



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

**Proposed Taos Resource
Management Plan
Amendment and
Environmental Assessment
for the Río Grande Del Norte
National Monument
Management Plan**

November 12, 2024

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Acronyms

Term	Definition
BLM	Bureau of Land Management
CFR	Code of Federal Regulations
EA	Environmental Assessment
e-bikes	electric bikes
EIS	Environmental Impact Statement
eMTB	electric mountain bike
FAA	Federal Aviation Administration
FLPMA	Federal Land Policy and Management Act
FONSI	Finding of No Significant Impact
IM	Instruction Memorandum
IMBA	International Mountain Bicycling Association
LWC	lands with wilderness characteristics
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NHT	National Historic Trail
NM	National Monument
NTS	National Trails System
NTSA	National Trails System Act
ORV	outstandingly remarkable value
OSNHT	Old Spanish National Historic Trail
PRMPA	Taos Proposed Resource Management Plan Amendment
RGDN	Río Grande del Norte
RMP	Resource Management Plan
RMPA	Resource Management Plan Amendment
ROW	right-of-way
S.O.	Secretarial Order
SRMA	Special Recreation Management Area
SRP	Special Recreation Permit
U.S.C.	U.S. Code

Introduction

The Bureau of Land Management (BLM) Taos Field Office and BLM New Mexico State Director proposed the Taos Proposed Resource Management Plan Amendment (PRMPA) and Environmental Assessment (EA) for the Río Grande del Norte (RGDN) National Monument (NM) on September 18, 2024. The BLM received 12 unique protest letter submissions during the subsequent 30-day protest period, which ended on October 18, 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. One letter was not complete because the protestor did not follow the requirements outlined in 43 CFR 1610.5-2. Another letter was complete and timely but was dismissed because the protesting party who submitted the letter did not have standing to protest. The remaining 10 letters were complete and timely and were from parties who had standing to protest. Seven of these protest letters contained valid protest issues. The BLM documents the responses to the valid protest issues in this protest resolution report. The protest decision and the reasons for the decision are 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, issued a Protest Resolution Report to protesting parties, and posted the report on the BLM's website; no changes to the RGDN PRMPA/EA 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

Letter Number	Protester	Organization	Determination
PP-NM-TA-EA-24-01	Robert Godreau	--	Dismissed: Comments Only
PP-NM-TA-EA-24-02	Erin Salano	New Mexico Department of Game and Fish	Dismissed: Comments Only
	Ginny Seamster	New Mexico Department of Game and Fish	
PP-NM-TA-EA-24-03	Kelly Pasholk	--	Dismissed: No Standing
PP-NM-TA-EA-24-04	Natalie Paynter	--	Dismissed: Comments Only
PP-NM-TA-EA-24-05	Paul McGuff	--	Denied
	William Fawcett	--	
	Mark Henderson	--	
	David Love	--	
	John Martin	--	
PP-NM-TA-EA-24-06	Sally Paez	New Mexico Wild	Denied
	Michael Fiebig	American Rivers	
	Michael Casaus	The Wilderness Society	
	Romir Lahiri	Conservation Lands Foundation	
	Shannon Romeling	Amigos Bravos	
	Diane Reese	Sierra Club Rio Grande Chapter	
PP-NM-TA-EA-24-07	Aaron Clark	International Mountain Bicycling Association	Denied
PP-NM-TA-EA-24-08	Nick Streit	Friends of the Rio Grande del Norte	Denied
PP-NM-TA-EA-24-09	Sol Lothe	Rio Grande Balloons LLC	Denied
PP-NM-TA-EA-24-10	Withheld	--	Dismissed: Incomplete
PP-NM-TA-EA-24-11	Katie Goodwin	Access Fund	Denied
	Bryan Pletta	New Mexico Climbers Resource and Advocacy Group (NM CRAG)	
PP-NM-TA-EA-24-12	Simone Griffin	BlueRibbon Coalition	Denied

FLPMA: Consistency with Other Laws

Rio Grande Balloons, LLC

Sol Lothe

Issue Excerpt Text: All hot air balloon flight operations occur in Federal Airspace, managed by the Federal Aviation Administration, which includes regulations for minimum safe altitudes and distances from objects on the surface, as codified in 14 CFR 91.119. It is outside of the jurisdiction of BLM to attempt to regulate flight operations which fall under the jurisdiction of the FAA. The requirement to follow all Federal Laws (including FAA regulations for flight operations) is already a stipulation of SRP permits. The location of the power lines is at least 1000 feet North of the approved balloon launch sites and is well outside the FAA's 500ft safe distance from objects on the surface in sparsely populated areas such as this. In addition, this specific section of the Federal Aviation Regulations starts out with the language "Except when necessary for takeoff or landing...", making the 500 ft distance from objects inapplicable when selecting a site for takeoff or landing. iii. From a practical standpoint, Hot Air Balloon Pilots are responsible for the safety of their aircraft and passengers. Avoiding objects on the surface, such as power lines, fences, cars, boulders, etc. is an everyday part of flying a hot air balloon, and it is therefore unnecessary and inappropriate for the BLM to try to regulate the safety of flight operations relative to these power lines. Using this logic in the context of rafting, it would be like saying "we're not going to allow rafting below the John Dunn Bridge because there are boulders in the river that could be hazardous to boaters." As it is the responsibility of boaters and raft guides to navigate their boats around obstacles in the river in a safe manner, so is it the responsibility of hot air balloon pilots to navigate their aircraft around objects on the surface in a safe manner, whether taking off, in flight, or landing. It should also be understood that any Hot Air Balloon SRP holders choosing to use the three approved launch sites on BLM Land would only do so if there are ground wind patterns to carry their balloons generally to the South or Southeast from these launch sites. If ground winds are such that there would be any hazard of blowing towards the power lines at this low altitude, then these launch sites would not be used as a simple matter of navigability and practicality related to the nuances of this flying area.

Summary:

Protestors stated that the BLM exceeded its authority under the Federal Land Policy and Management Act (FLPMA) by attempting to regulate flight operations of hot air balloons, which are already regulated by the Federal Aviation Administration (FAA).

Response:

As explained in the RGDN PRMPA/EA, FAA regulates the operation of aircraft within the United States under 14 CFR 91 et seq. These regulations include restrictions on aspects of hot air balloon operation such as minimum safe altitudes, aircraft speed, and right-of-way (ROW) rules. All hot air balloon operations must comply with these regulations when operating in Federal air space.

The proposed management actions in the RGDN PRMPA/EA do not regulate flight operation of hot air balloons already regulated by FAA. Rather, the management actions set forth in RGDN PRMPA/EA Appendix C provide terms and other management direction for issuance of Special Recreation Permits for hot air balloons and other commercial, noncommercial, and competitive events within the RGDN NM to protect Monument objects and values on BLM-managed lands within the Monument, including sensitive wildlife species, as mandated in Proclamation 8946 (RGDN PRMPA/EA Appendix C, Table C-16, REC Management Action 9, p. C-119). As noted in the RGDN PRMPA/EA, "The proposed management would reduce direct and indirect adverse effects on wildlife

and special status species caused by the presence of hot air balloons below the rim” (RGDN PRMPA/EA p. 91). Additionally, the RGDN PRMPA/EA makes no case regarding the safety of the flights below the rim of the gorge, and Special Recreation Permit holders are still required to comply with FAA regulations during operations within the RGDN NM. Accordingly, none of the management actions outlined in the RGDN PRMPA/EA exceed the BLM’s authority for management of the public lands or are in conflict with any FAA regulations.

The RGDN PRMPA/EA is in compliance with all other Federal laws and regulations, including those enforced by FAA under 14 CFR 91.119. Additionally, the management direction for Special Recreation Permits for hot air balloon operation within the RGDN NM are consistent with the mandates set forth in the Monument’s enabling legislation, Proclamation 8946. Accordingly, this protest issue is denied.

Lands with Wilderness Characteristics

New Mexico Wild et al.

Sally Paez et al.

Issue Excerpt Text: Of the LWC inventory units in Table 3-7, the following units have not been designated as Wilderness and currently qualify for management in the Final RMPA/EA to protect and maintain wilderness characteristics: Central Playas (8,339 acres), Cerro de la Olla (12,236 acres), Guadalupe Mountains (7,131 acres), La Junta Rim (9,335 acres), Llano (6,588 acres), North Chiflo (34,452 acres), Plover Prairie (32,636 acres), Punche Valley (25,772), and San Antonio East (9,855 acres). The BLM’s 2017 LWC inventory report reflects that the BLM intended to use this Monument planning process to evaluate and decide how to manage identified LWC units. In our previous comments, we recommended that the BLM confirm that it has an up-to-date LWC inventory and manage all qualifying LWCs within the Monument to protect and maintain wilderness characteristics. In particular, we urged the BLM to prioritize North Chiflo (34,452 acres) for LWC management, and we encouraged the BLM to consider managing as LWCs the entire width of the Río Grande gorge to the top of the rim on the East side from the confluence of the Red River north to the Colorado state line, as well as the portion of the Red River canyon within the Monument. Yet, in the Final RMPA/EA the BLM discusses only a small percentage of these LWCs. Specifically, the BLM’s proposed action (Alternative B) would carry forward the existing management of San Antonio East (9,855 acres) to protect and maintain wilderness characteristics and would also manage 5,120 acres of the 12,236-acre Cerro de la Olla unit to protect and maintain wilderness characteristics. In response to our previous comments, the BLM explains that it “anticipates that other, overlapping management will help preserve wilderness characteristics in inventoried areas not specifically managed to preserve wilderness characteristics. This includes management where the BLM is required to ensure the proper care and management of Monument objects.”

New Mexico Wild et al.

Sally Paez et al.

Issue Excerpt Text: The BLM should revise the Final RMPA/EA and protect qualifying LWCs for the following reasons. First, by failing to manage qualifying LWCs to protect wilderness characteristics, the BLM is missing a critical opportunity to “protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; . . . preserve and protect certain public lands in their natural condition; [and] provide food and habitat for fish and wildlife,” as required by FLPMA.⁵² Managing LWCs to protect wilderness characteristics furthers the BLM’s ability to protect these related resources and values, as well as the objects the Monument was designated to protect.

New Mexico Wild et al.

Sally Paez et al.

Issue Excerpt Text: As acknowledged in the RMPA/EA, Section 201 of FLPMA imposes an affirmative legal duty on BLM to “prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern.” BLM’s inventory must include lands with wilderness characteristics (LWCs), as described in the Wilderness Act. The BLM must keep this inventory “current so as to reflect changes in conditions and to identify new and emerging resource and other values.” Additionally, FLPMA mandates that BLM must inventory and consider LWCs during the resource management planning process.

Summary:

Protestors stated that the BLM violated FLPMA by failing to designate and manage LWC in Central Playas, Cerro de la Olla, Guadalupe Mountains, La Junta Rim, Llano, North Chiflo, Plover Prairie, Punche Valley, and San Antonio East to protect those wilderness characteristics and related resources and values. Protestors claim that the BLM violated FLPMA by failing to maintain a current inventory of LWCs.

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)). 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. Although the BLM must consider LWCs in the land use planning process, the BLM “is not required to protect those characteristics as a priority over the resource values and multiple uses” (BLM Manual Section 6320).

Section 201(a) of FLPMA requires that the BLM “prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values” and that “this inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values.” Additionally, Section 202(c)(4) of FLPMA requires that “in the development and revision of land use plans, the Secretary shall...rely, to the extent it is available, on the inventory of the public lands, their resources, and other values.” The BLM’s wilderness characteristics inventory process does not require that the BLM conduct a completely new inventory and disregard the inventory information that it already has for a particular area when preparing a land use plan.

The BLM relied on a current inventory of the resources of the public lands when preparing the RGDN PRMPA/EA. The BLM described the inventory information it used for LWC in Section 3.2.10 of the RGDN PRMPA/EA, including a description of a follow-up wilderness characteristics inventory completed in 2017 after the designation of the RGDN NM and using the inventory process outlined in BLM Manual 6310 (RGDN PRMPA/EA p. 66). “The inventory included desktop and field-based reviews, along with input from livestock permittees pertaining to roads and range improvements. The BLM also reviewed citizen inventories prepared by Friends of the Río Grande del Norte” (RGDN

PRMPA/EA p. 66). Table 3-7 provides the 11 units included in the 2017 LWC Inventory (RGDN PRMPA/EA p. 66).

Section 3.2.10.3 states that the 2013 Monument designation and designation of Ute Mountain wilderness area (formerly Cerro del Yuta Wilderness) (13,172 acres) in 2019 has provided long-term protection for LWC (RGDN PRMPA/EA p. 69). Under the RGDN PRMPA, the San Antonio East unit (9,855 acres) and 5,120 acres of the Cerro de la Olla unit would be managed to protect and maintain its wilderness characteristics (RGDN PRMPA/EA p. 68). See Section 3.2.17 of the RGDN PRMPA/EA for additional discussion on lands with special designations.

Section 3.2.10.2 states that other management decisions discussed throughout the RGDN PRMPA/EA and existing Monument decisions would provide adequate protections or mitigation of adverse effects on the criteria for which inventoried LWC are evaluated; therefore, areas identified in the 2017 inventory would retain much of the wilderness qualities (RGDN PRMPA/EA pp. 67 through 68). See Appendix B, Maps B.14, B.20, and B.23, of the RGDN PRMPA/EA for additional information on exclusion and avoidance areas across the Monument.

Accordingly, the BLM considered the protection of LWC in the RGDN PRMPA/EA and properly exercised its authority under FLPMA and BLM regulations. The BLM also relied on its current inventory of public lands, to the extent it was available, in developing the RGDN PRMPA/EA. Accordingly, this protest issue is denied.

National Trail System Act

Paul McGuff et al.

Issue Excerpt Text: Compliance with National Trails System Act (NTSA) requires flexible corridor widths that ensure the preservation of designated high-potential segments of the Old Spanish National Historic Trail under the NTSA, not just some corridor with a fixed width or distance from the trail. NTSA also stipulates that National Trails shall be managed in ways that further public involvement in and enjoyment of the trail. We see few resources for this Monument being devoted to meeting this stipulation. For BLM, NTSA Goal 1 is some future target, but it is unclear how BLM plans to meet it.

Summary:

Protestors stated that the BLM violated the NTSA by failing to provide flexible corridor widths that ensure the preservation of designated high-potential segments of the Old Spanish National Historic Trail (OSNHT).

Response:

The 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)(23) establishes the OSNHT and provides for Secretarial administration. According to 16 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.

The NTSA requires that the BLM submit a comprehensive plan for the management, development, and use of a trail, including “a protection plan for high potential historic sites and high potential route segments” (16 U.S.C. 1244(f)(3)). Additionally, “The location and width of such rights-of-way across Federal lands under the jurisdiction of another Federal agency shall be by agreement between the head of that agency and the appropriate Secretary” (16 U.S.C. 1246(a)(2)).

The 1-mile corridor encompassing the OSNHT would be used to define the area in which prescriptions would be implemented (RGDN PRMPA/EA Appendix C, National Historic Trail [NHT] Management Action 1, pp. C-136 through C-139). Neither the NTSA nor BLM national trails policy requires the BLM to identify specific limitations or allowable discretionary uses on national trails at the land use planning level. Resource Management Plans (RMP) 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). Per BLM Manual 6280, allocation of a National Trail Management Corridor must be “of sufficient width to encompass National Trail resources, qualities, values, and associated settings and the primary use or uses that are present or to be restored.” The BLM determined that a 1-mile corridor was of a sufficient width to encompass the OSNHT resources, qualities, values, and associated settings and the primary use or uses of the trail.

The BLM, as a Trail Administrator, would directly and indirectly support the protection of high-potential route segments and any resources listed or determined eligible for the National Register of Historic Places. In the RGDN PRMPA/EA 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 OSNHT or its designated high-potential route segments. Site-specific NEPA analysis is required prior to authorizing any future implementation actions that may affect the OSNHT. Additionally, BLM has the authority to require mitigation to avoid or minimize impacts on NHTs during that site-specific decision-making and NEPA evaluation.

NHT Management Action 1 establishes the OSNHT trail corridor as Visual Resource Management Class II, which is consistent with BLM Manual 6280 and specifies that the Taos Overlook segment would be managed as a high-potential segment per the BLM’s Comprehensive Administrative Strategy, BLM Manual 6250, BLM Technical Reference 6280, the 2016 Multi-Agency National Trails System Memorandum of Understanding, and Proclamation 8946 (RGDN PRMPA/EA Appendix C, NHT Management Action 1, pp. C-136 through 139).

As discussed in the RGDN PRMPA/EA (Appendix C, Table C-19), NHT Goal 1 establishes a goal for the BLM to provide effective and accessible orientation, interpretation, and education programs and activities on the trail (RGDN PRMPA/EA Appendix C, NHT Goal 1, p. C-136). NHT Management Actions 1 through 3 go into more detail for the methods of meeting these goals (RGDN PRMPA/EA Appendix C, NHT Management Actions 1 through 3, pp. C-136 through C-140). NHT Management Action 1 in RGDN PRMPA/EA Appendix C, Table C-19, provides protective management for the OSNHT, specifically providing prescriptions for the trail corridor on public lands under each alternative with a notation that the BLM will continue to work in partnership with the

National Park Service to manage the OSNHT (RGDN PRMPA/EA Appendix C, NHT Management Action 1, pp. C-136 through C-139).

By protecting the resources of the OSNHT and preserving high-potential route segments, the BLM is able to manage the OSNHT in ways that further public involvement in and enjoyment of the trail. Additionally, the BLM is in compliance with the NTSA and BLM Manual 6250 regarding National Trail Management Corridors. Accordingly, this protest issue is denied.

NEPA: Level of Analysis

Paul McGuff et al.

Issue Excerpt Text: We object to an implication that an Environmental Assessment has been chosen as a “more efficient process.” The implication is that BLM wants a quick process in order to avoid potential complications that might arise from a possible 2025 change in federal administration. Neither the National Environmental Policy Act nor federal regulations provide for this type of expediency consideration as a basis for environmental impact assessment processes. We wish to point out that the Bureau’s perceived need for speed is due both to an irrelevant political consideration and a tardy start on compliance with the National Environmental Policy Act. Eleven years ago Proclamation 8946 required, “For purposes of protecting and restoring the objects identified above, the Secretary, through the BLM, shall prepare and maintain a management plan for the monument and shall provide for maximum public involvement in the development of that plan including, but not limited to, consultation with tribal, State, and local governments as well as community land grant and acequia associations.” The BLM’s Environmental Assessment based on an “urgent need” was first begun in 2016 then placed on hold following the issuance of Executive Order 13792, dated April 26, 2017. Executive Order 13990 of January 20, 2021, revoked Executive Order 13792. Scoping began again last year nearly two years after the latest Executive Order.

Summary:

Protestors stated that the BLM violated NEPA by choosing to prepare an EA rather than an Environmental Impact Statement (EIS) for the PRMPA for the sole purpose of efficiency.

Response:

Per the BLM’s planning regulations, “a resource management plan may be changed through amendment” and “an amendment shall be made through an environmental assessment of the proposed change, or an environmental impact statement, if necessary” (43 CFR 1610.5-5). When determining whether to prepare an EIS instead of an EA for a plan amendment, the BLM must determine the significance of the effects of the proposed action. To determine whether the effects are significant enough to warrant preparation of an EIS, the BLM must consider both the context and intensity of the action and the effects (BLM Handbook H-1790-1, p. 70). One of the Council on Environmental Quality’s considerations for evaluating intensity of effects is the degree to which the effects are likely to be highly controversial (40 CFR 1408.27(b)(4)). In this context, “controversy” means that there is disagreement about the nature of the effects, not merely public opposition to a project or preference for a different alternative. Substantial disagreement among the scientific community regarding the nature of effects indicates controversy. The BLM decision-maker uses his or her discretion to determine the degree of controversy (BLM Handbook H-1790-1, p. 71). When evidence points to a lack of controversy or intensity of effects, proceeding with an EA is appropriate.

Section 1.1 of the RGDN PRMPA/EA states: “Because the 2012 Taos RMP was completed at the time Proclamation 8946 established the Monument, and the BLM does not anticipate needing

substantial changes to how the Monument is currently being managed under the 2012 Taos RMP, an EA-level plan amendment has been determined to be the appropriate means of streamlining the process now that planning for the Monument is once again proceeding. The BLM believes that the purposes for which the Monument was designated—the protection, preservation, and restoration of important resource values—can be achieved without substantial changes to its current management. Under the 2012 Taos RMP, the Monument lands are being managed as two Areas of Critical Environmental Concern (ACECs), which provide management largely consistent with the purposes of the Monument’s designation” (RGDN PRMPA/EA p. 6). Planning decisions for an NM must analyze and consider measures to ensure that objects and values are conserved, protected, and restored (BLM Manual Section 6220.1.6.G.4). Although other NMs have developed land use plans for the Monument or completed plan revisions supported by an EIS based on the existing management of the Monument, after considering the planning issues and the scope of the planning effort, the BLM determined it could complete a Resource Management Plan Amendment (RMPA) supported by an EA. Specifically, there are two designated Areas of Critical Environmental Concern in the RGDN NM that are currently being managed to protect the Monument’s objects and values. The BLM is also not proposing major changes to management; therefore, the BLM concluded that it was more appropriate to prepare an EA for the proposed RMPA. The analysis throughout Chapter 3 of the RGDN PRMPA/EA shows that no significant impacts from the proposed action are predicted, which justifies this decision and is the baseline reason for proceeding with an EA over an EIS, not a “more efficient process” due to a possible change in Federal administration, as the commenter suggests.

The management proposed in the RGDN PRMPA/EA adequately protects the Monument objects and values and would not result in any significant impacts on resources. Because of this and the fact that there were no major changes in management proposed from the current 2012 Taos RMP, an RMPA at the EA rather than EIS level is appropriate. Additionally, there is no controversy or disagreement amongst the scientific community about the nature of the effects analyzed in the RGDN PRMPA/EA. Accordingly, this protest issue is denied.

NEPA: Impact Analysis – Cultural

Paul McGuff et al.

Issue Excerpt Text: We protest the adequacy of the Class I Report contracted by the BLM for the Rio Grande del Norte National Monument. As indicated in our comments on the report submitted to the government on September 13 and our Protest Comment 021, the reasons for our protest include the fact that the BLM did not follow its own guidelines in contracting for and accepting the Class I Report for the Monument. The report fails to meet the government purpose to “...provide cultural resource specialists and managers with an informed basis for understanding...” the Rio Grande del Norte National Monument study area (see, BLM Manual 8110 2.21.A.1.a). It is improper to use this inadequate report to support a Determination of No Adverse Effect under the National Historic Preservation Act or a Finding of No Significant Impact under the National Environmental Policy Act.

Paul McGuff et al.

Issue Excerpt Text: The BLM Manual 8110 establishes a standard for Class I overviews. In the September 13 letter we compare the Class I Seltzer-Rogers report against that standard. The disconnect between the Class I overview we reviewed and the BLM standard is the reason the overview fails to meet the government purpose to “... provide cultural resource specialists and managers with an informed basis for understanding...” the Rio Grande del Norte National Monument study area (see, BLM Manual 8110 2.21.A.1.a). We document our findings in detail within a table attached to the September 13 letter. As shown in the table we determined that out of 34 requirements mentioned in the BLM Manual as necessary in a Class I report just 12 were met or

partially met. We also considered the requirements in BLM Manual 8130, Planning for Uses of Cultural Resources. Neither it nor the Manual 8110 were cited in the Class I report or evidently considered as that report was written. Ironically the BLM lists the Class I report as a scientific basis to support its management decisions (see Appendix A of the Resource Management Plan Amendment). Citation of a flawed document does not resolve any resource management challenge at the Rio Grande del Norte National Monument.

Summary:

Protestors stated that the BLM violated NEPA by utilizing a Class I report that fails to comply with the standards outlined in BLM Manual 8110 to support management decisions in the RGDN PRMPA/EA.

Response:

NEPA directs that data and analyses in an EA or 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 RGDN PRMPA/EA.

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 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, 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.

Per the BLM Land Use Planning Handbook (H-1601-1), the appropriate level of identification for land use planning is a regional overview, or Class I document. BLM Handbook 8130 defines a Class I Existing Information Inventory as “(1) a compilation and analysis of reasonably available cultural resource data and literature, and (2) a management-oriented synthesis of the resulting information” (MS-8130.2.B). However, BLM Handbook 8110 states that “there is no outside source for direction on how to construct a compilation and synthesis of all existing cultural resource information as preparation for multiple-use, land-use planning and day-to-day cultural resource decision making” (MS-8110.2.1.A4).

The National Historic Preservation Act (NHPA) requires Federal agencies, as part of the NHPA Section 106 process, to make a “reasonable and good-faith effort” to identify historic properties within the area of potential effect in part through consultation with Tribes and consulting parties (36 CFR 800.4(b)). The scope and scale of cultural resource identification for RMP-level efforts are much more general and less intensive than for site-specific use proposals. The BLM NEPA Handbook also directs the BLM to “use the best available science to support NEPA analyses and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55). Under the BLM’s guidelines for implementing the Information Quality

Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

The BLM developed a Class I Cultural Resources Report that identifies all known cultural resources in the planning area and provided it to the parties that accepted consulting party status for review on January 19, 2024. A summary of the Class I report, including the types of cultural resources sites within the Monument, environmental consequences and cumulative impacts of alternatives on cultural resources, and several data sources used for the report can be found in Section 3.2.1 (RGDN PRMPA/EA pp. 32 through 35). No comments were received on the report and, because an RMP does not approve any specific on-the-ground actions, it was determined that the RGDN PRMPA/EA would have no adverse effects on historic properties, as defined by NHPA Section 106. Any future site-specific actions would be subject to Section 106 of the NHPA and all applicable Federal historic preservation laws, including NEPA, Executive Order 13287, and Section 110 of the NHPA.

The RGDN PRMPA/EA provides goals, objectives, and management actions related to cultural resources and traditional uses in Appendix C, Tables C-2 and C-3 (RGDN PRMPA/EA pp. C-8 through C-15). The public and consulting parties had an opportunity to review and comment on these goals, objectives, and management actions multiple times, including during the public comment period for the RGDN Draft RMPA/EA from April 23 through May 23, 2024.

The BLM utilized a Class I report that complied with the standards outlined in the BLM Land Use Planning Handbook 1601-1 to support management decisions in the RGDN PRMPA/EA and complied with NEPA’s requirement to analyze the environmental consequences/impacts on cultural resources in the RGDN PRMPA/EA. Accordingly, this protest issue is denied.

NEPA: Impact Analysis – Electric Bikes

International Mountain Bicycling Association

Aaron Clark

Issue Excerpt Text: Additionally we protest that this policy removal was done in whole and without any analysis of the alternative options available to the BLM and the BLM failed to provide adequate and accurate rationale or analysis that supports and/or justifies such a dramatic reversal and the resulting change to the proposed public access provided in the Draft EA/RMPA. There lacks any data or analysis of why this decision has been eliminated beyond a cursory “summary” sentence in the final EA that reads as follows. The Final EA, on page 22 under a summary of the changes, the BLM states: “A decision regarding the use of e-bikes on trails within the Monument has been removed from the scope of this analysis because it has been determined that the BLM does not have discretion to make such a decision due to the limitations on motorized vehicles specified in Presidential Proclamation 8946”. (emphasis added) With the word “because” the BLM has placed the responsibility of the removal on the proclamation language which is an incorrect assessment. Proclamation 8946 states: “...motorized vehicle use in the monument shall be permitted only on designated roads and non-motorized mechanized vehicle use shall be permitted only on designated roads and trails.

International Mountain Bicycling Association

Aaron Clark

Issue Excerpt Text: Under the BLM E-Bike Rule, e-bikes can be authorized on non-motorized trails. The BLM demonstrates an understanding of this in the Draft EA/RMPA where the BLM states: “Under Alternative B, the BLM would employ the e-bike definitional exclusion from the motorized classification, as provided at 43 CFR 8340.0-5(a), for the purposes of authorizing e-bikes (or e-mountain bikes) on non-motorized trails within the Monument.” p82 Again, the above statement from the Draft EA/RMPA demonstrates that the BLM understands they have a regulatory tool to follow

through with the proposed action by using the definitional exclusion described in 43 CFR 8340.0-5(a) but chooses instead to try and arbitrarily leverage the proclamation language to mislead the public into believing that e-bike access to trails is not permitted. We believe the public is owed an explanation. We believe the Monument is managed as a National Monument by the BLM under the full authority of their regulations within the confines of the Proclamation language. If the BLM does not define a Class 1 e-bike as a motorized vehicle, then it is managed as a non-motorized vehicle and should be permissible on trails authorized for bicycles. The BLM simply must follow the process laid out in the IM. Proclamation 8946 states: “Laws, regulations, and policies followed by the BLM in issuing and administering grazing permits or leases on lands under its jurisdiction shall continue to apply with regard to the lands in the monument, consistent with the purposes of this proclamation.” While the above statement in this case is specific to issuing and administering grazing permits, it is generally understood that the same is the true for the general management of the lands by the BLM when made consistent with the proclamation. Again, if the BLM regulations exclude a vehicle from the motorized definition, then it becomes managed as a non-motorized vehicle and can therefore comply with the proclamation’s motorized vehicle restrictions.

International Mountain Bicycling Association

Aaron Clark

Issue Excerpt Text: We contend, the BLM unnecessarily rescinded their proposed access for e-bikes based upon inaccurate information that mis-represents their own BLM Rule on Access for e-bicycles, or the BLM decided to seek to mislead the public to avoid engaging in the process of their IM 2023-051 and the other management tools available to the BLM for meeting the S.O.3376 on providing access for e-bikes on public lands. Or there was undue pressure from internal politics or external pressure from anti-access groups. IMBA asks that the BLM revisit the analysis of allowing Class 1 ebikes on specific bike trails in the Monument. The e-bike rule specifically established a tool for the BLM to use as referenced and the IM specifically established a simple process for which to employ it. The BLM does NOT need to remove this proposed access based on the Proclamation language as there is a clear tool to use to remain in compliance and meet the requirements.

International Mountain Bicycling Association

Aaron Clark

Issue Excerpt Text: Additionally we protest that this policy removal was done in whole and without any analysis of the BLM Instruction Memorandum (IM) 2023-051 - Management and Use of Electric Bikes on BLM-managed Lands , issued August 1, 2023, established a policy “concerning the use of electric bikes (e-bikes) on Bureau of Land Management (BLM)-managed trails where mechanized use is allowed and off-road vehicle use is otherwise prohibited”. This scenario is precisely the situation the RGDN NM is in with the proclamation restricting motorized use to roads. The IM states clearly that “U nder the rule, an e-bike can be excluded from the definition of off-road vehicle and, therefore, allowed on trails where off-road vehicle use is otherwise prohibited, only when the electric motor is not exclusively propelling the e-bike for an extended duration.”. Under the BLMs e-bike Rule, it provided the BLM with the authority to allow e-bike use on trails where motorized vehicles are prohibited by excluding Class 1, 2, and 3 e-bikes from the definition of off-road vehicle when pedaled and not throttled. We see no mention of this IM in the final EA. While this IM required field offices to obtain concurrence from the Assistant Director, National Conservation Lands and Community Partnerships, the RGDN NM proposal here in this final EA does not even appear to attempt this process and instead just jettisoned the proposed action in the draft EA rendering the ebike proposal meaningless as e-bikes would now be restricted to roads and eMTBs would have no place to ride bikes despite this clear tool to allow them to. The tool mentioned above is the critical tool at meeting the SO intention of expanding access to ebikes on BLM lands when a proclamation restricts motorized travel to roads. Again, we protest the action that removes from the analysis the use of e-

bikes on trails within the Monument on the ground that it is unjustified, inaccurately based, and marginalizes the comments that IMBA provided on the topic.

BlueRibbon Coalition

Simone Griffin

Issue Excerpt Text: In accordance with FLPMA, the BLM is mandated to manage lands for multiple use and sustained yield. Limiting motorized access, including e-bikes, contradicts the purpose of promoting public enjoyment of these lands. The growing demand for diverse recreational opportunities, especially for e-bike users, should be reflected in the plan. Excluding e-bikes from areas where traditional bicycles are allowed discriminates against users who rely on electric assistance for recreational enjoyment. We urge the BLM to incorporate broader access for e-bikes as part of its recreation management strategy. The vast reduction of recreational management zones is not in compliance with the monument proclamation and the restrictions are far reaching. This is a blatant disregard for FLPMA and the monument's multiple use mandate.

Summary:

Protestors stated that the BLM violated NEPA, IM 2023-051, Secretarial Order (S.O.) 3376, and FLPMA by:

- Removing proposed analysis and access of Class 1 e-bikes on specific trails and restricting e-bike access to roads within the Monument based on inaccurate information.
- Failing to provide an adequate rationale or analysis on the impacts from e-bikes that resulted in the decision to reverse the decision regarding the use of e-bikes on trails within the Monument.
- Claiming that the BLM does not have the regulatory authority to employ definitional exclusion from the motorized classification for e-bikes under the RGDN PRMPA/EA. Protestors stated that the BLM instead used language from Proclamation 8946 to rationalize the exclusion of e-bikes from trails closed to motorized vehicles within the Monument.
- Violating FLPMA's multiple-use mandate by limiting motorized access including e-bikes within the Monument.

Response:

Presidential Proclamation 8946 states that "except for emergency or authorized administrative purposes, motorized vehicle use in the monument shall be permitted only on designated roads and non-motorized mechanized vehicle use shall be permitted only on designated roads and trails." Because e-bikes are motorized vehicles, as acknowledged in the preamble to the 2020 e-bike rule, the proclamation provides that e-bikes are limited to designated roads in the Monument. As such, unlike mechanized, non-motorized bikes, e-bikes may not be used on trails in the Monument. The e-bike provision at 43 CFR 8342.2(d), which allows the BLM to exclude e-bikes from the definition of off-road vehicle at 43 CFR 8340.0-5(a), in certain instances, does not change the outcome because it does not allow the BLM to take the position that e-bikes are not "motorized vehicles."

The BLM complies with Proclamation 8946 by proposing management actions that only authorize e-bike use on designated roads. Accordingly, this protest issue is denied.

NEPA: Monitoring and Evaluation

Paul McGuff et al.

Issue Excerpt Text: The BLM State Director is missing critical information for a decision on significance of impacts. We object to the statements in the comment response about monitoring,

which imply that monitoring plans that meet standards are currently incorporated in the proposed Resource Management Plan. The Bureau has presented no such evidence for monitoring or its results. The comment response implies that legal requirements are met but we find little evidence to confirm. The BLM can address our protest if it can document it has met and does meet 43 CFR 1610.4–9 and 36 CFR 219.12 requirements that land-use plans must establish monitoring intervals and standards based on resource sensitivity. BLM Manual 6220 mandates that plans for national monuments analyze and incorporate measures to ensure the conservation, protection, and restoration of objects and values. The proposed management plan does not include a monitoring strategy—one that specifies change indicators, methodologies, protocols, and time frames for evaluating outcome achievement. Sadly, no such strategy and documentation is provided for the last 12 years of operation under the Taos Resource Management Plan. An October 10, 2023 email from the New Mexico State Historic Preservation Office confirms that a search of their files in the 2012 to 2024 period reveals no consultation or even mention of monitoring of cultural resources at the Rio Grande del Norte National Monument.

Paul McGuff et al.

Issue Excerpt Text: 114-1. Our protest, which is supported in general by our comments, is that the BLM does not demonstrate “full compliance” with many regulations including 43 CFR 1610. We object in particular to the claim that the standard given in 1610.4-9, Monitoring and Evaluation, has been met by the government. The plan we read does not establish intervals and standards for monitoring or refer to them by reference. The text of 1610.4-9 is worth quoting because no element in it is fully met.

1610.4-9 Monitoring and evaluation.

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

114-2. Another part of 43 CFR 1610 not fully met by the government within the documents for comment is 1610.5-4, Maintenance. There is little evidence of maintenance presented within the plan or the cited supporting records. We know that over 12 years of operation a good plan would see modifications. This is especially so when the period of operation encompasses a land-management mission shift, a period of climate alteration, and change in the quality and quantity of public use. We find it striking that the proposed Resource Management Plan Amendment has so little to say about maintenance of the parent Taos Resource Management Plan. The text of 1610.5-4 is worth quoting because no element in it is fully met.

1610.5-4 Maintenance.

Resource management plans and supporting components shall be maintained as necessary to reflect minor changes in data. Such maintenance is limited to further refining or documenting a previously approved decision incorporated in the plan. Maintenance shall not result in expansion in the scope of resource uses or restrictions, or change the terms, conditions, and decisions of the approved plan. Maintenance is not considered a plan amendment and shall not require the formal public involvement and interagency coordination process described under §§ 1610.2 and 1610.3 of this title or the preparation of an environmental assessment or environmental impact statement.

Maintenance shall be documented in plans and supporting records.
<https://www.ecfr.gov/current/title-43/section-1600.1610.5-4>”t.

Summary:

Protestors stated that the BLM violated its FLPMA planning regulations by failing to include a sufficient monitoring strategy, evaluation framework, or maintenance plan in the RGDN PRMPA/EA, particularly for cultural resources.

Response:

FLPMA’s planning regulations require that “the proposed plan shall establish intervals and standards, as appropriate, for monitoring and evaluation of the plan. Such intervals and standards shall be based on the sensitivity of the resource to the decisions involved and shall provide for evaluation to determine whether mitigation measures are satisfactory, whether there has been significant change in the related plans of other Federal agencies, State or local governments, or Indian tribes, or whether there is new data of significance to the plan” (43 CFR 1610.4-9).

Additionally, BLM Manual 6220 provides that plans for NMs analyze and incorporate measures ensuring the conservation, protection, and restoration of objects and values. This involves the inclusion of a monitoring strategy specifying change indicators, methodologies, protocols, and time frames for evaluating outcome achievement. In addition, implementation-level actions would be subject to NEPA review, and site-specific mitigation measures would be identified through the environmental review process.

RGDN PRMPA/EA Section 2.5, *Monitoring and Mitigation Protocol*, discusses that proposed monitoring efforts would allow the BLM to track “advancement in fully implementing the land-use plan and attaining desired outcomes” and that “monitoring efforts would be prioritized in alignment with the Río Grande del Norte National Monument Science Plan, as well as the goals and objectives outlined in the RMP” (RGDN PRMPA/EA p. 24). The RGDN PRMPA/EA states that “management of terrestrial and riparian vegetation would continue as prescribed in the 2012 Taos RMP with additional management actions to refine and focus monitoring methods and schedules, broaden definitions of ecological health, and expand restoration resources” (RGDN PRMPA/EA p. 57). Additionally, under the RGDN PRMPA/EA, the BLM would continue to monitor water quality on a bimonthly basis at eight sites within the Monument (RGDN PRMPA/EA p. 63). Finally, the RGDN PRMPA/EA proposes the continued use of the Assessment, Inventory, and Monitoring program to monitor the status and condition of BLM resources across the Monument’s rangeland sites (RGDN PRMPA/EA p. 55).

Additionally, RGDN PRMPA/EA Appendix D outlines how the BLM will utilize best management practices to allow management flexibility to address changing conditions and recognizing that conditions may evolve during a land use plan’s duration. Adaptive management strategies are applied to minimize potential resource conflicts and ensure protection of resources.

RGDN PRMPA/EA Appendix C, *Detailed Description of Alternatives*, presents each resource and resource use along with their goals, objectives, management actions, allowable uses, and administrative designations for each alternative (RGDN PRMPA/EA p. C-4). CUL Management Action 12 states the BLM will “regularly monitor and patrol listed, eligible, and potential National Register of Historic Places (NRHP) sites and other areas of high cultural significance to discourage illegal artifact collecting and site disturbance. The Site Stewards Program would continue to monitor site condition and increase BLM presence at sites” (RGDN PRMPA/EA p. C-13).

The RGDN PRMPA/EA complied with FLPMA by including intervals and standards for monitoring and evaluation. Accordingly, this protest issue is denied.

NEPA: Public Involvement

Paul McGuff et al.

Issue Excerpt Text: The Proclamation to establish the Rio Grande del Norte National Monument emphasizes the need to involve and consult with the public as part of the development of management plans. Based on the Proclamation the BLM has not made a successful effort to involve the public in scoping, review, planning, and implementation. As we discussed in other comments BLM Taos wants a quick completion of the Resource Management Plan/Environmental Assessment and associated FONSI that does not ensure that best science is incorporated, nor allow for sufficient public input and involvement in the development of a long term management plan.

Access Fund and New Mexico Climbers Resource and Advocacy Group

Katie Goodwin and Bryan Pletta

Issue Excerpt Text: New language was added to the Proposed RMP that was not presented in the Draft RMP and which therefore did not provide the public an adequate opportunity to comment and contribute to informed decision making by the BLM. At Appendix C_Proposed Alternatives_Proposed Taos Resource Management Plan Amendment and Environmental Assessment for the Rio Grande del Norte National Monument Management Plan_508. Row 17, Page C-117, the Proposed Monument Management Plan states that: New rock-climbing routes that use fixed hardware would require preapproval by the BLM through site-specific NEPA analysis and be subject to NHPA Section 106. Replacement of existing fixed hardware on existing rock-climbing routes would be subject to NHPA Section 106. This Section 106 requirement language for replacement of existing fixed hardware was not presented in the Draft RMP and is not consistent with management strategies outlined in Alternative B (the Proposed Action). This addition will have a significant impact on climbers' ability to replace unsafe existing aging fixed climbing hardware in a timely manner, placing climbers at risk and limiting recreation access to the monument. Additionally, at Appendix C_Proposed Alternatives_Proposed Taos Resource Management Plan Amendment and Environmental Assessment for the Rio Grande del Norte National Monument Management Plan_508. Row 17, Page C-117, the Proposed Monument Management Plan states: Existing routes determined to be in conflict with Monument objects and values would be subject to removal. This language requiring anchor removal was not presented in the Draft RMP, and, in any case, the Proposed RMP language does not clearly articulate what "in conflict" means. This language is not in line with management strategies outlined in Alternative B (the Proposed Plan). This broad statement could lead to all climbing and climbing hardware being removed from the monument depending on how "in conflict" and "Monument objects and values" are determined by a BLM manager.

Rio Grande Balloons, LLC

Sol Lothe

Issue Excerpt Text: The newly introduced language reads "Hot air balloon flights below the rim of the gorge would be allowed outside of the seasonal closure period (January 1 through August 31), but only in the area between John Dunn Bridge and Manby Hot Springs." This defined boundary for flights below the rim of the gorge, being limited to the area between the John Dunn Bridge and Manby Hot Springs, is a new change to Alternative B that was not in the Draft Taos RMPA/EA, and therefore, there has not been an opportunity to comment on this issue prior to the issuance of this Proposed RMPA/Final EA. In the Draft RMPA/EA, Alternative A would have allowed flights below the rim of the gorge in all areas of the gorge, with any seasonal and spatial buffers being applied as adaptive management at the SRP stipulations level, as has been the case for the past several years under the 2012 Taos RMP. Alternative B would have excluded flights below the rim entirely in the

Black Rock SRMA and all areas of the Monument. There was never a mention of, or opportunity for comment on, the current proposed specific area restrictions for flights in the gorge; i.e. only between John Dunn Bridge and Manby Hot Springs.

Summary:

Protestors claim that the BLM violated NEPA by failing to provide adequate public involvement opportunities throughout the planning process and failing to provide the public an adequate opportunity to comment on newly added language to the RGDN PRMPA/EA that was not present in the RGDN Draft RMPA/EA, specifically regarding changes within alternatives.

Response:

Public involvement is an important part of the NEPA process. The level of public involvement varies with the different types of NEPA compliance and decision-making. Council on Environmental Quality regulations require that agencies “make diligent efforts to involve the public in preparing and implementing their NEPA procedures” (40 CFR 1506.6(a)), but there is a wide variety of ways to engage the public in the NEPA process (BLM NEPA Handbook, H-1790-1, pp. 62–63). If the BLM chooses to release a Draft RMPA/EA, the BLM’s planning regulations require a minimum 30-day public review period (43 CFR 1610.2(e)). Pursuant to NEPA, the BLM must assess, consider, and respond to all substantive comments received (40 CFR 1503.4). Substantive comments are those that reveal new information, missing information, or flawed analysis that would substantially change conclusions (BLM Handbook H-1601-1, pp. 23–24).

According to BLM Handbook H-1790-1, “EAs shall ‘...include brief discussions...of alternatives as required by section 102(2)(E)...’ (40 CFR 1508.9(b)). Section 102(2)(E) of the NEPA provides that agencies of the Federal Government shall ‘study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources’” (H-1790-1, p. 79). The preferred alternative represents the alternative determined to best address the purpose and need and the issues considered at this stage of the process. While collaboration is critical in developing and evaluating alternatives, the final designation of a preferred alternative remains the exclusive responsibility of the BLM. However, identifying a preferred alternative does not indicate any final decision commitments from the BLM. In developing the RGDN PRMPA/EA, the decision maker may select various components from each of the alternatives analyzed in the RGDN Draft RMPA/EA. The RGDN PRMPA/EA may also reflect changes and adjustments based on comments received on the RGDN Draft RMPA/EA, new information, or changes in BLM policies or priorities (RGDN PRMPA/EA p. 21).

Chapter 4, *Consultation and Coordination*, documents the BLM’s public outreach during preparation of the RGDN PRMPA/EA, including the scoping period, public comment periods, and dates of public meetings (RGDN PRMPA/EA pp. 105 through 106). Guidance for implementing public involvement under NEPA is codified in 40 CFR 1506.6, thereby ensuring Federal agencies make a diligent effort to involve the public in the NEPA process. The BLM formally initiated the external scoping process for the RGDN PRMPA/EA with the publication of the Notice of Intent in the *Federal Register* (88 *Federal Register* 54660) and distribution of news releases on August 11, August 22, and August 24, 2023, that identified the start of the public scoping period, meeting dates, locations, and methods by which interested parties could comment, and the public scoping meetings. The BLM hosted two in-person and one virtual public scoping meetings (RGDN PRMPA/EA Table 4-1, p. 106). The purpose of these meetings was to provide the public with an opportunity to be informed about the project and to ask any questions they may have, and, in the case of the in-person meetings, to provide an opportunity to accept handwritten and hand-delivered comments.

The BLM considered all public comments submitted on the RGDN Draft RMPA/EA. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix J, *Draft RMPA/EA Comment Analysis Report*, presents the BLM’s responses to all substantive comments received on the RGDN Draft RMPA/EA. The BLM’s response identifies any modifications to the alternatives, improvements to the impacts analysis, or factual corrections made as a result of public comments. The BLM’s response also explains why certain public comments did not warrant further agency response. It is important for the public to understand that the BLM’s comment response process does not treat public comments as if they were a vote for a particular action. The comment response process ensures that every comment is considered at some point when preparing the RGDN PRMPA/EA. Changes to the RGDN PRMPA/EA were made in response to public comments received on the RGDN Draft RMPA/EA, cooperating agency input, U.S. Fish and Wildlife Service consultation, and internal BLM reviews of the RGDN PRMPA/EA.

The BLM provided adequate public involvement opportunities throughout the planning process of the RGDN PRMPA/EA. The BLM considered a reasonable range of alternatives in compliance with NEPA, the BLM NEPA Handbook (H-1790-1), the BLM Land Use Planning Handbook (H-1601-1), and other applicable laws, policies, and regulations. Accordingly, this protest issue is denied.

Proclamation 8946

Access Fund and New Mexico Climbers Resource and Advocacy Group

Katie Goodwin and Bryan Pletta

Issue Excerpt Text: The Proposed RMP at Appendix C_Proposed Alternatives_Proposed Taos Resource Management Plan Amendment and Environmental Assessment for the Rio Grande del Norte National Monument Management Plan_508. Row 17, Page C-117 also states that: No climbing would be permitted within raptor-nesting areas during seasonal restrictions; nor would disturbance of migratory-bird nesting, as identified in Wildlife Management Action 13, or within 50 feet of cultural resources, as determined on a case-by-case basis. Existing routes determined to be in conflict with Monument objects and values would be subject to removal. [emphasis added] The use of the term “cultural resources” is arbitrary and capricious related to the permitting process for new fixed anchor placement and does not appear in Presidential Proclamation 8946. Cultural resources is so general a term that it could lead to widespread bans on new climbing route development or fixed hardware replacement (as discussed above) or at least very extensive authorization delays that could compromise safety for aging hardware. Additionally, using the vague and undefined term “in conflict” as justification for anchor removals is also arbitrary and capricious. The language used in the Organ Mountains–Desert Peaks National Monument Proposed Resource Management Plan Amendment and Final Environmental Impact Statement provides an example of a better stipulation to this end that states “Prohibit climbing in areas where rock climbing would adversely affect or has adversely affected Monument resources, objects, and values,” which is more consistent with the known term adverse effects as defined in the Section 106 process.

Paul McGuff et al.

Issue Excerpt Text: The objective of the Resource Management Plan Amendment for the Monument should be what management changes are necessary to preserve objects as singled out for protection in Presidential Proclamation 8946. We object that that focus is not evidenced. For example there should be a hard look at effects of recreational activities on Monument resources to assure resource condition is not degraded. A monitoring plan with baseline condition (affected environment) at the time the Monument was established should be the foundation of the plan. Authorizing new recreational uses (Horsethief Mesa) and expansion of rights of way are inconsistent with the preservation of Monument Objects.

Paul McGuff et al.

Issue Excerpt Text: We protest that the Resource Management Plan Amendment as written to include expansion of mechanized roads and trails is counter to the intent National Monuments and Presidential Proclamation 8946 in particular. Expansion of mechanized roads and trails within the Monument for recreation use is not consistent with the purposes of landscape conservation within the Monument. Mechanized recreation should be confined to existing roads and trails in the travel plan and alternatives for expanded mechanized use of roads and trails for recreation use should be considered outside the Monument. Another example that is counter to the landscape preservation directive of the Proclamation is the suggestion of an expansion of mountain bike and mechanized vehicle use in a National Monument. That expansion would also require an Environmental Impact Statement and consideration of alternatives on lands outside those under Monument protection. Development of mechanized trail systems within the Monument (Horsethief Mesa and Taos Overlook) is incompatible with the Monument Proclamation 8946. Taos Field Office travel management plans correctly seek to stabilize mechanized use on existing roads and trails in the Monument. We have no objection to mechanized use, but Horsethief Mesa and Taos Overlook have high archeological and historic site density: rock art and artifact scatters in the Horsethief Mesa area and the Old Spanish National Historic Trail at Taos Overlook. The BLM development of mechanized travel is not compatible with a priority on protection of these resources over recreation use.

New Mexico Wild et al.***Sally Paez et al.***

Issue Excerpt Text: The BLM’s proposed ROW designation lacks adequate support and justification in the record to demonstrate that the new ROWs will be “consistent with the care and management of the objects” that the Monument was designated to protect. In the Purpose and Need section, the BLM states that “[o]pportunities for new rights of way (ROWs) for electrical transmission in support of renewable energy development is an evolving circumstance that may require new authorizations consistent with the parameters specified in Proclamation 8946.”¹⁵ The BLM further explains that the ROW designation will allow for “new, expanded, and upgraded utility ROWs that serve local communities in a manner consistent with the protection, preservation, and restoration of Monument objects. Proclamation 8946, which established the Monument, allows for limited opportunities to upgrade or modify utility ROWs. The linear layout of the Monument makes it difficult to avoid crossing the Monument with transmission lines and other utilities.” The BLM’s conclusory statement that the ROWs will “serve local communities in a manner consistent with the protection, preservation, and restoration of Monument objects” is insufficient to meet the requirements of the proclamation and applicable law.

New Mexico Wild et al.***Sally Paez et al.***

Issue Excerpt Text: Given the Monument objects identified in Proclamation 8946 and the limitations that the proclamation places on new or expanded ROWs, it is especially problematic that the BLM proposes to designate enormous ROWs through this RMPA process without any specific project proposal available for review. Designated ROW corridors are intended to provide “a preferred location for existing and future linear rights-of-way and facilities. The corridor may be suitable to accommodate more than one right-of-way use or facility, provided that they are compatible with one another and the corridor designation.” Without knowing what transmission line or infrastructure projects might be proposed within these enormous new ROWs, neither the BLM nor the public can meaningfully evaluate whether the project violates Proclamation 8946, which prohibits any new or expanded ROWs that are inconsistent with the care and management of Monument objects, including visual and wildlife resources.

Friends of the Rio Grande del Norte***Nick Streit***

Issue Excerpt Text: We believe the BLM has erred in their decision to expand ROW's in the monument because the dramatic expansion of width of the ROW's in the Monument would allow for utility lines large enough to negatively impact the viewshed of large sections of the monument and pose a threat to wildlife. The BLM's proposed ROW designation lacks adequate support and justification in the record to demonstrate that the new ROWs will be "consistent with the care and management of the objects" that the Monument was designated to protect. In the Purpose and Need section, the BLM states that "Opportunities for new rights of way (ROWs) for electrical transmission in support of renewable energy development is an evolving circumstance that may require new authorizations consistent with the parameters specified in Proclamation 8946." The BLM further explains that the ROW designation will allow for "new, expanded, and upgraded utility ROWs that serve local communities in a manner consistent with the protection, preservation, and restoration of Monument objects. Proclamation 8946, which established the Monument, allows for limited opportunities to upgrade or modify utility ROWs. The linear layout of the Monument makes it difficult to avoid crossing the Monument with transmission lines and other utilities." The BLM's conclusory statements that the ROWs will "serve local communities in a manner consistent with the protection, preservation, and restoration of Monument objects" is insufficient to meet the requirements of the proclamation and applicable law.

Summary:

Protestors stated the BLM violated Proclamation 8946 by failing to protect archaeological sites in the Monument, specifically those in Horsethief Mesa and the Taos Overlook, by expanding mechanized roads and trails, as well as by designating new ROWs for transmission development without adequately understanding the impacts on visual and wildlife resources of future facility siting or requiring a monitoring plan to assess those impacts. In addition, protestors state the BLM acted in an arbitrary and capricious manner by adding the terms "cultural resources" and "in conflict" to their future determinations of permitting climbing routes, as it could lead to widespread bans on new climbing route development.

Response:

Proclamation 8946 created the RGDN NM on March 25, 2013, and identified cultural and historic resources, ecological diversity, geological features, and wildlife resources and their associated landscapes as objects that the Monument was designated to protect, preserve, and restore. Land use plans developed for an NM must analyze and consider measures to ensure that objects and values are conserved, protected, and restored (BLM Manual Section 6220.1.6.G.4). Through the land use planning process, the BLM identifies specific and measurable goals and objectives for each object and value (BLM Manual Section 6220.1.6.G.4.a).

The BLM developed the management goals, objectives, and actions under each action alternative with the purpose of protecting RGDN NM objects and values; see Section 1.2 for the purpose and need of the RGDN PRMPA/EA, where the objectives are further defined and explained as they relate to Proclamation 8946 (RGDN PRMPA/EA pp. 7 through 9). Based on the impacts analysis conducted, the BLM included measures in the RGDN PRMPA/EA that protect Monument objects and values and contribute to meeting the goals and objectives for each object and value as set forth in the RGDN PRMPA/EA.

Protestors claim the BLM violated Proclamation 8946 through specific decisions within the RGDN PRMPA/EA. Regarding expanding mechanized roads, the RGDN PRMPA/EA does not propose expansion of mechanized roads and trails within the Monument. In Appendix C, TRA Management

Action 1 states that the BLM will “Maintain existing travel consistent with existing travel management decisions and Presidential Proclamation 8946. In accordance with Presidential Proclamation 8946, except for emergency or authorized administrative purposes, motorized vehicle use in the Monument is limited to designated roads. Non-motorized mechanized vehicle use is limited to designated roads and trails” (RGDN PRMPA/EA Appendix C, p. C-85). Should the need, funding, and resources become available, the BLM would complete a Travel Management Plan to provide for appropriate access to the Monument, while minimizing conflicts among users and impacts on resources.

The RGDN PRMPA/EA is a planning-level document and would not result in on-the-ground planning decision or actions. Subsequent projects, including any applications for transmission/utility facilities and ROWs, will be analyzed during site-specific NEPA analysis processes. The magnitude of specific resource impacts will be identified during those analyses. Under the PRMPA, the BLM proposed expansion of the Powerline Falls ROW corridor and designation of a new ROW corridor following an existing transmission line within the Horsethief Mesa and the Arroyo Hondo Land Grant (RGDN PRMPA/EA p. 21). The BLM fully analyzed the impacts of this proposed ROW expansion and designation for each of the resources in the Environmental Consequences sections in Chapter 3 (RGDN PRMPA/EA pp. 27 through 103) and concluded that, due to the presence of existing utility line facilities at both of these locations, expanding and designating these ROW corridors would provide the opportunity for co-location and reduce impacts of linear utility infrastructure on Monument objects and resources across the broader landscape (RGDN PRMPA/EA Appendix J, pp. J-5 through J-6). New utility facilities would only be approved if subsequent site-specific NEPA analysis determines that Monument objects and outstandingly remarkable values (ORVs) of the RGDN NM are not affected. This process supports Proclamation 8946, which states, “Nothing in this proclamation shall be construed to preclude the Secretary from renewing or authorizing the upgrading of existing utility line rights-of-way within the physical scope of each such right-of-way that exists on the date of this proclamation. Additional utility line right-of-way or upgrades outside the existing utility line rights-of-way may only be authorized if consistent with the care and management of the objects identified above” (Proclamation 8946).

Similarly, the process for authorizing new fixed hardware for rock climbing routes within the Monument is an implementation-level decision addressed outside the scope of the RGDN PRMPA/EA. The BLM is actively finalizing its evaluation of a programmatic process—independent of the Monument-planning process—to authorize the placement of fixed hardware for rock climbing in a manner that addresses input received on the RGDN Draft RMPA/EA. However, a minimum buffer from cultural resources would be applied, as setting new routes for climbing and the replacement of existing hardware constitutes a potential to affect cultural resources. Presidential Proclamation 8946 identifies *cultural resources* as objects of value, not limited protections solely to historic properties under Section 106. Replacement of existing fixed hardware on existing rock-climbing routes would be subject to NHPA Section 106. As a result, all cultural resources within the Monument would be managed as if eligible for Section 106 listing. Please refer to revised REC Management Action 5 that states, “New rock-climbing routes that use fixed hardware would require preapproval by the BLM through site-specific NEPA analysis and be subject to NHPA Section 106. No climbing within raptor nesting areas during seasonal restrictions identified in Wildlife Management Action 13 or within a distance 50-feet of cultural resources, as determined on a case-by-case basis” (RGDN PRMPA/EA Appendix C, p. C-82).

The RGDN PRMPA/EA adequately protects objects and values within the RGDN NM. Accordingly, this protest issue is denied.

Wild and Scenic Rivers Act

New Mexico Wild et al.

Sally Paez et al.

Issue Excerpt Text: “The expansion of the existing Powerline Falls ROW corridor is also inconsistent with the Wild and Scenic Rivers Act. In 1968, Congress designated 74 miles of the Río Grande as a Wild and Scenic River to protect its free-flowing nature and outstandingly remarkable values (ORVs). The BLM recognizes that the ORVs for the Río Grande “include cultural, fish and wildlife habitat, geological, recreational, riparian, and scenic values. The river gorge is home to numerous species of wildlife, including big horn sheep, river otter, and the Río Grande cutthroat trout. The Río Grande [provides] a wide variety of recreational opportunities, luring anglers, hikers, artists, and whitewater-rafting enthusiasts.” The Wild and Scenic Rivers Act requires the BLM to “protect and enhance” the designated portion of the Río Grande for the benefit of present and future generations by preserving its ORVs. Consistent with the proclamation and Wild and Scenic Rivers Act, the BLM currently classifies the Wild and Scenic River corridor along the Río Grande as “Visual Resource Management Class I.” The objective of Class I “is to preserve the existing character of the landscape.” Although Class I management “does not preclude very limited management activity,” the “level of change to the characteristic landscape should be very low and should not attract attention.” Contrary to the proclamation and the Wild and Scenic Rivers Act, the RMPA/EA proposes to designate a 600’ right of way (ROW) across the gorge and to change the Visual Resource Management classification within the ROW corridor from Class I to Class III.28 This proposal would have a significant impact on the Monument’s viewshed and visual resources. New infrastructure would also have significant negative impacts on the wildlife that uses the gorge as a connected wildlife migratory corridor, and on the locals and visitors who use the gorge as a unique recreation waterway. Additionally, the construction of new transmission lines and utility infrastructure would impact soil health and vegetation and would cause erosion and water quality degradation. The large width of the proposed ROW is intended to accommodate multiple future uses and facilities, but the ultimate impact of this proposed ROW is unknown because the BLM is not currently evaluating any specific project proposals.

Summary:

Protestors claim that the BLM violated the Wild and Scenic Rivers Act by designating the Powerline Falls ROW. Protestors state that this new ROW would allow for transmission development close to the Río Grande’s ORVs, which are protected under the Wild and Scenic Rivers Act and would negatively affect the views and values of the Río Grande.

Response:

To the extent possible under existing legal authorities, the BLM’s policy goal for eligible and suitable rivers is to manage their free-flowing condition, water quality, tentative classification, and any ORVs to ensure a decision on suitability can be made for eligible rivers or, in the case of suitable rivers, until Congress designates the river or releases it for other uses (BLM Manual Section 6400.3.5). In order to be assessed as outstandingly remarkable, a river-related value must be a unique, rare, or exemplary feature that is exceptional at a comparative regional or national scale (BLM Manual Section 6400.3.1.D.1). The determination of whether an area contains an ORV is a professional judgment on the part of the agency’s study team (USDI-USDA Final Revised Guidelines for Eligibility, Classification, and Management of River Areas, 47 *Federal Register* 39457) (BLM Manual Section 6400.3.1.D).

The BLM identified the proposed expansion of the existing Powerline Falls ROW corridor due to the presence of existing utility line facilities at these locations and because the BLM anticipates that the demand for ROWs in the planning area could increase with time (RGDN PRMPA/EA p. 76).

Expanding and designating this ROW corridor would provide the opportunity for co-location with existing lines and reduce impacts of linear utility infrastructure on Monument objects and resources across the broader landscape. While the primary goal of Proclamation 8946 is to protect and restore Monument objects, it also specifically states, “Nothing in this proclamation shall be construed to preclude the Secretary from renewing or authorizing the upgrading of existing utility line rights-of-way within the physical scope of each such right-of-way that exists on the date of this proclamation. Additional utility line right-of-way or upgrades outside the existing utility line rights-of-way may only be authorized if consistent with the care and management of the objects identified above.”

Because the existing ROW and infrastructure at Powerline Falls was granted prior to designation of the Rio Grande as a Wild and Scenic River, new authorizations would be allowed as a grandfathered use. However, new ROWs or new installations on existing structures would only be granted based on new decision-making if subsequent site-specific NEPA analysis determines that Monument objects and ORVs of the Rio Grande are not affected.

Additionally, the RGDN PRMPA/EA is a planning document and would not result in on-the-ground decisions or actions. As such, actions allowed under RGDN PRMPA/EA, including any applications for transmission/utility facilities and ROWs, would be done through a decision-making process including site-specific environmental review prior to development. The magnitude of specific resource impacts will be identified during those analyses. During the project-specific decision-making process, the BLM may require design modifications to minimize surface disturbance, operational conflicts, visual contrast, and avian conflicts and may impose additional best management practices or mitigation measures, if necessary, for the protection of Monument objects, special status species, wildlife, and other resources.

The RGDN PRMPA/EA is consistent with the Wild and Scenic Rivers Act. Accordingly, this protest issue is denied.

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