



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

**Rio Puerco Field Office  
Proposed Resource  
Management Plan and Final  
Environmental Impact  
Statement**

December 4, 2024

This page intentionally left blank.

## **Contents**

Acronyms .....	ii
Introduction .....	1
Protesting Party Index .....	2
FLPMA: Consistency with Other Plans .....	4
FLPMA: Multiple Use.....	7
Lands with Wilderness Characteristics .....	8
NEPA: Impacts Analysis – Air Quality and Public Health .....	10
NEPA: Impact Analysis – Air Quality .....	12
NEPA: Impacts Analysis – Environmental Justice .....	13
NEPA: Impacts Analysis – Water Resources.....	18
Tribal Consultation.....	21
References .....	22

## *Acronyms*

<b>Term</b>	<b>Definition</b>
<b>APA</b>	Administrative Procedure Act
<b>APD</b>	Application for Permit to Drill
<b>BIA</b>	Bureau of Indian Affairs
<b>BLM</b>	Bureau of Land Management
<b>CDNST</b>	Continental Divide National Scenic Trail
<b>CDTC</b>	Continental Divide Trail Coalition
<b>CEQ</b>	Council on Environmental Quality's
<b>CFR</b>	Code of Federal Regulations
<b>CO</b>	carbon monoxide
<b>CWA</b>	Clean Water Act
<b>DEIS</b>	Draft Environmental Impact Statement
<b>Diné C.A.R.E.</b>	Diné Citizens Against Ruining Our Environment
<b>EIS</b>	Environmental Impact Statement
<b>EJ</b>	environmental justice
<b>EO</b>	Executive Order
<b>FAQ</b>	frequently asked questions
<b>FEIS</b>	Final Environmental Impact Statement
<b>FLPMA</b>	Federal Land Policy and Management Act
<b>FO</b>	Rio Puerco Field Office
<b>FSM</b>	Forest Service Manual
<b>HAP</b>	hazardous air pollutant
<b>IM</b>	Instruction Memorandum
<b>LWC</b>	Land with Wilderness Characteristics
<b>NAAQS</b>	National Ambient Air Quality Standards
<b>NEPA</b>	National Environmental Policy Act
<b>NOx</b>	nitrogen oxides
<b>NTS</b>	National Trails System
<b>NTSA</b>	National Trails System Act
<b>PM10</b>	particulate matter 10 microns or less in diameter
<b>PM2.5</b>	particulate matter 2.5 microns or less in diameter
<b>PRMP</b>	Proposed Resource Management Plan
<b>RFD</b>	reasonably foreseeable development
<b>RMP</b>	Resource Management Plan
<b>ROS</b>	Recreation Opportunity Spectrum
<b>RPFO</b>	Rio Puerco Field Office
<b>SIP</b>	State Implementation Plan
<b>SO2</b>	sulfur dioxide
<b>SRMA</b>	Special Recreation Management Area
<b>U.S.C.</b>	U.S. Code
<b>VOC</b>	volatile organic compound
<b>VRM</b>	visual resource management

## ***Introduction***

The Bureau of Land Management (BLM) Rio Puerco Field Office (FO) released the Rio Puerco FO Proposed Resource Management Plan (PRMP) and Final Environmental Impact Statement (FEIS) on August 9, 2024. The BLM received 24 unique protest letter submissions during the subsequent 30-day protest period, which ended on September 9, 2024.

The planning regulations at 43 Code of Federal Regulations (CFR) 1610.5-2 outline the requirements for filing a valid protest. The BLM evaluated all protest letters to determine which protest letters were complete and timely, and which persons have standing to protest. Nine letters were complete and timely but were dismissed because the protesting parties who submitted the letters did not have standing to protest. The remaining 15 letters were complete and timely and were from parties who had standing to protest. The Pueblo of San Felipe released its objections set forth in its protest letter and the protest is resolved. Five of the remaining protest letters contained valid protest issues. The BLM documents the responses to the valid protest issues in this protest resolution report. The protest decision is recorded in writing along with the reasons for the decision in this protest resolution report.

After careful review of the report by the BLM's Assistant Director for Resources and Planning, the Assistant Director concluded that the BLM New Mexico State Director followed the applicable laws, regulations, and policies and considered all relevant resource information and public input. The Assistant Director addressed the protests and issued a Protest Resolution Report to protesting parties and posted the report on the BLM's website; no changes to the Rio Puerco PRMP/FEIS were necessary. The Assistant Director addressed the protests and issued a Protest Resolution Report to protesting parties and posted the report on the BLM's website; no changes to the Rio Puerco PRMP/FEIS were necessary. The decision was sent to the protesting parties by certified mail, return receipt requested. Consistent with the BLM Delegation of Authority Manual (MS-1203 Delegation of Authority), resolution of protests is delegated to the BLM Assistant Director for Resources and Planning whose decision on the protest is the final decision of the U.S. Department of the Interior (43 CFR 1610.5-2(b)).

The report is divided into sections each with a topic heading, excerpts from individual protest letters, a summary statement of the issues or concerns raised by the protesting parties, and the BLM's response to the protests.

***Protesting Party Index***

<b>Letter Number</b>	<b>Protester</b>	<b>Organization</b>	<b>Determination</b>
PP-NM-RP-EIS-24-01	Sally Paez	New Mexico Wilderness Alliance (New Mexico Wild)	Denied
PP-NM-RP-EIS-24-02	Claire Cutler	Continental Divide Trail Coalition	Denied
	Teresa Ana Martinez		
PP-NM-RP-EIS-24-03	Claudia Trueblood	New Mexico Environment Department	Dismissed: Comments Only
	Dr. Sydney Lienemann		
PP-NM-RP-EIS-24-04	Peter Callen	Pathways: Wildlife Corridors of NM	Dismissed: Comments Only
PP-NM-RP-EIS-24-05	Gabriel Lucero	--	Dismissed: No Standing
PP-NM-RP-EIS-24-06	Ron Kellermueller	New Mexico Department of Game and Fish	Dismissed: Comments Only
PP-NM-RP-EIS-24-07	Ora Correa	--	Dismissed: No Standing
PP-NM-RP-EIS-24-08	Andrew Mackenzie	58th Special Operators Wing	Dismissed: Comments Only
PP-NM-RP-EIS-24-09	Isabella Beshouri	Tri-State Generation and Transmission Association	Dismissed: No Standing
PP-NM-RP-EIS-24-10	Sandra Johnson	Las Placitas Association	Dismissed: Comments Only
	George Franzen	Eastern Sandoval Citizens Association	
	Mary-Rose Szoka-Valladares	Land Use Protection Trust	
PP-NM-RP-EIS-24-11	Mario Atencio	Torreon Community Alliance	Denied
PP-NM-RP-EIS-24-12	Paul Madrid	SLCMDWA	Dismissed: No Standing
PP-NM-RP-EIS-24-13	Patience O-Dowd	Wild Horse Observers Association	Dismissed: Comments Only
PP-NM-RP-EIS-24-14	Nolberto Hernandez	--	Dismissed: No Standing
PP-NM-RP-EIS-24-15	Charla Johnson	--	Dismissed: Comments Only
PP-NM-RP-EIS-24-16	--	Pueblo of San Felipe	Resolved
PP-NM-RP-EIS-24-17	Timothy Johnson	--	Dismissed: Comments Only
PP-NM-RP-EIS-24-18	Jacob Johnson	--	Dismissed: No Standing
PP-NM-RP-EIS-24-19	T. Lee Johnson	--	Dismissed: No Standing

<b>Letter Number</b>	<b>Protester</b>	<b>Organization</b>	<b>Determination</b>
PP-NM-RP-EIS-24-20	Allyson Easley	Western Environmental Law Center	Dismissed: No Standing
	Robyn Jackson	Diné Citizens Against Ruining Our Environment (Diné C.A.R.E.)	Dismissed: No Standing
	Mike Eisenfeld	San Juan Citizens' Alliance	Dismissed: No Standing
	Kelly Fuller	WildEarth Guardians	Denied
PP-NM-RP-EIS-24-21	Earl Romero	--	Dismissed: No Standing
PP-NM-RP-EIS-24-22	George Werito, Jr.	Navajo Nation, Ojo Encino Chapter	Denied
PP-NM-RP-EIS-24-23	Daniel Tso	Torreon Community Alliance	Dismissed: Comments Only
PP-NM-RP-EIS-24-24	Jessica Romero	--	Dismissed: No Standing

## ***FLPMA: Consistency with Other Plans***

### ***Continental Divide Trail Coalition***

***Claire Cutler, Teresa Ana Martinez***

**Issue Excerpt Text:** The CDTC was dismayed to see the removal of the CDNST SRMA from the Proposed RMP. The proposed RMP states that, “The CDNST SRMA was removed in Final EIS Alternatives B, C, and D because managing the CDNST as an SRMA would be essentially duplicative of current CDNST management under the Continental Divide National Scenic Trail Comprehensive Plan” (page 2-50). However, the CDNST management decisions detailed under the Proposed Alternative are not consistent with the Continental Divide National Scenic Trail Comprehensive Plan, and therefore designation of a CDNST SRMA under this alternative would not be Duplicative of - or consistent with - the management under the Continental Divide National Scenic Trail Comprehensive Plan. FSM 2300, Chapter 50 states that “The one-half mile foreground viewed from either side of the CDT travel route must be a primary consideration in delineating the boundary of a CDT management area” (FSM 2353.44b(7)). The Proposed RMP designates a corridor of only 1,000 feet on either side of the CDNST. Maintaining a one-half mile corridor around the CDNST is essential to ensuring that the high-quality, scenic, and primitive nature of the CDNST is preserved within the foreground of the trail. The proposed management decisions regarding forest product removal, leasable minerals, and salable minerals are also inconsistent with preserving the nature and purposes of the trail. Therefore, the proposition that the Proposed RMP is so consistent with the Continental Divide National Scenic Trail Comprehensive Plan that designation of an SRMA would be duplicative is false. CDTC requests that the Rio Puerco Field Office either add the CDNST SRMA back into the Proposed RMP and/or ensure that all management actions under the Proposed RMP are truly consistent with the Continental Divide National Scenic Trail Comprehensive Plan.

### ***Continental Divide Trail Coalition***

***Claire Cutler, Teresa Ana Martinez***

**Issue Excerpt Text:** Sec. IV. B(1)(b)(1) of the Continental Divide National Scenic Trail Comprehensive Plan states that where possible, the CDNST should be located in primitive or semi-primitive non-motorized ROS classes. To classify as either of those ROS classes, or to classify as semi-primitive motorized, the CDNST can not have alterations that could draw the attention of the trail user. With a trail corridor of only 2,000 feet total, left open to forest product removal, locatable mineral entry, and salable mineral extraction, these activities, and the ancillary activities associated with them (such as road-building), could easily result in noticeable alterations to the natural environment within the foreground viewshed of the trail. By allowing these activities, the Proposed RMP does not sufficiently protect the natural and scenic resources of the CDNST within the proposed 1,000 foot corridor, let alone a wider corridor.

### ***Continental Divide Trail Coalition***

***Claire Cutler, Teresa Ana Martinez***

**Issue Excerpt Text:** Furthermore, under the Proposed RMP the CDNST would be managed as VRM II and III in “higher quality viewshed areas” outside of Wilderness and Wilderness Study Areas. CDTC understands that the CDNST cannot always be managed as VRM I, and recognizes that management as VRM II may be necessary in some locations. However, according to BLM standards, the objective of VRM III is “to partially retain the existing character of the landscape.” The Allowed Level of Change under VRM III is “moderate” and “management activities may draw attention.” As stated in the previous paragraph, alterations in the CDNST corridor should not draw the attention of the trail user. Furthermore, BLM Manual 6280 states that VRM classes should be established at the most protective level practicable. Establishing VRM III as an acceptable standard in high quality viewshed areas is unambitious and does not align with protecting the corridor to the highest standard practicable. CDTC requests that the CDNST corridor be managed as VRM I or II in all areas where it



is practicable, and only be managed as VRM III or IV where absolutely necessary. CDTC would enthusiastically support this effort and meet with BLM staff to identify appropriate VRM designations for different areas along the CDT.

### ***Continental Divide Trail Coalition***

***Claire Cutler, Teresa Ana Martinez***

**Issue Excerpt Text:** The Proposed Alternative states that “motorized and mechanized travel would be limited to designated roads and trails.” This language is not consistent with the Continental Divide National Scenic Trail Comprehensive Plan. For clarity and consistency, CDTC requests that this language be amended to state that motorized use is prohibited on the CDNST unless the vehicle class and width were allowed on that segment of the CDNST prior to November 10, 1978, and the use will not substantially interfere with the nature and purposes of the CDNST, or unless that segment was constructed as a road prior to November 10, 1978, or in cases where motorized use meets the specific criteria set forth in Section 6 of the Continental Divide National Scenic Trail Comprehensive Plan.

### **Summary:**

Protestors stated that the BLM violated the Federal Land Policy and Management Act (FLPMA) and BLM Manual 6280 by being inconsistent with the Continental Divide National Scenic Trail (CDNST) Comprehensive Plan, failing to provide adequate protections for natural and scenic resources, and allowing motorized use contrary to the CDNST Comprehensive Plan’s management guidelines.

### **Response:**

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

In accordance with this requirement, the BLM has given consideration to State, local, and Tribal plans that are germane to the development of the Rio Puerco PRMP/FEIS. The BLM has worked closely with State, local, and Tribal governments during preparation of the Rio Puerco PRMP/FEIS. Chapter 5, *Consultation and Coordination*, describes coordination that has occurred throughout the development of the Rio Puerco PRMP/FEIS (Rio Puerco PRMP/FEIS pp. 5-1 through 5-9).

As stated in the Rio Puerco PRMP/FEIS, Section 2.2.12.3, *Special Recreation Management Areas* (Rio Puerco PRMP/FEIS p. 2-47), the CDNST Special Recreation Management Area (SRMA) was considered under Alternatives B, C, and D in the Draft Resource Management Plan (RMP)/Environmental Impact Statement (EIS). However, Alternatives B, C, and D in the Rio Puerco PRMP/FEIS were revised to not include the CDNST SRMA (Rio Puerco PRMP/FEIS p. 2-47), as managing the CDNST as an SRMA would essentially be duplicative of current CDNST management under the CDNST Comprehensive Plan (Rio Puerco PRMP/FEIS p. 2-50; Forest Service 2009). An SRMA is an administrative unit where existing or proposed recreation opportunities and recreation setting characteristics are recognized for their unique value, importance, or distinctiveness, especially as compared to other areas used for recreation. Similarly, as stated in the 2009 amendment to the CDNST Comprehensive Plan, “The nature and purposes of the CDNST are to provide for high-quality scenic, primitive hiking and horseback riding opportunities and to conserve natural, historic, and cultural resources along the CDNST corridor.” This statement outlines the identified recreational opportunities for the CDNST and would be duplicative if designated as an SRMA. The CDNST Comprehensive Plan outlines the unique and distinctive values of the trail and provides for protection

and enhancements of activities and experience along the CDNST. Management of recreation on the CDNST is outlined in Section 5, *Recreation Resource Management*, of the CDNST Comprehensive Plan (Forest Service 2009:14–19). As outlined in Section 2.2.16.2.3, *Management Common to All Alternatives*, of the Rio Puerco PRMP/FEIS, the BLM’s management of the CDNST would follow the guidance of the CDNST Comprehensive Plan (Forest Service 2009). Since Draft EIS publication, the CDNST alignment was changed by the U.S. Department of Agriculture, Forest Service. The public had the opportunity to comment on the new alignment via the U.S. Department of Agriculture, Forest Service Environmental Assessment process available here: <https://www.fs.usda.gov/project/?project=39547>. The BLM does not make decisions on the alignment but does determine management of the trail.

The National Trails System Act (NTSA), 16 U.S. Code (U.S.C.) 1241–1251, as amended, promotes the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas, and historic resources of the United States; provides the means for attaining these objectives by instituting a National Trails System (NTS); prescribes the methods and standards for adding NTS components; and encourages partner involvement in the planning, development, operation, maintenance, and, where appropriate, operation and maintenance of NTS components. NTSA 16 U.S.C. 1244(a)(5) establishes the CDNST and provides for secretarial administration. According to 43 U.S.C. 1246(a)(1)(B), the Secretary responsible for the overall administration of a trail may delegate management of a specific trail segment to the appropriate Secretary through a joint Memorandum of Agreement.

There are three BLM Manuals that address the NTS: BLM Manuals 8353, 6250, and 6280. BLM Manual 8353 provides guidance on the management of secretarially designated National Recreation Trails, including National Water Trails and Connecting and Side Trails. BLM Manual 6250 outlines the policies and procedures for administering congressionally designated National Scenic and Historic Trails. BLM Manual 6280 provides direction to help guide the inventory, assessment, and monitoring of National Scenic and Historic Trails and trails under study or recommended for congressional designation.

In this planning effort, the BLM is making land use planning decisions that do not authorize site-specific implementation actions. The BLM will undertake additional decision-making, including appropriate environmental review pursuant to the National Environmental Policy Act (NEPA), prior to authorizing or approving an action that may affect the CDNST. Neither the NTSA nor BLM national trails policy requires the BLM to identify specific limitations or specific allowable discretionary uses on national trails at the land use planning level. RMPs are designed to guide and control future management actions and the development of subsequent, more detailed and limited-scope plans for resources and uses (43 CFR 1601.0-2).

Management along the CDNST varies between agencies. In most cases, motorized travel is avoided but not completely excluded; however, in some cases it is prohibited. There are areas where the CDNST crosses a road or runs parallel to an existing road. In these areas, motorized travel is allowed if there are no other options, per NTSA 16 U.S.C. 1246(c). There are areas where mountain bikes and equestrian use are allowed. As stated in NTSA 16 U.S.C. 1246(c): “Other uses along the trail, purposes of the trail, may be permitted... [To] the extent practicable, efforts be made to avoid activities incompatible with the purposes for which such trails were established. The use of motorized vehicles by the general public along any national scenic trail shall be prohibited...” While sections of the CDNST may go along or near established roads, guidance instructs that the CDNST prohibit motorized vehicle use unless consist with applicable land management plans and other requirements laid out in the CDNST Comprehensive Plan (Forest Service 2009:19). In Alternative B of the Rio Puerco PRMP/FEIS, the CDNST corridor has been revised to 0.5 mile, whereas the corridor under Alternative C is 1,000 feet from the trail (a 2,000-foot-wide corridor) (Rio Puerco PRMP/FEIS p. 2-110). Regarding the development of a travel management plan for the Rio Puerco FO, the Rio Puerco

FO is deferring the development of a travel management plan until after the Approved RMP/Record of Decision is signed, consistent with BLM policy. The general management prescriptions in the Approved RMP/Record of Decision will serve as the guide for developing site-specific transportation and travel management prescriptions in a travel management plan. Until that time, limited travel management prescriptions are outlined in Section 2.2.18.3 (Rio Puerco PRMP/FEIS pp. 2-122 through 2-124).

Table 2-36 of the Rio Puerco PRMP/FEIS (pp. 2-110 through 2-111) was revised to clarify the BLM's intent regarding the visual resource management (VRM) class designations for the CDNST to better align with BLM Manual 6250. BLM Manual 6280 provides direction to help guide the inventory, assessment, and monitoring of National Scenic and Historic Trails. It does not provide guidance related to developing VRM for trails during the land use planning process. It should be noted that visual inventory classes are informational only and as assigned through the visual inventory process. VRM classes are assigned through RMPs and based on visual inventory class. The assignment of VRM classes is ultimately based on the management decisions made in the RMPs; however, visual values must be considered throughout the RMP process. All proposed actions that would result in surface disturbance must analyze potential visual impact. In the Rio Puerco PRMP/FEIS, VRM would be managed in accordance with BLM Manual 8400 to establish classes at the most protective level practicable and to meet national trail scenery management objectives (Rio Puerco PRMP/FEIS p. R-26).

The Rio Puerco PRMP/FEIS satisfies FLPMA's consistency requirements and is in alignment with BLM policy and the CDNST Comprehensive Plan. Accordingly, this protest is denied.

### ***FLPMA: Multiple Use***

***Western Environmental Law Center, Diné C.A.R.E., San Juan Citizens' Alliance, WildEarth Guardians***

***Allyson Beasley, Robyn Jackson, Mike Eisenfeld, Kelly Fuller***

**Issue Excerpt Text:** Under the Reasonably Foreseeable Development Scenario, Alternative C continues to elevate oil and gas extraction over other uses--and, accordingly, fails to take into account the long-term needs of future generations as required by FLPMA, 43 U.S.C. § 1702(c), contributes to greenhouse gas emissions and climate change; exacerbates ongoing health risks and impacts; perpetuates environmental injustices and inequities; and inflicts other direct, indirect, and cumulative harms on the people and communities who call the planning area home-- especially those in Greater Chaco's frontline and fenceline communities.

#### **Summary:**

Protesters stated that the BLM violated FLPMA by choosing an alternative that elevates oil and gas extraction over other uses, leading to a range of negative impacts on multiple resources including air quality and climate change, public health and safety, and environmental justice.

#### **Response:**

Section 302(a) of FLPMA directs the BLM to manage public lands on the basis of multiple use and sustained yield, unless otherwise provided by law (43 U.S.C. 1732(a)). Section 103(c) of FLPMA defines "multiple use" as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people.

FLPMA’s multiple-use policy does not require that all uses be allowed on all areas of the public lands. Rather, the BLM has discretion to allocate the public lands to particular uses, and to employ the mechanism of land use allocation to protect for certain resource values, or, conversely, develop some resource values to the detriment of others, short of unnecessary and undue degradation. Through the land use planning process, the BLM evaluates and chooses an appropriate balance of resource uses that involves tradeoffs between competing uses.

The BLM develops and revises land use plans to meet the multiple-use mandate in FLPMA. Criteria for development and revision of land use plans based on the principles of multiple use and sustained yield are outlined in FLPMA Section 202 and the BLM’s planning regulations at 43 CFR 1600. Understandably, the BLM cannot accommodate every type of use on every acre it manages; for example, mining is not allowed in wilderness areas, and, conversely, areas where mining is allowed do not allow for a primitive and unconfined setting, such as those found in a wilderness area. The BLM developed the Rio Puerco PRMP/FEIS consistent with Section 202 of FLPMA, the BLM’s planning regulations, and NEPA.

The BLM makes management decisions based on the existence of a resource on Federal land. This concept applies to all resources, including wilderness, culturally significant sites, geologic features, and oil and gas development. Environmental and social impacts play a major role in the selection of alternatives for managing BLM resources. The BLM recognizes that oil and gas development may have potential adverse effects on a select portion of the population as well as on some resources; however, the extraction of this resource would also have a beneficial effect on a portion of the public. As stated in Section 4.2.10, *Mineral Resources*, “site-specific NEPA analysis would be completed for proposed mineral development within the Decision Area” (Rio Puerco PRMP/FEIS p. 4-46).

All references to and discussion of environmental effects of the alternative planning decisions are disclosed in Chapter 4, *Environmental Consequences*, of the Rio Puerco PRMP/FEIS, which analyzes impacts of all resources against each other and discloses the potential effects to include direct, indirect, and cumulative. Potential impacts from oil and gas development on air quality and climate change are discussed in Section 4.2.1 (Rio Puerco PRMP/FEIS pp. 4-1 through 4-16), public health and safety in Section 4.2.6 (Rio Puerco PRMP/FEIS pp. 4-32 through 4-34), and environmental justice in Section 4.2.15 (Rio Puerco PRMP/FEIS pp. 4-74 through 4-87).

All alternatives considered in the Rio Puerco PRMP/FEIS, as described in Chapter 2, provide an appropriate balance of uses on public lands and comply with Federal requirements to analyze impacts. All alternatives allow some level of all uses present in the planning area, in a manner that is consistent with applicable statutes, regulations, and BLM policy. Therefore, the Rio Puerco PRMP/FEIS satisfies FLPMA’s multiple-use policy. Accordingly, this protest issue is denied.

## ***Lands with Wilderness Characteristics***

### ***New Mexico Wilderness Alliance (New Mexico Wild)***

***Sally Paez***

**Issue Excerpt Text:** The differences between the 2008 Citizens’ Inventory and the BLM’s 2010 inventory, in addition to BLM’s focus on newly acquired lands, decommissioned roads, and removed facilities, reflect that the BLM did not undertake a comprehensive inventory of potential LWCs within the Rio Puerco Field Office. Moreover, there have been significant delays during this planning process, and the process has spanned nearly two decades. The BLM should update the inventory to ensure it is “maintained on a continuing basis” and “current,” as required by FLPMA. Second, during this decades-long planning effort, in 2021 the BLM adopted new policy guidance for conducting wilderness characteristics inventories and considering wilderness characteristics in the land use planning process. Manual 6310, Conducting Wilderness Characteristics Inventory on BLM Lands,

contains policy and guidance for conducting the LWC inventories mandated by FLPMA. Manuel 6310 emphasizes that, “[r]egardless of past inventory, the BLM must maintain and update as necessary, its inventory of wilderness resources on public lands.” Manuel 6320, *Considering Lands with Wilderness Characteristics in the BLM Land Use Planning Process*, describes how the BLM should incorporate an LWC inventory into the development of an RMP. Although this updated policy guidance has been in effect for almost four years, the guidance was not used in developing the Proposed RMP and FEIS.

***New Mexico Wilderness Alliance (New Mexico Wild)***

***Sally Paez***

**Issue Excerpt Text:** The Biden Administration’s adoption of the 30x30 initiative in the interim between the Draft RMP/DEIS and the Proposed RMP/FEIS warrants a new inventory of LWCs and a commitment to protect wilderness characteristics on those lands.

***Navajo Nation, Ojo Encino Chapter***

***George Werito, Jr.***

**Issue Excerpt Text:** The RMP’s failure to update the wilderness characteristics inventory since 2010 violates FLPMA’s mandate for maintaining up-to-date public land inventories. The wilderness characteristics inventory is essential for identifying and preserving lands with ecological and cultural significance. Without these updates, the BLM is unable to manage these areas effectively, leaving them vulnerable to degradation.

**Summary:**

Protestors stated that the BLM violated FLPMA, BLM Manuals 6310 and 6320, and the Biden Administration’s Executive Order (EO) establishing a national goal to conserve 30 percent of U.S. lands and oceans by 2030 (also known as the 30x30 initiative) by relying on outdated inventories of potential Lands with Wilderness Characteristics (LWCs), specifically the 2010 BLM Inventory, when developing the Rio Puerco PRMP/FEIS.

**Response:**

The BLM’s authority for managing lands to protect or enhance wilderness characteristics is derived directly from Section 202 of FLPMA, which gives the Secretary of the Interior authority to manage public lands for multiple use and sustained yield.

FLPMA makes it clear that the term “multiple use” means that not every use is appropriate for every acre of public land, and that the Secretary can “make the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use” (FLPMA, Section 103(c)). Furthermore, FLPMA directs that the public lands be managed in a manner “that, where appropriate, will preserve and protect certain public lands in their natural condition” (FLPMA, Section 102(a)). FLPMA authorizes the Secretary of the Interior to use land use planning as a mechanism for allocating resource use, including wilderness character management, amongst the various resources in a way that provides for current and future generations.

Section 201 of FLPMA requires the BLM to maintain an inventory of all BLM-administered lands and their resources and other values, including wilderness characteristics. It also provides that the preparation and maintenance of the inventory shall not, of itself, change or prevent change of the management or use of BLM-administered public lands. BLM Manuals 6310 and 6320 contain mandatory guidance on implementing these requirements. Regardless of past inventory, the BLM must maintain and update, as necessary, its inventory of wilderness resources on public lands. In some circumstances conditions relating to wilderness characteristics may have changed over time, and an area that was once determined to lack wilderness characteristics may now possess them. Per

BLM Manual 6310, “The BLM will determine when it is necessary to update its wilderness characteristics inventory.” The BLM’s wilderness characteristics inventory process does not require that the BLM must conduct a completely new inventory and disregard the inventory information that it already has for a particular area when preparing a land use plan (BLM Manual Section 6310.06.B).

The BLM updated its LWC inventory as necessary to support the Rio Puerco PRMP/FEIS. In 2010, the BLM reviewed its 1980 inventory of the Rio Puerco FO to identify areas where conditions relating to wilderness characteristics may have changed over time and evaluated public scoping comments to identify areas where the potential for wilderness characteristics could exist. In these identified areas, the BLM conducted a new wilderness inventory to update the 1980 inventory, resulting in the identification of seven areas (37,514 acres) outside of Wilderness Study Areas or wilderness that met the criteria for LWCs (Rio Puerco PRMP/FEIS Table 3-15, p. 3-32, and Appendix S, Maps 2-14 through 2-16). This updated inventory information was used in developing the Rio Puerco PRMP/FEIS.

As required by Section 201 of FLPMA, the BLM maintained an inventory of LWCs in the Rio Puerco FO and relied on its current inventory of the public lands in developing the Rio Puerco PRMP/FEIS. Accordingly, this protest issue is denied.

## ***NEPA: Impacts Analysis – Air Quality and Public Health***

***Western Environmental Law Center, Diné C.A.R.E., San Juan Citizens’ Alliance, WildEarth Guardians***

***Allyson Beasley, Robyn Jackson, Mike Eisenfeld, Kelly Fuller***

**Issue Excerpt Text:** Despite these known risks and impacts, BLM fails to analyze the health risks and impacts of air pollution from oil and gas in the planning area, on specific populations in the area, or from oil and gas leasing and development overall. BLM’s discussion of air quality impacts--with respect to health or otherwise--in the RMP/FEIS falls short of NEPA’s requisite hard look. See RMP/FEIS at 4-4, 4-8 and 4-9. In the RMP/FEIS, BLM includes tables with projected air pollutant emissions quantities resulting from reasonably foreseeable development for the San Juan Basin -- specifically, PM10, PM2.5, NOx, SO2, CO, VOC, and HAPs. RMP/FEIS at 4-5, Table 4-1 and 4-9, Table 4-6. However, BLM fails to do anything more than quantify these emissions --whether direct, indirect, or cumulative--and fails to analyze the effects of these cumulative emissions--on health or otherwise. BLM also fails to provide any metric by which BLM or the public can put these emissions in context or analyze their significance. Merely listing quantities of emissions--even cumulative emissions-- without any context or analysis of their significance, including the risks and effects associated with those emissions, as BLM does here, does not satisfy NEPA’s hard look requirement. BLM calculates the % increase in emissions that would result from reasonably foreseeable development under the RMP (over the total existing emissions in the San Juan Basin) but fails to discuss potentially significant impacts of these emissions--including localized health impacts to those living in and around the planning area, particularly in light of other oil and gas wells and pollutant sources in the area.

### **Summary:**

Protesters stated the BLM violated NEPA by failing to take a hard look at the health risks and impacts of air pollution from oil and gas development and failing to provide context or discuss the significance of emissions in the planning area.

**Response:**

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b), 1502.1). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Rio Puerco PRMP/FEIS.

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

Pursuant to the Council on Environmental Quality’s (CEQ) NEPA regulations, the BLM is required to also consider the environmental impacts of a proposed action and any reasonable alternative when preparing an EIS, which includes the cumulative effects (40 CFR 1502.16(a)(1) and BLM Handbook H-1790-1, Section 6.8.3). The CEQ regulations define cumulative effects as “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such actions” (40 CFR 1508.1(g)(3)(2022)).

A land use planning–level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan–level decisions. As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground implementation decision or actions (e.g., the BLM is not approving an Application for Permit to Drill to start drilling), the scope of the analysis was conducted at a regional, programmatic level. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Chapter 4 of the Rio Puerco PRMP/FEIS analyzes impacts of all resources against each other and discloses the potential effects to include direct, indirect, and cumulative. Potential air pollutant emissions from implementation of the mineral resources decisions under the Rio Puerco PRMP/FEIS are provided in Section 4.2.1 (Rio Puerco PRMP/FEIS pp. 4-1 through 4-16), which also includes a cumulative impacts discussion placing these potential emissions in the context of emissions from other reasonably foreseeable activities in the region. A discussion of National Ambient Air Quality Standards (NAAQS), Air Quality Index, and other information relevant to how State and Federal agencies assess and manage health effects from air pollutant emissions is provided in Section 3.2 (Rio Puerco PRMP/FEIS pp. 3-2 through 3-7). As noted in the responses to comments in Rio Puerco PRMP/FEIS Appendix R, the BLM must provide for compliance with applicable pollution-control laws, including State and Federal air, water, noise, or other pollution standards.

The BLM adequately analyzed direct, indirect, and cumulative effects from air pollutant emissions in the Rio Puerco PRMP/FEIS and complied with NEPA’s requirement to analyze the environmental impacts on health and safety as a result of potential future development in the Rio Puerco PRMP/FEIS. Accordingly, this protest is denied.

## ***NEPA: Impact Analysis – Air Quality***

***Western Environmental Law Center, Diné C.A.R.E., San Juan Citizens' Alliance, WildEarth Guardians***

***Allyson Beasley, Robyn Jackson, Mike Eisenfeld, Kelly Fuller***

**Issue Excerpt Text:** Moreover, as BLM acknowledges in its own 2015-2020 Air Resources Management Program Strategy, but still fails to discuss in the RMP, the agency is subject to the following mandates with respect to air quality under FLPMA: (1) FLPMA declares a policy that the BLM will manage the public lands in a manner that will protect the quality of air and atmospheric values, among other resources; (2) FLPMA requires the BLM's land use plans to provide for compliance with applicable air pollution standards or implementation plans, among other laws; and 3) FLPMA requires the BLM's leases or other instruments authorizing use or development of public lands to include provisions allowing the BLM to revoke or to suspend the lease for violation of terms that require compliance with air quality standards or implementation plans. With respect to the first obligation, it is difficult to see how continued authorization of oil and gas leasing and drilling under the RMP is consistent with managing the public lands "in a manner that will protect the quality of air and atmospheric values," particularly given that the San Juan Basin is already home to, among other things, a methane "hot spot." As to the third obligation, BLM should incorporate into the RMP what these lease provisions are and how BLM plans to monitor for, and act on, non-compliance with air quality standards or implementation plans. New Mexico's upcoming regional haze SIP revisions and the fact that New Mexico is already undergoing an Ozone Attainment Initiative or other state-level rulemakings or initiatives, independently of BLM, are not substitutes for a hard-look NEPA analysis with respect to air pollutant emissions and impacts, and do not fulfill the agency's independent FLPMA obligations.

### **Summary:**

Protesters stated that the BLM violated NEPA and FLPMA by failing to adhere to air quality mandates, including neglecting to manage public lands to protect air quality and not incorporating lease provisions and monitoring plans to ensure compliance with air quality standards.

### **Response:**

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b), 1502.1). The BLM is required to take a "hard look" at potential environmental impacts of adopting the Rio Puerco PRMP/FEIS. The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action and alternatives. A land use planning-level decision is broad in scope. For this reason, analysis of land use plan management alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan-level decisions.

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



Chapter 4 of the Rio Puerco PRMP/FEIS analyzes the potential direct, indirect, and cumulative impacts of the alternatives on the human and natural resources within the planning area. Section 4.2.1, *Air Resources, Including Climate Change* (Rio Puerco PRMP/FEIS pp. 4-1 through 4-16), analyzes the potential impacts of the alternatives on air resources in the planning area and specifically Section 4.2.1.1.2, *Mineral Resource Decisions* (Rio Puerco PRMP/FEIS pp. 4-3 through 4-7), discusses the potential impacts that the mineral resources decisions under each alternative would have on air quality. Despite the differences in areas open and closed to fluid minerals leasing under each alternative, actual impacts would be similar across alternatives because a similar level of well development is expected to occur. All counties within the planning area comply with the NAAQS and are attainment areas. Because the estimated growth of oil and gas wells is low (five to eight new wells per year), it is not expected that mineral resource management decisions would lead directly to NAAQS exceedances of ozone in the planning area. However, any future proposed mineral development project decision-making on BLM land would be subject to NEPA analysis and would take into account any changes in oil and gas development, air quality, and other relevant factors, such as any new State-required nitrogen oxides and volatile organic compound emissions controls (Rio Puerco PRMP/FEIS p. 4-3). A regional mitigation strategy is also provided in Appendix O, *Regional Mitigation*. Mitigating impacts and monitoring for future proposed projects will be analyzed and determined through site-specific, implementation-level decision-making and NEPA analysis.

The BLM complied with NEPA’s requirement to analyze the environmental consequences and impacts on air quality in the Rio Puerco PRMP/FEIS. Accordingly, this protest is denied.

## ***NEPA: Impacts Analysis – Environmental Justice***

***Western Environmental Law Center, Diné C.A.R.E., San Juan Citizens’ Alliance, WildEarth Guardians***

***Allyson Beasley, Robyn Jackson, Mike Eisenfeld, Kelly Fuller***

**Issue Excerpt Text:** NEPA and its implementing regulations require BLM to do more than list generalized categories of risks: the agency must analyze and take a hard look at those risks and their effects. The intent of NEPA is for agencies to study the impact of their actions on the environment before the action is taken. In the RMP/FEIS, BLM engages in only a cursory, not even 3-page-long discussion of health and safety impacts from foreseeable oil and gas leasing and development in the planning area, providing only a list of very general possible risks related to pipelines, spills, and traffic. Nowhere does BLM tie these risks to specific populations in the planning area, or discuss the potential for adverse or disproportionate risks and impacts on the “environmental justice” populations it identifies. Nor does BLM even acknowledge the potential for long-term and cumulative health risks and impacts resulting from oil and gas development authorized by the RMP, whether for its selected Alternative C or otherwise.

***Western Environmental Law Center, Diné C.A.R.E., San Juan Citizens’ Alliance, WildEarth Guardians***

***Allyson Beasley, Robyn Jackson, Mike Eisenfeld, Kelly Fuller***

**Issue Excerpt Text:** The existing health status and pollution burdens experienced by individuals and populations in the planning areas, and the disproportionate health risks they face in light of social determinants of health and environmental justice concerns, are precisely the kinds of “incremental impacts of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (federal or non-federal) or person undertakes such other actions” that NEPA requires BLM to analyze here. BLM must not summarily dismiss health and safety impacts as temporary simply because some exposures (e.g., to emissions and fugitive dust from construction) are temporary. It is arbitrary, and contrary to scientific understanding, to assume that just because an exposure is temporary, so too are the effects resulting from that exposure. The health effects that can

arise from environmental exposures, especially in conjunction with social determinants of health and environmental justice issues, may endure long after the acute exposure source is gone. Indeed, NEPA requires BLM to consider, in assessing the significance of an action, “[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts.” Indeed, “[s]ignificance cannot be avoided by terming an action temporary or by breaking it down into small component parts.” BLM also cannot dismiss health impacts as “temporary,” and thus avoid taking a hard look at cumulative health impacts, by simply stating that wells will be properly plugged and reclaimed at the end of their useful lives, and thus cease to cause health risks and impacts at that time. BLM must analyze cumulative emissions and their impacts over the full life course of a well, in conjunction with other wells in the planning area and other past, present, and reasonably foreseeable future actions and emissions. This includes localized impacts -- for which the planning stage is an opportunity to lay the groundwork for mitigation measures.

***Western Environmental Law Center, Diné C.A.R.E., San Juan Citizens’ Alliance, WildEarth Guardians***

***Allyson Beasley, Robyn Jackson, Mike Eisenfeld, Kelly Fuller***

**Issue Excerpt Text:** BLM also fails to take a hard look at the inexorable relationship between health and environmental justice. Executive Order 12898 on environmental justice requires each federal agency to make the achievement of “environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” BLM must analyze health and safety impacts throughout the planning area related to land allocation decisions and future oil and gas development, particularly cumulative and disproportionate risks and impacts. As noted above, the CEQ guidance on environmental justice in the NEPA process specifically directs agencies to incorporate relevant underlying health data, and social and structural factors, into their NEPA analyses, and to use this data to identify cumulative risks and reasonably foreseeable cumulative effects. “BLM cannot discount the localized impacts to people for whom the public health impacts are of clear significance.” The inequities at which BLM must take a hard look in an environmental justice analysis are not incidental, nor are they biologically determined—they are structural, systemic, and part of an unjust historical and ongoing pattern and practice of environmental racism, settler colonialism, and treatment of communities in the leasing areas as energy sacrifice zones. And, as discussed throughout these comments, there are several other health risks and impacts BLM should also analyze in the context of health and environmental justice, particularly in light of social and structural factors that affect health. BLM must engage in a thorough analysis of these and other inequities that NEPA requires, apply this analysis to its decision-making, and articulate a “rational connection between the facts found and the choices made” in coming to its ultimate conclusions in light of that analysis.

***Western Environmental Law Center, Diné C.A.R.E., San Juan Citizens’ Alliance, WildEarth Guardians***

***Allyson Beasley, Robyn Jackson, Mike Eisenfeld, Kelly Fuller***

**Issue Excerpt Text:** BLM should analyze these asthma-related effects in relation to existing asthma rates and related impacts in the communities adjacent to and counties encompassing the planning area and the Greater Chaco landscape. While BLM included additional HAPs discussion in its February 2024 Supplemental Analyses, which we appreciate, the agency has still failed to take a hard look at asthma and other respiratory health impacts of these lease sales, individually or cumulatively with other leasing and development and other reasonably foreseeable future actions in the area. BLM’s previously-mentioned IM 2022-059 on implementing environmental justice, and the accompanying FAQ, outline ways of collecting such data. And air pollution-related asthma, in particular, can exert profound and widespread cumulative health effects throughout a person’s life course, especially when combined with social determinants of health.

***Western Environmental Law Center, Diné C.A.R.E., San Juan Citizens' Alliance,  
WildEarth Guardians***

***Allyson Beasley, Robyn Jackson, Mike Eisenfeld, Kelly Fuller***

**Issue Excerpt Text:** We emphasize that BLM must take a hard look at environmental justice impacts --including cumulative impacts--of its planning decisions and the oil and gas activity they ultimately authorize--including the reasonably foreseeable development authorized under Alternative C-- regardless of the acreage or number of wells or parcels at issue under the RFD, and that decisions must not be viewed in isolation but as decisions that are, potentially, cumulatively significant for those living nearby, within the broader Greater Chaco landscape, and in the context of the global climate crisis. BLM must undertake a more robust analysis of these impacts at the planning stage, and has failed to do so here.

***Western Environmental Law Center, Diné C.A.R.E., San Juan Citizens' Alliance,  
WildEarth Guardians***

***Allyson Beasley, Robyn Jackson, Mike Eisenfeld, Kelly Fuller***

**Issue Excerpt Text:** The Instruction Memorandum, the accompanying FAQ/guide to Addressing Environmental Justice in NEPA Documents, and the numerous tools and resources listed therein, should --indeed, must--help guide not just BLM's identification of environmental justice "populations" or "communities of concern," but actual environmental justice analysis. BLM's "analysis" in the RMP/FEIS largely ends with the former identification stage. Having "determined that there are communities the meet the criteria for further environmental justice analysis," RMP/FEIS at 4-85, BLM violates NEPA by failing to undertake that analysis for the RMP-- including an analysis of any disproportionate, adverse, or cumulative health impacts, that could result from each alternative in the RMP, including the Preferred Alternative--and an analysis of how other reasonable alternatives could help mitigate or avoid adverse environmental justice impacts. Instead, BLM unlawfully defers analysis of environmental justice impacts to later stages

***Western Environmental Law Center, Diné C.A.R.E., San Juan Citizens' Alliance,  
WildEarth Guardians***

***Allyson Beasley, Robyn Jackson, Mike Eisenfeld, Kelly Fuller***

**Issue Excerpt Text:** BLM fails even to mention IM 2022-059 in the RMP/FEIS, let alone adhere to its own environmental justice commitments and obligations stated therein, including an obligation to take environmental justice into account in planning stages. As discussed herein (and in prior incorporated comments), IM 2022-059, EO 12898 and EO 14008, NEPA and the APA require more than mere identification of EJ communities. BLM must take a hard look at risks and impacts to those communities that could result from its planning and management decisions, and factor those findings into its decision-making. BLM has failed to do so here.

***Western Environmental Law Center, Diné C.A.R.E., San Juan Citizens' Alliance,  
WildEarth Guardians***

***Allyson Beasley, Robyn Jackson, Mike Eisenfeld, Kelly Fuller***

**Issue Excerpt Text:** Here, again, these documented risks are of particular concern in certain communities within the planning area in light of environmental justice concerns, like social and structural inequities, such as limited access to prenatal care and proximity of homes to oil and gas development. BLM must account for local health data as part of its "hard look" at health impacts, especially as they relate to social determinants of health and environmental justice.

***Navajo Nation, Ojo Encino Chapter***

***George Werito, Jr.***

**Issue Excerpt Text:** The RMP's failure to meet the mandates of Executive Order 12898 is evident in its lack of attention to public health impacts, particularly for Indigenous and low-income populations. The BLM's plan does not fully assess the disproportionate effects of fracking on Navajo

communities, including the health risks associated with air pollution from methane and volatile organic compounds (VOCs) and potential contamination of water supplies. The absence of specific mitigation measures addressing these risks (including the lack of specific setback requirements for oil/gas developments) violates NEPA’s requirement for environmental justice and public health protections.

***Navajo Nation, Ojo Encino Chapter  
George Werito, Jr.***

**Issue Excerpt Text:** The RMP contains critical gaps in managing and protecting water resources essential to the Navajo communities. Fracking poses significant risks of groundwater depletion and contamination, yet the RMP lacks enforceable standards for water conservation and pollution prevention. NEPA, FLPMA, and the Clean Water Act (CWA) require that BLM ensure the sustainable use and protection of water resources. However, without specific and enforceable mitigation measures, such as limits on water usage, wastewater recycling, and stringent disposal methods, the RMP fails to meet these legal obligations.

**Summary:**

Protestors stated that the BLM violated NEPA, EO 12898, EO 14008, BLM Instruction Memorandum (IM) 2022-059, and the Administrative Procedure Act by failing to take a hard look at the direct, indirect, and cumulative impacts on and the relationship between public health conditions and environmental justice communities resulting from oil and gas development. Additionally, the BLM failed to adequately characterize the risks to air and water resources that are essential to indigenous communities and did not specify enforceable mitigation measures to meet its legal obligations under the Clean Water Act.

**Response:**

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b), 1502.1). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Rio Puerco PRMP/FEIS.

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

A land use planning–level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan–level decisions. As the land use planning decisions considered by the BLM are programmatic, the scope of the analysis was conducted at a regional, programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from planning-level changes. The analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

EO 12898 directs Federal agencies to identify and address disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations, to develop a strategy for implementing environmental justice, to promote nondiscrimination in Federal programs affecting human health and the environment, and to provide access to public information and participation for minority and low-income communities.

EO 14008 places climate change at the forefront of U.S. foreign policy and national security and created the [Justice40 Initiative](#), which aims to ensure that 40 percent of the overall benefits of Federal investments in climate and clean energy flow to disadvantaged communities. In spring 2023, Congress amended NEPA as part of the Fiscal Responsibility Act in tandem with EO 14096, which defined environmental justice to mean the “just treatment and meaningful involvement of all people” in agency decision-making and actions “regardless of income, race, color, national origin, Tribal affiliation, or disability.” NEPA provides a procedural framework by which agencies may consider the environmental effects of their actions and, through EO 14096, agencies are encouraged to include effects that relate to environmental justice. EO 14008 sets the broad climate policy framework, including international and domestic climate actions, while EO 14096 focuses on ensuring that the benefits of these actions are equitably distributed, particularly to communities historically burdened by environmental injustices. Together, they represent a comprehensive approach to tackling climate change and promoting environmental justice.

BLM IM 2022-059 provides policy clarity and updates best practices for incorporating environmental justice into the BLM’s activities and applies to all environmental reviews under NEPA. BLM IM 2022-059 requires the BLM to conduct environmental justice screenings to identify and inventory affected populations, to analyze potential social and economic effects on these populations to determine if impacts are disproportionate, and to provide opportunities for meaningful involvement of affected populations in the decision-making process.

The Administrative Procedure Act (5 U.S.C. 551–559) establishes how Federal administrative agencies like the BLM make rules and the procedures for judicial review of agency actions.

Rio Puerco PRMP/FEIS Section 3.17, *Social and Environmental Conditions* (pp. 3-52 through 3-74), provides a thorough description of the social and economic conditions that currently exist within the study area including environmental justice populations, which are specifically discussed in Section 3.17.7 (pp. 3-71 through 3-74). Section 4.2.15, *Social and Economic Conditions* (pp. 4-74 through 4-87), provides a thorough analysis of direct, indirect, and cumulative socioeconomic impacts from implementation of the alternatives presented within the Rio Puerco PRMP/FEIS with impacts specific to environmental justice populations discussed in Section 4.2.15.2.1 (pp. 4-84 through 4-85). As noted in this section, “While the potential exists for disproportionate adverse impacts on minority and low-income environmental populations of concern in the planning area resulting from management decisions, the level to which those populations would experience such impacts would depend on the nature of implementation. These impacts would be determined at a site-specific level of analysis for the specific implementation of projects” (Rio Puerco PRMP/FEIS p. 4-85). Additionally, Section 4.2.6 of the Rio Puerco PRMP/FEIS (pp. 4-32 through 4-34) describes the direct, indirect, and cumulative impacts associated with mineral resources and public health and safety management, explaining that, “Under all of the alternatives, environmental conditions, as well as public health and safety, would be protected as a result of the BLM hazardous materials management practices. Authorized uses of hazardous materials would adhere to federal and state requirements to reduce or eliminate impacts. BLM procedures (including leasing stipulations), as well as state and local agencies, would address accidental events and unauthorized use. These procedures would help minimize public exposure and environmental impacts to the extent possible.” These procedures and stipulations would protect the health and safety of all people, including environmental justice populations.

Section 4.2.1, *Air Resources, Including Climate Change* (Rio Puerco PRMP/FEIS pp. 4-1 through 4-16), analyzes the potential impacts of the alternatives on air resources in the planning area and specifically Section 4.2.1.1.2, *Mineral Resource Decisions* (Rio Puerco PRMP/FEIS pp. 4-3 through 4-7), discusses the potential impacts that the mineral resources decisions under each alternative would have on air quality. Despite the differences in areas open and closed to fluid minerals leasing under each alternative, actual impacts would be similar across alternatives because a similar level of well

development is expected to occur. Any future proposed mineral development project on BLM land would be subject to NEPA analysis and would take into account any changes in oil and gas development, air quality, and other relevant factors (Rio Puerco PRMP/FEIS p. 4-3).

The Rio Puerco PRMP/FEIS discusses the current conditions of groundwater quality and quantity in Section 3.18.2 (pp. 3-75 through 3-78) and the potential direct, indirect, and cumulative impacts on water resources in Section 4.2.16 (pp. 4-87 through 4-91). Authorizations for any mineral extraction activities on BLM-administered land would require site-specific analysis and compliance with applicable environmental laws and regulations including NEPA. Water usage associated with authorized mining activities would require permitting through the New Mexico Office of the State Engineer, which would assess the application for water use for the proposed mining activity in accordance with the New Mexico water rights statutes. The BLM has no specific regulatory authority related to use of water or enforcement of water quality laws. However, regarding water quality standards, the BLM does have the authority per FLPMA Section 302(c) to revoke or suspend land use authorizations if violations of applicable State or Federal air or water quality standards or implementation plans occur and will do so if necessary (Rio Puerco PRMP/FEIS Appendix R, p. R-75). The Rio Puerco PRMP/FEIS does not actually authorize any specific project that affects water quality and all specific projects implementing the Rio Puerco PRMP/FEIS will be subject to additional analysis of possible water effects, as appropriate, and must comply with the Clean Water Act and NEPA.

The Rio Puerco PRMP/FEIS discusses the current conditions of oil and gas development in Section 3.12.3.1, *Oil and Gas* (Rio Puerco PRMP/FEIS pp. 3-38 through 3-39), and explains that, “In accordance with American Petroleum Institute (2009), proper well design ensures the environmentally sound, safe production of hydrocarbons by containing them inside the well, protecting groundwater resources, isolating the production formations from other formations, and by proper execution of hydraulic fractures and other stimulation operations.” The Rio Puerco PRMP/FEIS analyzes and adopts mitigation measures that avoid some potential future impacts altogether by proposing to close certain public lands to certain uses and minimizes other potential future impacts by restricting certain uses on the public lands. At the RMP level, it is typically not appropriate to analyze specific mitigation measures that rectify impacts, reduce impacts over time, or compensate impacts, because the approval of an RMP does not directly result in any on-the-ground impacts and there is subsequent decision-making for implementation. The BLM would look at all appropriate mitigation measures during the decision-making process for future actions in the planning area.

The BLM complied with EO 12898, EO 14008, EO 14096, BLM policy, and the Administrative Procedure Act ensuring the management proposed with the Rio Puerco PRMP/FEIS does not disproportionately affect environmental justice populations. The BLM also complied with NEPA and completed all necessary impact analyses required by NEPA in preparation of the Rio Puerco PRMP/FEIS. Accordingly, this protest issue is denied.

## ***NEPA: Impacts Analysis – Water Resources***

***Western Environmental Law Center, Diné C.A.R.E., San Juan Citizens’ Alliance, WildEarth Guardians***

***Allyson Beasley, Robyn Jackson, Mike Eisenfeld, Kelly Fuller***

**Issue Excerpt Text:** NEPA’s requirement to assess all the potential impacts of opening lands to oil and gas leasing also includes taking a “hard look” at how ensuing development could impact groundwater. *WildEarth Guardians v. U.S. Bureau of Land Mgmt.*, 457 F. Supp. 3d 880, 886-89 (D. Mont. 2020). This must include more than generic boilerplate about potential water resource impacts

from oil and gas development. Also, BLM must --but has failed to--disclose water demands associated with foreseeable development of any lands that are left open to leasing

***Western Environmental Law Center, Diné C.A.R.E., San Juan Citizens' Alliance, WildEarth Guardians***

***Allyson Beasley, Robyn Jackson, Mike Eisenfeld, Kelly Fuller***

**Issue Excerpt Text:** In light of these risks to a critical resource, BLM must evaluate potential groundwater impairment. As a threshold matter, BLM must provide a detailed account of all regional groundwater resources that could be impacted, including usable aquifers that may not currently be used as a drinking water supply. The accounting must include, at minimum, all aquifers with up to 10,000 parts per million total dissolved solids, and it cannot substitute existing drinking water wells or any other incomplete proxy for a full description of all usable or potentially usable groundwater in the region. Second, BLM must use that accounting to assess how new oil and gas wells might impact these resources. That evaluation must assess the sufficiency of protective measures that will be employed, including wellbore casing and cementing and vertical separation between aquifers and the oil and gas formations likely to be hydraulically fractured. In assessing these protections, BLM cannot presume that state and federal regulations will protect groundwater, because of the shortcomings and industry noncompliance described above. BLM may not defer this analysis of groundwater impacts to the APD stage. *WildEarth Guardians*, 457 F. Supp. 3d at 888. BLM's failure to conduct this analysis violates NEPA. BLM should address the potential use of surface water and groundwater for hydraulic fracturing and drilling by assessing the reasonably foreseeable development on groups of proximate parcels. BLM should also evaluate the potential for aquifer drawdown or overdraft due to cumulative effects of past, present, and future activities that could impact nearby groundwater wells, as well as the potential for cumulative effects on surface water quantity and stream/river structure and function. Likewise, the BLM must quantify and address the risk of potentially catastrophic spills and blowouts at well sites, which could impact and degrade surface waters. This is a serious concern because such major spills are not uncommon in natural gas drilling.

***Western Environmental Law Center, Diné C.A.R.E., San Juan Citizens' Alliance, WildEarth Guardians***

***Allyson Beasley, Robyn Jackson, Mike Eisenfeld, Kelly Fuller***

**Issue Excerpt Text:** In its NEPA analysis, the BLM must address whether the development of oil and gas resources will affect any high-quality waters or whether it will degrade any existing uses. The BLM may not evade its NEPA duty to consider these impacts by asserting that other agencies may issue discharge permits. 40 C.F.R. §§ 1502.14(f), 1502.16(h). "A non-NEPA document - let alone one prepared and adopted by a state government - cannot satisfy a federal agency's obligations under NEPA."

***Western Environmental Law Center, Diné C.A.R.E., San Juan Citizens' Alliance, WildEarth Guardians***

***Allyson Beasley, Robyn Jackson, Mike Eisenfeld, Kelly Fuller***

**Issue Excerpt Text:** Here, in its NEPA analysis the BLM must closely assess the direct, indirect, and cumulative impacts of oil and gas development on water supplies. 40 C.F.R. §§ 1508.7, 1508.8. This analysis must consider the potential sources of water that would be used for oil and gas development, and the impacts of these water withdrawals on water availability for drinking, agriculture, and wildlife. The analysis must further address the impacts to water quantity at different annual, seasonal, monthly, and daily time scales because the impacts of such water withdrawals could be more acute during times, months, and seasons of scarcity.

**Summary:**

Protestors stated that the BLM violated NEPA by failing to take a hard look at the potential direct, indirect, and cumulative impacts on groundwater and surface water resources from oil and gas development including how oil and gas development could affect the various uses of water within the Rio Puerco FO. In addition, protestors stated that the BLM inaccurately presumed that State and Federal regulations or other agencies would protect groundwater resources.

**Response:**

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b), 1502.1). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Rio Puerco PRMP/FEIS. The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

A land use planning–level decision is broad in scope. For this reason, analysis of land use plan management alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan–level decisions. As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions (e.g., the BLM is not approving an application for oil and gas development), the scope of the analysis for the Rio Puerco PRMP/FEIS was conducted at a regional, programmatic level. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The Rio Puerco PRMP/FEIS discusses the current conditions of groundwater and surface water quality and quantity in Section 3.18.2, *Water Resources* (pp. 3-75 through 3-78), and the potential direct, indirect, and cumulative impacts on these resources in Section 4.2.16, *Soil and Water Resources* (pp. 4-87 through 4-91). Potential impacts on surface water and groundwater specifically from mineral resource decisions are provided in Section 4.2.16.1.3, *Mineral Resources Decisions* (pp. 4-89 through 4-90). Here, the BLM notes that under all alternatives water depletions for oil and gas hydraulic fracturing would likely continue to occur over the long term, which could result in depletion and degradation of water resources. For Federal mineral ownership, the BLM estimates that 100 wells would be vertically drilled and 29 wells would be horizontally drilled in the Decision Area over the life of the plan; based on this, the BLM estimates a volume of 218.56 acre-feet of water for oil and gas development would be used for hydraulic fracturing over the life of the plan. Impacts are most likely to occur where lands within the Decision Area are open to oil and gas leasing.

As discussed in Appendix R (Rio Puerco PRMP/FEIS pp. R-61 through R-63), authorizations for any mineral extraction activities on BLM land would require additional site-specific decision-making and environmental analysis in compliance with NEPA and compliance with other applicable environmental laws and regulations. Water usage associated with authorized mining activities would require permitting through the New Mexico Office of the State Engineer, which would assess the application for water use for the proposed mining activity in accordance with the New Mexico water rights statutes. As explained in the PRMP/FEIS, the BLM does not have authority over decisions made by the Office of the State Engineer.

Underground water resources are also managed and permitted by the New Mexico Office of the State Engineer. Any permit applications for underground water would have to be approved in accordance



with State law, which governs the ownership of water rights. The BLM would not have the authority to prevent water from being allocated by the State Engineer for any project, private or commercial. The BLM may revoke or suspend land use authorizations if violations of applicable State or Federal air or water quality standards or implementation plans occur, and will do so if necessary (Rio Puerco PRMP/FEIS Appendix R, p. R-75).

The BLM complied with NEPA's requirement to analyze the environmental consequences and impacts on groundwater and surface water. Accordingly, this protest issue is denied.

## ***Tribal Consultation***

### ***Torreón Community Alliance***

#### ***Mario Atencio***

**Issue Excerpt Text:** The proposed RMP-FEIS contains no information on how BLM, in collaboration with BIA, may have attempted to engage Navajo Indian allotment holders regarding the development of the RMP. This is problematic because the Interior Department has trust responsibilities towards allotment owners. On November 30th, 2022 the Secretary of Interior enacted new tribal consultation procedures that recognize the legal obligation to “identify, protect and conserve Tribal trust resources with... Tribes and Tribal members” This consultation process is to be “robust, interactive, predecisional, informative and transparent”. The RPFO RMP revision was identified by the BLM administration as a key planning area that needed to be combined with the BLM Farmington Field Office's RMP Amendment in the special “Honoring Chaco Initiative”. The outreach to allottees during the recent controversy of the Public Land Order that withdrew lands from mineral development around the Chaco Culture National Historical Park had the Assistant Secretary of Indian Affairs meet with allottees to hear their concerns.

### ***Torreón Community Alliance***

#### ***Mario Atencio***

**Issue Excerpt Text:** The proposed RMP-FEIS is an action that may have a direct effect on a Tribe as defined in the Interior Department's 2022 tribal consultation procedures. Actions that may directly affect Tribes include those that impact the health, welfare, cultural practices, lands, and sacred sites of Tribes and Tribal members, and also include actions that may affect a “Tribe's formal relationship with the Department, be it nation-to-nation or beneficiary-to-trustee”. Per this definition, the proposed RMP-FEIS is an action that will have a direct effect on Diné members of Torreón/Starlake Chapter, including allotment owners in their relationship with the Department as beneficiary-to-trustee. For such actions, it is the Department's policy to seek consensus with impacted Tribes using a consensus-seeking model — but this has not happened with the proposed RMP-FEIS.

#### **Summary:**

Protestors stated that the RMP does not provide evidence of robust consultation with Navajo allotment holders in violation of the Department of the Interior's trust responsibilities, nor did the BLM properly consult with the Diné members of Torreón/Starlake Chapter regarding direct effects on the Tribe as required by Departmental Manual 512 DM 3 regarding Intergovernmental Relations.

#### **Response:**

Section 101(d)(6) of the National Historic Preservation Act requires that “in carrying out its responsibilities under section 106, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties [of traditional religious and cultural importance to be eligible for inclusion on the National Register].” It is BLM

policy to ensure “that potentially affected tribes, located inside and outside of field office boundaries, are consulted in order to identify their concerns to allow these concerns to be considered in specific BLM decisions” (BLM Manual 1780 Section 1.F.7).

The BLM must clearly explain how Tribal input affected the final decision. While the BLM prefers to address Tribal concerns or resolve potential effects, this is not always feasible. Where the BLM is not able to accommodate Tribal desires, a clear explanation must be provided explaining why this was not possible (BLM Manual 1780 Section 1.6.D).

The BLM has consulted with Tribal governments throughout the development of the Rio Puerco PRMP/FEIS. The BLM’s consultation with Tribal governments is summarized in Section 5.4.2 of the Rio Puerco PRMP/FEIS (pp. 5-4 through 5-5), which details that the BLM initiated consultation with 20 federally recognized Tribes and Pueblos with a demonstrated interest in the Rio Puerco FO planning area, including the Torreon chapter of the Navajo Nation, inviting them to participate in the RMP process. Subsequently, 25 meetings were held with various Tribal leaders, soliciting input and hearing their concerns. The Tribes were also invited to several planning training sessions and alternatives development and analysis workshops, with several Tribal members participating. During the comment period for the Rio Puerco Draft RMP/EIS, all Tribes that were initially contacted were contacted again to discuss the Draft RMP/EIS and eleven of the Pueblos and one Navajo Nation Chapter agreed to a meeting (Rio Puerco PRMP/FEIS p. 5-5).

The BLM adequately consulted with Tribal governments regarding the Rio Puerco PRMP/FEIS. Accordingly, this protest issue is denied.

## ***References***

U.S. Department of Agriculture, Forest Service (Forest Service). 2009. *The 2009 Continental Divide National Scenic Trail Comprehensive Plan*. Approved September 28, 2009.  
[https://www.fs.usda.gov/sites/default/files/fs\\_media/fs\\_document/cdnst\\_comprehensive\\_plan\\_final\\_092809.pdf](https://www.fs.usda.gov/sites/default/files/fs_media/fs_document/cdnst_comprehensive_plan_final_092809.pdf).