did not include:

- An objective to maintain sustainable Gunnison sage-grouse populations or to manage Gunnison sage-grouse to promote habitat conservation.
- An alternative that would exclude priority habitat from energy development and transmission projects.

### **Response:**

As articulated in Section 3.1 of the LRMP, "this FEIS is a programmatic document. It discusses environmental effects on a broad scale and does not predict what would happen when such broad-based standards and guidelines are implemented on an individual, site-specific project, nor does it convey long-term environmental consequences of any site-specific projects." As part of this broad scale cumulative effects analysis for threatened and endangered terrestrial wildlife species (presented on page 168 of the FEIS), the BLM analyzed impacts related to implementing the proposed LRMP as a whole. This analysis found that "all alternatives would be limited by LRMP components designed, in part, to account for potential cumulative impacts of activities occurring on adjacent ownerships or from the combined effects of all program activities in the planning area. After considering direct, indirect, and cumulative effects to listed species, LRMP

components are expected to provide the ecological conditions necessary to maintain or improve existing populations of listed species within their current distribution across the planning area.”

Regarding the claim that the BLM did not compare the “no lease” alternative with the proposed plan’s application of the NSO stipulation for Gunnison Sage-grouse habitat is incorrect. The BLM compared these alternatives in its analysis found on pages 213-214 of the FEIS, which states that “the No Leasing Alternative would provide the greatest protection for sage-grouse habitats in the PLAA. There is potential that some loss of Gunnison sage-grouse habitats could occur under the No Leasing Alternative due to development of lands that are already leased within the PLAA. Existing leases compromise 26 percent of occupied Gunnison sage-grouse habitat in the PLAA and 79 percent of unoccupied critical habitat. Based on projected total combined acres of disturbance on leased and unleased lands for conventional and GSGP gas within the PLAA, Alternative A has the greatest potential to directly or indirectly affect sage-grouse habitats. This is followed by Alternatives D, B (proposed plan), and C (no lease alternative), respectively. Total projected disturbance acres are very similar for Alternatives A and D, with somewhat less disturbance projected for Alternative B, followed by substantially less disturbance for Alternative C.”

The protesters claim that the LRMP/FEIS analysis is inconsistent with the best available science (specifically the USFWS proposed rule to list the Gunnison sage-grouse as endangered and the BLM’s NTT Report), in light of the status of the Dove Creek and San Miguel Basin populations. The BLM disagrees, as the FEIS cites the January 11, 2013, proposed listing decision, as well as maps of the proposed occupied and unoccupied critical habitat on Figure 2.3.4 of the LRMP (Vol. II). The LRMP also provides a detailed description of the existing conditions of the Dry Creek Basin and Miramonte subpopulations of the San Miguel population on page 212 of the FEIS. The FEIS cites and incorporates the most recent relevant science for both Greater and Gunnison sage-grouse.

In regard to the BLM’s December 2011 National Technical Team (NTT) Report, the document only provides the latest science and best biological judgment to assist in making management decisions related to the Greater Sage-grouse, not the Gunnison Sage-grouse. In 2000, Gunnison sage-grouse and greater sage-grouse (*Centrocercus urophasianus*) were recognized as separate species. This determination was based on differences in physical, genetic, and behavioral characteristics, as well as geographic isolation, between the two species.

The protesters also claim that the BLM did not comply with IM 2010-071. Before addressing this point, it is important to point out that since IM 2010-071 was release in 2010, this IM was supplemented/modified by several other IMs that directed the agency to consider certain Gunnison Sage-grouse management measures while revising/amending existing resource management plans. At the time the Tres Rios LRMP was being developed, the BLM was following Colorado IM 2010-028. Since 2010, Colorado IM2010-028 was superseded by the following IMs: Washington Office IM-2010-071, Washington Office IM-2012-043, and Colorado IM 2013-033. Regardless of the variations in guidance, through the desired conditions and objectives set forth in the LRMP/FEIS, the BLM captures the clear purpose of all of these directives, including guidance provided in BLM Manual 6500, which states “ensure optimum populations and a natural abundance and diversity of wildlife resources on public lands by



restoring, maintaining, and enhancing habitat conditions through management plans.” The LRMP/FEIS proposed desired condition 2.3.15 specifically states, “areas identified as critical habitat or proposed critical habitat for special status wildlife species have the characteristics to support sustainable populations, promoting recovery of the species,” and objective 2.3.26, which states, “improve habitat for Gunnison sage-grouse when conducting resource management actions within occupied habitat.” A series of proposed standards and guidelines that help meet management objective 2.3.26 require the avoidance of leks, timing restrictions, and maintenance of habitat effectiveness.

Contrary to the protester’s claim, the BLM has met the directives in Washington Office IM 2010-071 and Colorado IM 2013-033 to analyze at least one alternative that excludes fluid mineral leasing, development, and rights-of-way in Gunnison sage grouse habitat. The BLM analyzed in LRMP/FEIS a no leasing alternative for all 768,625 of BLM administered acres in the planning area, and also analyzed the use of NSO stipulations for Gunnison sage grouse habitat in the preferred alternative. The analyses that cover these alternatives are found in Section 3.10 of the Draft LRMP and Draft EIS and on page 212-214 of the FEIS. In terms of analyzing an exclusion areas for all rights-of-ways (transmission lines), standard 2.3.46 specifically points out that that ROWs would be excluded within 0.6 miles of known leks and areas outside of this 0.6 mile buffer would avoidance areas for ROWs (guideline 2.3.72).

### *Air Quality Impacts*

**Issue Number:** PP-CO-TresRio-14-14-2  
**Organization:** Western Environmental Law Center  
**Protestor:** Kyle Tisdel

**Issue Excerpt Text:** Very few changes were made to the air quality analysis for the FEIS in direct response to the large number of substantive air quality comments received by the agencies on the draft SEIS, including significant air quality comments from both the Environmental Protection Agency ("EPA") and the National Park Service ("NPS"). Of primary concern is the fact that the Agencies did not implement a comprehensive and enforceable set of air quality mitigation measures that would ensure no significant impacts to air quality and air quality related values in the FEIS. Without further analysis of the mitigation measures needed to sufficiently address potential air quality impacts for this FEIS,

the Agencies are failing to satisfy their most fundamental obligations under NEPA.

**Issue Number:** PP-CO-TresRio-14-14-4  
**Organization:** Western Environmental Law Center  
**Protestor:** Kyle Tisdel

**Issue Excerpt Text:** The SEIS modeling predicted significant NO2 impacts, PM impacts and SO2 impacts. The SEIS and FEIS fail to include an assessment of near-field impacts and continue to put off an assessment of the impact from the proposed development on regional ozone concentrations.

**Issue Number:** PP-CO-TresRio-14-14-8  
**Organization:** Western Environmental Law Center  
**Protestor:** Kyle Tisdel

**Issue Excerpt Text:** Entirely absent from the agencies discussion of air quality impacts is the relationship to human health. Logically, the required air quality mitigation measures discussed above with have a positive relationship to human health, but

poor baseline air quality conditions due to direct, indirect and cumulative impacts in the planning area warrants an independent hard look analysis at human health; and, moreover, such analysis is required by NEPA and CEQ implementing regulations.

**Summary:**

The SEIS and FEIS have gaps in air quality impact analysis, including impacts on human health and regional ozone, in violation of NEPA and CEQ implementing regulations. The agencies did not implement a comprehensive and enforceable set of air quality mitigation measures that would ensure no significant impacts to air quality and air quality related values, and so violated their obligations under NEPA.

**Response:**

The air quality impact analysis for the Final LRMP and FEIS indicates that some potentially significant environmental effects could occur with all alternatives. The SJNF and TRFO plan to require certain air pollution mitigation measures, which would be effective in reducing impacts to air quality (Final SJNF and Proposed TRFO LRMP, Vol. I, p. 372).

Volume I, Section 3.12 of the Final LRMP and FEIS discusses mitigation measures, including those that will be LRMP standards and those that will be LRMP guidelines. The SJNF and TRFO considered the findings of New Mexico Environment Department's Air Quality Modeling Study for the Four Corners Area, which assessed the effectiveness of certain emissions controls for oil and gas operations. In addition, and as a result of public comment and concerns of the USFS and the NPS, the air quality mitigation options were revised for the Final LRMP and FEIS and some new options were added (Final SJNF and Proposed TRFO LRMP, Vol. I, p. 373).

NEPA analysis is typically conducted for oil and gas leasing when permits are issued. The Final LRMP and FEIS is the first NEPA analysis where lands that could be made available for lease are identified and stipulated. In a subsequent analysis stage, when there is a site-specific proposal for development, additional air quality impact analysis would occur. This typically occurs when an application for a permit to drill is submitted. Based on the analysis results, additional mitigation or other equally effective options could be considered to reduce air pollution. (Final SJNF and Proposed TRFO LRMP, Vol. I, p. 372)

The reasons why near-field and ozone modeling were not completed for the Final LRMP and FEIS, as well as the strategy for future ozone analysis and monitoring, are listed on page 348 of the FEIS. The USFS and the BLM consulted with the Air Quality Impact Analysis Stakeholders Group (including EPA Region 8 and NPS) regarding the ozone analysis conducted for the LRMP. It was agreed among the group that ozone modeling would occur when more site-specific NEPA can be conducted at the project development NEPA analysis stage when development can be adequately defined in terms of geographic areas, drilling methods, well and road locations, well density, well drilling rates, and production rates. (Final SJNF and Proposed

TRFO LRMP, Vol. I, p. 348)

Human health concerns related to air quality was not identified as an issue during scoping and was therefore not carried forward into the draft analysis. However, the air quality analysis was updated in the Final Environmental Impact Statement to reflect the known potential effects, including consideration of effects on health. Air quality would remain within the standards established by the state. (Final SJNF and Proposed TRFO LRMP, Vol. III, p. S-27)

## APA

**Issue Number:** PP-CO-TresRio-14-24-20  
**Organization:** Dolores Water Conservancy District  
**Protestor:** Maynes, Bradford, Shipps & Sheftel, LLP

**Issue Excerpt Text:** Approving the proposed Bypass Flow Standard and Minimum Pool Guideline would be in violation of the APA because (1) the FEIS entirely failed to consider important aspects of the Bypass Flow Standard and the Minimum Pool Guideline and (2) the record is devoid of information to support the Bypass Flow Standard and Minimum Pool Guideline.

**Issue Number:** PP-CO-TresRio-14-25-17  
**Organization:** Southwestern Water Conservation District  
**Protestor:** Maynes, Bradford, Shipps & Sheftel, LLP

**Issue Excerpt Text:** Therefore, approving the proposed Bypass Flow Standard and Minimum Pool Guideline would be in violation of the APA because (1) the FEIS entirely failed to consider important aspects of the Bypass Flow Standard and the Minimum Pool Guideline and (2) the record is devoid of information to support the Bypass Flow Standard and Minimum Pool Guideline.

## Summary:

The BLM violated the APA because the PRMP/FEIS' administrative record does not provide any information to support the Bypass Flow Standard and Minimum Pool Guideline.

## Response:

BLM intends to modify the approved RMP language to reinforce the preferred collaborative approach, as articulated in the DEIS and will address this modification in the ROD. Specifically, the BLM will change the aquatic habitat requirements found in section 2.5.18 (a)-(d) and minimum reservoir levels found in section 2.5.22-23 from "standards" to "guidelines." This modification is consistent with Volume 2, Part 3, Design Criteria of the Draft LRMP on page 252 which states, "cooperative and collaborative efforts are the preferred approach to sustaining aquatic ecosystems and ensuring that viable populations of aquatic species are maintained or improved." The BLM believes this approach will retain the critical outcomes found within the standards, including the re-establishment of native fish populations in appropriate locations, while allowing significant flexibility in arriving at those outcomes. The BLM believes that a strong commitment to improved stream conditions, along with flexibility and innovation, will be

critically important for meeting the requirements of federal law during the process of renewing federal authorizations for existing water facilities. The BLM also will describe in the ROD that it is including a reference to the preferred collaborative approach with the Colorado Water Conservation Board as part of the change in the description of minimum flow from “standards” to “guidelines.”

## FLPMA

**Issue Number:** PP-CO-TresRio-14-12-4

**Organization:** Montezuma County  
County Board of County Commissioners

**Protestor:** Steve Chappell

**Issue Excerpt Text:** The LRMP states; "Protected areas are key components of the sustainable ecosystems strategy. Protected areas are lands especially dedicated to the protection and maintenance of biological diversity (International Union for Conservation of Nature 1994). They are large, mostly unaltered, undeveloped, and roadless lands that contain terrestrial, riparian area and wetland, and aquatic ecosystems at multiple scales. They serve as conservation reserves and refuges to protect the native biodiversity within them (Norton 1999; Noss 1991). They also provide wildlife movement corridors and landscape linkage areas that connect habitats and landscapes, which in turn facilitate the interaction of species. (emphasis added) Management objectives for protected areas on TRFO and SJNF lands include: Preserving habitats, ecosystems, and species in as undisturbed a state as possible; Conserving the area's biodiversity through protection, not through active management; Ensuring the integrity of its ecosystems; and Maintaining established ecological processes." The sustainable ecosystems strategy is not described in FLPMA. FLPMA states; "(7) goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law;"(emphasis added) While FLPMA does

give direction that "where appropriate" public lands may be preserved in their natural condition, it does not direct the establishing and preserving protected areas as a means to maintain ecosystem diversity as a primary objective. Rather it is a secondary objective. The LRMP elevates the establishment of protected areas beyond the direction of FLPMA.

**Issue Number:** PP-CO-TresRio-14-14-50

**Organization:** Western Environmental  
Law Center

**Protestor:** Kyle Tisdell

**Issue Excerpt Text:** Therefore, drilling activities may only go forward as long as unnecessary and undue environmental degradation does not occur. This is a substantive requirement, and one that the agencies must define and apply in the context of oil and gas development authorized in the planning area. In other words, the TRFO/SJNF must define and apply the substantive requirements in the context of the specific resource values at stake -an application that can be found nowhere in the FEIS, but which the agencies are required to make. Further, these UUD requirements are distinct from requirements under NEPA. "A finding that there will not be significant impact [under NEPA] does not mean either that the project has been reviewed for unnecessary and undue degradation or that unnecessary or undue degradation will not occur." Ctr. for Biological Diversify, 623 FJd at 645

(quoting Kendall's Concerned Area Residents, 129 I.B.L.A. 130, 140 (1994)). In the instant case, agencies failure to specifically account for UUD in the LRMP and FEIS -which is distinct from its compliance under NEPA -is also actionable on procedural grounds and must occur before the final LRMP is approved.

**Issue Number:** PP-CO-TresRio-14-25-28

**Organization:** Southwestern Water Conservation District

**Protestor:** Maynes, Bradford, Shipps & Sheftel, LLP

**Issue Excerpt Text:** relying on a framework that favors only some of the required multiple uses cannot provide for the delicate balancing required by the FLPMA, especially where water resources are concerned. Attempting to define the resource goals as conditions that existed before European settlement cannot accommodate "climate change, land-use change, and changing landscape conditions" such that a balance among the uses can be achieved. Therefore, the HRV concept is fundamentally incompatible with the BLM's statutory authority in the FLPMA.

### **Summary:**

The PRMP/FEIS violates FLPMA because it:

- Elevates the establishment of protected areas beyond the direction of the law.
- Fails to identify that unnecessary and undue environmental degradation does not occur in the context of oil and gas development authorized in the planning area.
- Relies on the Historical Range of Variation(HRV) concept, which is inconsistent with FLPMA.

### **Response:**

The BLM has complied with FLPMA's multiple-use and sustained-yield mandate in the Tres Rios PRMP, and has not elevated the establishment of protected areas beyond the direction of the law. Section 202 of FLPMA states that "in the development and revision of land use plans, the Secretary shall— use and observe the principles of multiple use and sustained yield set forth in this and other applicable laws." The BLM believes that the management goals, objectives, standards, and guidelines outlined in the PRMP for all resource and resource uses addresses this multiple use and sustained yield objective of FLPMA. "Multiple use" is defined in Section 103(c) of FLPMA to include "the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people, ... the use of some land for less than all of the resources, ... and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output." 43 U.S.C. § 1702(c). The BLM's multiple use mandate does not require that all uses be allowed on all areas of the public lands. Such a management scenario would preclude any kind of balance. The purpose of the mandate is to require the BLM to evaluate and choose an appropriate balance of resource uses, which involves tradeoffs between competing uses. The alternatives in the PRMP/FEIS reflect this provision.

The unnecessary and undue degradation mandate under Section 302(b) of FLPMA cited by the protester is applied to all actions on public lands at the site specific level. Regardless of the proposed land use plan level actions articulated in the PRMP/FEIS, all subsequent site specific actions on public lands will only be approved after an environmental review, which includes consideration of the unnecessary and undue degradation of a proposal.

The protesters also point out that the use of the Historical Range of Variability (HRV) concept is inconsistent with FLPMA. As mentioned in Section 3.2 of the FEIS, the HRV only “describes the range of ecological conditions (including vegetation structure and natural disturbance regimes) that occurred during the reference period. HRV information allows a comparison of whether current ecological conditions within the planning area are similar, or dissimilar, to the HRV conditions that occurred within the planning area in the past.” The BLM did not rely solely on the HRV; the HRV was only one of several tools utilized by the BLM and Forest Service to help establish an ecological framework for the conservation and management of ecosystems, habitats, and species. This framework is fully addressed in Section 2.1 of the PRMP/FEIS.

### ACECs

**Issue Number:** PP-CO-TresRio-14-15-27

**Organization:** The Wilderness Society

**Protestor:** Nada Culver

**Issue Excerpt Text:** The Draft San Juan Land Management Plan evaluated 22 areas as potential ACECs and found 11 areas met the relevance and importance criteria. Of those 11 areas, only four were evaluated for designation in the range of alternatives for the draft plan (Draft LRMP, Appendix U, p. 2). This clearly does not comply with FLPMA's requirement to prioritize designation of ACECs or Manual 1613's requirement to fully consider for designation all areas that meet the relevance and importance criteria. Furthermore, many of the areas which were found not to meet the relevance and importance criteria were disqualified due to the arbitrary and unsupported criterion that "the low proportion of public land does not warrant further consideration as a potential ACEC" (See, e.g., Draft LRMP, Appendix U, pp. 22, 24, 27,28). The Proposed RMP includes updated relevance and importance findings for the 22 potential ACECs, finding that 19 of them meet the relevance and importance

criteria (PRMP, Appendix U, Table U.1).

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

**Issue Number:** PP-CO-TresRio-14-15-29

**Organization:** The Wilderness Society

**Protestor:** Nada Culver

**Issue Excerpt Text:** until the ACECs can be evaluated and designated in a plan amendment, "The relevance and importance values identified within these 15 areas are

largely protected through specific direction in the LRMP.... In addition, protection of identified relevance and importance values will be considered during project-level analysis of any management actions or project proposals" (PRMP, Appendix U, p. 4). Protective management stipulations are not a substitute for ACEC designation, and considering relevant and important values at the project level does not give the same level of protection that ACEC designation would nor would it necessarily entail adequate environmental analysis and public review.

**Issue Number:** PP-CO-TresRio-14-15-3

**Organization:** The Wilderness Society

**Protestor:** Nada Culver

**Issue Excerpt Text:** Further, as discussed in detail below, the BLM has acknowledged that it identified 19 areas in the field office that met criteria of having sufficient "relevance and importance" to be designated as areas of critical environmental concern (ACEC) but only evaluated 4 of them for potential designation and management in the Draft LRMP, through some form of "oversight." While the BLM proposes to defer correction of this process to a later date, it is absolutely inconsistent with developing a meaningful management plan to ignore over 100,000 acres that deserve protection when making decisions about oil and gas leasing, off-highway vehicle use, and other potentially damaging activities.

### **Summary:**

The Agencies used arbitrary and unsupported criteria for evaluation of relevance and importance for some of the ACEC nominations, failed to consider some potential ACECs within plan alternatives, and failed to protect the relevant and important values for 15 potential ACECs that were not considered for designation in the PRMP. This is in violation of FLPMA and the BLM Manual 1613.

### **Response:**

Appendix U of the Final LRMP and FEIS explains that of the 22 sites evaluated for the LRMP, 19 sites were found to meet both the relevance and importance criteria, as shown in Table U.1. Due to procedural oversight, only the four ACECs found to meet the relevance and importance criteria were brought forward in the Draft LRMP alternatives and listed in the *Federal Register* Notice, dated December 14, 2007. The remaining 15 areas that meet both relevance and importance criteria were not included in the alternatives to be analyzed as potential ACECs. (Final SJNF and Proposed TRFO LRMP, p. U-4).

Federal regulations require that "The State Director, upon approval of a draft resource management plan, plan revision, or plan amendment involving ACECs, shall publish a notice in the *Federal Register* listing each ACEC proposed and specifying the resource use limitations, if any, which would occur if it were formally designated. The notice shall provide a 60-day period for public comment on the proposed ACEC designation." (43 C.F.R. 1610.7-2 (b)) The remaining 15 areas were not considered in the Final LRMP and FEIS, as doing so, would have violated this Federal regulation, since these 15 potential ACECs were not included in the Federal Register notice of availability for the Draft LRMP and DEIS due to the procedural oversight.

The BLM will move forward with designating the Anasazi Culture area (formally Mud Springs in the DEIS) and the Gypsum Valley area (formally Big Gypsum and Little Gypsum Valleys in the DEIS) as ACECs. The Grassy Hills and Silvey's Pocket areas were analyzed for designation under Alternative C, but will not be carried forward as designated ACECs.

The BLM grants in part the protests regarding the 15 areas that met both the relevance and importance criteria but were not analyzed as proposed ACECs in the range of alternatives due to procedural error. These areas include Cement Creek, Cinnamon Pass, Cayote Wash, Disappointment Valley, Dry Creek Basin, Dolores River Canyon, Horse Range Mesa, Lake Como, McIntyre Canyon, Mesa Verde Entrance, Muleshoe Bench, Northdale, Slick Rock, Snaggletooth, and the Spring Creek areas. BLM Manual 1613 – Areas of Critical Environmental Concern (part .21 (E)) states that “if an area is identified for consideration as an ACEC and a planning effort is not underway or imminent, the District Manager or Area Manager must make a preliminary evaluation on a timely basis to determine if the relevance and importance criteria are met. If so, the District Manager must initiate either a plan amendment or further evaluate the potential ACEC or provide temporary management until an evaluation is completed through resource management planning. Temporary management includes those reasonable measures necessary to protect human life and safety, or significant resource values from degradation until the area is fully evaluated through the resource management planning process.” As stated in the LRMP/FEIS, the BLM will conduct a subsequent resource management plan amendment in order to address these 15 ACECs. In the meantime, the ROD/Approved LRMP will outline temporary (interim) management that will protect the 15 areas from significant resource value degradation until amendment is completed.

### *Air Resources*

**Issue Number:** PP-CO-TresRio-14-26-2

**Organization:** Kinder Morgan CO2 Company, L.P.

**Protestor:** Valerian Brock

**Issue Excerpt Text:** The BLM's appropriate role in addressing air quality in land use plans is to "provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans." 43 U.S.C. § 1712(c)(8). The LRMP's air quality provisions do not simply "provide for compliance" with applicable CDPHE air emission regulation. Instead, they supersede and displace the state regulatory authority because they adopt detailed air emissions standards. For example, Standards 2.12.11-2. J2.20 adopt detailed emissions requirements for engines, leak detection, and monitoring. As explained in Issue 2, below,

the LRMP does so by 2 Kinder Morgan's comments on this issue appear on page 10 of Exhibit A and pages 2-6 of Exhibit B selectively borrowing language from portions of state and federal emissions control regulations. This is problematic not just because it usurps CDPHE and EPA authority, but because the standards do not operate as designed if they are removed from the regulatory whole, State and federal air quality regulations are a web of hundreds of pages of cross-referenced definitions, standards and exceptions. These regulations are backed by thousands of pages of interpretive guidance, judicial decisions, and other information, Removing only a single strand of this regulatory web and placing it into an LRMP as a standard causes the standard to function in unintended ways, if it functions at all. For example, Standard



2,12,15 requires valves to be maintained in a condition that allows "<10,000 parts per million [ppm] leakage." 10,000 parts per million of what? Standard 2.12,17 applies to "valves and pipes in hydrocarbon service" but does not define what "hydrocarbon service" means. These are technical issues addressed in state and federal air quality regulations that were overlooked in the LRMP.

**Issue Number:** PP-CO-TresRio-14-26-4

**Organization:** Kinder Morgan CO2 Company, L.P.

**Protestor:** Valerian Brock

**Issue Excerpt Text:** The BLM responded to Kinder Morgan's comment with a legal error. The BLM stated that it did not have the authority to tailor LRMP air quality management direction to the type of gas stream being processed, or to treat CO2 operations differently than traditional natural gas operations. See LRMP Appx. S-64. The BLM stated that:

Regulations (43 CFR 3000.0(a)) explicitly define gas as "any fluid, either combustible or noncombustible, which is produced in a natural state from the earth and which maintains a gaseous or rarified state at ordinary temperatures and pressure conditions." The managing agencies are thus mandated to regulate the extraction of CO2 gas identical to that of

natural gas resources. LRMP Appx. S-64 (emphasis added). 43 C.F.R. § 3000.0-5(a) does indeed define "gas" in the manner described. But this regulation is part of the BLM's minerals management regulations, not the BLM's land use planning regulations. And nothing in this definition suggests the BLM is prohibited from adopting LRMP management direction that is tailored to the needs of the gas stream being produced, transported, and processed. Even BLM's mineral management regulations distinguish between different types of gas streams. For example, the BLM regulates helium development in a different way than it regulates traditional natural gas development, although helium is "produced in a natural state from the earth" and thus falls under the regulatory definition of a "gas" quoted in the LRMP. See 43 C.F.R. Part 3195. The BLM is incorrect that it is "mandated to regulate the extraction of CO2 gas identical to that of other natural gas resources." The BLM Land Use Planning Handbook states that a protest should be upheld where plan components were "based upon invalid or incomplete information." See BLM Handbook H-1601-1 Appx. E, Page 7. The LRMP's air quality management direction is based on the invalid legal conclusion that the BLM lacks the authority to tailor LRMP management direction to the type of gas being produced, transported, and processed. The protest should be upheld on this basis.

### **Summary:**

The LRMP displaces state and EPA regulatory authority by adopting detailed air emissions standards. The LRMP's air quality management direction is based on the invalid legal conclusion that the BLM lacks the authority to tailor LRMP management direction to the type of gas being produced, transported, and processed. The protest should be upheld on this basis.

### **Response:**

The Four Corners Air Quality Task Force Policy Oversight Group and the Air Quality Impact Analysis Stakeholders Group, including the Colorado Department of Public Health and

Environment as well as EPA Region 8, assisted with many elements of the air quality effects analysis for the Tres Rios and San Juan National Forest LRMP/FEIS, including the identification of mitigation measures and other air pollution reduction strategies (Final SJNF and Proposed TRFO LRMP/EIS, Vol. I, p. 345-6).

The FEIS explains that “air quality impact analysis indicates that some potentially significant environmental effects could occur with all alternatives” (Final SJNF and Proposed TRFO LRMP/EIS, Vol. I, p. 372). The SJNF and TRFO were asked by the State of Colorado, the EPA, and the state and federal regulators of air pollution, to adopt the measures listed in standard and guidelines for air quality. Furthermore, FLPMA requires that “public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmosphere, water resource and archaeological values.” 43 U.S.C. § 1701(a)(8). Standards and guidelines for air quality protection on the SJNF and TRFO serve to meet this requirement and are within the authority of the USFS and BLM (Final SJNF and Proposed TRFO LRMP, Vol. III, pp. S-20-21).

The FEIS describes the improvements in air quality that can be gained from the implementation of mitigation measures, including those defined as LRMP standards and guidelines (Final SJNF and Proposed TRFO LRMP, Vol. I, pp. 372-8). Section 2.12 of the LRMP (Volume II) also identifies the desired conditions and objectives related to air quality that guided the development of the standards and guidelines for air quality.

The planning regulations state that “[t]he resource management plan generally establishes in a written document: ... (2) Allowable resource uses (either singly or in combination) and related levels of production or use to be maintained; (3) Resource condition goals and objectives to be attained; (4) Program constraints and general management practices needed to achieve the above items....” (43 CFR 1601.0-5) Therefore, RMPs cannot be developed without attention to constraints relevant to the mineral management programs. Helium extraction is governed by different laws than traditional natural gas.

## *Climate Change*

**Issue Number:** PP-CO-TresRio-14-14-10

**Organization:** Western Environmental Law Center

**Protestor:** Kyle Tisdell

**Issue Excerpt Text:** Specifically regarding the planning area, the agencies offer that “the observed temperature record in southwest Colorado shows average annual warming of about 2 degrees Fahrenheit over the past 30 years. Additional warming is predicted for the future.” Appendix G-1.

Despite the strength of these findings, the agencies back away from taking serious action to address impacts, providing, for example: “The assessment of so-called ‘greenhouse gas’ emissions and climate change is in its formative phase; therefore, it is not yet possible to know with confidence the net impact to climate,” and that “[t]he lack of scientific tools designed to predict climate change on regional or local scales limits the ability to quantify potential future impacts.” *Id.* at 364. This type of dismissive

approach fails to satisfy the guidance outlined in Department of Interior Secretarial Order 3226, discussed below, or the requirements of NEPA. "Reasonable forecasting and speculation is ... implicit in NEPA, and we must reject any attempt by agencies to shirk their responsibilities under NEPA by labelling any and all discussion of future environmental effects as 'crystal ball inquiry.'" *Save Our Ecosystems v. Clark*, 747 F.2d 1240, 1246 n.9 (9th Cir. 1984 (quoting *Scientists' Inst. for Pub. Info., Inc. v. Atomic Energy Comm.*, 481 F.2d 1079, 1092 (D.C. Cir. 1973)).

**Issue Number:** PP-CO-TresRio-14-14-12

**Organization:** Western Environmental Law Center

**Protestor:** Kyle Tisdell

**Issue Excerpt Text:** Oil and gas development activities on the SJNF and TRFO are predicted to produce greenhouse gas emissions. The amount of CO<sub>2</sub> and CH<sub>4</sub> emissions associated with well development on new federal leases for the RFD scenario were estimated for well drilling, well completion, and gas production." *id.* at 364. The agencies reference relatively modest figures for GHG emissions, estimating emissions totaling "88,281 tons of CO<sub>2</sub> per year and 399 tons of CH<sub>4</sub>, per year (9,975 tons of CO<sub>2</sub> equivalents as CH<sub>4</sub>)." *id.* However, these emissions account for only a relatively narrow set of production operations, only including emissions from drill rig engines, hydraulic fracturing engines, compressor engines, and well pad separators. *id.* at 365 (table 3.12.21). These figures fail to account for other oil and gas operation emissions, fugitive oil and gas emissions, as detailed below, and, notably, fails to address the GHG emissions associated with burning these fossil fuel resources.

**Issue Number:** PP-CO-TresRio-14-14-14

**Organization:** Western Environmental Law Center

**Protestor:** Kyle Tisdell

**Issue Excerpt Text:** NEPA imposes "action forcing procedures ... requir[ing] that agencies take a hard look at environmental consequences." *Methow Valley*, 490 U.S. at 350 (citations omitted) (emphasis added). These "environmental consequences" may be direct, indirect, or cumulative. 40 C.F.R. §§ 1502.16, 1508.7, 1508.8. BLM is required to take a hard look at those impacts as they relate to the agency action, and the LRMP and FEIS fail to provide this hard look analysis. "Energy-related activities contribute 70% of global GHG emissions; oil and gas together represent 60% of those energy-related emissions through their extraction, processing and subsequent combustion.,<sup>42</sup> Even if science cannot isolate each additional oil or gas well's contribution to these overall emissions, this does not obviate BLM's responsibility to consider oil and gas development in the planning area from the cumulative impacts of the oil and gas sector. In other words, the BLM and USFS cannot ignore the larger relationship that oil and gas has with international investors Group on Climate Change, Global Climate Disclosure Framework for Oil and Gas Companies (attached as Exhibit 38). CONSERVATION GROUPS' PROTEST PAGE 27 of 73 SAN JUAN PUBLIC LANDS LRMP AND FEIS gas management decisions have to the broader climate crisis that we face. Here, the LRMP failed to include the full scope of GHG emissions into its analysis, and, thus, failed to provide the hard look detailed analysis of impacts that NEPA demands. See *Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1379 (9th Cir. 1998) ("To

'consider' cumulative effects, some quantified or detailed information is required. Without such information, neither the courts nor the public, in reviewing the [agency's] decisions, can be assured that the [agency] provided the hard look that it is required to provide.").

**Issue Number:** PP-CO-TresRio-14-14-16

**Organization:** Western Environmental Law Center

**Protestor:** Kyle Tisdell

**Issue Excerpt Text:** Agencies failure to account for the full lifecycle of oil and gas production represents a fundamental deficiency in the LRMP and FEIS. As discussed more fully below, BLM not only has the authority, but an obligation to address GHG emissions and methane waste. Furthermore, the agencies must consider not only the cumulative impact of the GHG emissions authorized by the revised LRMP, it must also consider those emissions combined with other activity in the area. As noted above, "the impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct." *Ctr. for Biological Diversity*, 538 F.3d 1172, 1217. The agency's failure to assess cumulative impacts, particularly, as here, the cumulative impacts of climate change, "impermissibly subjects the decision making process contemplated by NEPA to 'the tyranny of small decisions.'" *Kern*, 284 F.3d at 1078 (citation omitted).

**Issue Number:** PP-CO-TresRio-14-14-18

**Organization:** Western Environmental Law Center

**Protestor:** Kyle Tisdell

**Issue Excerpt Text:** Despite the agencies pioneering action, however, they offer no estimate of the current or projected methane emission rates from drilling and production activities; making it impossible to provide a detailed hard look analysis of the agencies mitigation strategy. Such emission rates can differ quite dramatically from one oil and gas field to the next, and, depending on the type of mitigation and emission controls employed, emissions can range anywhere from 1% to 12%.

**Issue Number:** PP-CO-TresRio-14-14-20

**Organization:** Western Environmental Law Center

**Protestor:** Kyle Tisdell

**Issue Excerpt Text:** However, recent peer-reviewed science demonstrates that gas-aerosol interactions amplify methane's impact such that methane is actually 105 times as potent over a twenty year time period. This information suggests that the near-term impacts of methane emissions have been significantly underestimated. See 40 C.F.R. § 1508.27(a) (requiring consideration of short and long term effects). Further, by extension, BLM has also significantly underestimated the near-term benefits of keeping methane emissions out of the atmosphere. 40 C.F.R. §§ 1502.16(e), (f); *id.* at 1508.27. These estimates are important given the noted importance of near term action to ameliorate climate change near term action that scientists say should focus, *inter alia*, on preventing the emission of short-lived but potent GHGs like methane while, at the same time, stemming the ongoing increase in the concentration of carbon dioxide.<sup>66</sup> These uncertainties which, here, the agencies do not address necessitate analysis in the LRMP and FEIS. 40 C.F.R §§ 1508.27(a), (b)(4)-(5)

### **Summary:**

The agencies' failure to take serious action to address climate change impacts satisfies neither the NEPA requirements nor the guidance in DOI Secretarial Order 3226. The BLM failed to take a "hard look" at the direct, indirect, and cumulative impacts on greenhouse gas emissions. The agencies fail to address the uncertainties associated with methane's potency as a greenhouse gas.

### **Response:**

US Department of Interior (DOI) Secretarial Order 3226, which was reinstated by DOI Secretarial Order 3289 (February 22, 2010) calls on agency and bureaus to consider and analyze potential climate change impacts when undertaking long-range planning exercises (DOI Secretarial Order 3226, January 19, 2001).

Because we do not understand every complex interaction between a warming climate and the ecosystems of SJNF and TRFO lands, the vision and strategies for climate change in this LRMP focus primarily on maintaining the health, diversity, and productivity of SJNF and TRFO lands and focusing on ecosystems that have already demonstrated sensitivity or are considered most at risk. In the short term, both the USFS and the BLM plan to continue improving their understanding of ecosystem changes. The agencies also intend to pursue long-term monitoring projects. There are many flora and fauna populations that are vulnerable because of their narrow range of habitat, small populations, or limited ability to adapt or tolerate change. Specific strategies have been developed for these vulnerable species, as well as for important ecosystems that are already undergoing rapid change (Final SJNF and Proposed TRFO LRMP, Vol. II, p. 11).

The SJNF's and TRFO's response to ecosystem change as a result of climate change includes a variety of adaptation and mitigation strategies. The primary strategy will be to manage for healthy, resilient ecosystems. It is also recognized that ecosystems have always been dynamic. Early detection of ecosystem changes that result from climate change will require detailed, regularly scheduled monitoring. Desired conditions and objectives for climate change are interrelated with managing for healthy ecosystems. LRMP components related to climate change are dispersed throughout the resource sections of the LRMP and are all identified in Volume III, Appendix G (Final SJNF and Proposed TRFO LRMP, Vol. II, pp. 11-12).

A greenhouse gas (GHG) assessment was completed for the Supplement to the Draft EIS and is presented in Section 3.12 of the Final EIS. In addition, many of the mitigation options in the Supplement to the Draft EIS were developed to reduce GHG emissions. As a result of public comment, several additional mitigation options to reduce GHG emissions were added and are disclosed in the FEIS. Assessing the GHG emissions throughout the basin is outside of the scope of this analysis because at the time the analysis was conducted, GHG were not regulated and were not consistently a part of the emission inventory data supplied by the states within the modeling domain (Final SJNF and Proposed TRFO LRMP, Vol. III, p. S-25). GHG emissions

for the planning area were compared to estimated GHG emissions for La Plata County for 2005 and 2020 (Final SJNF and Proposed TRFO LRMP, Vol. I, p. 364).

### Special Status Species

**Issue Number:** PP-CO-TresRio-14-24-24  
**Organization:** Dolores Water Conservancy District  
**Protestor:** Maynes, Bradford, Shipp & Sheftel, LLP

**Issue Excerpt Text:** The Plan identifies "downstream big river fishes" (i.e., razorback sucker, humpback chub, bonytail) as "Special Status Aquatic Species" even though they are not present in the planning area. The apparent justification for doing so is that these species "are affected by management actions on the SJNF and TRFO that result in water depletions to the lower basins. . . . Conservation of these species is already addressed "in the form of recovery plans and conservation strategies" listed in Table 2.5.1. There is no statutory authority to manage the Planning Area for species of concern that reside far outside the Planning Area.

**Issue Number:** PP-CO-TresRio-14-25-26  
**Organization:** Dolores Water Conservation District  
**Protestor:**

**Issue Excerpt Text:** The Plan identifies "downstream big river fishes" (i.e., razorback sucker, humpback chub, bonytail) as "Special Status Aquatic Species" even though they are not present in the planning area. The apparent justification for doing so is that these species "are affected by management actions on the SJNF and TRFO that result in water depletions to the lower basins." Conservation of these species is already addressed "in the form of recovery plans and conservation strategies" listed in Table 2.5.1. But identifying a species as having "special status" can trigger specific LRMP standards and guidelines. There is no statutory authority to manage the Planning Area for species of concern that reside far outside the Planning Area.

### Summary:

The Plan identifies "downstream big river fishes" (i.e., razorback sucker, humpback chub, bonytail) as "Special Status Aquatic Species" even though they are not present in the planning area. There is no statutory authority to manage the Planning Area for species of concern that reside far outside the Planning Area.

### Response:

The BLM must analyze the potential indirect and cumulative impacts of management actions under NEPA, which may include impacts to resources outside of its jurisdiction. In regards to the BLM's obligation under NEPA to analyze impacts to resources outside of the planning area, CEQ regulations (40 CFR §§ 1508.8(b), 1508.25) address BLM's responsibility applicable to indirect and cumulative impacts considerations, analysis, and documentation. The geographic

area to consider, in terms of potential impacts, during the planning process is not constrained to simply the planning area or project area. (BLM Land Use Planning Handbook H-1601-1 at 14). As articulated in BLM's Land Use Planning Handbook, the "analysis area" that BLM must consider relative to the planning for BLM-administered lands "can be any size, can vary according to resource, and can be located anywhere within, around, partially outside, or completely outside the planning or decision areas." BLM, H-1601-1 at 14). Consideration of such indirect and cumulative impacts should include measures to mitigate through management of activities within the BLM-managed planning area.

Here, the BLM determined that activities located within the planning area have the potential to affect special status aquatic species downstream. According to Section 2.5 – Aquatic Ecosystems and Fisheries on page 56 of the LRMP/FEIS, "the ability to support healthy, self-sustaining populations of fish and other aquatic biota has been reduced in a number of the streams and rivers located within the planning area. This is most evident in areas impacted by consumptive uses of water. The cumulative impacts of hundreds of existing water developments have resulted in adverse and ongoing impacts to the composition, structure, and function of aquatic ecosystems. Where fish population monitoring has been conducted downstream of major water developments, significant decreases in population densities have been observed." An example of a proposed measure in the LRMP that addresses downstream impacts includes Objective 2.5.14, which commits the BLM to "annually evaluate seven streams (five streams on NFS lands and two on BLM lands) for adequacy of instream flows sufficient to maintain population viability and otherwise achieve LRMP direction." This objective is met by carry forward standards and guidelines outlines in Section 2.5 of the LRMP/FEIS.

Four species (bonytail chub, humpback chub, Colorado pikeminnow, and razorback sucker) are found downstream of the planning area in the main streams and some tributary streams of the San Juan and Dolores Rivers. The lineage greenback cutthroat trout is found in Stoner Creek, Little Taylor Creek, Rio Lado Creek, and Roaring Forks Creek on NFS lands in the upper portions of the Dolores River system within the planning area. Razorback suckers, humpback chubs, and bonytails have dynamic life history traits that are impacted by upstream habitat modifications, including sediment routing, increased water temperatures and flow regimes among others. Therefore, the BLM identified standards and guidelines to mitigate such impacts within the planning area, also found in Section 2.5 of the LRMP/FEIS.

Additionally, these species fall under the purview of Section 7 of the ESA (16 U.S.C. 1531 et seq.), which outlines the procedures for federal interagency cooperation designed to conserve federally listed species and designated critical habitats. Section 7(a)(2) of the ESA states that any action authorized, funded, or carried out by a federal agency would not likely jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Within the planning area, management activities may impact these five threatened or endangered fish species and/or their potential habitat. Activities that result in water depletions, influence stream flow, or degrade water quality may impact these species. Species management for the four downstream fish (bonytail chub, humpback chub, Colorado pikeminnow, and razorback sucker) is guided by two USFWS recovery implementation programs. Contrary to the protesters' claims, the BLM consideration of impacts to downstream

special status aquatic species and the identification of management prescriptions to mitigate impacts to such species is permissible and appropriate as discussed in the FEIS/PRMP.

### Leasable Minerals

**Issue Number:** PP-CO-TresRio-14-13-2

**Organization:** Chama Peak Land Alliance

**Protestor:** Lesli Allison

**Issue Excerpt Text:** The FEIS/LRMP excludes the Chromo area from analysis, despite ongoing leasing attempts by the BLM in this area. On page 62 of the FEIS, three basins with moderate to high mineral potential are identified. Chromo is located at the intersection of two of these basins: the Northern San Juan Basin (NSJB) and the San Juan Sag (SJS). The plan presumes that the NSJB is "fully leased and developed" and that any further development would involve infill wells on existing and expanded pads. It therefore does not offer any planning guidance in Chromo. It also does not offer any meaningful planning analysis of the San Juan Sag, stating: "Because of assumed minimal leasing interest in the San Juan Sag and minimal development projections, the FEIS does not include a detailed analysis of the San Juan Sag." Nevertheless, the FEIS does indicate on its maps that this particular location is considered to be high for mineral potential and continued nominations of lease parcels in the area confirm steady interest. In analyzing the PLAA basin (the only one of the three basins to merit analysis), the FEIS states on page 275 that:

"Due to the large vertical separation between groundwater supply wells and the target formations of the PLAA (>4,000 feet), as well as the presence of confining layers, it is unlikely that hydraulic fracturing would result in the contamination of useable groundwater resources by means of contaminant movement through the intervening formations. For the same reason,

it is also unlikely that hydraulic fracturing would result in the vertical migration of saline groundwater from the lower Paleozoic carbonate aquifer systems upwards into the upper Mesozoic sandstone aquifer systems." Unfortunately, no such analysis is provided for either the NSJB or the SJS basins, in both of which the target formations in this particular area appear to lie at shallow depths and in dangerously close proximity to useable and important ground and surface water resources. Without such analysis, continued efforts to develop oil and gas resources in the Chromo area are in violation of the BLM's legal obligations to protect water resources.

**Issue Number:** PP-CO-TresRio-14-14-22

**Organization:** Western Environmental Law Center

**Protestor:** Kyle Tisdell

**Issue Excerpt Text:** The LRMP entirely fails to address these concerns. While there are specific split-estate lands which have no surface occupancy (NSO), controlled surface use (CSU) or timing limitations (TL) stipulations applied to them, there is no general recognition of private land conservation efforts. This is in direct conflict with often legally binding limitations on other uses of these lands. For the TRFO/SJNF to totally ignore these lands is irresponsible. The BLM and USFS have recognized similar lands where the surface is owned by the State of Colorado with NSO stipulations, which we applaud. See Appendix H at H-43 (Stipulation 3.13.1). However, a similar NSO stipulation,



including the consultation with the land-trust, is fully justified, here. The failure of the BLM and USFS to do so minimizes the importance of private land management in meeting not only private owners' interests, but also, the multiple use (wildlife, habitat, and water quality) objectives of the agencies.

**Issue Number:** PP-CO-TresRio-14-14-24

**Organization:** Western Environmental Law Center

**Protestor:** Kyle Tisdell

**Issue Excerpt Text:** The RFD and the SDEIS fail to analyze shale oil or gas development outside of the Gothic Shale Play Area. Yet, Map 48 clearly shows much of the planning area outside of the high elevations of the Dolores, Animas, and Piedra River basins to have moderate potential. Included in these "moderate" areas are lands that have been nominated for leasing including existing expressions of interest on 360,000 acres of SJNF lands or have already been leased, demonstrating both the areas potential for oil and gas, as well as the pressure from industry proponents to develop the area. See Leasing ROD at 6. The failure of the agencies to provide a hard look analysis of these shale developments is a fatal flaw, and cannot be sustained.

**Issue Number:** PP-CO-TresRio-14-14-27

**Organization:** Western Environmental Law Center

**Protestor:** Kyle Tisdell

**Issue Excerpt Text:** During the past year the TRFO/SJNF have proposed leasing the oil and gas minerals under split-estate lands

in western La Plata County. These lands include some that are in private conservation easements, and many include wildlife habitat, archeological sites, and other values. While the BLM has protected a very small amount with NSO stipulations, slightly more with CSU stipulations, and some with TL stipulations, the majority of the split-estate lands in this area have only standard lease stipulations. The standard lease stipulations are inadequate, have not been justified by the agencies analysis, and fail to protect the agricultural, wildlife and other values of the area. The BLM and USFS must provide additional hard look analysis of the values on these lands, and justify the use of standard stipulations as being adequate to protect those values.

**Issue Number:** PP-CO-TresRio-14-14-30

**Organization:** Western Environmental Law Center

**Protestor:** Kyle Tisdell

**Issue Excerpt Text:** In the area around Buckles Lake to Mesa Cortado, the TRFO/SJNF has failed to provide even a minimal level of protection, such as requiring controlled surface use ("CSU") or timing limitations ("TL") stipulations. The agencies decision to allow near unmitigated oil and gas development in the area from Mesa Cortado up to Blanco Basin could result in significant impacts to elk and other wildlife populations. Moreover, it creates a strong potential for the area to be developed as a swath of highly divided and industrialized National Forest land from the Chalk Mountains of the South San Juan Wilderness to the primarily wild lands around Blanco River. Given the myriad surface resource values deserving protection, the entire area from Mesa Cortado up to the Blanco Basin Road should have, at a minimum, prevailing CSU and TL stipulations, if not NSO stipulations. Yet,

such protections are largely non-existent in the agencies management of the area. Perhaps even more concerning, however, is the TRFO/SJNF's failure to provide a sufficient hard look analysis for these resource values.

**Issue Number:** PP-CO-TresRio-14-14-31

**Organization:** Western Environmental Law Center

**Protestor:** Kyle Tisdell

**Issue Excerpt Text:** The SJNF areas around Mule Mountain, Devil Mountain, the areas in the upper Piedra Basin, as well as the area around FR 634 from Fourmile Creek to the Piedra Basin are important wildlife, recreational, and scenic areas. That the SJNF leaves much of this land available to leasing, and without the protection of NSO stipulations, creates the real potential for it to become an industrialized landscape. While TL and CSU stipulations cover much of this area, the agencies have failed to provide these protections in certain critical areas. For example, only Standard Stipulations apply to the Elk Creek/Horse Creek area, Trail Ridge, Middle Fork to East Fork, and O'Neal Hill areas, which are all left without even CSU stipulations. The failure to include these areas is both irresponsible and unjustified. All are prime wildlife areas, and, in turn, are prime recreation and wildlife viewing areas, which also allow spectacular and uninhibited views of the Weminuche Wilderness peaks. The TRFO/SJNF failed to sufficiently consider and take a hard look at these values, which represents a fundamental failure of the agencies decision making.

**Issue Number:** PP-CO-TresRio-14-14-41

**Organization:** Western Environmental Law Center

**Protestor:** Kyle Tisdell

**Issue Excerpt Text:** The stipulations in 1.6.2 apply only to multi-stage hydraulic fracturing, and, thus, fail to protect water because they do not apply to all operations using any well stimulation. Id. at H-16. All types of hydraulic fracturing present risks to water, as do other well stimulation techniques, such as acidizing, that can pose risks similar to those of hydraulic fracturing, and the agencies provides no justification for exempting such procedures from this or other stipulations.

**Issue Number:** PP-CO-TresRio-14-15-47

**Organization:** The Wilderness Society

**Protestor:** Nada Culver

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

**Issue Number:** PP-CO-TresRio-14-15-49

**Organization:** The Wilderness Society, et al.

**Protestor:** Nada Culver

**Issue Excerpt Text:** Only by omitting those lands [that would not be available for lease] was the BLM able to bring the amount of unleased federal land in the PLAA to below the 50 percent level. See *id.* (asserting that 44 percent of the PLAA is not leased). Neither Chapter V nor IM 2010-117 permits the BLM to consider that factor, however. They instead pose a simple and straightforward question to the BLM: is "a substantial portion" of federal lands within the PLAA unleased for oil and gas development? The answer to that question is "yes." Therefore, the only possible conclusion is that the PLAA satisfies the first criterion.

**Issue Number:** PP-CO-TresRio-14-15-51  
**Organization:** The Wilderness Society  
**Protestor:** Nada Culver

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

**Issue Number:** PP-CO-TresRio-14-15-53  
**Organization:** The Wilderness Society  
**Protestor:** Nada Culver

**Issue Excerpt Text:** The Oil and Gas Industry Has a Specific Interest in Leasing within the PLAA. Chapter V also requires a "specific interest" in leasing from industry. This requirement consists of two elements: (1) "discussions, expressions of interest, or existing leases in the area"; and (2) "a moderate or high potential for oil or gas confirmed by the discovery of oil or gas in the general area." Chapter V at B.3. Both elements are satisfied for the PLAA. First, industry has repeatedly and extensively "discussed" its interest in obtaining additional leases in the PLAA. In fact, the BLM prepared the SEIS at the behest of industry and for the sole purpose of evaluating industry's desire to intensively develop the Gothic Shale Play. According to Appendix R, the PLAA is an area where oil and gas industry has expressed leasing and development interest.... [T]he area contains a significant amount of existing leases (317) and has had successful development over the past 90+ years. Additionally, the emergence of the Gothic Shale Gas Play (GSGP) within the PLAA (which was identified by industry in 2008 and necessitated the Supplement to the Draft EIS) is of interest to industry, especially given the advancement of horizontal drilling and hydraulic fracturing technology that has made development of shale gas possible and more economical. Final EIS at App. R-3. The existing leases within the PLAA further underscore industry's interest. See *id.* at App. R-2. Thus, the PLAA satisfies the first element. Second, the BLM has determined that over 70 percent of the federal mineral estate within the PLAA has "high" occurrence potential

for oil and gas and most of the remainder has "moderate" occurrence potential. Id. at App. R-4. This potential is not speculative; it has been confirmed by "successful development over the past 90+ years." Id. at App. R-3. In spite of this evidence, the BLM once again failed to expressly conclude that this criterion was satisfied.

**Issue Number:** PP-CO-TresRio-14-15-64

**Organization:** The Wilderness Society

**Protestor:** Nada Culver

**Issue Excerpt Text:** Further, BLM's guidance requires development of criteria for exception, waiver and modification that are tailored to stipulations. Per Instruction Memorandum 2008-032, Attachment 1: lease stipulations and related exceptions, waivers, and modifications are to be developed during the land use planning process through an interdisciplinary team approach with management oversight and public review to ensure consistency, reasonableness, and appropriateness. Developing exceptions, waivers, and modifications is a creative process requiring the authors to think of situations that could occur well into the future and anticipate various scenarios that may render the stipulation unnecessary or ineffective, or may require increased flexibility in the application of the stipulation. Nearly all lease stipulations should have exception, waiver, and modification criteria documented in the land use plan and on the lease. The land use plan should also identify the documentation requirements and, if required, public notification or review associated with granting exceptions, waivers, and modifications to a lease stipulation. (emphases added). Unfortunately, BLM did not comply with this direction so all stipulations are subject to open-ended criteria for waiver, exception

and modification, without any requirements for public review. This is obviously arbitrary and capricious when evaluated against the standards of applicable regulations and guidance, not to mention the fact that the Forest Service provided specific criteria in the very same appendix.

**Issue Number:** PP-CO-TresRio-14-15-66

**Organization:** The Wilderness Society

**Protestor:** Nada Culver

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

**Issue Number:** PP-CO-TresRio-14-15-68

**Organization:** The Wilderness Society

**Protestor:** Nada Culver

**Issue Excerpt Text:** Appendix H does not contain any stipulations to protect the resources of Mesa Verde National Park -and does not even mention the existence of the national park, leaving its resources at risk.

**Issue Number:** PP-CO-TresRio-14-16-2

**Organization:** La Plata County

**Protestor:** Joseph Kerby

**Issue Excerpt Text:** Criterion #1: A substantial portion of the area to be analyzed in the MLP is not currently leased.

Understanding: Our understanding of this Criterion is to analyze the amount of federal mineral interest that is currently leased vs. the amount of federal mineral interest that is not currently leased in the PLAA. The purpose of this analysis is to determine if there is a substantial amount of unleased federal mineral that would be more appropriately leased through the phased, planned approach outlined in the Master Leasing Plan process. Appendix R states that within the Paradox Leasing Analysis Area (PLAA), 48% of the federal mineral estate is already leased, 44% is not leased, and 9% is not available for lease. Section 3.19.3 Environmental Consequences (Volume 1, page 500) states: First, the Paradox basin (which includes conventional development and the GSGP development area), focuses on the PLAA because it is the area with the highest leasing interest within the planning area, has high development potential as reflected in the RFD projections for the area (1,355 federal wells), and because much of the area is currently unleased (72%) and subject to lease after approval of the LRMP. The TRFO does not provide a determination on whether Criterion #1 is met. Based on this information, staff concludes that the determination of whether Criterion #1 has been met is inconclusive at this time.

**Issue Number:** PP-CO-TresRio-14-16-3

**Organization:** La Plata County

**Protestor:** Joseph Kerby

**Issue Excerpt Text:** Criterion #2: There is a majority federal mineral interest.

Understanding: Our understanding of this Criterion is to analyze the amount of federal mineral interest vs. non-federal mineral interest in the PLAA. The purpose of this analysis is to determine if the BLM has jurisdiction, authority, and controlling interest over a majority of the mineral

interest in the PLAA, and would therefore be able to plan and phase leasing and development in the area. Appendix R only compares the amount of BLM surface/BLM mineral to Non-BLM surface/BLM mineral (split estate). There is no comparison of the amount of federal mineral estate vs. non-federal mineral estate. In reviewing the Little Snake Field Office, Kremmling Field Office, and Grand Junction Field Office Master Leasing Plan Analyses, it is apparent that all three Field Offices compared the amount of federal mineral estate vs. non-federal mineral estate, which affirms our understanding of Criterion #2. Additionally, these field offices all provided a map detailing the mineral ownership within the MLP analysis area. This has not been provided by the TRFO. The TRFO does not provide a determination on whether Criterion #2 is met. Based on this information, staff concludes that the analysis of Criterion #2 was conducted incorrectly. The determination of whether Criterion #2 has been met is inconclusive at this time.

**Issue Number:** PP-CO-TresRio-14-16-4

**Organization:** La Plata County

**Protestor:** Joseph Kerby

**Issue Excerpt Text:** Criterion #3: The oil and gas industry has expressed a specific interest in leasing, and there is a moderate or high potential for oil and gas confirmed by the discovery of oil and gas in the general area. ....The TRFO does not provide a determination on whether Criterion #3 is met.

**Issue Number:** PP-CO-TresRio-14-20-2

**Organization:** Western Energy Alliance

**Protestor:** Kathleen Sgamma

**Issue Excerpt Text:** In the previous planning document, No Surface Occupancy (NSO) stipulations applied to 40,741 acres, Controlled Surface Use (CSU) to 428,707 acres, and Timing Limitations (TL) to 115,305 acres. 480,953 acres were withdrawn from leasing, and 63,851 acres were administratively unavailable for leasing. Standard lease terms applied to 1,512,515 acres. In the PLRMP, NSO stipulations apply to 1,159,104 acres (an increase of 2,745%), CSU stipulations to 1,498,603 acres (an increase of 246%), and TL stipulations to 1,010,225 acres (an increase of 776%). 509,954 acres are withdrawn from leasing (an increase of 6%), and 136,152 acres are administratively unavailable (an increase of 113%). Standard lease terms apply to only 248,689 acres (a decrease of 84%). These figures represent an exponential jump in the acreage carrying restrictive stipulations, particularly NSO stipulations. Such an increase from one planning document to the immediately subsequent one does not exhibit compliance with Section 363 of the Energy Policy Act. Furthermore, the agencies casually dismiss these stipulations in their response to our comments, stating that impacts from TL and CSU stipulations "should be minor" and that when NSO stipulations are applied, "offsite drilling locations would be available and exceptions could be granted if the impacts of surface occupancy are concluded to be acceptable." No evidence to back these statements is offered whatsoever, and this dismissal of our concerns is not justified. Western Energy Alliance therefore protests

**Summary:**

Proposed management for oil and gas leasing outlined in the LRMP/FEIS is flawed because the BLM:

- Continues to develop oil and gas resources in the Chromo area - a violation of the BLM's legal obligations to protect water resources.
- Failed to analyze shale oil or gas development outside of the Gothic Shale Play Area.

the broad application of excessively restrictive stipulations in contradiction to the clear direction of federal statute.

**Issue Number:** PP-CO-TresRio-14-20-3  
**Organization:** Western Energy Alliance  
**Protestor:** Kathleen Sgamma

**Issue Excerpt Text:**

**Failure to Adequately Accommodate Valid Existing Lease Rights:** In previous comments, Western Energy Alliance identified the need to protect valid existing lease rights in the planning document. In response, the agencies indicated that activities related to current leases are in fact governed by the existing lease terms, subject to discretionary mitigation measures at the project level when validated by science and the direction of the exiting land use plan. However, as indicated above, the application of restrictive stipulations is so widespread in the proposed LRMP/FEIS that for many current lease holdings it will be extremely difficult if not impossible to develop the resource. Access to and from a lease as well as the means to transport the resource seems not to have been taken into account. These excessive stipulations therefore serve to isolate numerous leases and eliminate lessees' ability to economically develop their leases. Western Energy Alliance protests the application of excessively restrictive stipulations on the basis that it does not accommodate valid existing lease rights.

- Failed to consider information critical to the analysis regarding leasing as directed in IM 2010-117 and did not provide a determination on whether MLP Criteria 1-3 are met in the Paradox Leasing Area (PLAA).
- Failed to undertake a hard look analysis for protecting resource values in the areas around Buckles Lake to Mesa Cortado, Mule Mountain, Devil Mountain, the areas in the upper Piedra Basin, Dolores District, as well as the area around FR 634 from Fourmile Creek to the Piedra Basin, and areas surrounding Mesa Verde National Park.
- Provided no justification for exempting hydraulic fracturing from stipulations.
- Failed to comply with Section 363 of the Energy Policy Act because this proposed LRMP provides an exponential jump in the acreage carrying restrictive stipulations compared to the existing land use plans.
- Proposes widespread restrictive stipulations that for many current lease holdings it will be extremely difficult, if not, impossible to develop the resource and so do not accommodate valid existing lease rights.
- Did not consider public review when developing waivers, exceptions and modifications.

**Response:**

The Tres Rios FEIS/PRMP points out that the oil and gas analyses target the most likely development areas since other areas have low probability of development within the life of the plan. The specifically FEIS notes that

“Within the planning area there are three basins with moderate to high potential for mineral occurrence: the Paradox Basin (referred to as the PLAA for this analysis), the Northern San Juan Basin (NSJB), and the San Juan Sag. This analysis focuses on the PLAA because it is the area with the highest leasing interest within the planning area, as well as having high development potential as reflected in the RFD projections for the area, and because much of the area is currently unleased and subject to lease after approval of the LRMP. On the basis of these factors, the impacts from oil and gas focus on the PLAA.

The NSJB, primarily on SJNF lands, also has high potential for development. However, unlike the Paradox Basin, the NSJB is fully leased and developed. Within the NSJB, the remaining question is how to condition further development of existing leases as additional wells are proposed. Anticipated development would involve constructing infill wells on existing, expanded well pads. The analysis of NSJB development and the relation to the revised LRMP decisions is also analyzed in this chapter.

A third area with potential is the San Juan Sag. Given the limited past limited development history in the San Juan Sag, only one to two exploratory wells, annually, over the life of the LRMP are projected for the San Juan Sag. Because of the assumed minimal leasing interest in the San Juan Sag, and minimal development projections, the FEIS does not include a detailed analysis San Juan Sag” (FEIS Volume I, page 62).

With respect to future development within the PLAA, Appendix R of the FEIS/PRMP presents discussion and analyses of IM 2010-117 Master Leasing Plan criteria as applied to the Paradox Leasing Analysis Area. The analysis for Criterion 1 indicates that “the majority of the areas that

are currently unleased have either been previously leased or do not contain geologic conditions conducive to oil and gas trapping and production” (FEIS/PRMP Volume III, page R-2). In addressing Criterion 2 the analysis determined that the unleased portions of the study area “are not in one large identifiable block but are dispersed throughout the area” (FEIS/PRMP Volume III, page R-3) such that applying a MLP is not feasible. Analysis for Criteria 3 indicates that while there is industry interest in additional development within the PLAA, the BLM manages only 37% of the high and moderate potential lands. Finally, in considering resource protections under Criterion 4, the analysis shows that “of the 269,226 acres that would be made available for lease (and that are not currently leased), 47% of the area includes NSO stipulations to protect resources. An additional 43% have CSU and TL stipulations, with the remaining 11% having standard lease terms” (FEIS/PRMP Volume III, page R-3) such that additional protections that could be applied under the proposed MLP are not needed.

As stated in the FEIS, “Projections for the oil and gas developments in the broader region have been addressed in the 2006 RFD and were confirmed as still valid in the 2010 RFD Addendum. Hovenweep, Chimney Rock, and Mancos Shale/Niobrara hydrocarbon potential is still in the wildcat exploratory stage of activity in southwest Colorado. These resource plays are currently highly speculative and there is simply not enough information with which to formulate a defensible RFD scenario. If unconventional shale gas/oil plays other than the GSGP become established in the future, then the LRMP can be updated to address the new potential and its impacts” (FEIS/PRMP Appendix S, page S-62). The FEIS Volume I at Section 3.19 presents analyses of impacts of potential fluid mineral development to a range of applicable resources across all alternatives (see also Volume 2, Table 2.6.31).

Although the PRMP leaves open large areas for potential resource development, protection of multiple resources from impacts associated with the multiple use of other resource values is integral to the BLM planning process. In planning for its multiple use mandate the Tres Rios FEIS/PRMP points out that “[t]he FEIS has expanded analyses of the effects of oil and gas development on physical, biological, and social resources. Mitigation is in the form of lease stipulations (Appendix H), management standards and guidelines, and application of BMPs. The evaluation of environmental consequences is based on the assumption that these mitigation measures would be applied” (FEIS/PRMP, page S-55, see also FEIS Volume I Section 3.19). Furthermore, “[t]he lease stipulations and standards and guidelines for other resources (e.g., riparian areas, wildlife, air quality) all apply to energy mineral development [per lease availability at any location] but are not repeated in the minerals sections” (FEIS/PRMP, page S-55). Oil and gas leasing stipulations are described at length in FIES Appendix H. Additional oil and gas lease stipulations and rationales related to a wide range of sensitive resources are provided in Appendix J (pages J-109-J-120). Lease stipulations are discussed as necessary to protect/preserve resources while still allowing for the development to potentially occur. Along the Mesa Verde escarpment, for example, leasing could potentially occur, but would only be available under NSO to protect sensitive resources present within the area.

As clearly stated in the FEIS “surface use and timing restrictions stipulations resulting from the LRMP cannot be retroactively applied to existing leases” although “COAs implementing LRMP standards and guidelines could be applied...to mitigate potential impacts...providing the leaseholder’s right to develop the lease remains intact” (FEIS Volume I, page 498, see also page 61). Thus the development of valid existing lease rights will not be hampered by new conditions



developed in the revised Tres Rios RMP, which is consistent with Section 363 of the Energy Policy Act of 2005.

Regarding the issue of waivers, exceptions, and modifications to lease stipulations, the FEIS/PRMP clearly states that “Waivers, exceptions, and modifications have been identified for all leasing stipulations (see Appendix H). Although it is difficult, if not impossible, to describe each and every scenario under which a waiver, exception, or modification might be allowed, regulations at 43 CFR 3101.1 allow for the lessee to request waivers, exceptions, or modifications with sufficient justification. For leases on TRFO lands, waivers, exceptions, and modifications would be considered generally and granted or denied based on agency discretion; for SJNF lands, waivers, exceptions and modifications would be granted based on the criteria identified with each stipulation. In some cases a plan amendment may be required in order to grant the request” (FEIS/PRMP, page S-54).

### *Social and Economic Interests*

**Issue Number:** PP-CO-TresRio-14-06-11

**Organization:** COHVCO

**Protestor:** Scott Jones

**Issue Excerpt Text:** Every spending category analyzed by Stynes and White places the spending of downhill skiing and snowmobiling at similar spending levels. Stynes and White found the average spending of cross country skiers significantly lower than downhill skiing and snowmobiling. In contrast the SJ/TR calculations value downhill and cross country skiing exactly the same and assert that snowmobile user spends almost 40% less than the expenditures of downhill and cross country skiers. These conclusions are arbitrary, capricious and fail to rely on best available science.

**Issue Number:** PP-CO-TresRio-14-06-12

**Organization:** COHVCO

**Protestor:** Scott Jones

**Issue Excerpt Text:** Stynes and White NVUM research indicates cross country skiers spend approximately 1/3 the amount spent by a snowmobiler/downhill skiers for a local day trip in every category. In applying these spending profiles the Stynes

and White work specifically compared the spending profiles of cross-country skiers and snowmobilers. This directly conflicts with SJ/TR conclusions that average cross-country skiers spend almost twice that of an average snowmobiler. Clearly the SJ/TR conclusions on these spending groups are arbitrary, capricious and fail to rely on best available science.

**Issue Number:** PP-CO-TresRio-14-06-13

**Organization:** Western Energy Alliance

**Protestor:** Kathleen Sgamma

**Issue Excerpt Text:** Failure to Adequately Analyze the Socio-Economic Impacts Related to Oil and Natural Gas Development: In our comments, Western Energy Alliance indicated that the Draft Land Management Plan severely underestimated the positive socio-economic impacts of oil and natural gas development. Specifically, the scope of the socio-economic analysis failed to account for the importance of tax and royalty revenues to the state and federal governments, and the role that oil and natural gas development on public lands plays in American energy security. In response, the agencies pointed out that a revised socioeconomic analysis

was incorporated into the PLRMP/FEIS. While updated, the socio-economic remains limited in scope to just the local community. Information on revenues to the state and federal governments, and the contribution toward national energy security is still absent. For this reason, Western Energy Alliance protests the lack of sufficiently comprehensive socio-economic analysis relating to oil and natural gas development within the planning area in the PLRMP/FEIS.

**Issue Number:** PP-CO-TresRio-14-06-14  
**Organization:** COHVCO  
**Protestor:** Scott Jones

**Issue Excerpt Text:** OHV users are found to spend similar or higher average amounts in every category of NVUM research when compared to hiker/bikers users. By comparison SJ/TR analysis concludes that the hiking/biking community on average spends 25% more than the average OHV user. This conclusion of the SJ/TR analysis cannot be support by the authority asserted, best available science and violates numerous standards of NEPA.

**Issue Number:** PP-CO-TresRio-14-06-15  
**Organization:** COHVCO  
**Protestor:** Scott Jones

**Issue Excerpt Text:** Analysis of developed camping conclusions reached in the SJ/TR analysis also directly conflicts with NVUM analysis. SJ/TR analysis concludes the average spending for a developed camping user is \$ 46.11 while NVUM analysis estimates this higher than average user group spending ranges from \$217 for local usage to \$300 per day. SJ/TR conclusions assert an average spending amount less than 20% of the lowest spending group found in

the NVUM analysis. There is simply no way to reconcile this average spend as the SJ/TR conclusions are completely outside the range of findings of the NVUM analysis.

**Issue Number:** PP-CO-TresRio-14-06-17  
**Organization:** COHVCO  
**Protestor:** Scott Jones

**Issue Excerpt Text:** Many of the SJTR conclusions regarding user spending categories remain 2-3 times below the NVUM low average spending amounts that have been identified and recognized as best available science on the issue. The Organizations assert these comparisons are direct evidence of arbitrary and capricious decision making and forces a conclusion that the plan must be remanded as the scope of error is far beyond the approximately 32% that the Hughes River court found sufficient to reverse the NEPA analysis.

**Issue Number:** PP-CO-TresRio-14-06-19  
**Organization:** COHVCO  
**Protestor:** Scott Jones

**Issue Excerpt Text:** costs and impacts simply were not analyzed in the determination that all wolverine habitat areas would be immediately found unsuitable for motorized routes.

**Issue Number:** PP-CO-TresRio-14-06-2  
**Organization:** COHVCO  
**Protestor:** Scott Jones

**Issue Excerpt Text:**  
The Organizations believe these mandates simply have not been complied with in the SJ/TR process and will result in long term

increases in user conflicts and degradation of assets and economic contributions. The Organizations vigorously assert that the hard look of NEPA analysis is not satisfied by citing to NVUM analysis as the source of the comparative recreational spending, when the conclusions regarding average spending reached in the SJ/TR conclusions often fall outside the range of spending identified for a particular user group in the NVUM analysis alleged to be relied on. This is anything but the hard look mandated by NEPA.

**Issue Number:** PP-CO-TresRio-14-06-7

**Organization:** COHVCO

**Protestor:** Scott Jones

**Issue Excerpt Text:** It should be noted that the SJ/TR DEIS fails to provide any average spending amounts for the particular user categories used in the NVUM process or the comparative utilization of the SJ/TR area by each user category. The SJ/TR only provides a single average for each group and does not break out day usage or trip length. The failure to provide this information, which should have been developed for the application of the NVUM process, has directly prejudiced the Organizations ability to meaningfully discuss errors in conclusions. The Organizations believe the failure to provide this information is a violation of NEPA as a high quality detailed statement of the analysis of the issue under the hard look standard has not been provided.

**Issue Number:** PP-CO-TresRio-14-06-9

**Organization:** COHVCO

**Protestor:** Scott Jones

**Issue Excerpt Text:** The FEIS notes the research of Drs. Stynes and White that has been produced in association with the

NVUM process has been relied on to break down the average spend of each user group into the four categories previously identified.<sup>19</sup> As a result of these assertions, analysis and conclusions reached in the FEIS and the work of Dr. Stynes and White done in conjunction with the NVUM process should be roughly consistent. This is simply incorrect and a facial violation of NEPA as there is no analysis of these differences. In insure that the scope of these conflicts is completely reviewed, a complete copy of Drs. Stynes and White research has been included with this appeal for your reference as Exhibit "1".

**Issue Number:** PP-CO-TresRio-14-20-4

**Organization:** Western Energy Alliance

**Protestor:** Kathleen Sgamma

**Issue Excerpt Text:** Failure to Adequately Analyze the Socio-Economic Impacts Related to Oil and Natural Gas Development: In our comments, Western Energy Alliance indicated that the Draft Land Management Plan severely underestimated the positive socio-economic impacts of oil and natural gas development. Specifically, the scope of the socio-economic analysis failed to account for the importance of tax and royalty revenues to the state and federal governments, and the role that oil and natural gas development on public lands plays in American energy security. In response, the agencies pointed out that a revised socio-economic analysis was incorporated into the PLRMP/FEIS. While updated, the socio-economic remains limited in scope to just the local community. Information on revenues to the state and federal governments, and the contribution toward national energy security is still absent. For this reason, Western Energy Alliance protests the lack of sufficiently

comprehensive socio-economic analysis relating to oil and natural gas development

within the planning area in the PLRMP/FEIS.

**Summary:**

The spending level estimates used for various recreational user groups are arbitrary, capricious, and fail to demonstrate a "hard look" and reliance on best available science as required by NEPA. The FEIS also fails to analyze and discuss differences in research on average spending from user groups, as required by NEPA.

Costs and impacts were not analyzed in the determination that all wolverine habitat areas would be immediately found unsuitable for motorized routes. The FEIS failed to adequately analyze the socio-economic impacts related to oil and gas development.

**Response:**

As explained on page 167 of the Final LRMP and FEIS, on February 4, 2013, the USFWS published a proposed rule to list the DPS of the North American wolverine occurring in the 48 contiguous United States as a threatened species under the ESA (USFWS 2013b). At this time, land management actions such as motorized and non-motorized recreation (winter and summer), timber management activities and infrastructure development are not considered to be threats to the existence of the wolverine and therefore would not be regulated under the proposed listing. Following listing of the species, separate site and project-specific consultation with the USFWS would be undertaken as necessary for LRMP implementation during NEPA analysis processes if projects were proposed that had the potential to affect wolverine or wolverine habitat (Final SJNF and Proposed TRFO LRMP, Vol. I, p. 167).

Section 3.29 of the Final LRMP and FEIS addressed economics, and analyzes the economic impacts of the different alternatives, including the impacts on federal and state revenues among the alternatives. The financial efficiency of the alternatives was examined in order to identify revenue and cost implications from the perspective of the government agency. The economic efficiency of the alternatives was also examined, which includes a broader definition of benefits by including values for public land uses that are not captured in the marketplace. As shown in Table 3.29.22 of the Final LRMP and FEIS, the present value of financial net revenues (public lands revenues minus public lands costs) may vary from a low of \$486 million under Alternative B, to a high of \$513 million under Alternative A. High natural gas extraction levels would cause Alternative A to exhibit the highest financial net revenues. Only the variable cost of managing the SJNF and TRFO oil and gas programs is included in this estimate, while all government revenues from oil and gas are counted. The economic net benefits (society benefits minus all costs) may range from a low of \$7.38 billion under Alternative B, to a high of \$7.43 billion under Alternative A. The net economic benefits are larger than net financial revenues primarily because the market value of natural gas greatly exceeds federal royalties and more than offsets the cost of natural gas drilling and extraction. (Final SJNF and Proposed TRFO LRMP, Vol. I, pp. 607-8)

The recreational data presented in table 3.29.8 of the FEIS are not expenditures, but rather are measures of consumer surplus, representing the net benefit of the recreation user, and is the total willingness to pay for the experience minus the actual expenditures. As explained on page 596 of the FEIS, "Values for recreation represent a market-clearing estimate of willingness-to-pay evaluations. These economic values were developed by Bowker et al. (2009). Values are net of fees paid by recreations (e.g., lift tickets, camp fees)" (Final SJNF and Proposed TRFO LRMP, Vol. I, p. 596). The values presented in Table 3.29.8 for recreational activities should therefore not be compared to the expenditure data presented in White and Stynes.

### Travel Management

**Issue Number:** PP-CO-TresRio-14-15-71

**Organization:** The Wilderness Society

**Protestor:** Nada Culver

**Issue Excerpt Text:** The PRMP does not include a map of the preliminary route network that will serve as the interim travel network, and in fact states that BLM has not completed an inventory of the existing routes that motorized travel will be limited to. Table 3.13.4 shows that BLM has inventoried 319 miles of routes in the Tres Rios Field Office. The PRMP also estimates that there are more than 3,000 miles of unauthorized and unmanaged roads and trails within the planning area (including NF5 lands), and states that "Maintaining an accurate inventory of these routes is difficult because they are continually being created and expanded through motorized use off of the designated motorized road and trail systems" (PRMP, p. 382). While maintaining an accurate inventory of routes on the public lands may be a difficult task, BLM is required to complete this inventory during the land use planning process and utilize that inventory to inform travel

planning decisions, even if those decisions are being deferred from the RMP. BLM cannot limit travel to existing routes unless those routes are known and mapped. The Tres Rios Field Office therefore must complete a route inventory and include a map of the inventory in the final RMP, as required by the Land Use Planning Handbook.

**Issue Number:** PP-CO-TresRio-14-15-71

**Organization:** The Wilderness Society

**Protestor:** Nada Culver

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

### Summary:

The BLM violates its Land Use Planning policy (H-1601-1) by:

- Failing to complete implementation-level route designations as part of the Land Use Planning process.
- Failing to provide an accurate and up-to-date inventory of existing routes.

## **Response:**

While the Land Use Planning Handbook recommends that route network be delineated in the RMP process, it also highlights possible reasons for not completing the route network. The PRMP complies with its Land Use Planning Handbook with respect to travel planning by:

- Including interim management designations in the absence of travel planning, which include “limiting motorized use to existing roads and trails as proposed in this LRMP, trails depicted on Figure 2.13.1, which represents the current known network of transportation linear features within the TRFO” (PRMP at page 97). Outlining a time-frame for completing the route designation process, in order to “transition management from a “limited to existing roads and trails” system to a “limited to designated roads and trails” in accordance with the Land Use Planning Handbook (H-1601-1) and the Travel and Transportation Management Handbook (H8342-1) (PRMP at page 97).
- Identifying a public process and general time frame for completing travel planning and route designations.
- Identifying preliminary designation criteria and a prioritization scheme.
- Identifying preliminary data needs.
- Including a map of the preliminary route network (PRMP Figure 2.13.1) for the Tres Rios Field Office. This map is hard to read, however, upon issuing the Record of Decision, the Tres Rios Field Office will make available clearer maps of the preliminary route network.

The PRMP does *not* comply with the Land Use planning policy by clearly identifying a schedule for completion of the travel management planning. The BLM will include a preliminary travel management planning and route designation schedule in the Approved RMP. It is recommended that an initial prioritization scheme or schedule be included

## **VRM**

**Issue Number:** PP-CO-TresRio-14-26-6

**Organization:** Kinder Morgan CO2 Company, L.P.

**Protestor:** Valerian Brock

**Issue Excerpt Text:** The LRMP designates undeveloped leased lands as VRM Classes I and II. See Ex. C. This does not accommodate past leasing decisions. There may be situations where Kinder Morgan's development and operations will not conflict with a VRM Class II designation. But

history and experience has demonstrated that, in many circumstances, reconciling oil and gas surface development with the restrictive VRM Class II requirements may prove impossible. Even the most responsible oil and gas development may inevitably be inconsistent with a VRM Class II designation, and certainly with a Class I designation.

## **Summary:**

The BLM did not take into account valid and existing rights, specifically oil and gas leases, when proposing to allocate portions of the planning area as VRM Classes I and II.

## **Response:**

The BLM considered valid existing rights when developing alternatives for Visual Resource Management Classes. As stated in the response to comments on the DRMP (FEIS at s-82):

*BLM VRM classes as described in Handbook 8431-1 indicate that multiple resource activities can occur within VRM Class II areas. However, it is within the authority of the BLM to assign an NSO stipulation to some VRM Class II areas that are particularly visually sensitive on the SJNF and TRFO and include scenic byways, river corridors, and scenic trails. The SJNF and TRFO LRMP has alternatives with VRM classifications that are intended to be consistent with existing lease rights.*

The BLM explained in the FEIS that all RMP decisions would be subject to valid existing rights, such as those provided by oil and gas leases. *Under Important Points Common to All Alternatives*, the BLM states,

*A number of designations and activities would not change under the alternatives, including existing current, valid mineral lease rights (lands leased prior to the date of this plan decision would be subject to valid existing rights under lease terms and may be conditioned to be in compliance with the LRMP) (LRMP, Volume 1, page 21).*

Further, when comparing Alternatives, the BLM states:

*All lands under lease as of the date of the revised LRMP are managed under their existing terms; the revised oil and gas leasing availability decisions do not change or limit the terms of the valid existing rights conveyed by the leases. Existing leases are concentrated in the San Juan Basin and Paradox Basin portions of the SJNF and TRFO. Given that these leases provide for existing rights, the revised LRMP and USFS oil and gas leasing availability decision provides for where and how oil and gas leasing development may occur on future leases only. If an existing lease expires, then such lands would be subject to the leasing decisions in the revised LRMP (LRMP, Volume 1, page 40).*

The BLM will ensure that the ROD will include reference to valid and existing rights for existing oil and gas leases.

## **Water & Watershed Resources**

**Issue Number:** PP-CO-TresRio-14-01-2

**Organization:** Colorado Water Congress

**Protestor:** Douglas Kemper

**Issue Excerpt Text:** The bypass flow standard and minimum pool guideline would unilaterally undermine

Colorado's primacy over the allocation of water and are inconsistent with the BLM's statutory authority under the Federal Land Policy and Management Act (FLPMA).

Colorado has vested the Colorado Water Conservation Board (CWCB) with the sole authority to appropriate or otherwise acquire water for instream flows in Colorado.

C.R.S. § 37-92-102(3). Colorado law invites federal agencies to participate in and rely on the State's instream flow program by directing the CWCB to request instream flow recommendations from the Department of the Interior, which the CWCB has done

on multiple occasions. Moreover, the CWCB and the BLM have entered into memoranda of understanding, most recently in 2011 (enclosed herewith), to provide a mechanism to resolve water management issues in a collaborative fashion. The proposed bypass flow standard and minimum pool guideline arbitrarily reject those commitments and undermine the efforts and success Colorado law and these agreements have achieved.

**Issue Number:** PP-CO-TresRio-14-09-4

**Organization:** Colorado Department of Natural Resources

**Protestor:** Mike King

**Issue Excerpt Text:** Sections 2.5.18(a)-(d) and 2.5.22-23 of the Final LRMP identify standards for minimum stream flow and minimum reservoir levels that run the risk of conflicting with state water law and the Memorandum of Understanding between the BLM and DNR regarding management of water resources on BLM managed land in Colorado (“BLM MOU”)

**Issue Number:** PP-CO-TresRio-14-12-6

**Organization:** Montezuma County Board of County Commissioners

**Protestor:** Steve Chappell

**Issue Excerpt Text:** The LRMP water projects to meet a "minimum flow rate standard" to support habitat in streams where native or desired non-native fish occur or should occur. This requirement is contrary to state water law and will impact water rights holders. Water rights are private property rights and this requirement amounts to a federal taking without just compensation. This requirement is inconsistent with the LRMP's own HRV

philosophy as it ignores the Historic Range of Variability on the Lower Dolores River. The LRMP imposes guidelines on private property, (under the pretense of "protection") of "sensitive" or "indicator" species, and includes "downstream big river fish" that are not even present in the planning area. The LRMP is a plan for the San Juan Public Lands Planning area. If the LRMP is planning for other resource areas it should provide analysis for those areas as well.

**Issue Number:** PP-CO-TresRio-14-12-8

**Organization:** Montezuma County Board of County Commissioners

**Protestor:** Steve Chappell

**Issue Excerpt Text:** The LRMP adopts "downstream big river fish" as "special aquatic species" that are not within the planning area. The affected species are already under protections afforded by the Endangered Species Act. There is no statutory authorization for this proposal and the LRMP does not provide the necessary analysis for other planning areas. The LRMP states; "2.6.24 Annually acquire new appropriated water rights for 30 USFS water uses (including water rights for livestock, recreation, administrative, or other uses) within the planning area. For TRFO lands, pursue appropriated water rights for new or outstanding BLM water uses." (emphasis added) Montezuma County protests the acquisition of private water rights by the BLM and especially for uses outside of the planning area. The adoption of "downstream big river fish" conflicts with LRMP 2.6.24.

**Issue Number:** PP-CO-TresRio-14-14-34



**Organization:** Western Environmental Law Center

**Protestor:** Kyle Tisdell

**Issue Excerpt Text:** The FEIS documents the risks to water supply in the area: "The withdrawal of groundwater resources from the planning area has the potential to place pressure on existing domestic, municipal, and agricultural groundwater uses at a time period when municipal demand for water is expected to grow." FEIS at 279.

Additionally, the FEIS states that "localized portions of the Fruitland Formation aquifer could be effectively dewatered" and that "[s]ome projections show that it would take several centuries to recharge this aquifer" FEIS at 269. Yet, other than saying that "some springs, seeps, streams, and wetlands. . . [could] run dry," the agencies have failed to adequately analyze the impacts that the dewatering of the Fruitland Formation could have. In addition, the FEIS/LRMP does not provide any standards, guidelines or stipulations to protect water quality or quantity from groundwater depletion.

**Issue Number:** PP-CO-TresRio-14-14-36

**Organization:** Western Environmental Law Center

**Protestor:** Kyle Tisdell

**Issue Excerpt Text:** The condition of many watersheds throughout the planning area is already "poor ... as a result of the cumulative impacts of management activities." FEIS at 62. Oil and gas activities can have multiple impacts on these watersheds which cumulatively exacerbate watershed quality. As acknowledged by the agencies, oil and gas activities remove significant amounts of water from these watersheds, which reduces water quantity and increases contaminant loads because of decreased capacity for

dilution downstream. A hard look analysis of the cumulative effects of oil and gas on relevant watersheds is required by NEPA.

**Issue Number:** PP-CO-TresRio-14-14-38

**Organization:** Western Environmental Law Center

**Protestor:** Kyle Tisdell

**Issue Excerpt Text:** The BLM has not analyzed the cumulative effects of removing water from the relevant watersheds or from the water cycle altogether. The LRMP does state that "in unique cases where water is transferred from one catchment to another, water lost (i.e., there is no return flow) from watersheds as a result of water transfer does not adversely alter or impact the aquatic ecology of the watershed or the stream." LRMP at 64. However, the TRFO/SJNF does not provide evidence for this conclusion. The agencies must analyze the effects of permanent withdrawals from the relevant watersheds due to water use in oil and gas development. BLM has also failed to complete landscape-scale watershed condition assessments, such as conducted by the U.S. Forest Service, important information about the existing conditions of these watersheds and the potential effects on the quality of water that oil and gas development and other activities may cause. Effectively, BLM's failure to conduct watershed assessments represents a failure to analyze the cumulative impacts of authorized activities on water quality. Such an analysis is required under NEPA and should be undertaken in order to understand current water quality conditions and the potential for further degradation because of BLM's plan.

## **Summary:**

- The bypass flow standard and minimum pool guideline would unilaterally undermine Colorado's primacy over the allocation of water and are inconsistent with the BLM's statutory authority under the Federal Land Policy and Management Act (FLPMA).
- Sections 2.5.18(a)-(d) and 2.5.22-23 of the Final LRMP identify standards for minimum stream flow and minimum reservoir levels that run the risk of conflicting with state water law and the Memorandum of Understanding between the BLM and DNR regarding management of water resources on BLM managed land in Colorado.
- The proposed minimum flow rate standard requirement is contrary to state water law and will impact water rights holders.
- The proposed minimum flow rate standard requirement is inconsistent with the LRMP's own HRV philosophy as it ignores the Historic Range of Variability on the Lower Dolores River.
- The LRMP adopts "downstream big river fish" as "special aquatic species" that are not within the planning area; there is no statutory authorization for this proposal and the LRMP does not provide the necessary analysis for other planning areas.
- The adoption of "downstream big river fish" conflicts with LRMP 2.6.24.
- The FEIS states that "localized portions of the Fruitland Formation aquifer could be effectively dewatered" and that "projections show that it would take several centuries to recharge this aquifer." The BLM has failed to adequately analyze the impacts that the dewatering of the Fruitland Formation could have. In addition, the FEIS/LRMP does not provide any standards, guidelines or stipulations to protect water quality or quantity from groundwater depletion.

BLM's failure to conduct watershed assessments represents a failure to analyze the cumulative impacts of authorized oil and gas development activities on water quality. Such an analysis is required under NEPA and should be undertaken in order to understand current water quality conditions and the potential for further degradation because of BLM's plan.

## **Response:**

Contrary to the protester's claims, the FLPMA specifies that special uses are subject to terms and conditions that minimize damage to fish and wildlife habitat and otherwise protect the environment. The Aquatic Resource Management Manual requires the BLM to establish aquatic resource management objectives in land use plans (Section 6720.13B) and to identify the flow needs and water quality requirements for aquatic habitats (Section 6720.15 and 6720.16) (see LRMP Section 2.5).

As pointed out in the Tres Rios PRMP, "implementation involves close coordination with CPW and the USFWS. In addition, partnerships with other state and federal agencies, as well as with interested individuals and organizations, are also an important means to achieve desired conditions and accomplish multiple objectives" (PRMP, page 57). Furthermore, FLPMA requires that BLM plans "be consistent with State and local plans to the maximum extent...consistent with Federal law..." (FLMPA Section 202 (c)(9)). The BLM will change the

aquatic habitat requirements found in section 2.5.18 (a)-(d) and minimum reservoir levels found in section 2.5.22-23 from “standards” to “guidelines” consistent with the Draft RMP and with state and local plans.

With regard to the FEIS/PRMP protective treatment of downstream fish, the FEIS/PRMP clearly points out that “agency actions that result in consumptive water uses must be in compliance with the Section 7 Agreement and Recovery Implementation Program Action Plan (USFWS 1993) and San Juan Basin Recovery Implementation Program (USFWS 2003) for four endangered fish species found in the Upper Colorado and San Juan River systems (Colorado pikeminnow [Ptychocheilus lucius], razorback sucker [Xyrauchen texanus], humpback chub [Gila cypha], and bonytail [G. elegans])” (PRMP, page 57). The NEPA requires analyses of cumulative effects, which can include impacts to resources removed from, but nonetheless, affected by management of the planning area.

The BLM evaluated potential groundwater depletions associated with the RFD based on several scientific studies including those of Questa Engineering 2000 and Norwest Corporation 2009 (see the discussion at FEIS/PRMP Appendix J, page J-126). The analyses indicate that “on BLM lands for infill CBM development and production, about 103 acre-feet of water would be needed for well drilling and completion and water depletion from intercepted groundwater potentially bound for streams and river, over the next 15 years. On NFS lands, approximately 241 acre-feet of water would be needed for well drilling and completion and water depletion from intercepted groundwater potentially bound for streams and rivers over the next 15 years, due to infill CBM development and production” (FEIS/PRMP, page J-127). The “depletion estimates are relatively low compared to flows in the [contributing] rivers. The combined base flows for the Animas, Florida, and Pine Rivers average nearly 200,000 acre-feet/year” (FEIS/PRMP, page J-126).

The FEIS analyzes impacts associated with dewatering of the Fruitland Formation on page 268. The LRMP has numerous Standards, guidelines and stipulations which address groundwater including: Standards 2.6.29-31, 2.6.35, 2.6.39; Appendix H Oil and Gas Leasing Stipulations, Section 1.6 Groundwater Resources; and Stipulations 1.1.1, 1.1.2, 1.2.1, 1.3.1, 1.3.2, 1.4.1, 1.4.2, 1.7.1, 1.9.1, 1.10.1, 1.11.1, and 1.12.1.

Cumulative impacts related to fluid minerals development and groundwater resources are discussed on pages 275-279. See Supplemental EIS (August 2011), cumulative effects to water Section 3.3. focuses on oil and gas activities on water.

### *Wild and Scenic Rivers*

**Issue Number:** PP-CO-TresRio-14-24-2

**Organization:** Dolores Water Conservancy District

**Protestor:** Maynes, Bradford, Shipp & Sheftel, LLP

**Issue Excerpt Text:**

The identification of the Lower Dolores River as suitable in Appendix D includes no discussion of the political context and the goals of tribal governments or other federal, state, or local agencies, as required by BLM's own guidance. It alludes to the Dolores River Dialogue and its work to study and conserve the Lower Dolores River

and that the "many comments" concerning this proposal "generally encouraged the agencies to find ways to support the work of

these community-based groups and to make use of the scientific information stemming from these efforts

### **Summary:**

The BLM failed to follow its own policy (BLM Manual 6400) by not adequately consulting with other government entities concerned with the inventory, evaluation, and management of potential wild and scenic river segments.

### **Response:**

Several specific issues arose earlier in the planning process, with respect to wild and scenic river suitability. The issue of adequately addressing the political context and tribal goals, however, did not arise earlier. It is therefore not a valid protest point.

In any event, the BLM consulted with other government entities regarding wild and scenic river suitability, which is described in the FEIS. In making wild and scenic river suitability determinations, the BLM Wild & Scenic River policy requires that the BLM consider (among other criteria) the existing support or opposition to designation, along with other agencies' plans, programs, or policies (BLM Manual 6400, page 3-7). Appendix D of the PRMP/FEIS, pages D-6 and D-7 discuss the collaboration efforts made throughout the wild and scenic river suitability process. Additional description of the collaboration with government entities is described in Section 4.3 of the FEIS (page 635).

## **Lands with Wilderness Characteristics**

**Issue Number:** PP-CO-TresRio-14-12-10

**Organization:** Montezuma County Board of County Commissioners

**Protestor:** Steve Chappell

**Issue Excerpt Text:** We object to the inclusion of Coyote Wash as "Lands Managed for Wilderness Characteristics" as this unit is only 1,144 acres in size. This unit is significantly smaller than the 5,000 acres the LRMP states as being a minimum size. We also object to the inclusion of the Snaggletooth area of the Dolores River as it is not unroaded. The Road from pump station to slickrock runs right through this area, therefore this region does not qualify as unroaded.

**Issue Number:** PP-CO-TresRio-14-15-11

**Organization:** The Wilderness Society

**Protestor:** Nada Culver

**Issue Excerpt Text:** Attached Exhibit 1, Photos 1 and 2 shows photographs of just two of countless examples throughout the inventory where BLM uses clearly unmaintained and even signed closed routes as boundaries for analyzed wilderness characteristics units; these routes are clearly not maintained using mechanical means and should not be used as boundaries (in several cases the routes are even marked with BLM-installed carsonite posts denoting closures or rehabilitation areas). Instead, these routes should be analyzed as potential

impacts to apparent naturalness. However, in many cases, BLM uses these routes as boundaries, while also failing to provide rationale—either written or photographic—to illustrate why BLM determined that these routes meet the criteria for boundary delineation laid out in Manual 6310; no Route Analysis forms (Manual 6310, Appendix C) or route photographs are included to backup these boundary decisions. Attached Exhibit F, Photos 49 illustrates an example where BLM identifies an existing above-ground pipeline as an impact to naturalness, but fails to redraw the unit so that the developed right-of-way (pipeline) is the new boundary for the unit.

**Issue Number:** PP-CO-TresRio-14-15-13  
**Organization:** The Wilderness Society  
**Protestor:** Nada Culver

**Issue Excerpt Text:** BLM states in its analysis of the naturalness of the McIntyre Canyon unit (CO-030-290c) that, "The unit has historic mining activity and Abandoned Mine Land activities concentrated in areas that detract from the naturalness," but not a single photograph of such activities is included in either the proposed RMP/FEIS or in the permanent documentation file provided by the BLM for that unit. Nor are the "concentrated" areas where this historic mining and Abandoned Mine Land activities are supposedly located described or shown on any map.

**Issue Number:** PP-CO-TresRio-14-15-15  
**Organization:** The Wilderness Society  
**Protestor:** Nada Culver

**Issue Excerpt Text:**

Not only does BLM frequently cite many of these minor impacts as the rationale for disqualifying entire units from further consideration, but nowhere in the entire report are the cumulative effects of minor impacts on the apparent naturalness of a unit as a whole summarized or illustrated in any way. In fact, the key term "substantially unnoticeable" is not used a single time in the LWC report and the term "substantially noticeable" is used only once. If BLM analyzed whether or not certain extant impacts are "substantially noticeable" and do in fact have negative effects on apparent naturalness, that analysis was not described or provided to the public in any way in this report. In several cases, BLM lists existing impacts when describing the presence or absence of naturalness for a unit. However, BLM almost universally fails to describe or illustrate where exactly these impacts occur, whether or not they are "substantially noticeable," and/or whether or not their cumulative effects have negative impacts on naturalness. The BLM also fails to "exclude the unnatural portions of the area" in order to determine if a remaining but smaller unit can be drawn that still meets the criteria for lands with wilderness characteristics.

**Issue Number:** PP-CO-TresRio-14-15-19  
**Organization:** The Wilderness Society  
**Protestor:** Nada Culver

**Issue Excerpt Text:** BLM often cites the shape of a unit in its assessment' of whether or not that unit contains wilderness characteristics. In fact, BLM states in its 2012 Wilderness Characteristics Assessment for the BLM Portions of the San Juan Public Lands (2012 Wilderness Assessment) that "other areas were eliminated as they would be unmanageable due to their physical shape" (2012 Wilderness Assessment, p.6). Irregular boundaries may influence the BLM's analysis of opportunities for solitude

or primitive and unconfined recreation, or in deciding whether or not to manage a qualifying area for its wilderness characteristics; however, an irregular boundary should not be used as a criterion for determining whether or not that area meets the size or apparent naturalness criteria. Nor should the shape of an area alone, prior to on-the-ground field work to confirm its boundaries, "preclude managing [it] for wilderness characteristics" (Wilderness Assessment, p.6). An irregular shape is not a recognized factor in determining whether or not an area contains wilderness characteristics, but instead should be considered when determining whether or not to manage an area identified as having wilderness characteristics for protection of those characteristics. Arbitrarily omitted numerous qualifying polygons adjacent to BLM Wilderness Study Areas from the portfolio of wilderness characteristics inventory units BLM Manual 6310 defines how the size criterion for lands with wilderness characteristics units can be met. The size criterion can be met not only by areas of contiguous unroaded BLM lands greater than 5,000 acres in size, but also by road less areas less than 5,000 acres that "are contiguous with lands which have been formally determined to have wilderness or potential wilderness values, or any federal lands managed for the protection of wilderness characteristics" including designated Wilderness and BLM Wilderness Study Areas (Manual 6310, p.8). Appendix 0 of the proposed RMP/FEIS states that in the initial GIS analysis of potential wilderness inventory units, "Per 1M No. 2011-154, areas of any size adjacent to existing WSAs or designated wilderness were also identified." However, while several WSA adjacent polygons were identified by BLM in the McKenna Peak WSA, Weber/Menefee WSAs, and Silverton Areas, the Dolores River Canyon WSA was

mainly overlooked. The only units identified and analyzed adjacent to the Dolores River Canyon WSA and moved forward into the lands with wilderness characteristics inventory were Lower Dolores River Area Sub-Units CO-030-290a and CO-030-290h. And only CO-030-290a was found to have wilderness characteristics, despite the fact that 290h also abuts the WSA and thus inherits the wilderness characteristics found therein. There are several parcels of contiguous road less BLM lands that exist adjacent to the Dolores River Canyon WSA which should have been included in BLM's analysis of lands with wilderness characteristics. These include areas around Skein Mesa, Wild Steer Mesa, Bull Canyon, Silveys Pocket, Coyote Wash, and North Island Mesa. Additionally, there appear to be several polygons adjacent to the Weminuche Contiguous, Whitehead Gulch, and West Needles WSAs which also were not analyzed. Maps and descriptions of these units, as well as full field inventories of several units are included as Exhibits D-J. 4 The term "irregular shape" is often used to in the description portion of the Inventory Area Evaluations and boundaries are either explicitly or implicitly analyzed for their manageability (i.e. the unit "has manageable boundaries"). Did not complete inventory As noted above, BLM was still conducting inventory in the days before release of the Proposed RMP and so has not provided that information to the public. Taken in conjunction with the arbitrary exclusion of potential areas (described in detail below) violates the requirements of Manual 6310 to evaluate lands with wilderness characteristics as part of land use planning processes and make the inventory available for public review and comment.

**Issue Number:** PP-CO-TresRio-14-15-7

**Organization:** The Wilderness Society

**Protector:** Nada Culver

**Issue Excerpt Text:** The TRFO's LWC inventory began with, "a preliminary geographic information system (GIS) analysis...that isolated areas with no inventoried (GIS cataloged) roads and that were greater than 5,000 acres in size" (FEIS, p. 0-1). This process, intended to identify those areas of contiguous unroaded BLM lands greater than 5,000 acres (or of any size if adjacent to Wilderness Study Areas) resulted in the identification of "20 land units totaling 109,484 acres on the TRFO, which were prioritized for further analysis" (FEIS, p. 0-1). However, this analysis was flawed in that it relied on road data that is currently outdated and/or does not differentiate between BLM roads that meet the criteria for wilderness inventory roads (WIRs) as defined in BLM Manual 6310 and those that do not meet that criteria'. The proposed RMP states, "Currently, most of the roads, primitive roads and trails located on BLM lands within the TRFO have not yet been fully inventoried or mapped" (Final LRMP, p.9S). The Tres Rios Field Office contains thousands of miles of roads and trails, many of which are relics of historic mining activity or other antiquated uses. Many of these historic routes are no longer being maintained and are largely reclaimed either naturally or through active reclamation. These reclaimed routes do not meet the definition of wilderness inventory roads as they are not "regularly maintained using mechanical means to insure relatively

regular and continuous use" and as such should not be considered as boundaries to potential LWC units nor as impacts on the wilderness characteristic of "apparent naturalness" unless their cumulative effects can be shown to have such impacts; these impacts require field visits and documentation, and should not be assumed prior to verification in the field.

**Issue Number:** PP-CO-TresRio-14-15-9

**Organization:** The Wilderness Society

**Protector:** Nada Culver

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

### **Summary:**

The BLM fails to follow its policy with respect to inventorying lands with wilderness characteristics (BLM Manual 6310) and managing lands with wilderness characteristics (BLM Manual 6320).

The BLM failed to comply with NEPA by using erroneous methods for conducting wilderness inventory (see also 4.6).

**Response:**

The 2012 *Wilderness Characteristics Assessment* was completed with the best available information using a combination of GIS, maps, and interviews with knowledgeable staff consistent with Manual 6320. As articulated in Section 201 of the FLPMA, the Secretary of Interior (through the BLM), “shall prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values ... this inventory shall be kept current so as to reflect changes and conditions and to identify new and emerging resources and other values.” BLM staff is continuing to ground-truth these areas. Inventories are used to guide the decision maker and are updated as information becomes available. If, as inventories are updated through the life of the LRMP, new areas are found to have wilderness characteristics, the decision maker will have that information available to them at that time and can choose a new course of action. The BLM is considering options for continuing to update this inventory and provide a mechanism for future decision making. As described in Appendix O BLM Lands with Wilderness Characteristics, BLM complied with IM-2011-154 when determining whether or not potential lands possessed wilderness characteristics.

In regards to BLM’s failure to comply with NEPA, please refer to the *Lands with Wilderness Characteristics Impacts* response.

**Wilderness Study Areas**

**Issue Number:** PP-CO-TresRio-14-06-39

**Organization:** COHVCO

**Protestor:** Scott Jones

**Issue Excerpt Text:** §603(a) of FLPMA further provides the additional mechanism, beyond NEPA analysis, that is to be complied with should there be a change in management: "The review required by this subsection shall be conducted in accordance with the procedure specified in section 3(d) of the Wilderness Act." The Organizations are not aware of any public meetings being held pursuant to §3 of the Wilderness Act to

support the proposed management changes on Molas pass. Given the identification of the Molas Pass area as having significant levels of motorized recreation prior to the passage of FLPMA, and no public process has been undertaken to change the area has continued as a grandfathered usage of the area. Such a usage is explicitly protected under FLPMA and specifically allowed under both BLM manuals for the management of grandfathered usages of a Wilderness Study Area.

**Summary:**

The BLM failed to comply with Section 603(a) of the FLPMA and Section 3(d) of the Wilderness Act by not engaging the public in the process of proposing management decisions in the Molas Pass area. Further, the BLM failed to follow its WSA policies with respect to grandfathered uses, specifically motorized recreation.

**Response:**



Section 603(a) of the FLPMA refers to periodic review of WSA inventories and suitability recommendations to ensure that the lands recommended for Wilderness Study continue to maintain the characteristics for which they were originally recommended. It goes on to state that this suitability review should be completed in accordance with section 3(d) of the Wilderness Act. Section 3(d) of the Wilderness Act does require public notification prior to the BLM submitting “any recommendations to the President with respect to the suitability of any area” for Wilderness protection/designation.

Neither sections of the statutes referred to in this protest require a separate public notification process for proposing management actions within an already designated WSA. As such, the public involvement process provided in Section 202(f) of the FLPMA governs the input on proposed management within existing WSAs, including any WSAs located near Molas Pass.

The public was provided an opportunity to comment on draft motorized suitability determinations made in the DLMP, which concluded that “Unsuitable areas include regulated areas, Wilderness Areas, WSAs, and most RNAs” (DLMP, page 140). Several comments about motorized access were received, documented, and responded to in *Appendix S - Response to Comments on the San Juan/Tres Rios Draft Land Management Plan and Draft and Supplemental Environmental Impact Statements* (S-27 through S-32).