

September 8, 2008

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

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

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

To Ms. Williams:

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

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SUWA and TWS have a long-standing interest in the management of Bureau of Land Management (BLM) lands in Utah and often participate in the decision-making process for project proposals and actions that could potentially affect lands included in the Utah Wilderness Coalition’s wilderness proposal—America’s Red Rock Wilderness Act (ARRWA). SUWA members and staff enjoy a myriad of recreation on BLM-managed public lands, including hiking, biking, nature-viewing, photography, and the quiet contemplation in the solitude offered by wild places. SUWA and TWS have and will continue to participate in the planning process for the Richfield PRMP. *See, e.g.*, SUWA’s comments to the Richfield Draft RMP (attached as Exhibit A¹). The additional co-protestants also have interests in BLM’s management of the Moab area and have also participated in the planning process for the Richfield PRMP.

We are protesting several different issues and aspects of the PRMP; these issues are listed below along with the location of these discussions in this document. Our discussion of each of these issues concisely states why we believe the State Director’s decisions are wrong and the corresponding portions of the PRMP at issue.

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¹ The attachments and exhibits originally submitted with SUWA’s comments to the Draft RMP are not attached here as hard copies, but are included on the accompanying CD, and were submitted along with SUWA’s comments to the Draft RMP on January 10, 2008.

Attached Exhibits

- A. SUWA Comments on Richfield Draft RMP
- B. SUWA Factory Butte Letter dated May 22, 2008 and accompanying photos
- C. Map of Route Designation Impacts on Potential ACECs
- D. Map of Route Designation Impacts on Lands with Wilderness Characteristics
- E. Selection from West Tavaputs Plateau EIS
- F. Maps of Oil and Gas Designations on Potential ACECs
- G. Jarbidge Resource Management Plan AMS
- H. Jarbidge Resource Management Plan ACEC Report
- I. Jarbidge Resource Management Plan Maps
- J. Letter from BLM to The Wilderness Society dated February 12, 2004
- K. 2007 Statewide Activity Report
- L. Richfield Visitor Days Report
- M. Maps of Oil and Gas Designations on Lands with Wilderness Characteristics

I. Applicable Legal Standards

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

A. National Environmental Policy Act

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

1. Reasonable Range of Alternatives Must Be Considered

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

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

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

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

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

40 C.F.R. § 1508.7 (emphasis added).

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

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

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

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

NEPA requires that BLM discuss mitigation measures in an EIS. 40 C.F.R. §§ 1502.14, 1502.16. Also, under NEPA, BLM's Finding of No Significant Impact (FONSI) is lawful only if "BLM has made a convincing case that no significant impact will result therefrom or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures." *Defenders of Wildlife*, 152 IBLA 1, 6 (2000) (citations omitted). In general, in order to show that mitigation will reduce environmental impacts to an insignificant level, BLM must discuss the mitigation measures "in sufficient detail to ensure that environmental consequences have been fairly evaluated." *Communities, Inc. v. Busey*, 956 F.2d 619, 626 (6th Cir. 1992). Simply identifying mitigation measures, without analyzing the effectiveness of the measures, violates NEPA. Agencies must "analyze the mitigation measures in detail [and] explain how effective the measures would be . . . A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA." *Nw. Indian Cemetery Protective Ass'n v. Peterson*, 764 F.2d 581, 588 (9th Cir. 1985), *rev'd on other grounds*, 485 U.S. 439 (1988). NEPA also directs that the "possibility of mitigation" should not be relied upon as a means to avoid further environmental analysis. Council on Environmental Quality, *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, available at <http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm>; *Davis v. Mineta*, 302 F.3d at 1125.

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

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

BLM cannot evaluate consequences to the environment, determine avoidable or excessive degradation, and assess how best to designate and protect Areas of Critical Environmental Concern (ACECs) without adequate data and analysis. NEPA's hard look at environmental consequences must be based on "accurate scientific information" of "high quality." 40 C.F.R. § 1500.1(b). Essentially, NEPA "ensures that the agency, in reaching its decision, will have available and will carefully consider detailed information concerning significant environmental impacts." *Robertson v. Methow Valley Citizens Council*, 490 U.S. at 349. The Data Quality Act and BLM's interpreting guidance expand on this obligation, requiring that influential scientific information use "best available science and supporting studies conducted in accordance with sound and objective scientific practices." Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub.L. No. 106-554, § 515. *See also* Bureau of Land Management, Information Quality Guidelines, available at http://www.blm.gov/nhp/efoia/data_quality/guidelines.pdf.

BLM's internal guidance also recognizes the importance of accumulation and proper analysis of data. The agency's Land Use Planning Handbook emphasizes the importance

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

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

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

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

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

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

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

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

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

NEPA requires that, in preparing a final EIS, BLM must discuss “any responsible opposing view which was not adequately discussed in the draft statement and indicate the agency's response to the issue raised.” 40 C.F.R. § 1502.9. The Council on Environmental Quality interprets this requirement as mandating that an agency respond in a “substantive and meaningful way” to a comment that addresses the adequacy of analysis performed by the agency. Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations.² BLM's NEPA Handbook elaborates upon this requirement, providing that: comments relating to inadequacies or inaccuracies in the analysis or methodologies used must be addressed; interpretations of analyses should be based on professional expertise; and where there is disagreement within a professional discipline, “a careful review of the various interpretations is warranted.” Handbook H-1790-1, Section V.B.4.a., p. V-11.

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

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

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

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

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

Therefore, “an EIS must be organized and written so as to be readily understandable by governmental decisionmakers and by interested non-professional laypersons likely to be affected by actions taken under the EIS.” *Oregon Environmental Council v. Kunzman*, 817 F.2d 484, 493 (9th Cir. 1987). Accordingly, where a plan is so unclear as to not permit review and understanding, it may be deemed “incomprehensible” and in violation of NEPA. See, e.g., *California, ex rel. Lockyer v. U.S. Forest Service*, 465 F.Supp. 2d 942, 949-950 (N.D.Cal. 2006) (management plan for Giant Sequoia National Monument was “incomprehensible” because it referenced but did not explain its reliance on certain

law and regulations, and because it contained conflicting statements regarding applicable standards for management, which were never clarified).

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

B. Federal Land Policy and Management Act

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

1. Duty to Inventory and Land Use Planning Requirements

FLPMA imposes a duty on BLM to identify and protect the many natural resources found on public lands. FLPMA requires BLM to inventory its lands and their resources and values, “including outdoor recreation and scenic values.” 43 U.S.C. § 1711(a). FLPMA also obligates BLM to take this inventory into account when preparing land use plans, using and observing the principles of multiple use and sustained yield. *See* 43 U.S.C. § 1712(c)(4), (1). Through management plans, BLM can and should protect wildlife, scenic values, recreation opportunities, and wilderness character in the public lands through various management decisions, including by excluding or limiting certain uses of the public lands. *See* 43 U.S.C. § 1712(e). This is necessary and consistent with FLPMA’s definition of multiple use, which identifies the importance of various aspects of wilderness characteristics (such as recreation, wildlife, and natural scenic values) and requires BLM’s consideration of the relative values of these resources but “not necessarily to the combination of uses that will give the greatest economic return.” 43 U.S.C. § 1702(c).

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

2. Unnecessary or Undue Degradation Standard

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

C. Off-Road Vehicle Regulations and Executive Orders

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

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

These Executive Orders put the burden of proof on BLM to ensure that sensitive and protected conservation lands are not harmed by ORV use. Under these directives, BLM should start from the position of evaluating all uses of lands that may harm or conflict with the values mentioned above as closed to ORV use. The next step is to take a hard look at a reasonable range of alternatives under NEPA with adequate consideration of public input. BLM should provide ample evidence to show how they have located ORV areas and trails to minimize harm, or otherwise keep these areas closed to ORV use. Only after such deliberation has occurred can the agency sufficiently state that they have complied with their legal obligations in deciding how to designate certain ORV management areas.

D. National Historic Preservation Act

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

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

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

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

E. Endangered Species Act

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

Service (FWS) to list species that are “threatened” or “endangered,” as defined by the ESA. 16 U.S.C. §§ 1533, 1532(6) & (20).

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

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

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

F. Clean Air Act and Clean Water Act

FLPMA and its implementing regulations—along with the applicable land use plans—require that BLM comply with all federal, state, and local environmental laws. *See* 43 U.S.C. § 1712(c)(8); 43 C.F.R. §§ 1610.3-2, 2920.7(b)(3). BLM is obligated, by FLPMA to comply with the environmental standards established in the Clean Air Act, 42 U.S.C. §§ 7401, *et seq.*, and the Clean Water Act, 33 U.S.C. §§ 1251, *et seq.* This means, for example, that BLM may not permit development that will result in exceedances of national ambient air quality standards, prevention of significant deterioration increment limits, air quality related values, and standards for hazardous air pollutants. BLM must conduct a full-scale quantitative analysis of the air quality impacts in the planning area

and model these impacts. BLM must also model impacts to water quality and ensure that national and state standards will not be exceeded.

II. Air Quality

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

Importantly, the Richfield PRMP shows that background air quality in the planning area is so poor, in terms of ground-level ozone and particulate matter (specifically, 24-hour maximum concentrations of particulate matter 2.5 microns in diameter or smaller (PM_{2.5})), that BLM cannot approve any additional activities which will contribute to increased ozone or PM_{2.5}. Thus, BLM may not permit off-road vehicle travel or further oil and gas development, as both of these activities emit ozone precursor pollutants and PM_{2.5}. FLPMA, and the Richfield PRMP, require that BLM manage the planning area according to federal and state air quality standards. *See* Richfield PRMP at 2–8; 43 C.F.R. § 2920.7(b)(3) (requiring that BLM “land use authorizations shall contain terms and conditions which shall . . . [r]equire compliance with *air . . . quality standards* established pursuant to applicable Federal or State law”) (emphasis added). *See also* 43 U.S.C. § 1712(c)(8) (requiring BLM in land use plans—which would therefore require implementation in daily management—to “provide for compliance with applicable pollution control laws, including State and Federal air . . . pollution standards or implementation plans”). These air quality standards include both the national ambient air quality standards (NAAQS) and the prevention of significant deterioration (PSD) increment limits. Both the State and Federal standards are based on *ambient concentrations* of various air pollutants. For this reason, the Richfield PRMP has failed to satisfy its FLPMA obligation: it permits activities (e.g. route designation and vehicle travel on designated routes) that the PRMP’s emissions inventory show will contribute PM_{2.5} and ozone precursors (both volatile organic compounds—VOCs—and nitrogen oxides—NO_x), thereby increasing ambient concentrations and further exceeding NAAQS. *See* Richfield PRMP at 4-7 to -20. In addition, BLM does not know whether it is satisfying its obligation to observe air quality standards without modeling the effect that the activities permitted in the PRMP will have on ambient *concentrations* of various pollutants, such as those related to NAAQS and PSD increment limits. The Richfield PRMP has also failed altogether to consider hazardous air pollutants (HAPs) that may be generated by activities approved in this plan; HAPs are also subject to regulation under the Clean Air Act.

Not only has BLM prepared an incomplete emissions inventory for the Richfield PRMP, but it has also failed to conduct modeling that analyzes the likely concentrations of

pollutants that will result. *See, e.g.*, PRMP at 4-7 to -20 (predicting likely quantities in tons per year—not ambient concentrations—of various pollutants that will result from plan implementation). As discussed below, the Richfield PRMP emissions inventory suffers from a number of flaws that have led to underestimates for various pollutants. With such flaws the emissions inventory cannot be used to accurately quantify and model pollutant concentrations in the planning area.

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

BLM's attempts to punt this obligation to perform dispersion modeling to a later date fail. *See* BLM Response to Comments, sorted by Resource, at 14 (stating that BLM guidance indicates that dispersion modeling is inappropriate without site-specific information and that BLM would consider performing such an analysis when it had a proposal before it). The fact that the implementation of the PRMP will result in air pollution (e.g., through approval of motorized use on designated routes and in the Factory Butte open areas) requires that such modeling and quantification be undertaken. *See* PRMP at 4-6 (admitting that various activities, including oil and gas development and ORV use, generate various pollutants, as well as fugitive dust). The routes identified in this plan that will be open to vehicular travel will never face further analysis whereby better estimates might be developed. BLM must conduct these analyses now. Besides, as SUWA pointed out, BLM has prepared models and more comprehensive emissions inventories in its Farmington, New Mexico; Vernal, Utah; and Roan Plateau, Colorado RMPs. This reality directly refutes the Richfield PRMP's insistence that such efforts would be too difficult at this time. Finally, as part of the "hard look" requirement, NEPA demands that BLM determine baseline conditions so that it, and the public, can fully understand the implications of proposed activities. BLM has failed to do this here.

It is particularly critical that BLM perform modeling now since it has already determined that the planning area likely exceeds NAAQS for ozone and PM_{2.5}. *See* PRMP at 3-8 to -10. The health impacts of PM_{2.5} are severe. *See* National Ambient Air Quality Standards for Particulate Matter, 71 Fed. Reg. 61,144 (Oct. 17, 2006) (discussing deleterious health effects of PM_{2.5} pollution). Likewise, the health impacts of ozone are also considerable. National Ambient Air Quality Standards for Ozone, 73 Fed. Reg. 16,436 (Mar. 27, 2008) (discussing adverse health impacts of ground-level ozone pollution).

The Moab Field Office Proposed Resource Management Plan and Final Environmental Impact Statement (August 2008) (Moab PRMP) includes inventories for HAPs likely to be generated by activities in the Moab planning area. *See, e.g.*, Moab PRMP at 4-22 to -23. The Richfield PRMP does not inventory or model HAPs.

The Richfield PRMP does not discuss or examine PSD increment limits (particulate matter, nitrogen oxides, carbon monoxide, sulfur dioxide). These federal air quality standards are also the State of Utah's air quality standards. Thus, there is no evidence, certainty, or indication that the Richfield PRMP will comply with federal and state air quality standards as NEPA and FLPMA require.

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

The emissions inventory prepared for the Richfield PRMP suffers from numerous deficiencies. SUWA detailed the important contributors to air pollution likely to result from the activities authorized in the PRMP, the proper methodology for quantifying those emissions, and the necessary modeling to fully understand the impacts of those emissions in its January 23, 2008 comments on the Draft RMP; in its May 22, 2008 supplemental comments; and its June 18, 2008 supplemental comments.

Among other things, BLM has failed to inventory the particulate matter pollution, differentiated for PM_{2.5} and for PM₁₀, which will be generated by fugitive dust. The existence of designated routes and travel of automobiles and ORVs on designated routes and in open cross-country travel areas will generate significant amounts of fugitive dust which will negatively affect air quality in the region. The Richfield PRMP and its air quality emissions inventory have completely failed to consider such emissions. The Richfield PRMP acknowledges that ORVs are significant contributors of fugitive dust. *See, e.g.*, Richfield PRMP at 4-6, 4-9, 4-11. SUWA alerted BLM to the importance of such quantification and modeling in its January 23, 2008 comments. To further guide BLM in how such quantification and modeling could be conducted, SUWA sent a letter on June 18, 2008 with examples of air quality modeling for fugitive dust from vehicular travel on unpaved roads. This modeling was conducted for the West Tavaputs Plateau Natural Gas Full Field Development Plan, Draft Environmental Impact Statement, UT-070-05-055 (Feb. 2008) (West Tavaputs DEIS), and the Enduring Resources' Saddletree Draw Leasing and Rock House Development Proposal, Final Environmental Assessment UT-080-07-671 (Dec. 2007) (Rock House EA). In both cases, BLM itself attempted to

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

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

These necessary preparations highlight the inadequacies of the Richfield PRMP's emissions inventory as presently constituted. The Richfield PRMP improperly attempts to quantify select ORV emissions by simply extrapolating what the percentage of ORVs traveling in the planning area might be based on national ORV-use figures multiplied by the fraction of the nation's population living in Utah further multiplied by the planning area's acreage compared to the acreage of the state as a whole. This methodology asks the wrong questions and thus gets the unreliable answers. It does not account for the actual estimated ORV-usage figures for the planning area and the mathematical function relationship between the number of routes designated and the number of miles traveled by ORVs and other vehicles. *See* BLM, Recreation Management Information System, Report #21, Visitor Days and Participants by Activity Group and State, Utah, Fiscal Year Range Oct 01, 2006 – Sep 30, 2007 (Aug. 6, 2008) (attached as Exhibit L); BLM, Recreation Management and Information System, Report # 20, Visitor Days and Participants by Activity Group and Office, Richfield Field Office, Fiscal Year Range Oct 01, 2006 – Sep 30, 2007 (Aug. 6, 2008) (attached as Exhibit L).

Instead, BLM must actually estimate the number of vehicles that will travel these routes and the number and mileage of routes that will be open so that it can correctly inventory the fugitive dust that is likely to result from vehicle use *and* the mere existence of routes due to disturbed soils. Clearly, if every unpaved route identified in the Richfield PRMP was closed, and subsequently the soil stabilized, there would be much less fugitive dust than is now likely to result from the plan. Fugitive dust levels are related to mileage of routes open, for this reason the air quality modeling in the Rock House EA and the West Tavaputs DEIS calculate particulate matter pollution from fugitive dust as a function of miles traveled on unpaved roads. Simple, proportional calculations based on population comparisons does not account for such variances and are less likely to accurately inform BLM as to what the true levels of pollution will be from these activities. Glaringly, these

calculations are for tailpipe emissions only and do not consider fugitive dust generated by off-highway travel. Thus, BLM must revise and improve the Richfield PRMP methodology for estimating pollution caused by ORVs and other vehicles.

Furthermore, this improved methodology for inventorying dust generation could be applied to any activity that will cause fugitive dust (e.g. mining, oil and gas development, grazing) in order to estimate total dust emissions. This information is necessary for understanding the likely contributions to regional climate change caused by this plan from eolian dust deposition and its tendency to cause premature snowpack melt.

The recent monitoring from Zion National Park underscores the fact that the planning area likely has poor air quality and may currently be in violation of NAAQS. In 2005, an air monitor in Zion National Park recorded ozone levels of 91 parts per billion as a fourth highest value. National Park Service, Annual Data Summary 2005: Gaseous Pollutant Monitoring Program Ozone, Sulfur Dioxide, Particulate Matter, Meteorological Observations, 3-3, <http://www.nature.nps.gov/air/pubs/pdf/ads/2005/gpmp-xx.pdf>. The current NAAQS standard for ozone is 75 parts per billion. *See* National Ambient Air Quality Standards for Ozone, 73 Fed. Reg. 16,436, 16,436 (Mar. 27, 2008). The Richfield PRMP lists values for ozone monitored at Zion National Park for 2006 and 2007 that also exceed the new NAAQS limit of 75 parts per billion. *See* PRMP at 3-9. Thus, the Zion National Park monitor shows that the area has already experienced ozone levels well above the current standards for that pollutant. Likewise, the PRMP admits that the planning area is not meeting the 24-hour maximum average NAAQS for PM_{2.5}. *Id.* at 3-9 to -10. For this reason it is essential that BLM monitor air quality in the planning area and then prepare comprehensive inventories as well as accurate models to assess the impact of the activities envisioned and permitted in these plans.

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

III. Climate Change

The PRMP's Superficial Discussion of Climate Change Violates Both NEPA and Secretarial Order 3226.

The effects of climate change on the Colorado Plateau, including the Richfield Field Office, will be profound. The U.S. Geological Survey, BLM's sister agency, predicted in 2007, among other things, that on the Colorado Plateau water will become more scarce, native plant and animal life will suffer, exotic, highly flammable plant species will spread, and wildfire will become more prevalent. Details of these expected outcomes were provided in the various studies SUWA submitted to BLM in its comments on the draft PRMP, but BLM did not respond to that information or explain why it was not relevant to the PRMP. This oversight violates NEPA's mandate to take a "hard look" at environmental issues, and to formulate a broad range of alternatives that meet the goals of the proposed action – here, the development of an RMP that ensures the long-term sustainability of the public resources in the Richfield Field Office. Further, BLM failed to comply with NEPA's requirements concerning scientific uncertainty.

Secretarial Order 3226, issued in 2001 and never rescinded by this administration, reinforces NEPA's goal of facilitating informed decision making by requiring the BLM to analyze the impacts of climate change when it revises RMPs. Neither the draft nor the PRMP mentions the Secretarial Order; nor do they comply with the terms of the Order.

A. BLM Failed to Take A "Hard Look" At the Impacts of Climate Change

The PRMP addresses climate change for the first time—the draft resource management plan did not discuss climate change or its impacts on the public lands within the Richfield Field Office at all. However, the extent of the discussion of this important issue in the proposed plan is superficial at best. In a total of just four paragraphs in Chapter 3's discussion of the affected environment, the PRMP simply provides a generalized description of the phenomenon and notes that the Intergovernmental Panel on Climate Change predicted global increases of 1 to 4.5 degrees Fahrenheit over the next 50 years. *See* PRMP at 3-3. Chapter 4's brief treatment of the impacts of climate change simply evaded a full discussion of how climate change will affect the RFO by relying on the unsupported assertion that the uncertain state of climate science makes further analysis impossible.

Because BLM chose to treat this issue with such an abbreviated discussion, important information about the effects of climate change, and the management options available to BLM in this changing environment, are missing from the Richfield PRMP. The PRMP provides no estimate of how much temperatures will increase in the Richfield Resource Area, or even in the Colorado Plateau generally, or how that increase may affect natural resources such as water, vegetation, wildlife, or any other resource managed by BLM.

Nor does the PRMP provide any real quantitative analysis of the extent to which activities which occur there, such as oil and gas development and ORV use, may contribute to the release of greenhouse gasses that cause climate change. The PRMP simply provides a laundry list of the types of activity that “can potentially generate CO2 and methane,” both greenhouse gases that contribute to warming. PRMP at 3-4. The PRMP also notes that dust generated from disturbed areas and roads can settle on snowpack, resulting in faster snowmelt. *Id.* There is no attempt to explain how this will affect the resources of the Richfield Field Office.

Inexplicably, the PRMP makes no attempt to utilize existing studies as the basis for any further information about how climate change—with expected warmer weather—may affect the resources of the Richfield Field Office.

SUWA provided BLM with comments on the Draft RMP that highlighted this gap in the climate information, and included studies with specific information about the impacts of climate change on the Colorado Plateau—which includes the Richfield Field Office. These impacts are described more fully below, and include not only dust-induced snowmelt, but also shrinking water resources, earlier and more rapid snowmelt, invasion of more flammable non-native plant species, soil erosion, loss of wildlife habitat, and larger, hotter wildfires. As discussed below, BLM ignored these studies in the Richfield PRMP.

Further, since the deadline to submit comments on the draft Richfield RMP and the release of the Richfield PRMP, several federal entities have published additional studies that confirm and reinforce the impacts discussed in SUWA’s comments on the Draft RMP and the studies cited in those comments. These recent studies include:

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

2) Committee on Environment and Natural Resources, National Science and Technology Council, “Scientific Assessment of the Effects of Global Change on the United States” (May 2008), *available at* <http://www.climatescience.gov/Library/scientific-assessment/>; and

3) U.S. Climate Change Science Program, Synthesis and Assessment Product 5.2, “Best Practice Approaches for Characterizing, Communicating and Incorporating Scientific Uncertainty in Climate Decision Making,” (April 2008), *available at* <http://www.climatescience.gov/Library/sap/sap5-2/public-review-draft/default.htm>.

These studies, published by federal agencies and readily available on the internet, provide important information about the impacts of climate change on lands like those in the Richfield Planning Area, as well as emerging new best management practices to employ in the face of climate change. In particular, the June 2008 report released by the

Environmental Protection Agency, specifically “identifies strategies to address management challenges posed by climate change for a subset of federally protected lands and waters. These strategies can also be broadly applied to other lands and waters managed by governmental or nongovernmental entities.” U.S. Climate Change Science Program Final Report, Synthesis and Assessment Product 4.4, “Preliminary Review of Adaptation Options for Climate-Sensitive Ecosystems and Resources” (June 2008), *available at* http://www.epa.gov/ord/npd/pdfs/gcrp-factsheet_SAP-4-4.pdf. This information should have been included in the analysis of the RMP alternatives in order to adequately address climate change. Because it was not, the BLM must release a supplemental EIS to discuss this crucial information and provide the public with the opportunity to comment.

As the U.S. Geological Survey explains, “understanding interactions of landscape with changing environmental conditions, and their relative influence on the severity of drought, are important for natural resources planning and land use sustainability.” USGS, Drought Conditions, 1996 to 2006: USGS Navajo Nation Studies, <http://geomaps.wr.usgs.gov/navajo/drought.html> (last visited Sept. 1, 2008).

Additionally, the Intergovernmental Panel on Climate Change noted in 2001 that

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

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

SUWA’s comments on the Draft RMP provided specific information about federal studies that had been recently published about the impacts of climate change on public lands and grasslands like those in the Richfield Field Office. *See* SUWA’s Comments to the DMRP, at 63–67. For example, the U.S. Climate Change Science Program working group published a report on September 11, 2007 which predicts and elaborates on the widespread impact of climate change on public lands in areas like the cold deserts of the Colorado Plateau. *See* U.S. Department of Agriculture, *The effects of climate change on agriculture, land resources, water resources and biodiversity*, *available at* <http://www.climatechange.gov/Library/sap/sap4-3/default.php>. That report notes that “the climate changes that we can expect are very likely to continue to have significant effects on the ecosystems of the United States.” *Id.* at 3. These impacts include:

- Climate effects on disturbances such as fire, insect outbreaks and wind and ice storms are very likely important in shaping ecosystem structure and function;
- Grasslands will transform into woody shrub lands with reduced capacity for water absorption and greater vulnerability to channelization and erosion;
- Droughts early in the 21st Century are likely to increase rates of perennial plant mortality in arid lands, accelerate rates of erosion and create opportunities for exotic plant invasions;
- Proliferation of non-native annual and perennial grasses are virtually certain to predispose sites to fire. The climate-driven dynamics of the fire cycle is likely to become the single most important feature controlling future plant distribution in U.S. arid lands;
- Climate change is likely to result in shrinking water resources and place increasing pressure on montane water sources to arid land rivers, and increase competition among all major water depletions in arid land river and riparian ecosystems;
- Major disturbances like floods and droughts that structure arid land river corridors are likely to increase in number and intensity (with associated increases in erosion and native plant loss);
- Land use change, increased nutrient availability, increasing human water demand and continued pressure from exotic species will act synergistically with climate warming to *restructure* the rivers and riparian zones of arid lands;
- Climate change will increase the erosive impact of precipitation and wind;
- Surface soils will become more erodible;
- Increases in wind speed and gustiness will likely increase wind erosion.

The report also notes that

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

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

Yet, despite the brief acknowledgment in the PRMP that the existence of climate change is no longer a matter of debate but a matter of scientific consensus, the PRMP does not take the logical—and required—next step and analyze what this means for the Richfield Field Office.

This is an important step. A description of the effects of climate change on existing conditions such as the prevalence of exotic plant species, the availability of water, the health of riparian areas, zones of soil erosion or vulnerability to erosion all provide critical baseline information necessary to BLM's ability to determine whether the resources can withstand any of the proposed alternatives. Without this basic foundational information about the existing health of the land, it is impossible to make any informed decision about the level, location, and kind of activities it can support in the future. BLM should have discussed all of these predicted effects of climate in Chapter 3's assessment of existing conditions and in Chapter 4's discussion of the impacts of the various alternatives.

At a minimum, a description of the effects of climate change on existing conditions such as the prevalence of exotic plant species, the availability of water and the health of riparian areas, zones of soil erosion or vulnerability to erosion, all provide critical baseline information necessary to BLM's ability to determine whether public land resources can withstand any of the proposed management alternatives, including newly-designated ORV play areas and routes, new mining and oil and gas development, and vegetation treatment projects. Without this basic foundational information about the existing impacts of climate change on the land, and future expected impacts, it is impossible to make informed decisions about the level, location, and kind of activities the land and its ecosystems can support in the future.

This omission is a significant oversight given that federal departments and agencies including the Department of Interior, the Environmental Protection Agency, and U.S. Geologic Survey have all published documents and/or provided public statements and even congressional testimony acknowledging the impacts of climate change on public lands resources. All of this information was readily accessible to BLM, and – as noted below – was even recognize by BLM and DOI officials a year before the PRMP was released. Together with the failure to incorporate the newer studies cited above, this oversight amounts to a failure to take the necessary “hard look” at the challenge of resource management in the MFO, and an important aspect of that challenge.

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

Ron Huntsinger, BLM's own science coordinator, said,

[w]e can anticipate further reductions in the level of allowable uses on public lands due to the loss of productivity and capacity The results

are more fragile ecosystems, a greater susceptibility to the outbreaks of attacks by parasites and disease, increased vulnerability to wildland fire and erosion and an overall reduction in the carrying capacity of the land.

Id.

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

B. BLM Has Failed to Follow NEPA Regulations Governing Decisionmaking in the Face of Uncertain Information.

SUWA disagrees with BLM's claim that scientific uncertainty makes further analysis of the impacts of climate change impossible in the PRMP. To the contrary, such scientific evidence exists, and SUWA provided much of it to BLM with its comments on the Draft RMP. At any rate, BLM's bare statement regarding the presence of a level of uncertainty about the precise degree of future change in climate conditions in the Richfield Field Office does not excuse its failure to present and analyze information about the impacts of climate change on the resources of the RFO.

First, as explained in the June 2008 report released by the EPA, the impact of climate change on public lands resources is not a mystery:

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

U.S. Climate Change Science Program Final Report, Synthesis and Assessment Product 4.4, Preliminary Review of Adaptation Options for Climate-Sensitive Ecosystems and Resources 9-14 (June 2008), available at http://www.epa.gov/ord/npd/pdfs/gcrp-factsheet_SAP-4-4.pdf. The scientific studies that SUWA provided in our comments on the Draft RMP provide significant, credible evidence of the impacts of climate change which should have formed the basis for the PRMP's own analysis of climate change's effects on the resources of the RFO. Bald assertions that such analysis is not possible does not stand up in the face of this evidence.

At any rate, some degree of scientific uncertainty does not justify a wholesale failure to address an issue. NEPA contains specific requirements governing the treatment of uncertain conditions and imposes an obligation to state, with support, that existing evidence is inconclusive and to summarize the conclusions of that evidence.

With respect to incomplete or unavailable information, 42 C.F.R. § 1502.22 provides

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:

1. A statement that such information is incomplete or unavailable;
2. a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;
3. a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and
4. the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

Given these regulations, BLM cannot rely on the so-called "uncertainties" relating to the impacts of climate change on the area to end the analysis with a simple acknowledgement of the phenomenon and a passing reference to BLM's claimed inability to "predict the effect of resource management-level decisions from this planning effort on global climate change." PRMP at 4-4. BLM must do more, even where information is uncertain (and in this case, SUWA emphasizes that the information, with the detailed studies cited above, is not particularly uncertain). For example, the PRMP does not even estimate the level of CO₂, a significant contributor to climate change, that would be released as a result of the PRMP activities such as coal

mining and burning, oil and gas development or ORV use. Nor does the PRMP discuss or summarize the credible scientific information about the threats caused by soil disturbance from ORV use, among other things, or how that may contribute to the spread of exotic plant species and, in turn, more wildlife. But there is no explanation of why that information is lacking or a statement concerning the BLM's ability to obtain the information.

In Chapter 4's discussion of the impacts of the PRMP, climate change earned a scant two paragraphs of discussion, with a proviso that BLM lacks "an established mechanism to accurately predict the effect of resource management-level decisions from this planning effort on global climate change." PRMP at 4-4. It did note, however, that a warmer, drier climate could lead to greater particulate matter pollution over areas of disturbed soils, and that the habitats of native species may be lost or relocated due to climate pressures. PRMP at 4-4, 5.³

Again, the impacts of climate change were simply not discussed; such an omission violates this section of the NEPA regulations. Thus, it is clear that BLM has failed to take a hard look—or virtually any look—at the impacts of climate change on the public lands resources in the Richfield Field Office.

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

C. Failure to Include an Alternative that Addresses the Threat of Climate Change.

As discussed above, land managers face new challenges as the warming climate creates systematic changes to the health and sustainability of the ecosystems of the Richfield Field Office. As the federal government's Climate Change Science Program noted in a new public review document on September 2, 2008:

³ But even BLM's bare-bones excuse has it backwards. The point is not that BLM should predict how "management-level decisions" affect global climate change, but that *BLM should factor how climate change affects the Richfield Field Office and develop management options that reflect the reality of the dramatic change that warming will cause all the resources in the Richfield Field Office.* In other words, the predicted warmer, drier conditions will create fundamental change to the Richfield Field Office and BLM has simply ignored those coming changes, choosing instead to manage for the past, rather than for the future.

With ongoing climate change and the threat that ecosystems will experience threshold changes, managers and decisionmakers are facing more new challenges than ever. Strong partnerships between research and management can help in identifying and providing adaptive management responses to threshold crossings. Because decisionmakers are dealing with whole new ecosystem dynamics, the old ways of managing change do not apply. A new paradigm in which research and management work closely together is needed.⁴

An understanding of the predicted impact of climate change should have led BLM to include an alternative that specifically addressed the systematic and fundamental changes expected as a result of climate change. For example, given that so many of the predicted outcomes of climate change center on increased soil erosivity, dust storms, shrinking water resources, drier riparian areas, invasion of exotic plants, and the spread of hotter, larger wildfires, it is entirely reasonable to expect BLM to design alternatives that minimize soil disturbance, and protect riparian areas, native vegetation and wildlife habitat, as much as possible. And given that ORVs are associated with both the ignition of wildfires and the spread of exotic weeds, it is likewise reasonable to expect that BLM would design—and even designate as preferable—an alternative with far fewer than the thousands of miles of backcountry ORV routes (4,277 miles) that the PRMP contains. As noted above, BLM’s own science coordinator noted that the effects of climate change should result in a reduction in the allowed use of certain activities on BLM lands—yet such an option was not presented in management plan options.

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

BLM’s failure to consult the scientific literature, and in particular EPA’s report, resulted in a fatally flawed document with none of the required options for managing a significant impact that will likely have systemic impacts throughout the Richfield Field Office. U.S. Climate Change Science Program Final Report, Synthesis and Assessment Product 4.4, Preliminary Review of Adaptation Options for Climate-Sensitive Ecosystems and Resources 9-14 (June 2008), *available at* http://www.epa.gov/ord/npd/pdfs/gcrp-factsheet_SAP-4-4.pdf. BLM should have drawn on EPA’s own research and consulted

⁴ <http://www.climatescience.gov/Library/sap/sap4-2/public-review-draft/>. *See* Chapter 5, page 1.

with EPA staff whose report “provides information on how existing practices could be adjusted, or new strategies developed, to address the effects of climate change on natural resources.” EPA, Global Change Research Program, Science in Action: Building a Scientific Foundation for Sound Environmental Decisions, *Assessment Provides Strategies for Managing Natural Resources in a Changing Climate: Findings of the U.S. Climate Change Science Program Synthesis and Assessment Product 4.4* at 2, available at http://www.epa.gov/ord/npd/pdfs/gcrp-factsheet_SAP-4-4.pdf.

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

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

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

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

None of the alternatives, and certainly not the proposed alternative, echo the strategies identified in the EPA report and suggested in the scientific studies SUWA presented to the BLM in its comments on the Draft RMP. Even the most conservation-oriented alternative, Alternative D, would extend just partial protection to non-WSA lands with wilderness character. It would extend protect to 682,600 acres of land with agency-identified wilderness character, or just 32.5% of the 2.1 million acre RFO. PRMP at 2.3. However, there are an additional 40,000 acres of non-WSA lands with wilderness character that the agency has not yet fully assessed. The PRMP allows destructive ORV use in these areas; it does not offer full protection. At any rate, it is clear that none of the

alternatives were drafted with the intent to address the effects of climate change – thus, even the most protective of the alternatives may not offer the right mix of management strategies to buffer the effects of climate change. Thus, BLM has abdicated an important part of its responsibilities by failing to present valid management options that can, over the long term, best ensure the sustainability of the full range of resources in the Richfield Field Office.

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

As noted above, BLM briefly discussed climate change in the PRMP, but entirely failed to mention it in the Draft RMP. Because the BLM failed to identify an important management consideration and impact on the RFO in the Draft, the public was left with the demonstrably erroneous impression that climate change has no bearing on the management of the RFO. Thus, it was deprived of the opportunity to learn about this issue and to comment intelligently on it.

Further, the PRMP gave short shrift to the scientific evidence and studies provided by SUWA, and simply failed to respond to key studies and conclusions about the impacts of climate change on the Colorado Plateau. Other studies released while BLM was completing the PRMP contained additional information about climate change, and included specific recommendations about management strategies that would address the changes expected from climate change. Again, even though these documents were widely publicized by the federal government’s Climate Change Science Program and easily accessible on the internet, BLM did not even mention these clearly relevant studies.

The compelling information about climate change necessitates that BLM provide a supplement EIS on this issue prior to signing the record of decision for the Richfield PRMP. 40 C.F.R. § 1502.9(c)(1) requires BLM to prepare an SEIS if “[t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impact.” The new climate change information should warrant an SEIS because it meets the threshold for “significant” new information, as outlined in 40 C.F.R. § 1508.27.

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

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

40 C.F.R. § 1508.27(a).

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

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

40 C.F.R. § 1508.27(b).

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

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

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

F. Violation of Secretarial Order 3226

Secretarial Order No. 3226 specifically requires BLM

to consider and analyze potential climate change impacts when undertaking long-range planning exercises, when setting priorities for scientific research and investigations, when developing multi-year

management plans, and/or when making major decisions regarding the potential utilization of resources under the Department's purview.⁵

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

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

Id. (emphasis added).

As noted above, no analysis of potential climate change impacts was provided in the plan and EIS. BLM simply ignored the Secretarial Order. *See, e.g.*, PRMP at 1-13 (outlining "planning criteria," which does not mention Secretarial Order 3226).

⁵ *See* http://elips.doi.gov/app_so/act_getfiles.cfm?order_number=3226 (emphasis added). By its terms the "Order is effective immediately and will remain in effect until its provisions are converted to the Departmental Manual or until it is amended, superseded or revoked, whichever comes first." *Id.* at Section 4. The Order has not been amended, superseded, or revoked.

IV. Cultural Resources

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

A. Federal Law

FLPMA obligates the Bureau of Land Management (BLM) to protect cultural, geologic and paleontological resource values (43 U.S.C. §§ 1701(a)(8) 1702(c)), whereas the National Historic Preservation Act of 1966 ("NHPA") (16 U.S.C. § 470 et seq.) provides for enhanced consideration of potential impacts to these resources through a cooperative federal-state program for the protection of historic and cultural resources. In particular, Section 106 (16 U.S.C. § 470f) obligates the BLM to consider the effects of management actions on historic and cultural resources listed or eligible for listing to the National Register of Historic Places, as provided under NHPA. Section 110 of the NHPA requires the BLM to assume responsibility for the preservation of historic properties it owns or controls (16 U.S.C. § 470h-2(a)(1)), and to manage and maintain those resources in a way that gives "special consideration" to preserving their historic, archaeological and cultural values. Section 110 also requires the BLM to ensure that all historic properties under the jurisdiction or control of the agency are identified, evaluated, and nominated to the National Register of Historic Places. *Id.* § 470h-2(a)(2)(A).

B. Deficiencies in the PRMP

The analysis in the PRMP is deficient with respect to cultural resources, both in terms of general theoretical assumptions applied throughout the document, as well as specific strategies identified for addressing cultural resource concerns. As was noted in CPAA's comments on the DRMP, general concerns include the absence of a meaningful and representative statistical sample of inventoried lands within the Richfield Field Office whereby the density, diversity and distribution of cultural resources could be adequately considered during the planning process; and the failure of the agency to adequately consider the indirect and cumulative effects of various activities on the integrity of historic properties (acknowledgement of such effects does not constitute thorough consideration of such effects).

CPAA's DRMP comments also noted a specific concern regarding the absence of a clearly stated intent to initiate Section 106 compliance prior to the designation of off-road vehicle (ORV) routes; the designation of ORV routes in areas known to have high archaeological site densities but little or no baseline inventory data, and the failure of the agency to more aggressively embrace its Section 110 responsibilities to evaluate and *nominate* properties under its management jurisdiction to the National Register of Historic Places.

1. Inadequate Statistical Sample

As noted in the PRMP, the analysis in the PRMP is based on professional expertise literature review, and consultation with tribes, since less than one percent (1%) of the RFO has been subjected to archaeological inventory. PRMP at 4-80. It therefore must be concluded that entire environmental and ecological ranges remain unexamined, and that the RFO has little or no data as to the nature, diversity or distribution of cultural resources on roughly 99 percent of the lands it manages. Given the paucity of baseline data and absence of survey data for most of the RFO, even estimates based on best available data have little or no basis on fact.

Although BLM asserts in its response to CPAA comments (PRMP Response to Comments at 104, sorted by Commentor) that it used “the best available information at the present time,” this does not mitigate the fact the data upon which the PRMP is based is flawed. The BLM cannot properly plan for and manage cultural resources it does not know exist, and hence the absence of a statistically valid sample militates against adequate consideration of potential impacts to unknown cultural resources. In effect, the database is little more than a *de facto* corroboration of the failure of the BLM over the past two decades to take seriously its Section 110 responsibilities to implement a proactive preservation program for the identification, evaluation and National Register nomination of historic properties under its jurisdiction or control.

CPAA’s DDRMP comments urged BLM to revise the DRMP to reflect a meaningful and statistically valid inventory of representative lands within the RFO whereby the diversity, distribution and density of cultural resources can be properly considered in future land management decisions. It is laudable that the proposed plan states the BLM’s intent to prioritize specified areas for proactive surveys (e.g., Horseshoe Canyon South, Bull Creek), and SUWA supports these efforts as an important first step toward ameliorating deficiencies in the current database. However, the PRMP indicates these efforts will be focused on areas of known high archaeological site density or “areas of special cultural designation” (PRMP at 2-17), and it offers no intent to develop a meaningful statistical sample survey of prehistoric land-use patterns across entire landscapes, including areas of low probability. The PRMP fails to articulate management strategies or objectives to inventory the broad suite of environmental and ecological ranges evident throughout the RFO whereby the nature, diversity or distribution of cultural resources could be determined. The absence of more geographically inclusive block surveys (Class III) or random sample surveys (Class II) of different environmental and ecological ranges perpetuates the data gaps that have precluded informed management decisions in the past.

2. NHPA Section 106 Inventories of ORV Routes

CPAA raised the need to conduct Sec. 106 inventories prior to ORV route designations in its DRMP comments, noting the fundamental component of the Draft EIS Travel Plan is the BLM’s intent to establish thousands of miles of designated trails for ORV travel, and BLM’s apparent decision that Section 106 compliance (e.g., Class III inventories) will

not be required prior to designation of routes and open play areas currently in use. As CPAA noted in its comments, the failure of the BLM to conduct adequate analysis in the past related to OrV impacts along routes currently being used by motorized vehicles was and still remains an abrogation of agency's Section 106 responsibilities, and the failure of the agency to recognize or correct this deficiency in the proposed plan appears to perpetuate the agency's failure to comply with Section 106 requirements in the past. Furthermore, the failure to require Class III inventories along routes prior to designation suggests the agency official has made a determination, as per 36 CFR 800.3(a), that travel route designations in such instances are not an undertaking as defined in 36 CFR 800.16(y).

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

BLM's response to CPAA's concern states that the agency will follow the guidelines set forth in an internal memo (BLM IM-2007-030) and a Utah protocol agreement, and that according to the IM, a Class III inventory is not required prior to route designations on "existing" routes (Response to Comments 1-3). It is important to note that the BLM's response, and the IM are silent as to whether the guidance set forth in the IM applies to all "existing routes" or only those that have been the subject of a Class III inventory in the past for a specific project that created the route in the first place (i.e. seismic exploration, oil and gas development, etc). If the BLM interpretation that no surveys are required on *all* existing routes, the IM would be in direct conflict with the mandates in the NHPA and federal regulations that require a Class III inventory for "undertakings." Route designations are certainly undertakings, and if the routes have not been surveyed prior to the designation, then BLM must conduct a Class III inventory. According to federal court decisions, the Advisory Council on Historic Preservation (ACHP), the independent federal agency created by Congress to implement and enforce the NHPA, has exclusive authority to determine the methods for compliance with the NHPA's requirements, not the BLM.

The PRMP is further in conflict with the NHPA in that it goes far beyond exempting the designated routes themselves from Section 106 review. The PRMP would allow vehicles to pull off designated routes 50 feet to either side for staging, and 150 feet to either side for camping (PRMP 4-91). The Proposed Plan would exempt from Section 106 inventory and review these staging and camping areas – a virtual 300-foot corridor along 4,277 miles of route, even though the proposed plan acknowledges it could result in impacts to

surface features, broken artifacts and surface disturbance of archaeological sites. The Proposed Plan seeks to designate staging and camping areas without any Section 106 review as required by law.

Recent research has documented a direct relationship between camping and adverse impacts to cultural resources. As articulated by Sullivan et al., recreational users of public lands may not know or understand what constitutes heritage resources, and that cultural resources are being damaged by “people who are unaware that they are behaving destructively in an archaeologically rich landscape.” Sullivan, Alan P., Patrick M. Uphus, Christopher I. Roos and Philip B. Mink II, *Inadvertent Vandalism: The Hidden Challenge for Heritage Resource Management*, CRM, No. 2:42-45 (2002). Inadvertent vandalism to heritage resources could result from camping on or around archaeological sites, construction of fire rings within cultural deposits, harvesting of prehistoric wood construction beams for firewood, removal of culturally rich soils to extinguish fires, burying of modern human trash and waste in archaeologically rich soils, and removal of surface vegetation for fires, thereby enhancing erosion of archaeological sites. Ongoing research near the RFO has also demonstrated a direct relationship between camping activities and inadvertent damage to archaeological sites in proximity to the camps, as well as malicious acts (e.g., vandalism, looting graffiti) to sites within 200 meters of the camps. See Spangler, Jerry D., William Davis, Kristen Jensen, Kevin T. Jones and Joel Boomgarden, *An Intuitive Survey and Site Condition Assessment in the Desolation Canyon National Historic Landmark, Carbon County, Utah* (2007); Spangler, Jerry D., Joel Boomgarden, Rachelle Green and Jamie Clark, *Desolation Canyon Baseline Site Condition and Vandalism Assessments: May 2007* (2007); and, Spangler, Jerry D., Kevin T. Jones, Andy Yentsch, Kristen Jensen, Joel Boomgarden and Shannon Arnold, *Desolation Canyon Baseline Site Condition and Vandalism Assessments: October 2007* (2008).

SUWA reiterates CPAA’s comments that were not addressed and/or accommodated in the PRMP:

- Designation of all ORV routes and open play areas must be based on full Section 106 reviews of all direct and indirect adverse effects resulting from increased availability of route maps, and the associated increased access to backcountry areas and increased use of travel corridors resulting from formal designations.
- The PRMP should articulate that Class III inventory and site evaluations along designated routes will include all areas of indirect impacts, with specific focus on cultural resources in adjacent topographic settings that could be impacted by increased vehicular access. This should include, but not be limited to, the identification of sites with potentially intact cultural deposits that are visible from a designated route regardless of distance, and to all localities within 200 meters of an existing route or camp area. See Spangler, Jerry D, Shannon Arnold and Joel Boomgarden, *Chasing Ghosts: An GIS Analysis and Photographic Comparison of Vandalism and Site Degradation in Range Creek Canyon, Utah* (2006). BLM’s response that areas of potential effect

(APE) will be determined in consultation with the SHPO is disingenuous given that the PRMP states that Section 106 clearances of existing routes is not required and hence no consultation with the SHPO is required. *See*, PRMP Response to Comments at 106, sorted by Commentor.

- Route or area closures are an appropriate and proven management tool to mitigate the adverse impacts of ORVs on and around archaeological sites. The PRMP should clearly specify such a management strategy.
- The PRMP should clearly state that Class III inventories, site assessments and site mitigations will be completed prior to the designation of ORV routes, including existing routes and open ORV areas, and that cultural resource protection will be a fundamental goal of any transportation planning.

3. NHPA Section 110 Deficiencies

Section 110 of the National Historic Preservation Act unequivocally specifies the responsibilities of federal agencies to proactively identify, evaluate and nominate National Register-eligible historic properties under their jurisdiction or control. Section 110(2)(a) specifically mandates the agency implement a program to ensure “that historic properties under the jurisdiction or control of the agency are identified, evaluated *and nominated* to the National Register” (emphasis added). BLM’s response to CPAA comments were inadequate. *See* PMRP Response to Comments at 104-105, sorted by Commentor. SUWA reiterates CPAAs position that there is no provision in the law that sites eligible for listing on the National Register need not be nominated if they receive the same protection as sites already on the National Register.

National Register nominations are fundamental planning decisions that must be accommodated in any RMP. Given that Section 110 of the NHPA unequivocally states federal agencies will identify, evaluate and nominate properties to the National Register, any BLM *post hoc* efforts to actually nominate properties not identified in the RMP could be perceived as activities beyond the scope of the RMP and in conflict with land-use plans. Prudent planning warrants the identification of those sites and districts the BLM intends to nominate to the National Register.

As noted in CPAA’s DRMP comments, many known archaeological sites in the RFO are clearly eligible under Criterion A in that they are associated with broad patterns of human prehistory on the Colorado Plateau; are eligible under Criterion C in that they embody distinctive characteristics of type, period or method of construction, or represent a significant and distinguishable entity, even if the individual sites lack distinction; and most importantly are eligible under Criterion D in that they have yielded or are likely to yield important information about the prehistory of the region. Euroamerican historic sites in the RFO would also be eligible under these three criteria, and potentially under Criterion B if they are associated with important individuals.

That the RFO will more aggressively pursue its Section 110 responsibilities through proactive surveys is laudable. However, the PRMP reflects reluctance on the part of BLM to fully embrace the agency’s responsibilities under Section 110, as it does not identify

those eligible properties the agency will nominate to the National Register, nor does it indicate the willingness of the agency to prioritize properties under its jurisdiction for National Register nominations. Given the federal agency's mandate to actually "nominate" properties to the register, the PRMP should reflect the commitment of the BLM to actually nominate eligible sites and archaeological districts where the cultural resources have been determined eligible for National Register listing.

In light of the concerns discussed above, SUWA reiterates CPAA's comments that were not addressed and/or accommodated in the PRMP:

- The PRMP should explicitly recognize that proactive cultural resource work is a critical need accentuated by increased ORV use. BLM's prioritization of specific areas with known archaeological resources for proactive survey should be augmented with a schedule of surveys to be done yearly, and a statement that Section 110 inventories will be prioritized *within* the field office budgets.
- The BLM should aggressively seek public input regarding which sites should be prioritized for nomination. This could include discussions with interested Native American tribes, the Utah Professional Archaeological Council, local and statewide historical societies, and historic preservation advocacy organizations.

V. Oil and Gas Development

A. BLM must analyze a “no leasing” alternative

BLM has failed to consider a no leasing alternative in the Richfield PRMP. As part of its analysis BLM must consider a no leasing alternative—in addition to a no action alternative. Federal courts have made clear that a no leasing alternative should be a vital component in ensuring that agencies have all reasonable approaches before them. *See, e.g., Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228 (9th Cir. 1988). The Richfield PRMP does not analyze the possibility of a no leasing alternative. Management framework plans are not NEPA documents and thus the several MFPs that together comprise the current management regime for the Richfield field office do not constitute adequate pre-leasing analyses that consider a no leasing alternative. *See Southern Utah Wilderness Alliance*, 164 IBLA 118, 123-24 (2004). Finally, any brief mention and rejection in the 1975 Price Environmental Analysis Record (EAR); the 1982 Henry Mountain Management Framework Plan; and the 1988 Sevier River and Henry Mountain Supplemental Oil and Gas Leasing Environmental Analysis of the no leasing alternative was facially insufficient and cannot be relied upon now for that necessary analysis. *Southern Utah Wilderness Alliance v. Norton*, 457 F. Supp. 2d 1253, 1262–64 (D. Utah 2006). Such a failing also prevents the 1975 Richfield Oil and Gas Program Environmental Analysis Record (EAR) – from now being relied on by BLM for adequate analysis of the no leasing alternative. *See id.* (explaining that such non-NEPA analyses with cursory or inadequate analysis do not satisfy BLM’s NEPA obligation). Hence, the BLM has *never* had before it the possibility of totally abandoning oil and gas leasing in the Richfield planning area, something it is required to consider. *See Bob Marshall Alliance*, 852 F.2d at 1228.

The Richfield PRMP appears to ignore the difference between a no action alternative and a no leasing alternative. The no action alternative evaluated in the Richfield Draft RMP, Alternative N, would simply be a continuation of the existing management plans. Richfield Draft RMP at 2-3. The PRMP dismisses the no leasing alternative by mischaracterizing its implications and conflating it with the no action alternative. *See* Richfield PRMP at 2-5 to -6. The no leasing alternative does not require BLM to buy back all existing leases. *See* Richfield PRMP at 2-5. It simply requires that BLM analyze a program in which no future leases are offered. This is not a useless exercise; it allows BLM to compare the difference in impacts between the no leasing alternative and the development alternatives. BLM must fully analyze the no leasing alternative. The present analysis is insufficient.

B. The RFD is inaccurate

BLM must also modify its reasonably foreseeable development (RFD) scenario figures in the Richfield PRMP to accurately reflect historical rates of development. As SUWA demonstrated in its comments on the Richfield Draft RMP, the RFD rate is improperly high. As discussed above, the agency is required to use high quality data and methods for

its analyses; the inaccurate RFD must be corrected. The PRMP now contends that this high rate is proper and dismisses SUWA's recommendations with the same formulaic statement that the RFD is based on "geologic conditions, oil and gas potential, leasing activity, historic trends, and current and projected interest." See BLM Response to Comments, sorted by Resource, at 95-96. However, this is incorrect. SUWA pointed out that BLM's RFD scenario was arbitrarily high and then asked that BLM lower the RFD scenario to be in line with historic development rates, geologic conditions, and oil and gas potential. SUWA cited from the *Scientific Inventory of Onshore Federal Lands' Oil and Gas Resources and Reserves and the Extent and Nature of Restrictions or Impediments to Their Development*, prepared by the United State Department of the Interior, Department of Agriculture, and Department of Energy which showed that most of the southern and southwestern portions (Piute County and the Wayne and Garfield county portions) of the planning area are identified as having the lowest possible concentrations of oil in the rating system used in the report, or no predicted oil whatsoever. *Id.* at 52 (2006).⁶ This report concluded that natural gas in the area was also in the lowest possible concentrations for the rating system used in the report. *Id.* at 101. This demonstrates that this portion of the planning area has neither the geologic conditions nor the oil and gas potential to support such an inflated RFD scenario. In terms of historic rates, the PRMP's RFD figures are well above anything ever seen in this field office; they have no relationship to historic reality. Thus, BLM has not justified its inappropriately high RFD scenarios with any data or information and to simply state that it has based them on geology or history does not excuse this artificial inflation. BLM must rework its RFD scenarios to match geological potential and historic trends.

C. BLM must thoroughly consider SUWA's proposed alternative to protect sensitive and important areas in light of the revised RFD

Changing the RFD scenario to a more historically and geologically accurate level would highlight the fact that BLM could easily close more areas to oil and gas leasing or impose non-waivable no surface occupancy (NSO) stipulations without limiting likely and realistic development. To this end, in its comments on the PRMP SUWA proposed a reasonable, feasible alternative that would have closed numerous sensitive areas or imposed non-waivable NSO stipulations on oil and gas leasing in the planning area. BLM refused to fully analyze this alternative. Analysis of this alternative is consistent with BLM's obligation under NEPA to consider a reasonable range of alternatives and to thoroughly assess more environmentally protective alternatives. BLM did not fully analyze SUWA's proposed alternative, but must do so.

⁶ U.S Department of the Interior, BLM, EPCA Phase II Inventory, EPCA Phase II Report, <http://www.blm.gov/epca/>. The Interior Department has since released its EPCA III Report, *Inventory of Onshore Federal Oil and Natural Gas Resources and Restrictions to Their Development, Phase III Inventory* (2008), which purported to update information about oil and gas resources in several regions across the country, including the Paradox Basin Study Area. The information in the EPCA III study is substantially the same as what was contained in the EPCA II study, namely that the planning area contains nominal amounts of predicted oil and gas reserves. See *id.* at 166-67.

VI. Recreation

A. General Recreation Management

Recreation on public lands comes in a variety of forms, and over time, an increasing number of users seek to use these lands. On a limited quantity of terrain, only so many types of recreation can feasibly coexist without impairing the natural habitat and the qualities that attract users. The PRMP inadequately addresses recreational use within the Richfield Field Office. BLM fails to fully analyze impacts from ORV use and does not take into account how different uses impact the land and conflict with each other.

1. BLM has not adequately evaluated impacts from ORV use under NEPA

In the PRMP, BLM is relying on flawed data that inaccurately portrays the amount of recreational ORV use in violation of NEPA's requirement that decisions be based upon accurate, high quality data and analysis. This compromises BLM's ability to conduct a thorough analysis of direct, indirect, and cumulative environmental impacts from its recreation management decisions.

The recreation analysis in the PRMP focuses disproportionately on ORV use. Non-motorized use is described, but severely underemphasized in terms of importance. By designating over 90 percent of total land area available to ORV use, BLM has ignored its own multiple-use mandate intended to benefit all stakeholders. Based upon BLM's own statistics, the number of non-motorized users exceeds the number of motorized recreational users. PRMP, Table 3-23. From these same statistics, the number of visitor days logged for non-motorized use also exceeds visitor days logged for motorized use. *Id.*

BLM has also not performed an adequate socio-economic analysis with respect to recreational uses. Different types of recreation have been examined to derive estimates of the economic value derived from a single user day. According to Kaval and Loomis (2003), the average value of a day of non-motorized recreation is worth more than twice the value derived from a day of motorized use. So, even if it is assumed that motorized and non-motorized recreational use days are roughly equal, the economic value derived from traditional forms of recreation exceeds that of motorized-recreational users.

2. BLM has failed to minimize conflicts between ORV use and other uses

BLM's ORV regulations require the agency to designate areas and trails for ORV use "to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors," 43 C.F.R. § 8342(c), but the PRMP fails to comply with this duty

Motorized users are affected minimally by non-motorized users. In contrast, non-motorized recreational users often feel displaced by motorized users. The scenic and physical impacts created by motorized users are far more noticeable than impacts caused by non-motorized users, and the noise that ORVs produce severely disrupts the natural experience. As a result, many traditional recreational users avoid areas where ORV use is known to occur. In areas open to both motorized and non-motorized recreation, this can largely exclude the latter. Therefore, not only are recreational opportunities and potential benefits to traditional non-motorized recreationalists reduced in the PRMP, conflicts are increased.

The PRMP clearly points out the recreation conflicts that will be caused by BLM's decisions in that document:

Recreational activities can conflict with one another and affect the available opportunities and experiences. For example, heavy use of an area by motorized users can displace non-motorized users. Various recreation activities also affect other resources, such as riparian areas, cultural resources, vegetation, wildlife, soils, grazing, and mineral extraction. Specific areas where recreation and/or resource conflict occurs include the Dirty Devil region, Factory Butte, and the Henry Mountains. PRMP at 3-97.

This admission of impacts from motorized use is not minimizing conflicts among recreational users as required by law. After several commentors provided BLM with examples of conflicts they experienced from ORV use in specific areas, BLM responded in the following way:

The BLM analyzed the impacts of travel management as outlined and described in Chapter 4 of the DRMP/DEIS. Congress recognized that, through the multiple-use mandate, there would be conflicting uses and impacts on the public land. Also, specific decibel limitations on motorized vehicles are under the jurisdiction of the Environmental Protection Agency, and a matter of State Law. As stated in 43 CFR 8343.1(b): "No off-road vehicle equipped with a muffler cutout bypass, or similar device, or producing excessive noise exceeding Environmental Protection Agency standards, when established, may be operated on public lands."

BLM Response to Comments, sorted by Commentor, at 241-42. This response fails to address concerns about conflicts from ORV use. BLM also does not explain how it will minimize these conflicts as required by the ORV regulations.

a. Requested Remedy

BLM should develop a broader range of alternatives that accounts for true disparities in recreational uses and considers in greater depth the impacts of different recreation types on one another, in addition to the land itself. Also, the statistics collected by the agency itself should be considered in the development and analysis of alternatives within the

context of BLM's multiple-use mandate, as well as the directive to designate areas for motorized use that minimize conflict with other users of the public lands. Alternatives should be examined fully to assess the tradeoffs between all economic values (both market and non-market) for all alternatives. The economic analysis should consider the net (rather than gross) benefits of a full range of management alternatives. BLM must refer to available literature on these economic impacts.

B. Special Recreation Management Areas (SRMAs)

Recreation data shows that all forms of outdoor recreation have been increasing over the last two decades. Citing the need to avoid user conflicts, BLM has designated a number of SRMAs within the Richfield Field Office land management area. However, the agency's designation process fails to adequately analyze the environmental, social, and economic consequences of these designations.

1. BLM has failed to conduct a thorough analysis of impacts from its designation of SRMAs

By not evaluating all potential and foreseeable direct, indirect, and cumulative environmental impacts from its designation of SRMAs, BLM is in violation of NEPA. The PRMP focuses almost exclusively on the benefits of leaving areas open for ORV use, while simultaneously ignoring and/or underestimating the impacts of motorized recreation.

BLM fails to take the requisite "hard look" at the environmental implications of their SRMA designations as required by NEPA. The agency does acknowledge some basic consequences; the likelihood of soil compaction leading to surface runoff and site-specific reduction of forage material for livestock were among the most highlighted. However, even these impacts were evaluated only superficially. There is no site-specific analysis of these impacts and the extent to which they would occur and adversely affect other recreational users, wildlife, or the quality of the habitat itself. BLM must provide objective analysis to support its proposed SRMA designations in the PRMP.

Although SRMAs are designated to provide ample recreation opportunities for users of different types (motorized, equestrian, biking, hiking), the land management plan lacks true balance in the activities emphasized in the proposed SRMAs. Of the 830,390 acres proposed within 5 SRMAs, a considerable majority is open to motorized recreation. There is not a single SRMA designated exclusively for non-motorized access. On the other hand, two of the five SRMAs are designated specifically for motorized recreation. This kind of planning does not represent the proportional make-up of recreational use in the planning area; non-motorized recreation represents the majority of recreation within the Richfield Field Office, while motorized users are a much smaller constituency (consistently less than one quarter of all recreational use). PRMP at Table 3-23. According to recreation figures, there should be SRMA(s) designed specifically for non-motorized recreation in order to accommodate the public instead of the other way around.

By allowing a disproportionate level of ORV use within the management planning area, BLM is not maximizing the *net* benefits that will be received by recreational users of all types. A national study by Roper (2003) looked at recreation participation rates on federally-managed lands over time (1995-2003) and found that off-road vehicle activities consistently ranked below non-motorized activities with walking, hiking and backpacking accounting for two-thirds or more of recreation visits, while ORV driving accounted for less than ten percent. Data from several states as well as national studies (the USDA Forest Service National Visitor Use Monitoring Program, the National Survey on Recreation and the Environment [see Cordell et al. 2004], and BLM's Public Lands Statistics)⁷ all show that motorized use is consistently a small portion of total recreation visits to public lands. In addition, the Recreation Management Inventory System (RMIS) for the state of Utah show that in Fiscal Year 2004, non-motorized visits made up more than 50 percent of all visits. Motorized recreation visits only made up 20 percent.⁸

RMIS Statistics from the Richfield Field Office show the same trend as the national surveys above. From 2000 to 2004, significantly more visitor days were attributed to non-motorized recreation activities versus motorized recreation. PRMP at Table 3-23. In addition, cars and SUVs driven within the Field Office area were included within OHV use. These vehicles, however, are more likely to be used to get to and from campsites and trailheads; it is highly unlikely that they use any ORV trails in the backcountry. Thus, the figures for OHV use on backcountry trails would be significantly lower than the figures presented by BLM (*See* Table 3-23: Recreation Visitation, Richfield PRMP/Final EIS, 3-96). Nationally, regionally, and locally, the trend of recreational use is constant; the majority of recreation occurring on public lands is non-motorized. Stynes and White (2005) have shown that motorized and non-motorized visitors spend the same amount per day on tourism-related services. Therefore, due to higher rates of non-motorized recreation, it is easily extrapolated that traditional recreation forms create greater injections for local economies. Another study has shown that the economic value of a day of non-motorized recreation is, on average, higher than the value for the same day of motorized recreation. *See* Kaval and Loomis (2003).

Trails designated for motorized recreation are very established and motorized users create considerable noise and effluence. All of this detracts from the natural experience. On the other hand, non-motorized recreation has very little adverse effect on ORV use, if any. As a result, non-motorized users will actively seek out areas where ORVs are known not to go. Therefore, SRMAs designated for 'Dispersed' use (both motorized and non-motorized recreation) would primarily be used by ORVs. Based upon the recreation trends and data collected by BLM, and BLM's own projection that both types of

⁷ National Forest Visitor Use Monitoring Program National Project Results, January 2000 through September 2003. http://www.fs.fed.us/recreation/programs/nvum/national_report_final_draft.pdf
National Survey on Recreation and the Environment: <http://www.srs.fs.usda.gov/trends/Nsre/nsre2.html>
U.S. Department of the Interior, Bureau of Land Management, Public Lands Statistics:
http://www.blm.gov/wo/st/en/res/Direct_Links_to_Publications/ann_rpt_and_pls/2006_pls_index.html

⁸ Source: Tina McDonald, Outdoor Recreation Planner, Recreation Management Information System (RMIS) Project Manager, USDI Bureau of Land Management, 2850 Youngfield St., Lakewood, CO 80215, Email Tina_McDonald@blm.gov

recreation will increase in coming years, the current management plan does not appropriately apportion and designate SRMAs for recreation purposes.

As a majority of the land area designated as SRMAs is sanctioned for ORV use of some kind, BLM has ignored the ORV regulations as well as its own concept of multiple-use. From the nationwide, state, and regional statistics available to BLM, there is clearly more non-motorized recreation than motorized recreation in the planning area. This plan places a disproportionately high level of importance on motorized use, despite it being established that motorized recreation has fewer users, lower economic value, and far-greater environmental impacts in general.

2. The Proposed RMP does not present a reasonable range of alternatives

The range of alternatives promoted by the earlier Draft RMP and EIS was poorly developed and the PRMP does not fix this flaw. A true range needs to represent the interests of all stakeholders for the specified lands, not just a limited demographic. Most areas for specialized recreation are targeted towards OHV use, and even areas meant for shared use are dominated by motorized recreation. This PRMP lacks sufficient opportunities for non-motorized recreation, providing virtually no balance for which SRMAs are designed in the first place.

a. Requested Remedy

BLM should develop a reasonable range of alternatives. These alternatives should be examined fully to assess the tradeoffs between all economic values (both market and non-market) for all alternatives. The alternatives should consider in greater depth the impacts of different recreation types on one another, and especially to the land itself. Also, the statistics collected by the agency itself should be considered within the development and analysis of alternatives.

C. Special Recreation Permits (SRPs)

1. The PRMP Must Seriously Consider Impacts From SRPs at the RMP Level Rather Than Deferring This Analysis

The BLM's response to our comments on the DRMP states that SRPs are evaluated on a case-by-case basis. However, site-specific projects will tier to the NEPA analysis performed in the RMP and thus will never be fully analyzed. The possibility of future analysis does not justify BLM avoiding an assessment of the potential environmental consequences of the action that it is approving in the RMP. As a matter of NEPA policy, compliance with the Act must occur "before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b). For purposes of NEPA compliance, "it is not appropriate to defer consideration of cumulative impacts to a future date when meaningful consideration can be given now." *Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1075 (9th Cir. 2002).

Furthermore, depending solely on site-specific analysis does not allow for cumulative impact analysis as required by NEPA. The NEPA regulations define “cumulative impact” as:

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

40 C.F.R. § 1508.7. (emphasis added). A failure to include a cumulative impact analysis of actions within a larger region will render NEPA analysis insufficient. *See, e.g., Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1078 (9th Cir. 2002) (analysis of root fungus on cedar timber sales was necessary for entire area)

In addition, the BLM Handbook on Recreation Permit Administration (H-2930-1) clearly states that field offices can and should develop guidelines for issuing SRPs. The Handbook provides: “Field Offices are encouraged to develop thresholds through land use planning for when permits are required for organized groups and events for specific types of recreation activities, land areas, or resource settings” H-2930-1 at 13. The PRMP states that SRPs will be required for groups over 50 individuals or 10 vehicles. However, a single threshold for the entire resource area is inadequate to account for all of the factors that contribute to the impacts of an SRP. For example, different types of vehicles, duration of activities, size of impacted area, sensitivity of landscape (vegetation, soils, etc.), and many other variables greatly affect whether an SRP is appropriate. BLM must address these factors in the RMP and describe how they will be incorporated into processing of SRP applications.

The Price Field Office Draft RMP provides an excellent example for evaluating SRP applications and issuing such permits. It classifies SRPs into four distinct classes, ranging from least intensive to most intensive, based on specific factors such as type of equipment, size of area used, number of participants, et cetera. The RMP then clearly states which permit classifications are allowed in each ROS class and SRMA. Because the RMP is very specific (for example, surface disturbance of 5-40 acres ranks as “medium intensity”), BLM can easily determine whether to issue an SRP and where, and can better estimate cumulative impacts from such permits.

As can be seen from the Handbook and RMPs for other field offices, not only does BLM have the discretion to establish SRP guidelines, but it has the obligation to do so in order to protect the resources that the RMP is intended to protect and sustain.

a. Requested Remedy

BLM must fully and critically analyze impacts from SRPs at the RMP level. This means that BLM should take into consideration all comprehensive, reasonable, and specific

criteria for issuing SRPs, including criteria included in our comments on the Draft RMP. BLM must provide clear guidelines for issuing SRPs in the RMP, and should use the Price RMP as a model.

2. BLM has failed to produce a range of alternatives for the issuance of SRPs.

The BLM provides no variation whatsoever among the action alternatives. We reiterate our comments on the Draft RMP that this is against the intent of NEPA, the CEQ regulations, and case law. A range of alternatives should evaluate different approaches that BLM can take toward issuing SRPs, and evaluate the impacts of each approach. Impact analysis is critical in order for the agency to establish the level of resource protection achieved by any management action. Therefore, BLM must establish a full range of alternatives for issuing SRPs and analyze and compare impacts from each alternative.

a. Requested Remedy

BLM must go back and look at a reasonable range of alternatives for limiting SRPs issued by the Richfield Field Office and base the selected alternative on an accurate discussion and analysis of the impacts of activities that will occur based on the issuance of SRPs.

VII. ORV Area and Trail Designations, and Travel Plan Decisions

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

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

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

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

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

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

to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands . . . taking into account noise and other factors.” *Id.* § 8342.1(c). Finally, BLM is obligated to close routes to ORV use if ORVs are causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, wilderness suitability . . . or other resources until the adverse effects are eliminated and measures implemented to prevent recurrence.” *Id.* § 8341.2.

The Richfield PRMP travel plan and ORV area and trail designations, including the decision to allow cross-country travel for 50 feet on either side of the designated trail, and 150 feet on either side of the trail for parking and campsite access, fail FLPMA’s UUD standard. The proposed travel plan and ORV designations will harm natural resources in a number of important ways, including: unnecessarily increasing fugitive dust and degrading air quality; unnecessarily fragmenting wildlife habitat; causing unnecessary damage to riparian areas, floodplains, and cultural resources; unnecessarily reducing naturalness in areas with identified wilderness characteristics; and impairing Wilderness Study Areas.⁹ (Elsewhere in this protest, we discuss the failings of the PRMP to consider how the proposed actions will exacerbate, and contribute to, the effects of climate change as well.)

The PRMP makes critical misrepresentations in its discussion of travel management decisions. First, the PRMP states that the “goals and objectives” of the travel plan designation process are to “[m]aintain existing access . . . meet public and administrative needs . . . establish[] a route system that contributes to protection of sensitive resources . . .” PRMP at 2-70 (emphasis added). Secondly, the PRMP states that BLM will “[d]esignate routes for motorized use unless significant, undue damage to or disturbance of the soil, wildlife, wildlife habitat, improvements, cultural, or vegetative resources or other authorized uses of the public lands is imminent.”

These statements incorrectly characterize BLM’s responsibilities pursuant to FLPMA and the ORV regulations. The PRMP must be corrected to inform the public and the decision maker of BLM’s overriding duty to “*protect* the resources of the public lands . . . and to *minimize* conflicts among the various uses of those lands.” 43 C.F.R. § 8340.0-2. BLM is required to locate ORV areas and trails to “*minimize* damage to soil, watershed, vegetation, air, or other resources of the public lands, and to prevent impairment of wilderness suitability . . . [and] to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands . . . taking into account noise and other factors.” 43 C.F.R. § 8342.1(a), (c). BLM’s own 8340 manual explains that “minimizing” means that the agency should reduce impacts to the maximum extent feasible. *See* BLM Manual 8340 – Off-Road Vehicles (General) (1982).

⁹ The PRMP includes a new management decision that states that BLM will grant the State reasonable access across public lands for economic purposes, in accordance with the *Cotter* decision. *See* PRMP at 1-15. The PRMP should include a statement that BLM *must* comply with the Interim Management Policy (IMP) for wilderness study areas, and access can be provided that is consistent with the IMP as well as *Cotter*.

Thirdly, the PRMP misstates the BLM's duty in the event that ORV use is causing or will cause adverse effects. Rather than merely installing "additional signs and barricades" or performing "restoration of the affected areas," BLM must comply with the ORV regulations – the agency "shall immediately close the areas affected to the type(s) of vehicle causing the adverse effect until the adverse effects are eliminated and measures implemented to prevent recurrence." 43 C.F.R. § 8341.2(a). Additional signs and barricades and restoration actions do not fulfill BLM's duty to immediately close the areas affected and *eliminate* the adverse effects. The PRMP must be modified to delete this newly added decision.

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

The BLM proposes to allow motor vehicles to travel off of designated routes 50 feet on each side of the route for purposes of "parking/staging" and to travel 150 feet of either side of the route to find campsites. PRMP at 2-83 and 4-342. This proposed action contradicts the decision to prohibit cross-country travel and to restrict travel to designated routes. *See id.* at 2-79. In addition, this decision would be contrary to the IMP's mandate that motor vehicle use of ways in WSAs must not cause surface disturbance and must not impair the area's suitability for wilderness designation.¹⁰ BLM's proposal to allow what amounts to cross-country travel of up to 150 feet on either side of 4,277 miles of designated route is not insignificant. This decision fails to minimize impacts to natural and cultural resources, and wilderness suitability. BLM must remove this proposed decision in the Final RMP. Otherwise, BLM must analyze the potential impacts to resources from this decision, and disclose this information to the public and the decision-maker, before issuing the Record of Decision.

The PRMP states that the Factory Butte travel restriction order – issued in September 2006, to limit the open play area to 2,600 acres and limit ORV use in the remaining 142,000 acres in the Factory Butte area to designated routes – will "remain in effect until the RFO Record of Decision (ROD) become final." PRMP at 3-99. The ORV

¹⁰ Pursuant to the IMP, any activity in WSAs must be temporary and not cause surface disturbance. H-8550-1.I.B.2.a. ("Surface disturbance is any new disruption of the soil or vegetation requiring reclamation within a WSA. Uses . . . necessitating reclamation (i.e., recontouring of the topography, replacement of topsoil, and/or restoration of native plant cover) are definitely surface disturbing and must be denied."). Second, after the activity ends, "the wilderness values must not have been degraded so far as to significantly constrain the Congress's prerogative regarding the area's suitability for preservation as wilderness." H-8550-1.I.B.2.b.. Thus, the non-impairment test is not an "either/or" proposition and a proposed activity must meet *both* criteria to be permitted to take place. H-8550-1.I.B.2.

regulations require that the closure remain in effect “until the adverse effects are eliminated and measures taken to prevent recurrence.” 43 C.F.R. § 8341.2. The PRMP presents no evidence that the adverse effects have been eliminated. To the contrary, the Proposed plan “would still result in impacts to soil from vehicle use” in the 9,890 acres proposed to managed as open ORV areas. PRMP at 4-31. In addition, SUWA has presented photographic evidence to BLM that, in fact, illustrates that the adverse effects have not been eliminated and that measures, including user-compliance, have not been established to prevent recurrence. *See* SUWA letter dated May 22, 2008, Exhibit B.

The PRMP fails to minimize conflicts with other users of the public lands, specifically non-motorized recreationists. The PRMP states that “conflicts between recreationists involved in motorized and non-motorized activities will increase with increasing use of public lands.” PRMP at 4-321. Further, the impact analysis and conclusions are based on “estimates [of] recreation participation.” *Id.* at 3-94. Before issuing the PRMP, BLM should conduct a visitor survey, similar to the Moab National Visitor Use Monitoring survey and pay particular attention to the relative use of non-motorized versus motorized recreation. *See* SUWA’s DRMP comments and <http://www.suwa.org/site/DocServer/BLMNVMsurveyMoab.pdf?docID+2821>. This study shows that non-motorized recreation is utilized by vastly more visitors to the Moab BLM-managed lands than motorized (ORV-based) recreation. In fact, the Moab survey found that motorized use accounted for less than 7% of visitors’ main activity. Having actual visitor information is essential to guide BLM’s long-term recreation management decisions and ORV area and route designation decisions. Conceding that conflicts between motorized and non-motorized recreationists will continue to increase, is not the equivalent of minimizing these impacts. BLM must comply with NEPA and analyze the impacts of its ORV area and trail, and travel management decisions -- including its decision to designate over 90% of the RFO available to ORV use. The PRMP must be amended to incorporate adequate analysis prior to BLM issuing the Record of Decision.

For the reasons discussed above and detailed in Section C.2, below, for individual resources, the PRMP does not comply with FLPMA, the minimization requirements of Executive Order 11644, and BLM’s ORV regulations. Specifically, the PRMP fails to minimize impacts to riparian and wetland areas, cultural resources, soils, vegetation, air quality, water quality, wildlife and wildlife habitat, wilderness character areas, wilderness study areas, and other users. The PRMP, including Appendix 9 and the Response to Comments, fails to disclose the purpose and need for the specific ORV area designations and the individual route designations, and fails to provide BLM’s analysis supporting a determination that each designated ORV area and trail and the travel plan decision minimize impacts to natural and cultural resources, and minimizes conflicts among users. BLM must conduct this analysis and share it with the public before areas and routes are designated and determined available for use.

C. The Richfield PRMP Fails to Comply with NEPA

1. Alternatives

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

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

BLM should have fully considered and analyzed more environmentally protective alternatives consistent with FLPMA’s requirement that BLM “minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values (including fish and wildlife habitat) of the public lands involved.” 43 U.S.C. § 1732(d)(2)(A). Specifically, BLM should have fully analyzed the following three alternatives (or a combination of one or more alternatives that incorporated the resource protections inherent in each of these three alternatives): 1) the Heart of the Redrock Heritage Proposal (HRHP) alternative designed to protect wilderness character areas and WSAs, and minimize conflicts among users, submitted by SUWA during the public participation process; 2) an alternative that would have minimized impacts to riparian areas by not designating routes or ORV use areas in or near riparian areas as requested by ECOS Consulting’s DMRP comments; and 3) an alternative that would have minimized impacts to cultural resources by not designating ORV use areas and trails before completing comprehensive surveys for cultural resources for the proposed ORV use areas and routes as requested in CPAA’s DRMP comments.¹¹

¹¹ In the discussion of BLM’s failure to analyze the impacts of climate change, we also argue in this protest that BLM should have developed an alternative that would have addressed the predicted impacts and challenges of climate change. Development of such an alternative should have included the protection of large tracts of undisturbed ecosystems, as recommended by a study by the Environmental Protection

The BLM's rationale for refusing to include the HRHP as an alternative simply states, without supporting information or citations, "[w]hile it provided an outline for management, it fell short of a fully developed alternative because it did not address and attempt to resolve the issue raised during scoping nor the multiple laws, regulations, and policies that BLM must consider in developing an RMP." This is not an exception from NEPA's mandate, however. PRMP at 2-7. *See also* BLM's Response to Comments, sorted by Commentor, at 235. Rather than assess this reasonable and comprehensive alternative for oil and gas development areas, ACECs, ORV route designations and travel plan decisions, BLM merely responded that "elements of the proposal are included in Alternative C and D." *Id.* While some elements of the HRHP are included in Alt. D, none of the alternatives strikes the same balance of user needs and resource protection offered by the HRHP.¹²

BLM must comply with NEPA's mandate to consider a reasonable range of alternatives, by including the HRHP's route designations and travel plan proposals in its alternatives analysis. BLM must issue a supplement that includes the HRHP and alternatives that protect riparian areas and cultural resources, and it must allow the public and the decision-maker to review and comment on these alternatives prior to issuing the Record of Decision.

2. Hard Look

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

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable

Agency, released in June of 2008. U.S. Climate Change Science Program Final Report, Synthesis and Assessment Product 4.4, "Preliminary Review of Adaptation Options for Climate-Sensitive Ecosystems and Resources" (June 2008), available at http://www.epa.gov/ord/npd/pdfs/gcrp-factsheet_SAP-4-4.pdf. Such an alternative may have resembled the HRHP in significant respects, and more effectively protected valuable riparian areas.

¹² SUWA incorporates into this protest our comments that were submitted for scoping and the DRMP, including our route-specific comments, as the BLM's responses were not responsive, especially to our route-specific comments. *See* PRMP Response to Comments at 243, sorted by Commentor, BLM's response "A portion of this route is county B" leaves the reader with the impression that the BLM regards County B roads as outside the scope of the analysis. BLM is mistaken. "Class B" is merely a State of Utah route classification system; it has nothing to do with the NEPA process and minimizing impacts to resources and other users, as mandated by the ORV regulations. These routes are located on BLM lands and under BLM's management authority. BLM has not granted FLPMA Title V rights of way for these routes. The agency must include all routes, including so-called Class B routes in its PRMP NEPA analysis.

future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7.

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

In the context of the Richfield PRMP, the decisions made with regard to designation of ORV areas and trails and travel management fail to fully analyze the effects of those decisions on riparian and wetland areas, cultural resources, soils, vegetation, air quality, water quality, wildlife and wildlife habitat, wilderness character areas, wilderness study areas, and other users, as discussed below.

a. Riparian Resources

Riparian areas represent approximately only 1% of the total area of the RFO, yet they are one of the most critical components of the ecosystem, as they provides habitat for 75-80% of all wildlife species. FLPMA, the ORV regulations, and the Utah Riparian Policy require BLM to *protect and minimize* impacts to riparian areas. The PRMP includes a list of perennial stream segments in the RFO (PRMP at 3021), however, the PRMP’s baseline information is inadequate as it fails to disclose the current functioning condition assessment (i.e. properly functioning, functioning at risk, not functioning) and the trend analysis for these riparian areas.

The PRMP acknowledges “[v]ehicle use in riparian areas could affect riparian functioning condition by crushing vegetation, compacting soils, eroding streambanks, increasing sediment in streams and spreading invasive species.” PRMP at 4-60, 4-70. Although acknowledging these impacts, “the Proposed RMP would designated routes with 400 stream crossings. PRMP at 4-47 and 4-70. Although these 400 crossings may be “fewer than under Alternative N or A but more than under Alternative C or D” this statement of fact does not suffice for the hard look and rigorous quantitative analysis NEPA requires. In addition, to disclosing the impacts to riparian areas from the ORV area and trail designations and travel management decision, BLM must inform the public and decision-maker why routes that are in and cross riparian areas would not conflict with BLM’s proposed 330 foot “buffer zone” or riparian avoidance area. *See* PRMP 2-147. Moreover, the BLM’s representation that 400 stream crossings “could” affect riparian area health is misleading. BLM should, instead, acknowledge that such intensive

use of streams by ORVs will certainly cause these impacts; equivocating on this issue misleads the public and the decision maker.

This PRMP decision does not “minimize” the impacts to riparian areas, since, by BLM’s own admission, fewer stream crossings have fewer impacts to riparian areas. *See* PRMP at 4-69, (“the absence of vehicle use in riparian areas would benefit riparian functioning condition”); PRMP 2-147 (“The potential for impacts to riparian resources under the Proposed RMP would be less than under Alternatives N or A, but greater than under Alternatives C and D.”). Alternatives C and D have 273 and 266 crossings, respectively, compared with 400 crossings in the proposed Plan, and would come closer to minimizing impacts to riparian areas than the BLM’s proposal. PRMP at 4-41. (However, even the discussion of Alternatives C and D lacks the analysis from which one could conclude that they minimize impacts to riparian areas, or would achieve the protective goals of the Utah Riparian Policy..)

The PRMP also fails to disclose which particular riparian areas will be affected by the ORV and travel management decisions. This information, in addition to the current functioning condition assessment is relevant and necessary information for the public and the decision-maker, and BLM must provide this information to the public before issuing its Final RMP.

As discussed in comments submitted by ECOS Consulting on the DRMP, and confirmed by the USGS report, submitted by SUWA in its DRMP comments Attachment EE, routes and ORV use cause significant impacts to riparian areas and can have “negative impacts on water quality [and] soil properties and vegetative cover, which can result in accelerated rates of erosion and sedimentation and elevated levels of turbidity in affected watersheds.” *Id.* These impacts can be minimized and often avoided by prohibiting routes and ORV use in and near riparian areas, yet BLM is doing just the opposite by proposing to designate routes within riparian areas.

b. Cultural Resources

Less than 1% of the RFO has been inventoried for cultural resources and only a handful of sites have been excavated, yet the PRMP’s analysis of impacts to cultural resources is based entirely on these incredibly meager and paltry inventories. *See* PRMP at 4-80. BLM acknowledges that motorized access and ORV use could increase damage to sites as a result of intentional vandalism, illegal digging and excavation of sites, as well as unintentional damage from driving across artifacts and sites. *See id.* Reducing access “by closing roads or restricting travel could thus protect cultural resources.” *Id.* at 84 (emphasis added). The PRMP reports that many Native American tribes expressed concern over ORV designations and use due to the adverse effects caused by ORVs (concerns included vandalism, modification of vegetation that leads to increased erosion and flooding). In particular, it was noted that increased access results in increased destruction of cultural resources that are “a very real part of Native American culture and religion” and that preservation to date, has been primarily due to “their isolation and limited access.” *Id.* at 80.

Given these grave concerns, and BLM's own admission that vehicle access and use increase impacts to cultural resources – the vast majority having not been surveyed or recorded to date –BLM's decision not to conduct cultural resources inventories for the open areas and routes until *after* “impacts occur” is a gross abdication of its duty to protect these resources. *Id.* at 4-85 (“Unlike other permitted uses, cultural resource inventories and mitigation strategies would not be implemented before designating these large areas open to cross-country OHV use. Mitigation of cultural resource impacts would be implemented on a case-by-case basis after the impact has occurred.”). This fails to comply with BLM's duties under FLPMA (duty to protect resources), the ORV regulations (duty to minimize the impacts) and the NHPA (designation of open areas and trails is an “undertaking” under Sec. 106)

Although it might be cost-prohibitive to inventory the entire RFO during the RMP process, BLM must inventory all proposed open areas and routes (which must include the 150 feet on either side that is open for cross-country travel when accessing campsites (*Id.* at 4-91)) prior to officially designating the areas and routes in the RMP and travel plan. If it is cost-prohibitive to inventory all of the proposed routes, BLM must refrain from designating those areas and routes that have not been inventoried in order to comply with FLPMA's UUD mandate, the NHPA, as well as the ORV regulations' minimization criteria. Moreover, if BLM is going to base its decision on cost, it must also weigh the high cost of the cultural artifacts that would be lost due to ORV access, damage, and looting.

The PRMP concludes that “impacts experienced as a result of travel management would be less than those described under Alternative N. . . OHV use in open areas, although greatly reduced, compared to Alternative N, would still result in impacts to cultural resources from vehicle use in those areas.” *Id.* at 4-91 to -92. Although these statements might be true, they are no substitute for rigorous quantitative analysis of potential impacts, required by NEPA's hard look requirement.

Without first completing cultural resource surveys for each ORV area and trail that is designated in the PRMP, BLM does not have the adequate information on which to base ORV area and trail designation decisions, resulting in a PRMP that is not in compliance with NEPA's hard look requirement, the NHPA, and FLPMA's UUD and minimization mandates.

c. Soil and Water

The goals listed in the PRMP include, among others: maintain or increase soil productivity, prevent or minimize soil erosion, restore watershed health, and reduce stream sedimentation and salinization of water. Proposed management includes: implement appropriate best management practices to protect water quality, and follow Utah Standards for Rangeland Health to improve soil conditions. *See id.* at 2-9 – 2-10. These goals are consistent with FLPMA's mandates as well as with the governing executive orders (discussed above).

Subsequent decisions and discussions in the PRMP fail to live up to these goals and statutory obligations. As noted in Chapter 4:

Soils in the RFO are susceptible to impacts from compaction and disturbance, which can lead to accelerated erosion, soil loss and reduced productivity. Management actions that involve ground-disturbing activities, reducing vegetation cover, trampling and using vehicles and heavy machinery can result in such impacts . . . The greatest impacts to soil come from cross-country vehicle travel, [and] the use of vehicles on poorly constructed routes . . . The effects of cross-country travel include reduction of disturbance of surface cover (e.g. soil-holding vegetation, litter, rocks), displaced soil particles, increased soil compaction, creation of new flow paths and channels, and increased runoff. Combined, these effects increase soil erosion. *The effects of travel on poorly constructed routes are similar to the effect of cross-country travel. Thus, the greater the number of poorly constructed routes, that are left open, the greater the impacts through compaction and erosion.*

PRMP at 4-21 (emphasis added).

The PRMP continues: “Proposed decisions that allow surface-disturbing activities pose greater risks for adverse impacts to soils and, in some places and situation (e.g. OHV open areas . . .) to the associated biological crusts.” Finally, the PRMP states that the impacts analysis for soils was based on several assumptions, including the assumption that designated “[r]oads and trails would be properly designed.” *Id.* This assumption is entirely misplaced, as the PRMP acknowledges that most, if not all, of the proposed designated routes are merely user-created routes -- the product of past mineral exploration and development, grazing activities and/or recreational uses. There is no evidence in the PRMP that these routes are “properly designed.” Thus, BLM’s analysis of impacts, based on this assumption, is flawed, and must be corrected.

BLM states that the Proposed plan would have fewer acres designated as open to cross-country travel than Alt. N, but “would still result in impacts to soil from vehicle use” in those 9,890 acres. PRMP at 4-31. In addition, since the “public would have access to 4,277 miles of unpaved routes” the “use of these routes would continue to create the potential for soils impacts in the immediate vicinity of these routes.” *Id.* and at 4-25.

Water quality will also be impacted by ORV designations and travel management decisions.

“OHV use has the potential to affect water quality by causing surface disturbance, channeling surface runoff, changing vegetation structure, and reducing riparian-wetland function. Roads and OHV routes can be primary sources of sediment and salinity delivery to rivers and streams. Of special concern are routes with a clay-based native surface and routes and cross-country vehicle use within riparian zones and Mancos shale areas. The magnitude and extent of motorized recreation

has a greater impact on soil and water resources than non-motorized recreation does. OHV recreation use during periods of high soil-moisture conditions could accelerate localized erosion and damage vegetation. . . . Generally, the more miles of open routes, the greater the possibility of adverse impacts to water quality, although the location of routes (e.g. crossing streams, within riparian areas) is more important than sheer miles.”

Id. at 4-40.

As noted above, the PRMP has 400 stream crossing, or 100 more stream crossings and more than 1000 miles of additional route when compared with Alternatives C and D. Clearly, the PRMP is not minimizing impacts to the soil and water resources.

Reporting in a vacuum that the Proposed plan has less impacts than some alternatives considered, but more than other alternatives considered, is meaningless without reference to the applicable minimization and other criteria. It is not adequate for NEPA’s hard look requirement, and it does not comply with FLPMA and the ORV regulations’ minimization requirement. The BLM should integrate the findings of the USGS ORV report, submitted w/ SUWA’s DRMP comments, into its impacts analyses, and provide quantitative analysis of the impacts of the ORV area and trail designations and travel management decisions on soils and water. The BLM must disclose the quantitative impacts of the ORV and travel management decisions on water quality, including the impacts to waters listed on the 303(D) list, and soils, including soil erosion in the Mancos shale formation as well as other soil types, to the public and decision-maker prior to issuing the Record of Decision.

d. Vegetation Including Special Status Species

The PRMP states that the goals and objectives of BLM’s vegetation decisions include restoring, sustaining and enhancing the health of vegetation communities. *See* PRMP at 2-12. The more area that is open to ORV use, “the greater the potential for adverse impacts to vegetation near the trails and in riparian areas. Limiting travel to designated routes would confine the vegetation impacts to areas that are already disturbed or hardened for vehicle use . . .” *Id.* at 4-60. Although the PRMP would arguably cause fewer impacts to vegetation than Alternatives N and A, there would be “direct and indirect impacts” to vegetation in the open areas caused by ORV use. *Id.* at 4-69.

The PRMP admits that the 9,890 acres it proposes to manage as open ORV play areas “include populations and habitat of the Wright fishhook cactus [a federally listed species]. OHV use could be more concentrated in this smaller area, and would likely have more adverse effects per acres. Impacts of OHV use on special status plant species could involve habitat disturbance, and mortality of the species, through the crushing of plants by tire and indirect mortality, through increases in erosion and sedimentation.” *Id.* at 4-163.

The Impacts Summary Table 2-7 notes that managing 9,890 acres as “open for cross-country OHV use could result in the removal of existing vegetation and soil compaction, but on dramatically fewer acres than under Alternatives N and A.” *Id.* at 2-147; *See also* 2-152 (“the potential impacts to SSS [special status species] would be less than under Alternatives N or A, but greater than under Alternatives C or D” due to varying amounts of acreage managed as open to cross-country ORV use in the various alternatives); and 2-148 (same comparison statement about the potential for the spread of weeds by vehicles)

The PRMP contains no evidence that its ORV designations and the travel management decisions minimize impacts to vegetation, including the federally listed cactus species that are located in the ORV open area. Reporting that the Proposed plan has less impacts than some alternatives considered, but more than other alternatives considered is not adequate for NEPA’s hard look requirement, does not comply with FLPMA and the ORV regulations’ minimization requirement, and may violate the Endangered Species Act. In fact, these superficial conclusions – that fewer trails cause fewer impacts -- could be drawn by anyone, regardless of expertise. The BLM should integrate the findings of the USGS ORV report, submitted with SUWA’s DRMP comments, into its impacts analyses. BLM must disclose the quantitative impacts of the ORV and travel management decisions on vegetation, including special status species, and on the spread of invasive species to the public and decision-maker prior to issuing the Record of Decision.

e. Air Quality

The PRMP has failed to adequately analyze and disclose the impacts of the ORV area and trail designations, travel management decisions, and resulting motor vehicle use of these areas and routes on air quality. Although admitting that “OHV use impacts air quality by increasing fugitive dust levels,” and that ORVs also cause vehicular emissions of PM, CO, NO, NO_x, and VOCs, the PRMP’s impacts analysis is limited to a comparison between the number of acres open and miles of designated route between the proposed plan, and the other alternatives. *See* PRMP at 4-9, and 4-6. In this superficial comparison, BLM determines that since the proposed plan has slightly fewer miles of route (i.e. 32 miles, or less than 1%), and a smaller open area than Alternative N, that the potential for emissions is decreased. *See* PRMP at 4-12. Ultimately, BLM concludes that “OHV use in open areas compared to designated and existing routes has the potential to cause the greatest amount of direct impacts to air quality” but that “[o]verall impacts to air quality would be negligible to minor” depending on level of use, vehicle speed, wind, soil moisture, etc. PRMP at 4-13. There is no evidence that the PRMP complies with the minimization requirements of the ORV regulations, and a mere simplistic comparison between alternatives does not satisfy NEPA’s hard look requirement.

The existence of designated open areas and designated routes will generate fugitive dust even when not being traveled by vehicles (e.g., by wind blown dust). It is vital that the PRMP quantify all of the routes that it is designating, estimate the rate at which they will generate fugitive dust when not being traveled by vehicles (including wind movement data from the local region and dust production data gathered at incremental distances from the routes), estimate the number of vehicles that will use each route, and the likely

fugitive dust generation rate, and then model those figures to understand the true impacts of fugitive dust emissions – from both the designation of areas and trails, and the associated use of those areas and trails. Dust and emissions studies have been conducted on public lands in the Mojave Desert, and RFO should avail itself of these studies to assist in its analyses.

BLM's meager analysis of impacts on air quality from its ORV designations and travel management decisions does not comply with FLPMA's mandate to comply with federal and state air quality standards, NEPA's hard look requirement (including baseline information as well as impacts analysis) or with the ORV regulations' minimization requirements. Implementation of the PRMP will result in air pollution (e.g., through designation of, and approval of motorized use on, designated open areas and routes), which requires that air quality modeling and quantitative analysis be undertaken before the Final RMP is issued. The open areas and ORV routes identified in this plan will not be subjected to further analysis whereby better estimates might be developed. Now is the time to conduct such analysis.

f. Wildlife and Wildlife Habitat

“OHV use within wildlife habitat areas could adversely impact wildlife by harassing and displacing animals and damaging vegetation. . . . If the disturbance were to become chronic or continuous, these impacts could result in reduced animal fitness and reproductive potential. . . [I]mpacts to [sage grouse] associated with human presence and noise from OHVs would result in displacement or harassment during sensitive lifecycles and could also result in nest abandonment.” PRMP at 4-184. The increasing use of ORVs on BLM lands could “transport noxious and invasive weed seeds” to uninfested areas and “could increase the susceptibility of native plant communities to weed establishment and could modify soil conditions so that soils are unsuitable for establishment by native species,,” to the detriment of wildlife. *Id.* at 4-198. Decisions to designate routes and open areas “particularly . . . in riparian areas could adversely impact migratory birds because of habitat degradation and fragmentation caused by the routes” *Id.* at 4-185.

Although designating routes would provide somewhat better protection to wildlife and fish, and their associated habitats than designating open areas, “[d]esignating areas as closed to OHV recreation use would further reduce surface disturbance and habitat modification. This management action would remove potential impacts to fish and wildlife and associated habitat by limiting alteration to habitat components and disturbance associated with OHV use and human presence.” *Id.* at 4-184 to -185.

Thus, it is doubtful that BLM's proposed plan (4,277 mile of route, and 91% of the planning area available to ORV use) has minimized impacts to wildlife. Although BLM acknowledges the uncontroverted impacts to wildlife from ORV routes and use, the PRMP fails to minimize impacts to wildlife, and its generalized statements fail to adequately analyze the potential impacts to wildlife and wildlife habitat from the ORV area and trail designations and the travel management decisions.

g. Non-WSA Lands with Wilderness Characteristics

The PRMP states that the goals and objectives for managing non-WSA lands with wilderness characteristics (WC lands) are to “protect, preserve and maintain wilderness characteristics.” *Id.* at 2-37. The proposed plan includes ORV route designations in all but one of the non-WSA lands with wilderness characteristics – for a total of 429.2 miles. *See id.* at 4-230. This is more than any other alternative considered by BLM. Worse still is that BLM is proposing ORV routes (25.1 miles) within the smaller subset of WC lands the agency is proclaiming to manage to protect and preserve the WC values. *See id.* at 4-270 to -271. The BLM proposes to designate 5,700 acres of non-WSA lands with wilderness character near the iconic Factory Butte as an open ORV play area. *Id.*

The BLM acknowledges that “the presence and noise of vehicles using these routes . . . would reduce visitors’ opportunity to find solitude in the non-WSA areas, especially in proximity to the routes . . . Motorized uses could conflict with primitive and unconfined recreation opportunities sought in the non-WSA areas.” *Id.* at 4-271. The PRMP concludes that limiting travel to designated routes would “confine to existing routes the soil and vegetation disturbance caused by motor vehicles, and would result in no additional change to the natural character of the non-WSA lands.” *Id.* BLM’s contention that routes in WC lands will not impact the area’s natural character flies in the face of BLM’s 1980 wilderness inventory documentation that included numerous statements regarding the existence of a route detracting from the naturalness of the area—which subsequently led BLM to drop the area from further wilderness consideration. BLM cannot have it both ways. Designating routes in WC lands will encourage more motorized use of the trail and the existence of a well-used trail bare of vegetation affects the naturalness of the area and its future eligibility for wilderness designation.¹³ The PRMP does admit that naturalness will be impacted in the open play areas, i.e. Factory Butte. *See id.* (“Cross-country motorized travel in these non-WSA lands would continue to result in surface disturbance to soils and vegetation, altering the landscape and diminishing the natural character of these non-WSA lands.”).

The PRMP does not minimize the impacts to the WC lands and does not adequately assess the impacts to the WC lands from ORV routes and use. *See* 4-244 (The impacts from ORV designation and the travel plan on WC lands would be minimized if managed for non-motorized use, rather than managed for motorized use on designated routes that were not inventoried as routes in the WC inventory).

h. Wilderness Study Areas

¹³ The same can be said of 59.5 miles of route BLM proposes to designate in the RFO’s WSAs. Designation will encourage motorized use and such use will eventually denude the trails of all vegetation. These trails will then become a noticeable impact to the casual visitor and will effect the naturalness of the areas—which could rob these WSAs of future wilderness designation. Proclaiming that the Proposed Plan is more restrictive than Alternatives A and N is not adequate analysis under NEPA. *See* PRMP at 4-244, 4-408.

As discussed in detail in Sec XIII, BLM's decision to permit motorized use on "ways" in all of the WSAs managed by the RFO, including 18 miles of ways that are currently closed to vehicle use is arbitrary. See PRMP at 4-406 (41.5 miles of ways open to motorized use in the No Action alternative, and 59.5 miles of ways proposed to be open to motorized use in the Plan), See also Map 3-10 (shows ways designated as open routes in all of the WSAs in the RFO)¹⁴. BLM proposes to open ways that are currently closed in the Little Rockies, Mt. Hillers, Mt. Ellen, Dirty Devil, Bull Mountain, Mt. Pennell and French Springs WSAs.¹⁵

The PRMP fails to state a purpose and need for designating these 60 miles of ways as open to motor vehicle use.¹⁶ The PRMP fails to analyze and disclose any adverse effects to the wilderness resources from the designation of these "ways," other than noting "[u]se of OHVs within WSAs could impact wilderness characteristics, however this use is mitigated by the IMP . . . but an additional 18 miles of ways would be designated as open to motor vehicle use, resulting in more potential impacts to wilderness characteristics than Alternatives N, C and D, but less than A." *Id* at 4-408.

BLM's proposal to designate nearly 60 miles of ways in the WSAs will certainly encourage motorized use, and such use will eventually denude the trails of all vegetation. As vegetation is worn away and trails become linear swaths of sand and dirt, these trails will become a noticeable impact to the casual visitor and will effect the naturalness of the areas – which could deprive these WSAs of future wilderness designation. See *Southern Utah Wilderness Alliance*, 164 IBLA 33 (2004) (even ongoing use of existing motorized recreational routes can lead to more damage to other resources, especially as interest in an area increases). This is especially true as ORV users habituate themselves to a 300-foot wide trail, as is the general rule under the PRMP.

Designating ways as open to motor vehicle use does not minimize impacts to wilderness suitability as required by the ORV regulations. The PRMP presents no documentation of

¹⁴ The list of WSAs with designated "ways" shown in Table 2-19 for the PRMP is incorrect and misleading. The mileage in the PRMP column (44 miles) is not the mileage for the PRMP, but rather the mileage for the No Action alternative. The number of miles of ways designated in the PRMP is 59.5. PRMP at 4-06. The PRMP fails to disclose to the public the miles of ways in each WSA that BLM proposes to designate as open for motor vehicle use. In addition, the PRMP at 4-343 states that only 3 additional miles of ways would be open in WSAs in comparison with the current management (Alt. N). This is incorrect, as is clear from Table 4-55 at 4-405 - -406, which states correctly that 18 additional miles of ways would be open in the PRMP, The PRMP fails to provide accurate data and analyses to the public as required by NEPA. 40 C.F.R. §§ 1502.8 and 1500.1(b).

¹⁵ To ascertain which ways currently closed BLM is proposing to open and officially designate as routes, one must go to Alt. N in the DRAFT RMP Route Inventory Maps, which shows closed ways in WSAs and then compare this map to PRMP Map 2-18. Table 4-55 in the PRMP is incorrect, as it directs the reader and decision-maker to Map 3-10 Proposed Route Inventory. This map does not indicate what ways are currently closed and what ways are currently open. The PRMP fails to provide accurate data and analyses to the public as required by NEPA. 40 C.F.R. §§ 1502.8 and 1500.1(b).

¹⁶ It should be noted that Monticello PRMP Appendix N states that designating "ways" as open to motor vehicle use *should be avoided first and foremost*, and that designation requires a "very reasonable and clear justification." Monticello PRMP Appendix N, at 24.

the current appearance of either the closed or open ways, or evidence that current motorized use on these ways is not causing impairment to the WSAs. BLM is required under the IMP and under NEPA to analyze all direct, indirect, and cumulative impacts that may occur. BLM must analyze these impacts, provide the analysis to the public and decision-maker in a revised PRMP before issuing the Record of Decision. In addition, the BLM must modify its ORV and travel management decisions in the Final RMP, to strictly prohibit driving 50 feet or 150 feet off of these designated ways to access parking/staging areas or to access campsites, in accordance with the IMP.

In addition to designating ways in WSAs, the PRMP proposes to manage *fewer* WSA acres under the “closed” category, than the current management plan. *See* PRMP at 4-405 (187,000 acres closed under the No Action alternative, and only 175,300 acres will be managed as closed under the PRMP).¹⁷ Closure and restoration of all ways in WSAs is most consistent with the IMP and with protection of the other natural and cultural resources in the Richfield Field Office. The proposed plan fails to comply with the IMP and ORV regulations, and the PRMP fails to take a hard look at this management decision. BLM must revise the PRMP to disclose the potential impacts to WSAs.

i. Other Users

The PRMP fails to minimize conflicts with other users of the public lands, specifically non-motorized recreationists. The BLM proposes to allow ORV use in over 90% of the RFO area. Based on BLM’s own statistics, non-motorized uses far exceed motorized uses. *See* PRMP Table 3-23, at 3-96. Although BLM’s conclusion might be correct that moving from a generally open field office area to one that is weighted toward designated routes, will “reduce” conflicts between motorized and non-motorized users, this is not equivalent to minimizing the conflicts between these user groups, as required by the ORV regulations. PRMP at 4-330. A glance at the proposed Route Designation Map 2-18 quickly reveals that there are few places where a visitor can get more than 1 mile away from a designated route. In addition, a comparison of the closed areas under the current management versus the proposed management reveals that there will be fewer closed areas. Maps 2-12 and 2-14.

Before issuing the PRMP, BLM should conduct a visitor survey, similar to the Moab National Visitor Use Monitoring survey and pay particular attention to the relative use of

¹⁷ The PRMP fails to provide accurate data and analyses to the public as required by NEPA. 40 C.F.R. §§ 1502.8 and 1500.1(b). The PRMP contains contradictory and misleading statements regarding the management of WSAs. PRMP at 4-343 states that the WSA acreage designated as closed and limited is the same as the No Action alternative. However, the PRMP at 4-405 states that 187,000 acres are closed in the No Action, and 175,300 acres of WSA will be closed in the PRMP. In addition, Table 2-19 is incorrect – the information shown in the PRMP column is the acreage amounts for the No Action alternative. The PRMP fails to disclose which WSAs are proposed to be managed as closed and limited, and it fails to disclose that some currently closed WSAs would no longer be closed in the PRMP. The only way the public and decision-maker can ascertain this is to compare Off-Highway Vehicle Area Designations Map 2-12 with Map 2-14.

non-motorized versus motorized recreation. See SUWA's DRMP comments, and <http://www.suwa.org./site/DocServer/BLMNVUMsurveyMoab.pdf?docID+2821>. This study shows that non-motorized recreation is utilized by vastly more visitors to the Moab BLM-managed lands than motorized (ORV-based) recreation. In fact, the Moab survey found that motorized use accounted for less than 7% of visitors' main activity. Having actual data on visitor use, as opposed to the impressionistic and skewed opinion on which BLM apparently relied, is essential to guide BLM's long-term recreation management decisions and ORV area and route designation decisions. The PRMP states "conflicts between recreationists involved in motorized and non-motorized activities will increase with increasing use of public lands." PRMP at 4-97.

The PRMP does not include BLM's analysis or data (if it exists) for determining that its ORV open areas, and specifically the Factory Butte open area, and trail designations and travel management decisions minimize conflicts among users, as required by the ORV regulations.

To comply with NEPA's hard look requirement and the ORV regulations' minimization mandate, BLM should conduct a visitor survey to determine actual use by motorized and non-motorized visitors. This data must be incorporated into the affected environment and environmental consequences analysis sections to more accurately depict the impacts to non-motorized users of ORV area and route designations and travel management decisions.

j. Route Designation Process

Appendix 9 contains a description of the RFO's process of creating the travel plan proposal. The process included verification between BLM and the counties' inventories, photograph reviews, GPS/GIS reviews, driving various routes using ORVs, and some foot travel. Appendix 9, however, fails to disclose the analysis for BLM's site-specific ORV area and trail designations or travel management decisions. It is merely general background on how BLM *verified* route proposals submitted by counties and individuals or groups (with the conspicuous exception of the HRHP submitted by SUWA). There is no presentation of the purpose and need for particular open areas or routes, and no evidence that areas and routes were located so as to minimize impacts to resources and other users.

BLM Instruction Memorandum No. 2004-005 advises BLM to "[c]hoose individual roads and trails" for designation, "rather than using *inherited* roads and trails." IM Attachment 2-3 (emphasis added). The reason behind this recommendation is that "[m]ost existing roads and trails on public lands were created over time, rather than planned and constructed for specific activities or needs." *Id.* The PRMP acknowledges that this was, in fact, the case with the existing route system in the RFO: "Development of the existing transportation system in the RFO has been associated with providing access for resource uses such as mineral development, livestock grazing and recreation." PRMP at 3-98. And BLM recognized that a "well designed and managed transportation system" should be put into place, due to the "[i]ncreased demand for access to public

lands, combined with the research on the impacts of roads to resources and resource uses.” *Id.*

However, there can be little argument that BLM merely “inherited” the existing, haphazard jumble of routes, as BLM proposes to designate 4,277 miles, or 98% of the 4,380 miles of inventoried routes. See PRMP at 3-98 (“Based on [BLM’s] inventory, the BLM identified 4,380 miles of routes/ways (Map 3-10)¹⁸ within the RFO.” RFO did exactly what it was cautioned not to do—designated routes inherited from the existing, unplanned inventory of routes rather than choosing individual routes that protect resources and minimize impacts to resources and other users as mandated by the ORV regulations, and that serve an important purpose and need.

This is not surprising since one of the guiding assumptions the interdisciplinary team operated under when considering route designations was that “existing routes” should be designated for motorized use “unless [currently] closed or restricted . . . to address specific resource concerns.” PRMP Appendix 9, at A9-1. This direction completely misses the mark, and violates the minimization and other applicable criteria discussed above.

The PRMP fails to provide a compelling purpose and need, and fails to provide an analysis of the BLM’s proposals to allow off-road travel up to 50 feet and 150 feet on either side of the designated routes for the purposes of parking and “staging, and accessing campsites, respectively. In addition, the PRMP fails to disclose that this decision would violate the IMP for ways designated within WSAs.

There is no information in the PRMP that discloses which areas and/or routes proposed for designation were found to have resource conflicts but were nevertheless included in the proposed plan. Finally, the PRMP fails to include an analysis of whether the proposed area and route designations are sustainable over the long term. To ensure that the agency has taken the required hard look, its analysis must be supplemented and provided for public review before the ROD is issued.

k. Incomplete Information

The federal regulations address incomplete or unavailable information at 40 C.F.R. § 1502.22. The Richfield PRMP and DRMP’s lack of information on the impacts from ORV area and trails designations and travel management decisions to air quality, water quality, soils, riparian areas, vegetation, non-WSA lands with wilderness character, WSAs, and cultural resources, and other users, cannot be used as an excuse by BLM for not providing analysis of the potential and expected impacts from its ORV area and trail designations. BLM must do more *before* it authorizes motorized use in designated areas

¹⁸ The information on Map 3-10 states that there are 4,620 miles of inventoried route, which is not consistent with the 4,380 miles of inventoried route reported at several other places in the PRMP (PRMP at 3-98, and 4-337). The PRMP fails to provide accurate data and analyses to the public as required by NEPA. 40 C.F.R. § 1500.1(b).

and on designated trails. Were it otherwise, agencies could simply, and easily, undercut NEPA's insistence on informed decision making by failing to gather data relating to key determinative issues and then arguing that the information is unavailable or too difficult to obtain. That is precisely what BLM is attempting to do here.

For the reasons discussed above, BLM has failed to minimize impacts to natural and cultural resources and other users as required by FLPMA's ORV regulations, and to take the requisite "hard look" at the impacts of its ORV area and trail designations and travel plan decisions on the natural and cultural resources it is entrusted to protect.

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

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

As SUWA noted in its comments on the DRMP, an accurate description of the baseline conditions of the Richfield Field Office is crucial to BLM's analysis and description of the environmental impacts from the proposed action and various alternatives. *See* SUWA DRMP Comments at page 12. All management decisions and strategies flow from the description of the current conditions. And unless BLM has an accurate, well-informed understanding of the current conditions, it cannot possibly begin to plan for future resource demands and needs. BLM cannot objectively decide how much ORV use to allow in the future, and which areas and routes to designate, as BLM does not know how much and what kind of damage such use has caused in the past, and is causing right now.

One of the most obvious and consequential flaws in the PRMP is its failure to assess the ongoing impact of existing ORV use in the Richfield Field Office. Instead of analyzing the current impacts of ORV use, BLM essentially treats existing ORV use as a given. BLM simply presumes that ORV use will continue and contends that such use will cause no damage over and above that which occurs now, and that the existing damage does not need to be studied. *In other words, BLM has concluded that current levels of ORV use and the existing trails are consistent with FLPMA, including the UUD and non-impairment standards, even though it does not know what the impacts are. See also* PRMP at 4-47 and 4-70 (the Proposed RMP would designate routes with 400 stream crossings "fewer than under Alternative N or A but more than under Alternative C or D"); *Id.* at 4-60 ("Limiting travel to designated routes would confine the vegetation impacts to areas that are already disturbed or hardened for vehicle use . . .").

As noted in SUWA's DRMP comments, this is a circuitous argument, it is not analysis.

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

4. Scientific Integrity and Public Scrutiny

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

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

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

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

In addition, in order to provide high quality information for the public to review and assess, the PRMP’s ORV area and route designation maps (PRMP Maps 2-14, 2-18) must be modified to display the proposed ORV area and route designations with other resource inventories and/or management decisions, such as riparian areas, potential ACECs, wildlife habitat, non-WSA lands with wilderness character areas, wilderness character

areas proposed to be managed to protect wilderness character attributes, and WSAs. *See* ACEC and Route Designation map and Wildlands and Route Designation map, attached as Exhibit C, and Exhibit D respectively. The PRMP maps fail to adequately portray critical information to the public and decision maker. BLM has this information at its disposal and it merely needs to combine various resource GIS layers to produce these informative maps. The PRMP maps must be modified and re-issued so that the public and decision-maker can better understand the impacts of the ORV area and route designations on various resources *before* issuance of a Record of Decision.

The PRMP fails to adequately analyze and inform the public and the decision maker as to the potential indirect and cumulative impacts to the natural and cultural resources from the ORV area designations and travel plan decisions. *See* PRMP at 4-605 (As a result of designating routes, “there could be increased concentrations of vehicles within certain areas of the RFO, that is, restricting the miles of roads open for motorized travel would be expected to increase vehicle concentrations more in the RFO than in surrounding areas that do not impose travel restrictions.”). There is merely a mention of ORV designations and use, but no discussion of specific ORV designations or travel plan decisions in the cumulative impact analysis for cultural resources, *see id* at 4-599, vegetation, *see id* at 4-599, riparian areas, *see id.* at 4-513, soil and water, *see id.* at 4-598, air quality, *see id* at 4-597, or WSAs and non-WSA lands with wilderness character, *see id.* at 4-603. In general, the PRMP fails to adequately assess the cumulative impact that the dense network of routes (over 90% of public lands in the RFP are available for ORV use) have on wildlife, soils, vegetation, riparian areas, air and water quality, WSAs, non-WSAs with wilderness character lands, cultural resources, and other users, when taken in combination with other actions, including oil and gas development, vegetation treatments, grazing, and climate change. BLM must supplement the PRMP and provide a scientific and quantitative analysis of the cumulative and indirect impacts of the ORV designations and travel management decisions, and provide the public a chance to review and comment on the supplementary information before a decision is issued that could significantly affect the very resources BLM is entrusted to protect.

VIII. Riparian Resources

As noted in SUWA's comments to the Draft RMP, we incorporated the comments that ECOS Consulting submitted for the DRMP into SUWA's DRMP comments. Again, SUWA incorporates the comments to the Draft RMP and the protest submitted by ECOS Consulting into our protest, and we also discuss our further concerns below.

The important role riparian and wetland areas occupy in the health and integrity of ecosystems throughout Utah and the West is recognized by the special protection conferred on them by several Executive Orders and the Utah BLM Riparian Management Policy. As the Utah BLM Riparian Policy explains, "[r]iparian areas comprise less than one percent . . . of public lands . . . in Utah . . . these small but unique areas are among the most important, productive, and diverse ecosystems in the state." Utah BLM Riparian Management Policy, Instruction Memorandum No. UT 2005-091 at 1. The Utah BLM Riparian Policy continues:

The objective of the policy is to establish an aggressive riparian area management program that will *identify, maintain, restore, and/or improve riparian values* to achieve a healthy and productive ecological condition . . .

Utah BLM Riparian Management Policy, Instruction Memorandum No. UT 2005-091 at 1 (emphasis added).

To meet this objective, field offices are responsible for "ensuring that all new or revised management plans contain objectives and management actions to maintain or improve riparian resources," and to the extent possible, "[m]aintain and/or improve riparian areas to Proper Functioning Condition (PFC) by incorporating riparian resource needs in Resource Management Plans (RMPs)." Utah BLM Riparian Policy at 2-3. This policy is binding on the BLM Richfield Field Office and provides the framework for the RMP process.

Further, Executive Order 11990 mandates that the BLM "shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities." Exec. Order No. 11,990, 42 Fed. Reg. 26,961 (May 24, 1977).

The Richfield PRMP does not comply with BLM's policy to aggressively protect riparian areas. The Utah Riparian Policy clearly states that "[r]iparian areas are to be improved at every opportunity." Utah BLM Riparian Policy at 4. The Richfield Field Office, however, fails to utilize most of the opportunities before it in this RMP process to improve riparian areas. While the Richfield PRMP repeatedly explains the benefits of protecting riparian areas, it fails to adequately impose such protections on riparian resources in the Richfield Field Office. Further, the PRMP repeatedly explains the serious damage OHV use, grazing, and other interference inflict on riparian areas, but still allows such activities in many riparian areas. These failures illustrate that BLM is

falling short of meeting its responsibility to “maintain or improve riparian resources” and to “provide leadership . . . to preserve and enhance the natural and beneficial values of wetlands.”

For example, the PRMP states that “[s]urface disturbing activities are the primary cause of adverse impacts to riparian resources. Conversely, proposed decisions to limit surface disturbing activities would help protect riparian resources.” PRMP at 2-147. The PRMP also explains that “[s]ubstantial surface disturbance to soil, including compaction of soil or loss of vegetation cover, could increase water runoff and downstream sediment loads, thereby degrading water quality, altering channel structure, and affecting overall watershed health.” PRMP at 4-38. “Proposed decisions that allow surface-disturbing activities that impact soils could . . . adversely impact water quality” while “[p]roposed decisions that limit surface-disturbing activities or that protect or restore soil, water and vegetation resources could protect or improve water quality.” PRMP at 4-38. The PRMP admits the “[m]anagement practices that can make [riparian areas] ‘At Risk’ include livestock grazing, the presence of roads, off-highway vehicle (OHV) activities, and commercial recreation and development.” PRMP at 3-32. Focusing on the harm caused by OHV use, the PRMP explains

OHV use has the potential to affect water quality by causing surface disturbance, channeling surface runoff, changing vegetation structure, and reducing riparian-wetland function. Roads and OHV routes can be primary sources of sediment and salinity delivery to rivers and streams. Of special concern are routes with a clay-based native surface and routes and cross-country vehicle use within riparian zones and Mancos shale areas. The magnitude and extent of motorized recreation has a greater impact on soil and water resources than non-motorized recreation does.

Id. at 4-40. The PRMP continues:

Generally, the more miles of open routes, the greater the possibility of adverse impacts to water quality, although the location of routes (e.g., crossing streams, within riparian areas), is more important than sheer miles. Stream crossings by motorized vehicles could remove riparian vegetation, increase the amount of bare soil, increase localized soil erosion, change surface hydrology, and reduce infiltration, all of which can impact water quality.

Id. at 4-40 to -41.¹⁹

¹⁹ BLM’s use of the words “could” and “can” in this statement is misleading. If there is an example of a riparian area in the Richfield Field Office where stream crossings did *not* result in the types of damage listed, we have not seen it, and BLM has not identified such an example. It is exactly this loose, equivocal approach to riparian protection that provides the foundation for such lax protection in the PRMP. It hardly constitutes the sort of aggressive remedial action required by the riparian and wetlands protection policies governing BLM.

Despite this demonstration that the Richfield Field Office understands the fragile ecological state of riparian areas and the importance of protecting them, the PRMP allows significant disturbance and repeatedly prioritizes other conflicting uses that damage riparian resources. The PRMP does not appear to close any riparian areas to grazing and allows designated routes to cross streams 400 times. Further, the PRMP allows a buffer zone that the EPA finds insufficient. The Utah Riparian Policy states that “[n]o new surface disturbing activities will be allowed within 100 meters of riparian areas,” unless one of three exceptions are met. Utah BLM Riparian Policy at 4. There is nothing in the Utah Riparian Policy, however, that requires the 100-meter buffer zone to be interpreted as a maximum ceiling. Indeed, EPA’s comments explained that

While a 330 foot riparian buffer zone will afford wetlands some degree of protection from oil and gas production, recreation, and other potential impacts, we recommend that 500 foot buffer be retained for wetlands: 1) identified as not in proper functioning condition; 2) vulnerable to these and other (e.g., grazing) impacts; and 3) along stream segments with steeper slopes or more erodible or sensitive soils. We also recommend that the 500 foot buffer be retained for riparian areas along the 13 miles of river segments eligible for WSR designation that are located outside WSAs and would not be managed to protect their outstandingly remarkable values as proposed under Alternative B.

EPA comments to the Draft RMP at unpaginated p. 9. Echoing this same concern, ECOS Consulting emphasized in its comments to the Draft RMP that a 330 foot buffer is “woefully inadequate.” PRMP Response to Comments, sorted by Category, at 155.

Additionally, the PRMP fails to provide all the information required by the Utah Riparian Policy and the information required for the public to understand the current condition and proposed management of each riparian area. FLPMA, 43 U.S.C. §§ 1701–1785, § 1701(a)(2) (2000), declares that “the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried.” The Utah BLM Riparian Policy explains that each field office is “responsible for . . . mapping and inventorying all riparian areas in [its] jurisdiction” and “will, to the extent possible . . . [i]nventory and map riparian areas within each office.” Utah BLM Riparian Policy at 3. The policy further explains that this responsibility:

will normally be completed during the Resource Management Planning (RMP) process. In order to be useful, the RMP, at a minimum will:

- Contain the Field Office riparian area priority list.
- Identify key riparian areas using PFC inventory and determine whether or not they are properly functioning systems.
- Identify riparian areas for possible acquisition.

- Identify riparian areas which meet policy tests for disposal or exchange.
- Identify easement acquisition which will improve Bureau management of existing riparian areas.
- Identify riparian areas with outstanding qualities to be considered for special designation or management.
- Contain planning and monitoring objectives for riparian area management.

Utah BLM Riparian Policy at 7–8.

While the PRMP does provide the total miles or acreage and percentage of surveyed riparian areas in the Richfield Field Office that are labeled under each category of riparian status (Proper Functioning Condition, Functioning at Risk, and Non-Functioning), it does not list the names of the riparian areas and their locations, does not provide a map of riparian areas, and does not provide other relevant information necessary for the reader to understand the relationship between a riparian area's category status and how it will be managed under the RMP. *See* PRMP at 3-32, Table 3-9: Riparian Conditions Inventory. For example, the PRMP does not explain where the 400 OHV stream crossings are located or where else the PRMP authorizes OHV use near riparian areas. Nor does the PRMP explain how it will ensure that all riparian areas either attain or are maintained at a Proper Functioning Condition status. Further, the PRMP does not contain the Field Office priority list, identify riparian areas with outstanding qualities to be considered for special designation or management, and does not contain planning objectives for riparian area management, all of which is required by the Utah BLM Riparian Policy.

Presumably BLM created a list of each riparian area, its status, and how it will be managed under the RMP when gathering the information presented in Table 3-9 and elsewhere in the PRMP; this information should have been included in the PRMP. The Richfield Field Office simply failed to provide the information necessary for the public to understand the status of each riparian area and how the Richfield Field Office is going to manage those areas. The Richfield Field Office should have included this information in the PRMP to satisfy both the substantive requirements of the wetlands and riparian area policies, and also NEPA's procedural requirement to provide information to the public sufficient to inform the public and decision makers of the state of the existing environment and the effects the various alternative, particularly the proposed alternative, will have on that environment.

IX. Socioeconomic Analysis

Several deficiencies in the socioeconomic analyses in the Richfield Draft RMP and EIS were noted in comments submitted by SUWA and others. None of these deficiencies have been addressed, nor do the responses by BLM sufficiently justify this lack of action on the part of the agency. These deficiencies violate numerous provisions of NEPA and its implementing regulations.

Specific areas of concern are listed below and discussed in detail in the following sections:

- A. BLM must analyze the costs associated with increased emissions of air pollutants resulting from oil and gas operations.
- B. The range of alternatives analyzed shows a bias toward off-road motorized recreation and oil and gas development.
- C. The PRMP does not account for the non-market values associated with undeveloped wild lands.
- D. The PRMP does not address the potential benefits to the local area economies from management to protect the natural amenities of the Richfield Field Office.
- E. The PRMP places a heavy emphasis on off-road motorized recreation without a realistic assessment of current recreation impacts and trends or an adequate assessment of the potentially significant negative impacts that such an emphasis is likely to have.
 - 1. The realities of recreation participation trends are overlooked in the formulation of the alternatives, in the proposed plan and in the analysis of the impacts of PRMP.
 - 2. The PRMP fails to address the potentially significant costs associated with off-road motorized recreation.
 - 3. The PRMP does not discuss the benefits of non-motorized recreation on public lands.
- F. The PRMP does not address the potential socioeconomic costs associated with oil and gas drilling.
- G. The PRMP does not account for errors and inadequacies of the Draft RMP/EIS that were identified in comments addressed to BLM.

The following sections discuss the specific issues listed above in detail.

A. BLM must analyze the costs associated with increased emissions of air pollutants resulting from oil and gas operations.

BLM concludes that oil and gas drilling and other activities in the Richfield planning area will result in increased emissions of several regulated pollutants including ozone precursors. See Richfield PRMP/FEIS at 4-4 – 4-20. There is a well-established case in support of the economic benefits of clean air and, by symmetry, the economic costs of deteriorating air quality. This case is demonstrated by a review of three major studies of the economic benefits of air quality improvements. These studies indicate that

improvements in air quality have resulted in significant benefits, well in excess of the costs of achieving the improvements. The studies, released in 1997, 1999, and 2005, show five patterns clearly, each of which is explained below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Source: Tables 6, 10, 13, and I-3 of EPA 1997; U.S. Census Bureau, 2008.

*EPA 1997 also attributes improvements in all listed health consequences to reductions in particulate matter (PM) and ozone.

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

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

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

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

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

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

Source: Tables 5-3, 6-1, 6-3 of EPA 1999; U.S. Census Bureau, 2008.

*EPA 1997 also attributes improvements in some listed health consequences to reductions in particulate matter (PM) and ozone.

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

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

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

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

Health Consequence	Affected Population	Economic Value per Case (2005 dollars)	Number of Cases Avoided	Economic Value (2005 dollars)
Premature Mortality	All	\$8,055,000	750-840	\$5.8-\$6.8 billion

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

Respiratory Hospital Admissions	≥65 years	\$22,744	2000-2300	\$43-\$53 million
	0 to <2 years	\$9593	1900-2100	\$15-\$20 million
Asthma Related Emergency Medical Visits	All	\$354.43	460-510	\$150,000-\$190,000
Minor Restricted Activity Days (MRAD)	Aged 18-65	\$64	1,200,000-1,400,000	\$64-\$84 million
School Days Lost	Aged 5-17	\$93	890,000-970,000	\$72-\$84 million
Total Economic Value				\$6.7-\$7.1 billion

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

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

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

Although particulate matter is the air pollutant most clearly associated with premature mortality, recent research suggests that repeated ozone exposure likely contributes to premature death.... Although [recent scientific studies] do not constitute a database as extensive as that for particulate matter, these recent studies provide supporting evidence for including mortality in ozone health benefits analysis

Hubbell et al. 2005 at 75.

The weight of scientific evidence supporting this conclusion has been confirmed in a recent study released by the National Research Council (2008).

Hubbell et al. (2005) also note limitations to their study which tend to understate the economic benefits of meeting the ozone standard. First, the authors do not include monetized benefit estimates for endpoints that are not health relate but

...may significantly contribute to monetized benefits. These include decreased outdoor worker productivity, decreased yields for commercial and noncommercial crops, decreased commercial forest productivity, damage to urban ornamental plants, impacts on recreation demand from forest aesthetics, and damage to ecosystem functions.

Hubbell et al, 2005 at 75.

Second, the authors note that benefits associated with reduced mortality may be much higher than they report.

Our estimates of mortality-related benefits of attaining the standards may change, based on emerging meta-analyses of the ozone mortality literature. If these meta-analyses confirm [emerging results]...the mean mortality benefits may increase by a factor of 2, suggesting that reductions in premature mortality associated with attainment of the ozone standards might be as high as 1,600 premature deaths avoided annually. This increase would substantially increase the economic value of health impacts as well, potentially up to \$10 billion [\$12.4 billion in 2005 dollars]

Hubbell et al. 2005 at 81.

Also, the authors note that recent research suggests that reduced ozone exposure would increase the monetized benefits of reduced emergency room care by a factor of 4.5 (Hubbell et al. 2005, p. 81).

Third, the estimates used to monetize the value of avoided hospital admissions and emergency room visits are downward biased. In the absence of estimates of willingness to pay to avoid these events, Hubbell et al. (2005) used estimates of total medical costs plus the value of lost productivity. These are lower bound estimates of the proper measures, which are willingnesses to pay to avoid the pain and suffering (see Hubbell et al. 2005, p. 78).

This review clearly shows that there are readily available tools to assist BLM in conducting a thorough analysis of the health related economic costs of increased ozone exposures for citizens living near and visitors to BLM lands. It also shows that substantial economic cost are likely to occur if air quality in the areas surrounding BLM lands continues to deteriorate as the result of proposed actions and developments such as increased oil and gas exploration and production. BLM should take advantage of the existing tools and scientific research to conduct the proper analysis.

7. Requested Remedy

BLM should apply all available tools and analyses, including the studies reviewed above to assess the cost of increased air pollution associated with the proposed plan.

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

In an apparent attempt to make the PRMP's high levels of oil and gas development and off-road motorized recreation appear reasonable, BLM developed a pro-development

alternative which actually increases the amount of land in the Richfield Field Office that is available for both oil and gas drilling and for off-road motorized recreation over and above the already large amount available under the “no action” alternative. These amounts are then decreased slightly for the PRMP’s preferred alternative to essentially the same levels as the no action alternative (in fact the PRMP actually makes slightly more of the planning area available for oil and gas drilling than does the current management plan).

The so-called protective alternatives are the only ones with notable differences in the amount of the planning area available for oil and gas drilling and off-road motorized recreation, and one of these (Alternative C) still opens the majority of the planning area for these uses. Only Alternative D proposes any actual balance between protection of wildlands and natural resources and motorized recreation and industrial development.

Because three of the four alternatives analyzed and the Proposed Plan would open the majority of the planning area to oil and gas drilling and off-road motorized recreation use, there is little variability in the economic impacts of each alternative. Two of the three action alternatives and the Proposed Plan make at least 70% of the planning area available to oil and gas development. Under all but one of the alternatives (and the Proposed Plan) the majority of the planning area is available for off-road motorized recreation. For both of these intensive uses (both of which are often mutually exclusive with other uses) the only alternative which offers a significantly different level of land available is Alternative D. Even this alternative designates nearly half of the planning area as available for oil and gas drilling and off-road motorized recreation. This is not an adequate range, but rather reflects the agency's pre-determined outcome and a "token" conservation alternative which does not actually focus on conservation over other uses and, judging from the changes from the DRMP to the PRMP, was never seriously considered.

The economic analysis necessary to truly assess the options for management of public lands requires that a broad range of possible alternatives be given a thorough and complete assessment (one which looks at both market and non-market values for all resource uses). Consequently, it is important that BLM examine a range of alternatives with varying levels of both market and non-market benefits. An actual range of alternatives would include alternatives that produce larger levels of non-market benefits, such as those that accrue when wild lands are protected from development and off-road motorized recreation. These benefits must be measured and compared with the market benefits that accrue to companies and individuals when natural resources are extracted and sold. Only when a true range of alternatives is thoroughly examined and compared can an informed decision about public land management be made, as required by NEPA.

The current alternatives do not provide such a range. Under the Proposed Plan, the majority of the lands in the Richfield Field Office are open to oil and gas drilling (market values) and off-road motorized recreation (which provides both market and non-market values, but which is also mutually exclusive with other non-market values that are associated with non-motorized recreation). As BLM notes, oil and gas leasing is

discretionary. The agency must recognize that this single use may not be the highest and best use of such a large proportion of the planning area. And, in the context of this PRMP, there is no way to reliably conclude what is the highest and best use, because alternatives that provide more undeveloped lands and less oil and gas drilling were never even considered.

Many commentors requested that the BLM consider a "No-Leasing Alternative". BLM's justification for the rejection of such an alternative, as set out below, is incorrect:

The "No-Leasing Alternative" in an RMP revision is actually an action alternative because where lands have already been leased, the no-action for NEPA purposes continues to allow for (honor) valid existing rights. Proposing a 'No-Leasing Alternative' would require revisiting existing leases and either buying them back from the lessee or allowing them to expire on their own terms. The first option (buying back), is outside the scope of any RMP. This is a political decision that the BLM has no authority to undertake in planning. As a result, the BLM does not regularly include a "No-Leasing Alternative."

PRMP at 2-5.

BLM wrongly asserts that a "No-Leasing Alternative" would require a buy back of existing leases. In fact a "No-Leasing Alternative" simply means that no *additional* leasing be allowed in the planning area. This alternative should always be analyzed. Instead, the majority of the planning area has been made available for additional oil and gas leasing in all but one of the alternatives analyzed. Commentors are well aware that existing leases are considered valid existing rights. The request to consider a "No-Leasing Alternative" is simply a request to restore some balance to the management of these public lands. Instead BLM has distorted the request, ignored it and proposes to make the majority of the planning area available for additional oil and gas leasing.

1. Requested Remedy

BLM must develop and thoroughly consider a reasonable range of alternatives that explores the full range of multiple uses of the lands within the Richfield Field Office. This should include the protection of undeveloped lands and lands with wilderness characteristics from motorized recreation and industrial development. This should also include consideration of an alternative which allows no additional leasing in the Richfield Planning Area. Each option within the proposed set of alternatives opens the vast majority of the planning area to extraction and motorized recreation; this ignores the important public values associated with protecting these lands and the potential positive economic impacts that such protection is likely to have on communities within the planning area.

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

Public lands provide numerous values, some of which are realized when natural resources are extracted, and others which require that the natural ecosystems remain intact. The benefits of these various values often flow to different groups or individuals. Given that some of the benefits from public lands are more likely to flow to individuals or companies (market benefits), and others are available for the entire population (non-market benefits), it is important that BLM examine both market and non-market benefits. Non-market benefits must be measured and compared with the market benefits that accrue to companies and individuals when natural resources are extracted and sold.

Any time that unique or irreplaceable resources or values are at risk, there is a strong component of non-market value which must be assessed. One of the primary purposes of the public lands system is the provision of public goods such as the protection of unique landscapes, ecological diversity, wildlife habitat, wilderness, and cultural and archeological resources. A proposed management plan that makes 90% of the resource management area available for off-road motorized recreation and nearly 80% open to oil and gas development most certainly puts these resources at risk.

BLM dismisses requests to examine non-market values by stating that studies of designated wilderness values cannot be generalized to non-wilderness lands with wilderness characteristics. First, this is not necessarily true. Many early studies were conducted based on the limited number of designated wilderness acres and then generalized to assess the values associated with protecting other undeveloped lands, such as roadless areas (see Walsh et al. 1984). These techniques can and should be used to estimate the intrinsic value of similarly undeveloped lands in the Richfield Field Office. In fact, the inclusion is not without precedent – the Price, Utah Field Office of BLM has included estimates of the non-market values associated with full field natural gas development for the West Tavaputs Plateau (BLM 2008).

Second, if BLM feels that existing research cannot be used, then the agency should conduct appropriate primary research on the non-market values associated with the lands in the Richfield Field Office. Unlike the brief qualitative assessments performed, this would provide clear information on the values derived by a variety of stakeholders.

The Proposed Plan would open the majority of the planning area to oil and gas drilling and off-road motorized recreation use. For both of these intensive uses (which are often mutually exclusive with other uses) the impacts on non-market values are likely to be high.

1. Requested Remedy

BLM should analyze a broader range economic impacts which includes both market and non-market benefits. The analysis is necessary fully to assess the tradeoffs between all economic values (both market and non-market) for all alternatives. The economic analysis should consider the net (rather than gross) benefits of a full range of management alternatives.

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

Economies of rural areas in the Western United States are now known to be much more complex than was once thought in that they are not solely reliant, or even primarily dependent, upon resource extraction. BLM analysis for land management planning has continued to focus only on a very narrow set of industries – those which rely on public lands to extract marketable commodities for private profit. However these are not the only industries which can potentially benefit by or be harmed by the management of the lands in the Richfield Field Office.

BLM was provided with an extensive review of the literature on the changes in the rural Western economy, on the role that public lands play over and above their role as a source of raw materials, and on the importance of managing these lands to maintain the new beneficial economic diversity that arises from protected public lands. However the Richfield PRMP/FEIS fails to address these economic changes in any way.

The economic impact that wilderness and wilderness quality lands have on local economies is well documented and has grown in importance as the U.S. moves from a primary manufacturing and extractive economy to one more focused on service sector industries. This shift means that many businesses are free to locate wherever they choose. The “raw materials” upon which these businesses rely are people, and study after study has shown that natural amenities attract a high-quality, educated, talented workforce – the lifeblood of these businesses. By narrowing the range of alternatives and the analysis of the potential impacts of land management on the local communities so that the economic impacts of wild lands are not discussed substantively, BLM fails to address this critical facet of today’s economy.

More and more evidence has accrued indicating that the West is not a resource-dependent region. The public lands, including those managed by the BLM in the Richfield Field Office are increasingly important for their non-commodity resources – scenery, wildlife habitat, wilderness, recreation opportunities, clean water and air. A vast and growing body of research indicates that the economic prosperity of rural Western communities depends more and more on these amenities and less and less on the extraction of natural resource commodities. See Bennett and McBeth 1998, Deller et al. 2001, Duffy-Deno 1998, Johnson and Rasker 1993 and 1995, Johnson 2001, Lorah 2000, Lorah and Southwick 2003, McGranahan 1999, Morton 2000, Nelson 1999, Power 1995 and 1996, Rasker et al. 2004, Reeder and Brown 2005, Rudzitis 1999, Rudzitis and Johansen 1989, Shumway and Otterstrom 2001, Snepenger et al 1995 and Whitelaw and Niemi 1989 for some examples.

Throughout the PRMP, BLM makes assertions such as this one: "No actions to maintain wilderness characteristics on lands outside of WSAs are proposed under this alternative, resulting in no impacts to recreation." PRMP at 4-323. This assertion is without merit.

Failing to maintain the wilderness characteristics of lands within the Richfield Planning area will most definitely have impacts on recreation. The disconnect arises from the fact that the only form of recreation that BLM chooses to analyze in any depth is off-road motorized recreation, as opposed to the acknowledged opportunities for primitive and unconfined recreation that these lands provide.

BLM also asserts: "No actions to maintain wilderness characteristics on lands outside of WSAs are proposed under this alternative, resulting in no additional impacts on socioeconomics." PRMP at 4-654. Again, substantial research has accumulated demonstrating the value to local economies of maintaining the wilderness characteristics of public lands, such that it is a gross oversight on the part of BLM to disregard these values and to make such a baseless dismissal of their importance.

Study after study has shown that the presence of protected public lands has a positive impact on local economies – strongly correlated with growth in both jobs and income. It stands to reason that the converse is also true. Leaving these lands unprotected will likely have long-term negative impacts on local economies.

1. Requested Remedy

BLM must review the relevant literature on resource dependent communities, the role of protected public lands in local economies and the importance of economic diversity for long-term economic prosperity. The agency must acknowledge the interplay between these three important aspects of rural western economies and collect and analyze data relevant to the non-traditional roles of public lands on local economic impacts. These data must then be applied to assess the impacts of the alternatives, including Alternative D. Some suggested analyses and sources of data can be found in "*Socio-Economic Framework for Public Land Management Planning: Indicators for the West's Economy*" (which was attached to the comments submitted by SUWA on the DRMP).

The BLM must make a thorough examination of the full socioeconomic impacts likely to occur if the Proposed Plan is implemented. These analyses must take into account the impacts that BLM land management actions will have on the surrounding communities, including the added cost of providing services and infrastructure, the long-term costs of the environmental damage that is likely to occur from high levels of oil and gas development and off-road motorized recreation, and the impacts on other sectors of the economy. The BLM must examine the role that protected public lands (including lands with wilderness characteristics) play in the local economy.

E. The PRMP places a heavy emphasis on off-road motorized recreation without a realistic assessment of current recreation impacts and trends or an adequate assessment of the potentially significant negative impacts that such an emphasis is likely to have.

The Proposed Plan will allow off-road motorized recreation on 90% of the planning area, including 8,400 acres where cross-country travel will be allowed. This does not represent

a balanced approach to land management planning and ignores certain realities about recreation participation in general and the particular costs associated with off-road motorized recreation in particular. Specific issues associated with the socioeconomic impacts of off-road motorized recreation are discussed in detail below.

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

As noted by BLM, motorized recreation has been increasing in recent years. BLM states: "Demand for OHV recreation use is likely to increase over time in the RFO, although these increases are not quantifiable with existing data." PRMP at 4-567. While this may be the case, what the agency fails to note is that *all* recreation is likely to increase.

Study after study of Americans' recreation activities shows that the vast majority of people participate in *non*-motorized recreation. A national study by Roper (2003) looked at participation rates over time (1995-2003) and found that off-road vehicle activities consistently ranked below non-motorized activities with walking, hiking and backpacking accounting for two-thirds or more of recreation visits, while OHV driving accounted for less than ten percent.

Data from several states as well as national studies (the USDA Forest Service National Visitor Use Monitoring Program, the National Survey on Recreation and the Environment [see Cordell et al. 2004], and BLM's Public Lands Statistics)²⁰ all show that motorized use is consistently a small portion of total public lands recreation visits. A study using NVUM data for the BLM Moab Field Office (BLM 2007) cited in the Moab DRMP shows that non-motorized recreation far outweighs OHV use, and it seems unlikely that the use patterns for the Richfield Field Office would differ.

Data from the Recreation Management Inventory System (RMIS) for the state of Utah show that in Fiscal Year 2006 motorized recreation accounted for just 20% of total visits, while non-motorized recreation visits were 52% of the total.²¹ The Richfield PRMP presents some RMIS data for the Richfield Field Office. These data also show that recreation visitors engaging in ORV use do not represent even one quarter of total visitors in any year and furthermore, according to the Richfield data, non-motorized visitors spend far more days recreating in the Field Office.

²⁰ National Forest Visitor Use Monitoring Program National Project Results, January 2000 through September 2003. http://www.fs.fed.us/recreation/programs/nvum/national_report_final_draft.pdf
National Survey on Recreation and the Environment: <http://www.srs.fs.usda.gov/trends/Nsre/nsre2.html>
U.S. Department of the Interior, Bureau of Land Management, Public Lands Statistics:
http://www.blm.gov/wo/st/en/res/Direct_Links_to_Publications/ann_rpt_and_pls/2006_pls_index.html

²¹ Source: Tina McDonald, Outdoor Recreation Planner, Recreation Management Information System (RMIS) Project Manager, USDI Bureau of Land Management, 2850 Youngfield St., Lakewood, CO 80215, Email Tina_McDonald@blm.gov

Visitor days are ultimately more important than total participation. Stynes and White (2005) have shown that motorized and non-motorized visitors spend the same amount per day on tourism-related services. Given the preponderance of evidence that most visitors are engaging in non-motorized recreation, it is likely that most of the benefit to the local communities from hotel and restaurant spending, as well as other spending by visitors is due to the non-motorized recreation opportunities in the area. It is also likely that if, as BLM asserts, off-road motorized recreation increases, and given that this activity will be allowed in some form over almost the entire Richfield Planning Area, more and more non-motorized visitors will experience negative impacts either from direct encounters with the sight, noise and pollution emissions from off-road motorized recreation. If this recreation does increase, it is also likely that enforcement ability will be inadequate to ensure that riders stay on designated routes which will result in the landscape being degraded and overrun by off-road vehicles. If this is the case, one result may be that the “cash cow” tourists seeking non-motorized opportunities are likely to choose other destinations. The impact on the local economy of this shift must be assessed as part of the analysis supporting the final Richfield RMP.

Even the most protective alternative offered by the BLM (Alternative D) still proposes to make nearly half of the planning area available to a group which represents just 20% of total recreational users of these lands. The proposed plan is even more inappropriate given the important values which will be lost to all Americans and the potential high costs that will be imposed on Utah and the rest of the region from higher levels of off-road motorized recreation in the Richfield Field Office.

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

These costs have been described, along with relevant research, in SUWA's comments on the Richfield DRMP and are reproduced in these comments in section G.(below). Therefore, we will not reiterate them here. However, the costs of off-road motorized recreation have been shown to be substantial and must be accounted for in the analysis of the socioeconomic impacts of allowing this form of recreation to occur on 90% of the planning area.

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

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

of the literature and the economic valuation of recreation and present methods that can be employed to apply these estimates for various other locations.

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

Recent research has shown that public land visitation is increased when the recreation and scenic values of the land is recognized through official designations. Weiler (2005) found that over the course of 20 years, the eight National Park Service Monuments that were re-designated to National Parks saw an average increase of nearly 13,000 annual visits each. Furthermore, the increase in visitation came mostly from those traveling large distances to visit the new National Parks. These visitors are likely to stay longer in the area, especially if surrounding BLM lands can provide increased opportunities for the types of recreation they are seeking. It is also interesting to note that visitation to the National Parks in the study increased even in times of economic downturn, indicating that the presence of highly visible public lands may be an asset to communities that can help mitigate the vagaries of the national economy. As people's income contracts, such natural areas may be seen as affordable family vacation destinations, while other more expensive options may suffer.

4. Requested Remedy

BLM must develop recreation management directives which reflect the proportional use of the area by non-motorized and/or non-OHV users.

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

BLM should evaluate the socioeconomic impacts of non-motorized recreation on the surrounding areas and communities. BLM should also assess the non-market values associated with non-motorized recreation and the impacts that allowing off-road motorized recreation on 90% of the planning area will have on these values.

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

The Proposed Plan opens 79% of the planning area to oil and gas leasing. This will have socioeconomic impacts not addressed by BLM. Oil and gas development has long been characterized by cycles of boom and bust which have lasting impacts on rural economies. Other parts of the state of Utah and other states in the region are currently experiencing the boom portion with its attendant issues, including the need to upgrade or expand infrastructure, increased need for emergency services, increases labor costs (which have impacts on local energy and non-energy businesses), and environmental degradation such as decreases in air quality, spills of toxic chemicals, and fragmentation of wildlife habitat.

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

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

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

Other negative impacts on local communities from rapid oil and gas development include changes in the local social and cultural make up of communities as drilling crews and

workers migrate into the area (Merrifield 1984, Davenport and Davenport 1980), changing population demographics and often leading to increased demand for housing which raises prices (Brabant and Gramling 1997). In addition to the social and economic instability, natural resource extraction also has negative impacts on the landscape (Morton et al. 2004). For a thorough discussion of the socioeconomic and other costs associate with oil and gas drilling see, “*The Economic & Social Impacts of Oil and Gas Development*,” which was attached to the comments submitted by SUWA on the Richfield DRMP. This document focuses on oil and gas drilling, but the research and conclusions are certainly applicable to resource extraction more broadly.

1. Requested Remedy

BLM must assess the long-term negative impacts associated with over-dependence on the resource extraction sectors of local economies and include these costs in the socioeconomic analysis for the Proposed Plan.

G. The PRPM does not account for errors and inadequacies of the Draft RMP/EIS that were identified in comments addressed to BLM.

SUWA has provided BLM with substantive comments on the Draft RMP/EIS. However, the agency has severely abridged the provided information and issues, and has only responded to these truncated comments, often asserting that they are unsubstantiated or lack documentation. In most cases the documentation to support requested analyses has been provided to BLM and would be apparent if the comment were reproduced in its entirety.

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

Examples include comments on non-market values, comments on the need to expand the analysis beyond the three traditional industries (these are oil and gas extraction, livestock grazing and commercial recreation, and are the only industries analyzed by the agency), and comments on the costs associated with off-road motorized recreation. BLM was supplied with several examples of non-market valuation techniques and methods, ample documentation of the changes in Western economies, citations of considerable research on the negative socioeconomic impacts of oil and gas development and a list of literature documenting the costs of off-road motorized recreation. BLM chose to ignore these portions of the comments from SUWA.

1. Comments regarding non-market values

Specifically, SUWA asked that BLM analyze the impacts on non-market values: "Recommendations: The BLM must measure and account for changes in non-market values associated with the level of off-road motorized recreation, oil and gas drilling and other development proposed in this RMP." Public Comments and Responses Richfield Draft RMP/EIS August 2008 Sorted by Category at 171: The response from the agency cited a lack of data:

BLM does recognize the potential impacts on non-market values due to off-road motorized recreation, oil and gas drilling and other development proposed in this DRMP/DEIS. The lack of available data does not allow for quantification of these impacts. Instead, impacts on such non-market values as recreational experiences were qualitatively analyzed in section 4.6.1, and aesthetic values were addressed in section 4.3.7

Public Comments and Responses Richfield Draft RMP/EIS August 2008 Sorted by Category at 171-172.

This response ignores decades of peer-reviewed, widely-accepted economic research on the non-market values associated with wildlands. A selection of these relevant studies was listed in the comments provided to BLM by SUWA (see page 822-83 of these comments). Researchers can and do often apply values estimated in other studies for other areas to new areas. This technique, called "benefit transfer," has been widely accepted for policy analysis and should be applied to BLM land management decisions given the importance of non-market values as discussed above.

BLM repeatedly dismisses a request to analyze the changes in non-market values associated with the alternatives in the Draft RMP: "The BLM must assess the non-market economic impacts on the owners of the lands in the Richfield Field Office – all Americans. This analysis must include the passive use values of undeveloped lands such as the lands with wilderness characteristics." Public Comments and Responses Richfield Draft RMP/EIS August 2008 Sorted by Category at 172. The response again asserts that data are unavailable and further claims that those that are available cannot be used. They also claim that the qualitative discussion will satisfy any need to analyze non-market values:

Suitable data on the non-market values referred to are not available to BLM. The studies of which the BLM is aware are based on designated wilderness, the results of which may or may not be generalized to other "wild lands." Even if the studies are generalizable to wilderness study areas (WSAs), closure of lands managed as WSAs is nondiscretionary and beyond the scope of the plan. The BLM does recognize the potential importance of non-market values relative to managing land for wilderness characteristics. The lack of available data makes quantification outside the scope of the DRMP/DEIS. Non-WSA lands with wilderness characteristics that are considered for management by the RFO were qualitatively analyzed for socioeconomic effects. For example, for Chapter

4 Alternative D of the DRMP/DEIS, non-market values from managing 682,600 acres of non-WSA lands with wilderness characteristics are qualitatively discussed.

Public Comments and Responses Richfield Draft RMP/EIS August 2008 Sorted by Category at 172.

If "suitable data" are not available to BLM, then such data should be collected by BLM. To refuse to do an analysis because of a lack of data is inappropriate. These values are likely to be large and should be estimated. Furthermore, studies on the non-market values of designated wilderness can and have been generalized to assess the benefits of lands that have the characteristics of wilderness without the designation (as noted above Walsh et al. 1984 did exactly this). SUWA is not the only commentator that has requested that BLM analyze non-market values associated with the set of alternatives. There are other individuals and organizations that see the deficiency in the agency's analysis without assessing these values. If this is clear to the American public, BLM must recognize the validity of the requests and proceed to include non-market valuation in their analysis.

2. Comments regarding impacts on the local economy

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

The Richfield DRMP/DEIS fails to fully address the impacts that the alternatives will have on the local economy. The economic impact that wilderness and wilderness quality lands have on local economies is well documented and has grown in importance as the U.S. moves from a primary manufacturing and extractive economy to one more focused on service sector industries. This shift means that many businesses are free to locate wherever they choose the "raw materials" upon which these businesses rely are people, and study after study has shown that natural amenities attract a high-quality, educated, talented workforce – the lifeblood of these businesses. To narrow the range of alternatives and the analysis of the potential impacts of land management on the local communities fails to address this important facet of today's economy.

For each of the alternatives except D, the DRMP/DEIS states, "No actions to maintain wilderness characteristics on lands outside of WSAs are proposed under this alternative, resulting in no additional impacts on socioeconomics (p. 4-458, p. 4-466, p. 4-469 and p. 4-472)." This is patently false. Study after study has shown that the presence of protected public lands has a positive impact on local economies – strongly correlated with growth in both jobs and income. It stands to reason that the

converse is also true. Leaving these lands unprotected will likely have long-term negative impacts on the local economies.

More and more evidence has accrued indicating that the West is not a resource-dependent region. The public lands, including those managed by the BLM in the Richfield Field Office are increasingly important for their non-commodity resources – scenery, wildlife habitat, wilderness, recreation opportunities, clean water and air. A vast and growing body of research indicates that the economic prosperity of rural Western communities depends more and more on these amenities and less and less on the extraction of natural resource commodities. See Bennett and McBeth 1998, Deller et al. 2001, Duffy-Deno 1998, Johnson and Rasker 1993 and 1995, Johnson 2001, Lorah 2000, Lorah and Southwick 2003, McGranahan 1999, Morton 2000, Nelson 1999, Power 1995 and 1996, Rasker et al. 2004, Reeder and Brown 2005, Rudzitis 1999, Rudzitis and Johansen 1989, Shumway and Otterstrom 2001, Snepenger et al 1995 and Whitelaw and Niemi 1989 for some examples.

The Draft EIS states “Changes in employment and income can then cause indirect socioeconomic impacts, such as changes in population... (p. 4-455).” A similar statement is made on page 4-479. While this may sometimes be the case, more and more in communities in the Intermountain West that are rich in natural amenities (such as those in the Richfield planning area), people move to the area either bring jobs with them or creating new businesses – “jobs follow people” as noted by Vias (1999) who found that employment growth followed population growth. The influence of amenities in the West’s economies is discussed in more detail above and in the attached documents: “*Socio-Economic Framework for Public Land Management Planning: Indicators for the West's Economy.*” See also Haefele et al (2007) for an additional discussion of the amenity economy.

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

Retirees and other who earn non-labor income are also important to rural western communities. This income is important for the counties impacted by the Richfield DRMP/DEIS – making up as much as 31% (in Piute

County) and at least 27% (in Sevier and Sanpete Counties) of total personal income in all of the Richfield Field Office counties, making it one of the largest sources of income in the planning area.²² Retirees are attracted by natural amenities that are available on undeveloped public lands. The potential impact that a management plan which is so heavily weighted toward development and motorized recreation will have on this source of income and economic activity must be accounted for.

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

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

SUWA Comments on the Draft RMP at 83-85 (see original SUWA comments for the complete citations of the literature referenced above). Note: There is no Alternative E within the Richfield DRMP/EIS. This was a typographical error, meant to address Alternative D. BLM has correctly assumed the nature of the error and the Alternative to which SUWA referred.

BLM cropped this comment to: "Recommendations: The BLM must collect and analyze actual data on the economic impacts of the alternatives, including Alternative E." Public Comments and Responses Richfield Draft RMP/EIS August 2008 Sorted by Category at 172. BLM's response to this comment dismisses it as unsubstantial: "This comment is so general as to be unusable. The comment offers no specifics as to what "actual" data BLM failed to use, nor does the comment provide any detail as to where BLM erred in its analysis." Public Comments and Responses Richfield Draft RMP/EIS August 2008 Sorted by Category at 172.

This tendency of the agency to present abbreviated comments to which it then refuses to respond is reprehensible. Taken in their entirety, the comments above do in fact offer

²²U.S. Department of Commerce, Bureau of Economic Analysis, Regional Economic Information System (<http://www.bea.gov/>) Investment and retirement income as a percentage of total personal income: Piute County – 31%, Sanpete County – 27%, Sevier County – 27%, Wayne County 30%, Garfield County – 27%

specifics to support SUWA's request, suggested data sources, existing methodologies, and peer-reviewed literature.

Later in the responses to public comments, BLM pulls out another portion of the longer discussion above:

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

Public Comments and Responses Richfield Draft RMP/EIS August 2008 Sorted by Category at 172.

The agency's response to this comment makes the claim that they have in fact done an adequate analysis of the impacts to the local economy. However, the impacts that were actually assessed are merely the customary narrow range which includes only the extractive industries and motorized recreation which lies at the heart of the issue raised by the comment in the first place:

The DRMP/DEIS evaluates the socioeconomic impacts of having access to BLM lands for multiple uses. This includes economic contributions to local communities from various recreational uses, energy production, livestock grazing, and other resource programs. A discussion of this analysis is provided in section 4.6.1. The comment asserts that surrounding communities will have additional costs of providing services, but provides no evidence to support this assertion. The comment asserts that long-term environmental damage from BLM actions are "likely", but provide no specifics, let alone evidence. The socioeconomic section of Chapter 4 does analyze the impacts of BLM actions to socioeconomics under the resource programs listed in the RMP chapter 4 Environmental Consequences section. Other programs were determined to have little or no impact on socioeconomic conditions.

Public Comments and Responses Richfield Draft RMP/EIS August 2008 Sorted by Category at 172.

The manner in which BLM ignores the substance of the comment is unacceptable. The response simply refers the commentor back to the agency's section that is being questioned. This fails to address or respond to the concerns raised by SUWA, and is inadequate as a response. This form of response is not an isolated case. There are

several comments (from SUWA, other organizations, and even individuals) that call into question the validity of analysis performed by the agency. BLM has responded to them almost always by referring the commentor back to its own section of the Draft RMP.

Further, BLM dismisses the comments as lacking evidence; however, the BLM's own Draft RMP provides ample evidence of potential long-term environmental damage. The requested analysis does in fact provide evidence that such environmental damage will have socioeconomic consequences that must be evaluated.

The assertion that "Other programs were determined to have little or no impact on socioeconomic conditions." Public Comments and Responses Richfield Draft RMP/EIS August 2008 Sorted by Category at 172 is unsubstantiated. Nowhere has the agency actually performed any analysis to determine what, if any, impacts the proposed plan would have on the overall economy of the planning area.

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

In a particularly egregious example, SUWA presented BLM with a very extensive review of peer-reviewed literature on the costs associated with the impacts of off-road motorized recreation. BLM chose to extract only the very beginning of the comment: "The RMP DEIS does not mention, let alone analyze the well-documented and potentially significant costs associated with off-road motorized recreation." Public Comments and Responses Richfield Draft RMP/EIS August 2008 Sorted by Category at 172. BLM's response to this comment dismisses it as unsupported by any documentation: "The comment does not provide references to documentation or other evidence to support this assertion. The DRMP/DEIS does evaluate the socioeconomic impacts of recreational use for various activities, including off-road motorized vehicles. A discussion of this analysis is provided in section 4.6, Impacts To The Social and Economic Environment." Public Comments and Responses Richfield Draft RMP/EIS August 2008 Sorted by Category at 172. However, the actual comment by SUWA was *several pages long*, and includes numerous examples of studies of the costs of off-road motorized recreation or its impacts:

b. Cost of Off-Road Motorized Recreation

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

- **Increased soil compaction and erosion and disrupted hydrologic function**

A study of the impacts of recreation use on trails (Mortensen 1989) found that off-road vehicle use produced the most serious trail impact, and was

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

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

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

- **Air pollution**

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

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

- **Impacts on vegetation**

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

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

Vegetation suffers directly and indirectly from the passage of off-road vehicles. The effects can last decades or even centuries. Compaction and erosion impair the ability of plants to absorb nutrients and carbon dioxide

and experience proper root growth. Disturbance of soils by off-road vehicles has long-term effects that favor the establishment of weedy species (Blackburn et al. 1994).

- **Impacts on wildlife**

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

- **Foregone passive use benefits**

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

- **Foregone wilderness/roadless recreation benefits**

Swanson and Loomis (1996) used a benefit-cost analytical method that translates recreation use into economic benefits. Recreation in 1990 on public lands (USFS and BLM) in the Pacific Northwest (western Washington, western Oregon, northern California) generated public benefits of \$1.6 billion. Recreation demand exceeded supply in some areas—the greatest gap was in “semi-primitive non-motorized” recreation. Authors measured the effects of four alternative management scenarios to estimate their ability to meet demand. Economic benefits were maximized under a redistribution that shifted acres from “semi-primitive motorized” to “semi-primitive non-motorized.” This scenario resulted in an additional \$916 million in public benefits. Authors found that existing public land allocations in the region provided excess supply for roaded recreation. The proposed alternatives for the Richfield Field Office most likely also provide excess supply for roaded recreation, even the so-called protective alternative which makes nearly half of the planning area available for a recreation activity engaged in by at most 20% of total participants.

- **Foregone psychological benefits**

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

- **Personal safety and injury**

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

- **Law enforcement**

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

The states of Michigan and Washington both document spending on OHV enforcement. The State of Michigan appropriated \$1,374,500 in fiscal year

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

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

- **Costs to taxpayers**

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

Recommendations: BLM must develop recreation management directives which reflect the proportional use of the area by non-motorized and/or non-OHV users.

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

SUWA Comments on the Draft RMP at 88-92 (see original SUWA comments for the complete citations of the literature referenced above).

None of the costs discussed above were examined by BLM in the Draft RMP/EIS. Instead the agency chose to focus its socioeconomic analysis of off-road motorized recreation on the potential benefits. Such an analysis is incomplete. Net, rather than gross, benefits should always be the basis for decisions, especially ones with long-term and far-reaching consequences such as a Resource Management Plan which will dictate public land use for 20 years.

This comment is legitimate and substantiated with considerable evidence from peer-reviewed economic literature on the socioeconomic costs associated with off-road motorized recreation and its impacts on the environment. BLM must collect and analyze more thorough and accurate data on the costs of off-road motorized recreation in order to make an accurate assessment of the socioeconomic impacts of the alternatives. BLM must recognize that increasing off-road motorized recreation implies the need for increased restrictions, and increased law enforcement, not making more land available for such recreation. However, BLM has once again truncated the comment, and only responded to the fragment that has been taken out of context. Such a response indicates a common disregard for science provided by SUWA, and public opinion in general. NEPA requires that BLM discuss “any responsible opposing view which was not adequately discussed in the draft statement and indicate the agency’s response to the issue raised” in preparing a final EIS. 40 C.F.R. § 1502.9. The Council on Environmental Quality interprets this requirement as mandating that an agency respond in a “substantive and meaningful way” to a comment that addresses the adequacy of analysis performed by the agency.²³ As such, the agency has violated NEPA’s requirements.

4. Requested Remedy

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

H. References

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²³ The U.S. Court of Appeals for the Tenth Circuit has held that the “Forty Questions” are “persuasive authority offering interpretive guidance” on NEPA from CEQ. *Davis v. Mineta*, 302 F.3d 1104, 1125 (10th Cir. 2002).

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X. Water Quality

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

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

FLPMA, and the Richfield PRMP, require that BLM manage the planning area according to federal and state water quality standards. *See* Richfield PRMP at 2-10; 43 C.F.R. § 2920.7(b)(3) (requiring that every BLM “land use authorization shall contain terms and conditions which shall ... [r]equire compliance with ... *water quality standards* established pursuant to applicable Federal or State law”) (emphasis added). *See also* 43 U.S.C. § 1712(c)(8) (requiring BLM in land use plans—which would therefore require implementation in daily management—to “provide for compliance with applicable pollution control laws, including State and Federal ... *water ... pollution standards* or implementation plans”) (emphasis added).

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

In order to comply with FLPMA, the PRMP should provide a summary of water quality analyses and modeling for the water bodies in the planning area. This summary should provide monitoring of water quality indicators, including temperature, alkalinity, specific conductance, pH, dissolved oxygen, turbidity, hardness, dissolved solids, and suspended solids, as required by the CWA. For an example of appropriate analysis and modeling, see West Tavaputs DEIS, Natural Gas Full Field Development Plan, February 2008, at 3-56 to 3-64 (attached as Exhibit E). The PRMP should state what the current baseline water quality is, as measured by these indicators, for each water body in the Richfield planning area.²⁴ Knowing the baseline water quality is essential to understanding whether the activities permitted in the PRMP will violate WQS. *See* 43 C.F.R. § 2920.7(b)(3); 43 U.S.C. § 1712(c)(8).

²⁴ Although BLM mentions that baseline water quality is affected by a variety of factors, the PRMP does not analyze what the baseline water quality is for the water bodies in the planning area. *See* PRMP at 3-23.

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

Although BLM briefly acknowledges that the activities the PRMP authorizes, including oil, gas, and mining development, as well as the designation of ORV routes, may adversely affect water quality, BLM fails to quantify the impact these activities will have on water quality. *See, e.g.,* PRMP at 1-9, 3-32, 3-54, 3-55. BLM asserts that, compared to other human and natural factors that affect water quality, PRMP activities would only have minor impacts on water quality. PRMP at 4-38. This blind assertion ignores substantial impacts from ORVs, and oil, gas, and mining development on water quality; and ignores BLM's own admission that restricting surface-disturbing activities would protect water quality and minimize erosion and sedimentation. PRMP at 4-38. Instead, the PRMP increases designated routes without providing quantitative analysis as to how these routes will impact resources and water quality.

The PRMP appropriately lists the water bodies in the Richfield planning area that are drinking water sources; yet the PRMP must also disclose whether any of these sources currently violate Federal Drinking Quality Standards Primary Maximum Contaminant Level and Federal Drinking Quality Secondary Standards as well as the accompanying Utah Drinking Water Standards. *See* PRMP at 3-24; Safe Drinking Water Act (SDWA), 42 U.S.C. § 300(f), *et seq.*; Utah Admin. Code R309-200, *et seq.* BLM inadequately addresses public drinking water concerns and fails to ensure that drinking water supplies will not be contaminated by activities permitted in the PRMP. BLM fails to provide any quantitative analysis demonstrating how it will comply with safe drinking water standards. By opening 4,277 miles of designated routes to ORV traffic and permitting other activities, BLM will increase various water contaminants in the planning area that may exceed CWA and SDWA standards. To comply with the CWA and the SDWA, BLM must analyze and disclose what the baseline drinking water quality for every public drinking water system is, and model the anticipated impacts from PRMP activities.

The PRMP appropriately discloses which water bodies in the Richfield planning area require a TMDL analysis; yet it should also disclose what the quantitative TMDL limits are for each pollutant and what the baseline water temperatures are for the water bodies with TMDLs. *See* PRMP at Appendix 4-1 to -2; PRMP at 3-23 to -24. The PRMP should also address anti-degradation limits for water bodies that meet WQS. BLM must

monitor and analyze water quality in these river segments to ensure that PRMP activities do not violate the TMDLs or the anti-degradation requirements for the listed rivers. A sizable number of the designated ORV routes in the PRMP are located near rivers and streams, and could significantly impair water quality. *See* PRMP at Map 2-18. BLM must not designate routes until it provides analysis and modeling that ensure compliance with FLPMA and the CWA’s TMDL, WQS, and anti-degradation requirements.

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

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

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

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

Among other things, BLM fails to ensure that mitigation measures, best management practices (BMPs), and NEPA-level review would protect water quality. *See* PRMP at 4-8 and 4-12. Although the PRMP briefly discusses BMPs in Appendix 14, it does not describe how water quality will be protected, and fails to provide either quantitative analysis of existing water quality or modeling for anticipated water quality impacts from the permitted activities. *See* Appendix 14-21 to -25. The PRMP must disclose baseline water quality measurements and then describe how it plans to monitor water quality so that BLM complies with WQS throughout the life of the plan.

Furthermore, BLM has failed to discuss the impacts of fugitive dust, engine fluids, runoff, and erosion from increased travel of ORVs on thousands of miles of new designated routes on water quality. The Richfield PRMP and its lack of water quality analysis have

completely failed to consider such pollutants and their impact on the local water bodies and safe drinking water. Because dust, engine fluids, run-off, and erosion can all contribute to exceedances of total dissolved and suspended solids counts, it is vital that BLM quantify all of the routes that it is designating in the PRMP, determine the natural background level of these contaminants, estimate the number of vehicles that will use each route and the level of contaminants generated by that use, and then model those figures to understand the true impacts of fugitive dust emissions, engine fluids, run-off, and erosion on water quality. Quantitative analysis and modeling must be conducted in order to understand whether the PRMP will comply with federal and state water quality standards and to know what impact travel on designated routes may have on water quality.

BLM recognizes that the number of ORVs registered in Utah grew nearly 70% between 2001 and 2004, and that there has been a large national increase in ORV use over the past twenty years. PRMP at 3-98 to -99, 3-134. Although BLM recognizes that growth of ORV use is a significant issue within the Richfield planning area, and similarly recognizes that, when it designates routes, ORV users will violate posted closures, BLM nonetheless plans to designate thousands of miles of routes near water, putting water quality in the Richfield planning area at risk. See PRMP at 3-100; *Southern Utah Wilderness Alliance*, 164 IBLA 33 (2004). BLM must take a hard look at the impacts of designating so many new routes, and must provide water quality analysis and modeling to ensure that its actions will not violate WQS and the CWA.

The Richfield PRMP fails to accurately quantify anticipated ORV-related pollutant increases in the water bodies of the Field Office. See PRMP, at 4-12, Table 4-4. In fact, BLM ignores effects on water quality and proposes instead to designate 4,277 miles of routes with 400 stream crossings. PRMP at 2-145- to -146. See PRMP at 3-96, Table 3-23. These stream crossings will have a devastating effect on water quality. Before allowing such extensive ORV use through and near water, BLM must analyze the baseline water quality, and then continue to monitor water quality throughout the life of the RMP. If ORV use results in violations of WQS, TMDLs, or anti-degradation requirements, BLM must close the exceedance-causing areas to ORVs until it can demonstrate that water quality standards are protected and maintained. BLM's lack of ORV-related water quality impacts does not satisfy NEPA's hard look requirement.

Similarly, BLM should restrict surface-disturbing activities within 660 feet of all waters, instead of merely 100 feet. See PRMP at 2-145. A 100 foot buffer is not sufficient to protect water quality. Permitting surface-disturbing activities so near to water will have a devastating effect on water quality. Before allowing these activities to occur so close to water, BLM must analyze the baseline water quality and then continue to monitor water quality while surface-disturbing activities occur. If monitoring shows that these activities violate WQS, TMDLs, or anti-degradation requirements, BLM must postpone work at these sites until water quality standards are protected and maintained. Furthermore, the PRMP only briefly addresses some effects of surface-disturbing activities on water quality, and fails to analyze related indirect effects on water quality, including decreased

vegetative cover, altered land surface, increased erosion and increased run-off, etc.²⁵ See PRMP at 4-38. For the foregoing reasons, BLM's lack of water quality analysis does not satisfy NEPA's hard look requirement.

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

In summary, the Richfield PRMP does not adequately analyze the impacts to water quality that will result from the activities planned and permitted in this document. These failures are contrary to both FLPMA, which requires that BLM observe water quality standards, and NEPA, which requires that BLM disclose the impacts of the activities it is permitting.

²⁵ As discussed elsewhere in this protest, ORV impacts such as these are inconsistent with the protective objectives of BLM's Riparian Area Policy. At any rate, it is hard to see how BLM can judge the impact of ORV use on riparian areas without information about the existing and projected level of water contaminants they cause.

XI. Areas of Critical Environmental Concern

When developing a land use plan, such as the Richfield PRMP, FLPMA mandates that BLM “*give priority* to the designation and protection of areas of critical environmental concern.” 43 U.S.C. § 1712(c)(3). (emphasis added). Such areas, or ACECs, are areas “where special management is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes.” *Id.* § 1702(a).

BLM’s ACEC Manual (1613) provides additional detail on the criteria to be considered in ACEC designation, as discussed in the applicable regulations, as well. *See* Manual 1613, Section .1 (Characteristics of ACECs); 43 C.F.R. § 8200. An area must possess *relevance* (such that it has significant value(s) in historic, cultural or scenic values, fish & wildlife resources, other natural systems/processes, or natural hazards) and *importance* (such that it has special significance and distinctiveness by being more than locally significant or especially rare, fragile or vulnerable). In addition, the area must require *special management attention* to protect the relevant and important values (where current management is not sufficient to protect these values or where the needed management action is considered unusual or unique), which is addressed in special protective management prescriptions. 43 U.S.C. § 1702(a). An ACEC is to be as large as is necessary to protect the important and relevant values. Manual 1613, Section .22.B.2 (Size of area to receive special management attention).

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

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

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

BLM has determined that 886,810 acres comprising sixteen ACECs meet the R&I criteria for ACEC designation. *See* PRMP 4-427 to -429; PRMP, Appendix 1 at a1-6. However, the PRMP proposes to designate only two ACECs, totaling 2,530 acres, just 0.3% of the acres nominated and found eligible as potential ACECs. *See* PRMP at 4-427 to -429. By only designating this small fraction of the eligible acreage, BLM violates FLPMA's mandate that "priority" be given to designation of ACECs. Likewise, for the 99.7% of acreage that BLM did not designate as ACECs, BLM fails to give priority to the adequate protection of the identified R&I values. Instead, BLM prioritizes ORV route designation and oil and gas development over protecting critical R&I values, in direct violation of FLPMA.

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

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

BLM has repeatedly acknowledged the damage from oil and gas development and improper or excessive ORV use to the values of the public lands that can and should be protected by ACECs (spectacular scenic values, endangered species, geologic formations, cultural resources, and naturalness). *See, e.g.,* PRMP at Appendix 1-8. Furthermore, the Interior Board of Land Appeals (IBLA) has found that even ongoing use of existing motorized recreational routes can lead to more damage to other resources, especially as interest in an area increases. *See Southern Utah Wilderness Alliance*, 164 IBLA 33 (2004). In other words, it is unavoidable and expected that, when BLM establishes routes for ORVs, there will be use beyond those routes, even in violation of route and area designations. As a result, BLM's failure to limit ORV access to the sensitive lands and special places nominated for ACEC protection is likely to endanger their unique R&I values.

The maps attached as Exhibits C and F show the potential and proposed ACECs overlaid with designated ORV routes and oil and gas designations. These maps illustrate the extent to which BLM disregards the R&I values identified in the potential ACECs, and prioritizes development and ORV use over critical environmental concerns, in direct violation of FLPMA. *See* ACEC and Proposed Routes Map, attached as Exhibit C; Richfield ACEC and Oil and Gas Map, attached as Exhibit F; 43 U.S.C. § 1712(c)(3).

Where ACEC or potential ACEC values include unique or rare scenic resources or naturalness, they are even more susceptible to irreparable damage from these activities. In some cases, the PRMP proposes an unconscionably high ORV route density within

potential ACECs. *See, e.g.*, Exhibit C; Parker Mountain Potential ACEC, Rainbow Hills Potential ACEC, and Fremont Gorge/Cockscomb Potential ACEC. These excessive route densities would impair and potentially eliminate the scenic, wildlife, and other R&I values identified in these critical areas. BLM must develop a manageable travel plan that will protect all of the potential ACECs and their R&I values from the damage directly associated with ORV use. BLM's failures to protect R&I values in the Richfield PRMP may mean that these values are lost forever.

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

C. Wilderness Study Area Status and Managing for Wilderness Character Status Are Not a Substitute for ACEC Designation

As discussed above, BLM has acknowledged the threats to lands with wilderness characteristics. However, BLM has failed to designate ACECs to protect these values. In fact, the PRMP points to the existing Mt. Ellen-Blue Hills WSA and its management prescription as a justification for discontinuing designation of the South Caineville Mesa ACEC – the assumption is made that the Interim Management Plan (IMP) will necessarily protect the R&I values and that no further special management attention is warranted. *See* PRMP 4-435 to -436. In addition, the PRMP notes that most of the existing Beaver Wash and Gilbert Badlands ACECs and some acres of the Dirty Devil, Henry Mountains, Horseshoe Canyon and Little Rockies Potential ACECs overlap WSAs, and the PRMP uniformly fails to designate these areas as ACECs with the justification that IMP management will protect R&I values. PRMP 4-440 to -441, 4-471, 4-494, 4-503, and 4-517. However, ACECs may be designated for a range of other values, as listed in FLPMA, which may not be protected by focusing on protecting wilderness character (although they will likely benefit). Consequently, BLM cannot dismiss its obligations under FLPMA with regard to ACECs based on the existence of a WSA.

ACEC designation is also important in the event that WSAs are released by Congress. The PRMP fails to adequately address what would happen in the event that a WSA is released from its status, although the PRMP does note that WSA protection is only an assumed protection as long as the WSA remains designated. PRMP at 4-427. Delaying ACEC designation and thorough consideration until the areas are released by Congress could jeopardize the scientific values of these potential ACECs. The PRMP must be explicit that BLM will manage released lands to protect their important values, including wilderness characteristics and the other R&I values that the PRMP acknowledges, according to the same standards (IMP) as analyzed and contemplated in the plan.

Without asserting this, BLM's failure to designate the South Caineville Mesa, Dirty Devil, Henry Mountains, Horseshoe Canyon and Little Rockies Potential ACECs that meet the R&I criteria runs afoul of its own ACEC Guidance—cited in BLM Response to Comments, by Commenter, at p. 223—which requires that the agency must specifically detail the “other form of special management” relied upon as support for not designating a potential ACEC. *See* Areas of Critical Environmental Concern; Policy and Procedures Guidelines, 45 Fed. Reg. 57,318, 57,319 (Aug. 27, 1980).

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

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

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

To which the BLM responds, appropriately:

“Layering” is planning. Under FLPMA's multiple use mandate, BLM manages many different resource values and uses on public lands. Through land use planning BLM sets goals and objectives for each of those values and uses, and prescribes actions to accomplish those

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

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

The values protected by the WSA management prescriptions do not necessarily protect those values found relevant and important in ACEC evaluation, and vice versa. The relevant and important values of ACECs within or adjacent to WSAs were noted in ACEC evaluations (Appendix I). The ACECs are evaluated and ranked on the presences and absence of the state R&I values. None of these values include wilderness characteristics. Additionally, the management prescriptions for the ACECs are limited to the scope to protect the R&I values and the BLM maintains that the size of the ACEC areas is appropriate to the R&I values identified.

Moab PRMP Response to Comments, at 121-9.

SUWA cannot make this argument any better than BLM does in the preceding paragraphs. However, we reiterate that BLM must revise the decisions in the Richfield PRMP to comply with this accurate statement of the agency's policies and obligations.

D. Wilderness Characteristics Can Be Protected Through ACEC Designation

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

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

As discussed above, BLM has acknowledged the threats to lands with wilderness characteristics from other activities, including ORV use and oil and gas development. However, the Richfield PRMP fails to support designation of ACECs to protect these values, as FLPMA requires. BLM has identified 682,600 acres of lands with wilderness character. There are an additional 40,351 acres of lands with wilderness characteristics that are included in America’s Redrock Wilderness Act; detailed descriptions and supporting data have been submitted to BLM proving the wilderness character of these lands.

All of these lands represent special resources and values that warrant corresponding protection. Proposed ACECs with wilderness characteristics that BLM failed to protect in the PRMP include: Kingston Canyon, Fremont Gorge/Cockscomb, Badlands, Lower Muddy Creek, Henry Mountains, Bull Creek, Little Rockies, Dirty Devil/North Wash and Horseshoe Canyon. BLM should designate these ACECs and consider designating others to protect lands with wilderness characteristics; and these ACECs should include protective management prescriptions, such as closure to oil and gas leasing and ORV use, in order to protect wilderness characteristics.

E. Inconsistencies in Acreages for Existing ACECs

BLM’s 2005 ACEC Evaluation Report lists total existing ACEC acreage at 16,200 acres. It also lists existing individual ACEC acreages as: Beaver Wash ACEC – 3,400 acres, Gilbert Badlands – 3,700 acres, North Caineville Mesa – 3,800 acres, and South

Caineville Mesa – 5,300 acres. *See* ACEC Evaluation Report at p. 2. However, in the Draft and Proposed RMP the total existing ACEC acreage is listed at 14,780 acres; or individually: Beaver Wash ACEC – 4,800 acres, Gilbert Badlands – 3,680 acres, North Caineville Mesa – 2,200 acres, and South Caineville Mesa – 4,100 acres. *See* DRMP at 3-91 and PRMP at 3-122.

This is a difference of 1,420 acres. The discrepancy may be a mapping error, which often happens converting old mylar physical files into the GIS-digitized world, but it is a suspiciously and disproportionately large variance that goes unexplained in the PRMP. Any intentional change in the acreage of an ACEC outside of the planning process would be illegal, of course. Either by accident or via a more sinister process, the PRMP has apparently reduced the acreage of ACECs in the Richfield Field Office. The discrepancy must be addressed and corrected. In the meantime, the PRMP fails to provide accurate data and analyses to the public in violation of NEPA. 40 C.F.R. § 1500.1(b).

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

1. Badlands RNA Potential ACEC

The R&I values for the Badlands Potential ACEC are scenic and natural processes (wind erosion), special status plant species, riparian and relict vegetation values. PRMP at 4-446; *see id.* at Attachment A1-8. In BLM’s January 2005 ACEC Evaluation Report special management recommended to maintain these R&I values includes, “[c]lose[ing] area to OHV use or limit OHVs to designated trails to prevent irreparable damage to cultural resources, badlands topography, listed species of cacti and scenic values.” *See* ACEC Evaluation Report at Attachment 3, p. 2.

Despite this recommendation of the special management attention needed to protect the area’s R&I values, the PRMP directly threatens these values by opening 8,500 acres for an ORV play area. PRMP at 2-52. The PRMP’s management of the Badlands Potential ACEC is also at odds with the BLM emergency closure of the Factory Butte area, enacted to protect special status cactus species. In the closure, dated September 2006, the BLM asserted “Surveys conducted have noted mortality to threatened and endangered plant populations from cross-country OHV use. Based on this information, BLM’s authorized officer has determined that OHV use in the area is causing or will cause considerable adverse effects to threatened and endangered plant species.” *See* Federal Register Notice UT-050-06-1220- PH –PM. There is no evidence that the reopening of acres closed by the 2006 emergency closure will protect the special status cactus species that provoked the closure and is one of the R&I values for the Badlands Potential ACEC. Accordingly, the management of many acres in this Potential ACEC as prescribed in the PRMP will impair the R&I values.

As discussed above, the fact that approximately 46% of the proposed ACEC overlaps with Mt. Ellen/Blue Hills WSA does not preclude its designation as an ACEC. *See* PRMP at 4-446. Designating the entire potential ACEC would grant enhanced protection

to lands both within and outside of the Mt. Ellen/Blue Hills WSA in the event of congressional release from WSA status. Manual 1613, Section .33.D also provides that ACEC designation within a WSA is permitted to protect the R&I values. The PRMP contemplates that in the case of WSA release, the lands would be managed to the existing management in place in the RMP. *See* PRMP at 2-104. Therefore, designation of the ACEC will ensure that if the WSA is released, the appropriate management structure is in place to protect the R&I values. Just as the designation of an ACEC is no substitute for wilderness suitability determinations, conversely, wilderness suitability determination (in the form of WSA release) should not determine whether or not to protect the R&I values of the affected lands.

BLM Manual 1613 requires that, for potential ACECs (those that BLM has identified as meeting relevance and importance), management prescriptions are to be “fully developed” in the RMP. Manual 1613, Section .22 (Develop Management Prescriptions for Potential ACECs). If an area is not to be designated, the analysis supporting the conclusion “must be incorporated into the plan and associated environmental document.” Manual 1613, Section .21 (Identifying Potential ACECs). However, BLM has not provided a sufficient explanation as to how the proposed management for this potential ACEC will protect the R&I values and thus cannot justify its decision not to propose designation of the Badlands ACEC (or existing constituent ACECs like South Caineville Mesa or Gilbert Badlands RNA ACECs). Because BLM’s proposed management would allow development or ORV activities within the potential ACEC, thereby adversely impacting the R&I values, and because BLM failed to *prioritize* the designation of the Badlands ACEC and failed to provide a sufficient rationale supporting its decision, BLM must designate the Badlands ACEC.

2. Dirty Devil/North Wash Potential ACEC

The R&I values for this potential ACEC include scenic, cultural, paleontological, wildlife (bighorn sheep), and special status species (plant species and Mexican spotted owl). The special management attention recommended to protect these R&I values includes: restoration and maintenance of riparian areas, potentially limiting recreation to some kind of permit system, restricting motorized access to special status species areas and limiting ORVs to designated routes. *See* ACEC Evaluation Report at Attachment 3, p. 4-6.

Again, the BLM relies on the fact that 64% of this potential ACEC is already a WSA. *See* PRMP at 4-462. Designating the entire potential ACEC would grant enhanced protection to lands both within and outside of the Dirty Devil/French Spring and Fiddler Butte WSAs in the event of congressional release from WSA status. Manual 1613, Section .33.D provides that ACEC designation within a WSA is permitted to protect the R&I values. The PRMP contemplates that in the case of WSA release, the lands would be managed to the existing management in place in the RMP. *See* PRMP at 2-104. Therefore, designation of the ACEC will ensure that if the WSA is released, the appropriate management structure is in place to protect the R&I values. Just as the designation of an ACEC is no substitute for wilderness suitability determinations,

conversely, wilderness suitability determination (in the form of WSA release) should not automatically determine whether or not to protect the R&I values.

BLM Manual 1613 requires that, for potential ACECs (those that BLM has identified as meeting relevance and importance), management prescriptions are to be “fully developed” in the RMP. Manual 1613, Section .22 (Develop Management Prescriptions for Potential ACECs). If an area is not to be designated, the analysis supporting the conclusion “must be incorporated into the plan and associated environmental document.” Manual 1613, Section .21 (Identifying Potential ACECs). However, BLM has not provided a sufficient explanation as to how the proposed management for this potential ACEC will protect the R&I values and thus cannot justify its decision not to propose designation of the Dirty Devil/North Wash ACEC. Because BLM’s proposed management would allow development (especially the impacts associated with potential leasing and development of tar sands in the Tar Sand Triangle STSA) or ORV activities within the potential ACEC, thereby adversely impacting the R&I values, and because BLM failed to *prioritize* the designation of the Dirty Devil/North Wash ACEC and failed to provide a sufficient rationale supporting its decision, BLM must designate the Dirty Devil/North Wash ACEC.

3. Fremont Gorge/Cockscomb Potential ACEC

The R&I values for this potential ACEC include cultural, scenic, riparian, plant and wildlife values. The special management attention recommended to protect these R&I values includes: evaluation of impacts of upstream actions to protect riparian values, limit recreation in riparian areas, close or limit ORV use, restrict recreation at Fish Creek Cove and Beas Lewis Flats to protect cultural resources and closure of most of the ACEC to oil and gas development. *See* ACEC Evaluation Report at Attachment 3, p. 7-8.

BLM states that 8% of this potential ACEC is already a WSA. *See* PRMP at 4-478. Designating the entire potential ACEC would grant enhanced protection to lands both within and outside of the Fremont Gorge WSA in the event of congressional release from WSA status. Manual 1613, Section .33.D provides that ACEC designation within a WSA is permitted to protect the R&I values. The PRMP contemplates that in the case of WSA release, the lands would be managed to the existing management in place in the RMP. *See* PRMP at 2-104. Therefore, designation of the ACEC will ensure that if the WSA is released, the appropriate management structure is in place to protect the R&I values. Just as the designation of an ACEC is no substitute for wilderness suitability determinations, conversely, wilderness suitability determination (in the form of WSA release) should not determine whether or not to protect the R&I values.

BLM Manual 1613 requires that, for potential ACECs (those that BLM has identified as meeting relevance and importance), management prescriptions are to be “fully developed” in the RMP. Manual 1613, Section .22 (Develop Management Prescriptions for Potential ACECs). If an area is not to be designated, the analysis supporting the conclusion “must be incorporated into the plan and associated environmental document.”

Manual 1613, Section .21 (Identifying Potential ACECs). However, BLM has not provided a sufficient explanation as to how the proposed management for this potential ACEC will protect the R&I values and thus cannot justify its decision not to propose designation of the Fremont Gorge/Cockscomb Potential ACEC. The PRMP makes no special provisions to manage the riparian upstream impacts. Because BLM's proposed management would allow development, ORV activities within the potential ACEC, and Section 203 disposal/sale of up to 7% of the potential ACEC thereby adversely impacting the R&I values, and because BLM failed to *prioritize* the designation of the Fremont Gorge/Cockscomb ACEC and failed to provide a sufficient rationale supporting its decision, BLM must designate the Fremont Gorge/Cockscomb ACEC.

4. Henry Mountains Potential ACEC

The R&I values for this potential ACEC include scenic, wildlife, special status species and ecological values. The special management attention recommended to protect these R&I values includes: restoration and maintenance of riparian areas, restricting motorized access to special status species areas and limiting ORVs to designated routes. *See* ACEC Evaluation Report at Attachment 3, p. 9-2.

Again, the BLM relies on the fact that 45% of this potential ACEC is already in the Mt. Ellen/Blue Hills, Mt. Hillers, Mt. Pennell and Bull Mountain WSAs. *See* PRMP at 4-489. Designating the entire potential ACEC would grant enhanced protection to lands both within and outside of these WSAs in the event of congressional release from WSA status. Manual 1613, Section .33.D provides that ACEC designation within a WSA is permitted to protect the R&I values. The PRMP contemplates that in the case of WSA release, the lands would be managed to the existing management in place in the RMP. *See* PRMP at 2-104. Therefore, designation of the ACEC will ensure that if the WSA is released, the appropriate management structure is in place to protect the R&I values. Just as the designation of an ACEC is no substitute for wilderness suitability determinations, conversely, wilderness suitability determination (in the form of WSA release) should not determine whether or not to protect the R&I values.

BLM Manual 1613 requires that, for potential ACECs (those that BLM has identified as meeting relevance and importance), management prescriptions are to be "fully developed" in the RMP. Manual 1613, Section .22 (Develop Management Prescriptions for Potential ACECs). If an area is not to be designated, the analysis supporting the conclusion "must be incorporated into the plan and associated environmental document." Manual 1613, Section .21 (Identifying Potential ACECs). However, BLM has not provided a sufficient explanation as to how the proposed management for this potential ACEC will protect the R&I values and thus cannot justify its decision not to propose designation of the Henry Mountain ACEC. Because BLM's proposed management would allow development or ORV activities within the potential ACEC, thereby adversely impacting the R&I values, and because BLM failed to *prioritize* the designation of the Henry Mountain ACEC and failed to provide a sufficient rationale supporting its decision, BLM must designate the Henry Mountain ACEC.

5. Horseshoe Canyon Potential ACEC

The R&I values for this potential ACEC include scenic, cultural, special status species and riparian values. The special management attention recommended to protect these R&I values includes: close or limit ORV access, restoration of springs, and closure of most of acreage to oil and gas development. *See* ACEC Evaluation Report at Attachment 3, p. 12.

Again, the BLM relies on the fact that 92% of this potential ACEC is already in the Upper and Lower Horseshoe Canyon WSAs. *See* PRMP at 4-501. Designating the entire potential ACEC would grant enhanced protection to lands both within and outside of these WSAs in the event of congressional release from WSA status. Manual 1613, Section .33.D provides that ACEC designation within a WSA is permitted to protect the R&I values. The PRMP contemplates that in the case of WSA release, the lands would be managed to the existing management in place in the RMP. *See* PRMP at 2-104. Therefore, designation of the ACEC will ensure that if the WSA is released, the appropriate management structure is in place to protect the R&I values. Just as the designation of an ACEC is no substitute for wilderness suitability determinations, conversely, wilderness suitability determination (in the form of WSA release) should not be the sole determinant for whether or not to protect the R&I values.

BLM Manual 1613 requires that, for potential ACECs (those that BLM has identified as meeting relevance and importance), management prescriptions are to be “fully developed” in the RMP. Manual 1613, Section .22 (Develop Management Prescriptions for Potential ACECs). If an area is not to be designated, the analysis supporting the conclusion “must be incorporated into the plan and associated environmental document.” Manual 1613, Section .21 (Identifying Potential ACECs). However, BLM has not provided a sufficient explanation as to how the proposed management for this potential ACEC will protect the R&I values and thus cannot justify its decision not to propose designation of the Horseshoe Canyon ACEC. Because BLM’s proposed management would allow development or ORV activities within the potential ACEC, thereby adversely impacting the R&I values, and because BLM failed to *prioritize* the designation of the Horseshoe Canyon ACEC and failed to provide a sufficient rationale supporting its decision, BLM must designate the Horseshoe Canyon ACEC.

6. Kingston Canyon Potential ACEC

The R&I values for this potential ACEC include mule deer, mule deer habitat and riparian values. The special management attention recommended to protect these R&I values includes: maintain and protect riparian areas and limiting ORVs, especially where ORV use impacts mule deer. *See* ACEC Evaluation Report at Attachment 3, p. 14.

BLM Manual 1613 requires that, for potential ACECs (those that BLM has identified as meeting relevance and importance), management prescriptions are to be “fully developed” in the RMP. Manual 1613, Section .22 (Develop Management Prescriptions for Potential ACECs). If an area is not to be designated, the analysis supporting the

conclusion “must be incorporated into the plan and associated environmental document.” Manual 1613, Section .21 (Identifying Potential ACECs). However, BLM has not provided a sufficient explanation as to how the proposed management for this potential ACEC will protect the R&I values and thus cannot justify its decision not to propose designation of the Kinston Canyon ACEC. Because BLM’s proposed management would allow development or ORV activities within the potential ACEC, thereby adversely impacting the R&I values, and because BLM failed to *prioritize* the designation of the Kinston Canyon ACEC and failed to provide a sufficient rationale supporting its decision, BLM must designate the Kinston Canyon ACEC.

7. Little Rockies Potential ACEC

The R&I values for this potential ACEC include scenic, wildlife, special status species and ecological values. It is recognized by the National Park Service as a National Natural Landmark. The special management attention recommended to protect these R&I values includes: close or limit ORV access, protective VRM classification and closure of most of acreage to oil and gas development and mining. *See* ACEC Evaluation Report at Attachment 3, p. 16.

Again, the BLM relies on the fact that 76% of this potential ACEC is already in the Little Rockies WSA. *See* PRMP at 4-514. Designating the entire potential ACEC would grant enhanced protection to lands both within and outside of these WSAs in the event of congressional release from WSA status. Manual 1613, Section .33.D provides that ACEC designation within a WSA is permitted to protect the R&I values. The PRMP contemplates that in the case of WSA release, the lands would be managed to the existing management in place in the RMP. *See* PRMP at 2-104. Therefore, designation of the ACEC will ensure that if the WSA is released, the appropriate management structure is in place to protect the R&I values. Just as the designation of an ACEC is no substitute for wilderness suitability determinations, conversely, wilderness suitability determination (in the form of WSA release) should not be a determinant on whether or not to protect the R&I values.

BLM Manual 1613 requires that, for potential ACECs (those that BLM has identified as meeting relevance and importance), management prescriptions are to be “fully developed” in the RMP. Manual 1613, Section .22 (Develop Management Prescriptions for Potential ACECs). If an area is not to be designated, the analysis supporting the conclusion “must be incorporated into the plan and associated environmental document.” Manual 1613, Section .21 (Identifying Potential ACECs). However, BLM has not provided a sufficient explanation as to how the proposed management for this potential ACEC will protect the R&I values and thus cannot justify its decision not to propose designation of the Little Rockies ACEC. Because BLM’s proposed management would allow development or ORV activities within the potential ACEC, thereby adversely impacting the R&I values, and because BLM failed to *prioritize* the designation of the Little Rockies ACEC and failed to provide a sufficient rationale supporting its decision, BLM must designate the Little Rockies ACEC.

8. Lower Muddy Creek Potential ACEC

The R&I values for this potential ACEC include scenic, special status species and riparian values. The special management attention recommended to protect these R&I values includes: manage as VRM II and limiting ORVs to designated routes or closing to ORVs in instances required to protect special status cactus species. *See* ACEC Evaluation Report at Attachment 3, p. 17. Additionally, paleontological discoveries in this area add an additional R&I value that the BLM should consider.

BLM Manual 1613 requires that, for potential ACECs (those that BLM has identified as meeting relevance and importance), management prescriptions are to be “fully developed” in the RMP. Manual 1613, Section .22 (Develop Management Prescriptions for Potential ACECs). If an area is not to be designated, the analysis supporting the conclusion “must be incorporated into the plan and associated environmental document.” Manual 1613, Section .21 (Identifying Potential ACECs). However, BLM has not provided a sufficient explanation as to how the proposed management for this potential ACEC will protect the R&I values and thus cannot justify its decision not to propose designation of the Lower Muddy Creek ACEC. Because BLM’s proposed management would allow development or ORV activities within the potential ACEC, thereby adversely impacting the R&I values, and because BLM failed to *prioritize* the designation of the Lower Muddy Creek ACEC and failed to provide a sufficient rationale supporting its decision, BLM must designate the Lower Muddy Creek ACEC.

9. Parker Mountain Potential ACEC

The R&I values for this potential ACEC include sagebrush steppe habitat and special status species. The special management attention recommended to protect these R&I values includes: limited ORV use, hunter education on pygmy rabbit identification and aggressive invasive plant species control. *See* ACEC Evaluation Report at Attachment 3, p. 21.

BLM Manual 1613 requires that, for potential ACECs (those that BLM has identified as meeting relevance and importance), management prescriptions are to be “fully developed” in the RMP. Manual 1613, Section .22 (Develop Management Prescriptions for Potential ACECs). If an area is not to be designated, the analysis supporting the conclusion “must be incorporated into the plan and associated environmental document.” Manual 1613, Section .21 (Identifying Potential ACECs). However, BLM has not provided a sufficient explanation as to how the proposed management for this potential ACEC will protect the R&I values and thus cannot justify its decision not to propose designation of the Parker Mountain ACEC. Because BLM’s proposed management would allow development or ORV activities within the potential ACEC, thereby adversely impacting the R&I values, and because BLM failed to *prioritize* the designation of the Parker Mountain ACEC and failed to provide a sufficient rationale supporting its decision, BLM must designate the Parker Mountain ACEC.

10. Special Status Species Potential ACEC

The R&I values for this potential ACEC are, not surprisingly, special status species. The special management attention recommended to protect these R&I values includes: closing or limiting ORV use, and restrictions on oil and gas leasing. *See* ACEC Evaluation Report at Attachment 3, p. 25-26.

BLM Manual 1613 requires that, for potential ACECs (those that BLM has identified as meeting relevance and importance), management prescriptions are to be “fully developed” in the RMP. Manual 1613, Section .22 (Develop Management Prescriptions for Potential ACECs). If an area is not to be designated, the analysis supporting the conclusion “must be incorporated into the plan and associated environmental document.” Manual 1613, Section .21 (Identifying Potential ACECs). However, BLM has not provided a sufficient explanation as to how the proposed management for this potential ACEC will protect the R&I values and thus cannot justify its decision not to propose designation of the Parker Mountain ACEC. Because BLM’s proposed management would allow development or ORV activities within the potential ACEC, thereby adversely impacting the R&I values, and because BLM failed to *prioritize* the designation of the Parker Mountain ACEC and failed to provide a sufficient rationale supporting its decision, BLM must designate the Parker Mountain ACEC.

XII. Wild and Scenic Rivers

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

BLM has determined that twelve river segments within the Richfield planning area, totaling 135.05 miles, are eligible for inclusion in the NWSRS. PRMP at 3-120 to -121, Appendix 2-1 to -2. Once BLM determines that a river segment is eligible, “its outstandingly remarkable values shall be afforded adequate protection, subject to valid existing rights, and until the eligibility determination is superseded, management activities and authorized uses shall not be allowed to adversely affect either eligibility or the tentative classification.” BLM Manual § 8351.32(C).

After determining which river segments are eligible, and protecting them accordingly, BLM must then determine which eligible segments are “suitable” for inclusion in the NWSRS. The PRMP recommends only one river segment, the segment of the Fremont River through the Fremont Gorge, totaling just five miles, for suitability designation. PRMP at 2-105 to -107; Appendix A3-1; Map 2-44. The “suitability” determination considers tradeoffs between river protection and corridor development, including the environmental and economic results of designation. 16 U.S.C. § 1275(a); PRMP at Appendix A3-1 to -2. Once BLM determines a segment is suitable, it must manage it so as to preserve the outstanding remarkable values and not impair any future suitability decision. BLM Manual § 8351.32(C).

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

A. BLM's Failure to Recommend River Segments within WSAs as Suitable Violates the WSRA and BLM Manual 8351

BLM violates the WSRA by failing to recommend river segments that otherwise qualify for inclusion in the NWSRS simply because the segments are within WSAs. *See* 16 U.S.C. § 1275(a); PRMP at Map 3-15. In the Richfield PRMP, BLM admits that “eligible segments are recommended non-suitable because the values identified would be protected by alternative protection methods,” including by the IMP. PRMP at 4-422. BLM justifies its failure to exclude 98 out of 130 eligible river miles from suitability recommendation because they are located within WSAs and are managed under the IMP.²⁶ PRMP at 4-422 to 4-423. Whether a river segment has an alternative method of protection is not an appropriate method to determine suitability. Suitability determinations are factual determinations and the fact that a certain segment falls within a WSA is immaterial.

Although the PRMP recognizes that Congress can release WSAs for other uses, BLM fails to address what would happen to eligible wild and scenic rivers in the event that a WSA is released from its status. *See* PRMP at 3-119. In the event that WSAs are released by Congress, these rivers and their outstanding remarkable values would be left unprotected. WSRA designation is the best and only method to protect these eligible river segments in the event WSAs are released by Congress.

By failing to designate river segments within WSAs that otherwise qualify as suitable, BLM defeats the purpose of the WSRA, i.e. to protect rivers and their outstanding remarkable values. 16 U.S.C. §§ 1271, 1272, 1276(d). NWSRS inclusion protects different values than WSA status does, and WSA management under the IMP does not necessarily protect eligible rivers and their outstanding remarkable values. The WSRA specifically protects rivers' outstanding remarkable values, whereas the IMP does not specifically protect outstanding remarkable values. Section 10 of the WSRA confirms that Wilderness designation and NWSRS inclusion are two separate designations. 16 U.S.C. § 1281(b). Wilderness Areas receive the highest level of protection and must remain “unimpaired.” 16 U.S.C. § 1131(a). Yet even the fact that land is designated Wilderness, and thus already receives the highest level of protection, does not affect whether the same area should also be designated a Wild and Scenic River. Like Wilderness Areas, WSAs also receive high levels of protection, and must not be impaired. Thus, like rivers in Wilderness Areas, the fact that a river lies within a WSA does not affect whether the same area should also be designated suitable for inclusion in the NWSRS.

²⁶ Eligible segments within WSAs include all, or the majority of, the Dirty Devil River and its tributaries, including Beaver Wash Canyon, Larry Canyon, No Man's Canyon, Robbers Roost Canyon, Sams Mesa Box Canyon and Twin Corral Box Canyon. PRMP at 4-422 to -423; Map at 3-15.

As the Moab BLM stated, “BLM strives to ensure that the goals and objectives of each program (representing resource values and uses) [e.g. Wild and Scenic Rivers, WSAs] are consistent and compatible for a particular land area.” Moab PRMP, BLM Response to Comments, Sorted by Commentor, at 142. Thus, BLM works to protect separate values that are highlighted in separate acts and regulations, such as protecting outstanding remarkable values in the WSRA and the ensuring non-impairment for WSAs. *Compare* 16 U.S.C. § 1271 et seq. *with* IMP. Regardless of whether the goals of the different regulations are complementary, the distinct values must be protected separately under the WSRA and the IMP. The Moab BLM Field Office uses the example of WSAs and ACECs to make this same point:

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

Moab PRMP, BLM Response to Comments, Sorted by Commentor at 143. Thus, BLM admits that different designations serve different purposes, and that designations are limited to protect only those values relevant to those particular designations, e.g. outstandingly remarkable values for Wild and Scenic Rivers vs. relevant and important values for ACECs. Therefore, the fact that an eligible river segment lies within a WSA is not a justification for finding the segment non-suitable.

Furthermore, the WSRA and the BLM Manual list specific factors that should be evaluated as part of the suitability analysis, and WSA status is not one of those factors. 16 U.S.C. § 1275(a); BLM Manual § 8351.33(A). Because BLM based its determination of non-suitability on a factor not listed in the WSRA or the Manual, BLM’s findings of non-suitability must be overturned. In order to best protect eligible rivers and the identified outstanding remarkable values, and to comply with the WSRA’s fact-based criteria for suitability determinations, BLM must conduct a factual determination of the suitability criteria, irrespective of WSA status, and then forward its determinations to Congress. *See* 16 U.S.C. § 1275(a).

B. BLM's Failure to Recommend Non-WSA River Segments that are Regulated Under Other Management Prescriptions Violates the WSRA and BLM Manual 8351

BLM violates the WSRA by failing to recommend non-WSA river segments that otherwise qualify for inclusion in the NWSRS simply because the segments are supposedly protected by other laws, regulations, or designations. PRMP at 4-423; *See* 16 U.S.C. § 1275(a). BLM states that, “[t]he 32 miles of eligible rivers not recommended for suitability located outside the WSAs would receive protection through existing laws, regulations and specific resource decisions within the Proposed RMP for Riparian, VRM, non-WSA lands with wilderness characteristics, SRMAs and Travel Management.” PRMP at 4-423. BLM’s failure to recommend these otherwise-suitable sections defeats the purpose of the WSRA, i.e. to protect rivers and their outstanding remarkable values. 16 U.S.C. §§ 1271, 1272, 1276(d). Many of the arguments presented in the preceding section apply for non-WSA river segments as well. Likewise, the arguments articulated by Moab BLM above apply equally to this subsection.

These other management prescriptions do not protect the eligible river segments and their outstanding remarkable values. In fact, some of these categories directly endanger the outstanding remarkable values of eligible rivers. For example, travel management in the PRMP permits wide-spread off-road vehicle travel, even on designated routes that are immediately adjacent to eligible wild and scenic rivers. *Compare* PRMP at Map 2-18 with Map 3-15. As discussed elsewhere in this protest (*see, e.g.*, Water Quality section, Riparian section, and Travel Management section), designated routes and off-road vehicle travel on these routes negatively impact water quality and riparian values, as well as outstanding remarkable values for eligible rivers. Therefore, BLM’s assertion that other designations, such as VRMs, riparian, SRMAs, etc., will adequately protect outstanding remarkable values is not only patently false, it also violates the purpose of the WSRA which is to protect outstanding remarkable values. 16 U.S.C. §§ 1271, 1272.

The WSRA and the BLM Manual list specific factors that should be evaluated as part of the suitability analysis, and management prescriptions such as VRMs, riparian policies, travel management, non-WSA lands with wilderness characteristics, and SRMAs are not among the listed factors. 16 U.S.C. § 1275(a); BLM Manual § 8351.33(A)(1)-(8). Because BLM based its determination of non-suitability on a factor not listed in the WSRA or the Manual, BLM’s findings of non-suitability must be overturned.

C. Downgrading the Recommendation for the Dirty Devil River from Suitable to Not Suitable Violates the WSRA and BLM Manual 8351

In violation of the WSRA and BLM Manual 8351, BLM downgraded the eligible segments of the Dirty Devil River from suitable in the DRMP to not suitable in the PRMP. PRMP at 2-108; Appendix A3-4; Appendix A20-6. *See* BLM Manual § 8351.32(C); 16 U.S.C. § 1273(b). The Dirty Devil River is a “nationally significant” river that is suitable for inclusion in the NWSRS for scenic, recreation, geologic, fish and wildlife, and cultural outstanding remarkable values. PRMP at Appendix A3-5 and A2-4. Appendices 2 and 3 of the Richfield PRMP provide compelling documentation as to why the Dirty Devil River should be recommended suitable. PRMP at Appendix A2-4, A3-4 to A3-6. Despite BLM’s enthusiastic and complimentary descriptions of the river’s outstanding remarkable values, BLM found the Dirty Devil River not suitable because “management prescriptions for other resources, resource uses, and special designations (i.e. WSAs, SRMAs, travel management, VRM Class II, oil and gas stipulations)” would supposedly protect the river’s outstanding remarkable values. Appendix A20-6. BLM’s justification is wrong; these other management prescriptions do not protect the Dirty Devil’s outstanding remarkable values, and BLM must recommend the river as suitable in order to protect its outstanding remarkable values as the WSRA and the Manual require. BLM Manual § 8351.32(C); 16 U.S.C. § 1273.

As discussed in subsection A. above, WSA status is not a substitute for a suitability recommendation. As discussed in subsection B. above, SRMAs, travel management, VRM Class II, and oil and gas stipulations are not a substitute for a determination of Wild and Scenic suitability. SRMAs are designated to provide recreation opportunities for users of different types (e.g. motorized, equestrian, biking, hiking, etc.) and have nothing to do with protecting outstanding remarkable values for eligible rivers. Although much of the eligible segment of the Dirty Devil River lies within the proposed Dirty Devil/Robber’s Roost SRMA, this designation will do nothing to protect the scenic, geologic, fish and wildlife, and cultural outstanding remarkable values of the River. Furthermore, a portion of the Dirty Devil is not even within the proposed SRMA. Likewise, travel management does not protect the Dirty Devil. In fact, BLM proposed to designate routes that provide off-road vehicle access very near the River, and some routes that even run adjacent to the river. *See* PRMP at Map 2-18 and Map 3-15. Although SUWA supports BLM’s decision to close a few dozen miles of routes that run adjacent to the Dirty Devil River, these closures are insufficient to protect the Dirty Devil’s outstanding remarkable values because BLM still proposes to leave the majority of the routes open to off-road vehicle travel. Travel near the river will directly harm the fish, wildlife, cultural, geologic, and scenic outstanding remarkable values at stake. VRM Class I and II designation only protects scenic resources, and does nothing to protect recreation, geologic, fish and wildlife, or cultural outstanding remarkable values. Nor do oil and gas stipulations protect the Dirty Devil’s outstanding remarkable values. Although most of the Dirty Devil River is either closed to leasing or open to leasing subject to major constraints, oil and gas stipulations have no impact on other activities

that impair outstanding remarkable values, including off-road vehicle travel and mining. *See* PRMP at Map 2-37. Thus, the management prescriptions that BLM relies on to protect the Dirty Devil entirely fail to protect the River and its outstanding remarkable values. The only method that will adequately protect this nationally significant river and its numerous, critical outstanding remarkable values is to recommend it as suitable for inclusion in the NWSRS.

Suitability determinations must be based upon the enumerated criteria listed in the BLM Manual and in the WSRA, namely land ownership and current uses in the area, reasonably foreseeable potential uses, the federal agency that administers the land, and the cost of acquiring land, manageability, and historical or existing rights. BLM Manual § 8351.33(A); 16 U.S.C. § 1275(a). In determining suitability for the Dirty Devil River, BLM considered factors beyond those enumerated in the WSRA and BLM Manual 8351, namely WSA status and the supposed protections of other management prescriptions. Because BLM considered factors beyond those specified above, BLM violated the WSRA and its own Manual. BLM Manual § 8351.33(A)(1)-(8); 16 U.S.C. § 1275(a). BLM's decision recommending the Dirty Devil not suitable must be overturned.

D. BLM Should Designate Additional Suitable Segments

PRMP Appendices 2 and 3, as well as the 2004 Eligibility Report, provide compelling documentation as to why additional stream segments, namely the tributaries of the Dirty Devil River, and Maidenwater Creek possess outstanding remarkable values and otherwise meet suitability requirements. Wild and Scenic Preliminary Eligibility and Tentative Classification Report, Feb. 2004 at 3-4, *hereinafter* "2004 Report"; 2004 Report at Appendix A2-4, A3-6 to A3-19, A3-23 to A3-25.

All of the eligible tributaries of the Dirty Devil should be designated suitable. These eligible segments include Beaver Wash Canyon, four forks of Robbers Roost, No Mans Canyon, Twin Corral Box Canyon, Larry Canyon, Sam's Mesa Box Canyon, and Happy Canyon. As discussed in Subsection A. above, the fact that the majority, or the entirety, of these segments lies with the Dirty Devil WSA is not a justification for finding these segments not suitable. 16 U.S.C. § 1275(a). *Cf.* PRMP at Appendix A3-6, A3-8, A3-11, A3-13, A3-15, A3-17. All of these tributaries possess outstanding remarkable values that must be protected. Indeed, these tributaries are a Mecca for slot canyoneering, backpacking and primitive recreation generally. Wild and Scenic River protection would be a complementary part of a management strategy to protect the outstanding remarkable values of these canyons.

All of the tributaries of the Dirty Devil meet the eligibility criteria because they are free-flowing and possess one or more outstanding remarkable values. 16 U.S.C. § 1273(b). Beaver Wash Canyon has important biological, scenic, and ecological outstanding remarkable values that must be protected. PRMP at Appendix A2-1, A3-7. Larry Canyon has outstanding scenery, recreation access, important perennial streams, critical habitat for

federally-listed and sensitive species like the Mexican spotted owl and Desert bighorn sheep, and related ecological values that must be protected. PRMP at Appendix A2-1, A3-8 to -9. No Mans Canyon has outstanding scenery, recreation, and cultural values. PRMP at Appendix A2-1, A3-11. The four forks of Robbers Roost have outstanding scenic, recreation, historic, and cultural values. PRMP at Appendix A2-2, A3-13. Sams Mesa Box Canyon and Twin Corral Box Canyon have outstanding scenery, wildlife and wildlife habitat for species including Mexican spotted owl and Desert bighorn sheep. PRMP at Appendix A2-2, A3-15, A3-17. The IMP will not adequately protect these segments. First, not all of these segments are entirely within WSAs, and thus do not receive the non-impairment protections that the IMP offers. PRMP at Map 3-15. And, as discussed in Subsection A. above, Wild and Scenic suitability protects different values than the IMP protects. BLM cannot use a factor that is not listed in the WSRA or the BLM Manual to determine that segments are not suitable. 16 U.S.C. § 1275(a); BLM Manual § 8351.33(A)(1)-(8). All of the eligible tributaries of the Dirty Devil River should be found suitable because the WSRA is the best and only way to adequately protect the identified outstanding remarkable values.

Maidenwater Creek possesses several outstanding remarkable values, namely scenic, recreational, geologic, fish and wildlife, and cultural values. BLM's justification that other management prescriptions, namely VRM Class II, and the identification of wilderness characteristics is insufficient to protect all of Maidenwater Creek's outstanding remarkable values. *See* Subsections A. and B. above. Although BLM states that a highway ROW and conflicts of ownership also preclude this segment from suitability, the ROW comprises only 100 feet out of four miles of the eligible segment, and thus, the current status of land ownership does not significantly interfere with the manageability of this segment. *Cf.* PRMP at A3-23 to -24. And, most of the other factors listed in the WSRA and the BLM Manual (e.g. manageability, interest by other agencies, estimated cost, etc.) point towards a recommendation for suitability. 16 U.S.C. § 1275(a); BLM Manual § 8351.33(A)(1)-(8). *See* PRMP at A3-23 to -25.

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

Maidenwater Creek and the tributaries of the Dirty Devil River should be designated suitable in order to better manage the ecosystems and protect watersheds of the planning area. BLM's justifications for not recommending these segments suitable are wrong; WSA status and other management prescriptions do not protect these streams and their outstanding remarkable values. BLM must recommend these river segments as suitable in order to protect their outstanding remarkable values and comply with WSRA and BLM Manual 8351. BLM Manual § 8351.32(C); 16 U.S.C. § 1273.

E. BLM Should Classify Additional Eligible Segments

SUWA supports the addition of Quitchupah Creek, the segment of the Fremont River from Capitol Reef National Park to Caineville Ditch Diversion, and Fish Creek as eligible in the PRMP. PRMP at Appendix A2-1 to -2. These segments were not originally found eligible in the 2004 Report, but new information regarding cultural resources, and coordination with the National Park Service provided assurance that these segments were eligible. 2004 Report at 8, 31; PRMP at Appendix A2-6, A2-8, A2-11, A2-12. However, SUWA disagrees with the non-eligible finding in the PRMP for Pine Creek, the segment of the Fremont River below Mill Meadow Dam, Happy Canyon, and Horseshoe Canyon, which were originally found eligible in the 2004 Report. PRMP at Appendix A2-5, A2-7 to -9; 2004 Report at 4.

The new information that Happy Canyon, Horseshoe Canyon, and the Fremont River Segment below Mill Meadow Dam are ephemeral is not sufficient justification to remove them from classification as eligible. *See* PRMP at Appendix A2-5, A2-7 to -9. The WSRA requires only that rivers be free-flowing, which means “existing or flowing in natural condition without impoundment.” 16 U.S.C. § 1286(b). There is no requirement in the WSRA that streams be perennial in order to be eligible. In fact, the BLM Manual states that river flows may be intermittent, seasonal, or interrupted, as long as rivers flow for more than a few days a year. BLM Manual § 8351 at 63. And BLM admits that “the volume of water flow need only be sufficient to sustain or complement the identified resource values—rivers with intermittent or non-perennial flows already exist within the national river system.” PRMP at 5-47 to -48. Perennial flow is not necessary to protect the scenic or geologic outstanding remarkable values of Horseshoe Canyon; nor are perennial flows necessary to protect the wildlife and recreation values of the Fremont River below Mill Meadow Dam; nor are perennial flows necessary to protect the scenic or recreation outstanding remarkable values of Happy Canyon. PRMP at Appendix A2-8; A2-2; A2-5. Furthermore, BLM must explain why this new information regarding stream flows did not come to light in the extensive 2004 Report, but only in the RMP phase. Designation of these streams as eligible would protect their identified outstanding remarkable values. Because Happy Canyon, the Fremont River below Mill Meadow Dam, and Horseshoe Canyon meet the definition of free-flowing, these streams are all be eligible in the PRMP.

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

In the 2004 Report, BLM found that 13 river segments totaling 155.5 miles were eligible for NWSRS inclusion. In the PRMP, BLM reduced these numbers and found that only twelve river segments totaling 135 miles were eligible. 2004 Report at 4-5; PRMP at Appendix A2-1 to -2. However, the PRMP does not clearly present the changes between the 2004 Report and the PRMP. In order to determine which river segments were originally found eligible in the 2004, but were found ineligible in the PRMP, the reader must flip back and forth between the two documents, and even then, it is not clear exactly

which streams comprise the reduction of 20.45 miles. NEPA and the BLM Manual require that BLM fully disclose, summarize, and circulate for public review and comment (i.e. *before* the ROD is issued) all data and information that it used to determine eligibility and suitability. BLM Manual § 8351.06(C); 42 U.S.C. § 4321 *et seq.*; *Robertson v. Methow Valley Citizens Council*, 490 U.S. at 349; *Inland Empire Public Lands Council v. U.S. Forest Serv.*, 88 F.3d 754, 757 (9th Cir. 1996). BLM fails to summarize in a meaningful, understandable way which river segments it determined were eligible in the 2004 Report but not the PRMP, and which river segments were not eligible in the 2004 Report but were eligible in the PRMP.

BLM should insert a table into the PRMP that explains the changes made between the eligibility study and the PRMP. This table should present a side-by-side comparison of all of the segments found eligible in the 2004 Report and their length, and all of the segments found eligible in the PRMP and their length. BLM must explicitly state which river segments comprised the 20.45 miles that were dropped from eligibility in the PRMP and why the classification of these segments changed from eligible to not eligible in the intervening years. BLM Manual § 8351.06(C); 42 U.S.C. § 4321 *et seq.*

XIII. Wilderness Study Areas and Lands with Wilderness Characteristics

A. Wilderness Study Area

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

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

H-8550-1.I.B.

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

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

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

Additional directives regarding management of ORVs in WSAs can be found in BLM's regulations, which require BLM to ensure that areas and trails for ORV use are located "to minimize damage to soil, watershed, vegetation, air, or other resources of the public lands, and *to prevent impairment of wilderness suitability.*" 43 C.F.R. § 8342.1(a)

(emphasis added). BLM is also obligated to close routes to ORV use if ORVs are causing or will cause considerable adverse effects on wilderness suitability. 43 C.F.R. § 8341.2.

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

Given the legal and policy framework set out above, BLM's decision to permit motorized use on so-called "inventoried ways" in WSAs, and, in fact, to *increase* the number of miles of WSA ways open to motorized use by 18 miles is arbitrary. *See* PRMP at 4-406 (41.5 miles of ways open to motorized use in the No Action alternative, and 59.5 miles of ways proposed to be open to motorized use in the Plan.). A review of Map 3-10 reveals that ways will be designated open to motor vehicle use in *all* of the WSAs in the RFO.²⁷ BLM proposes to open ways that are currently closed in the Little Rockies, Mt. Hillers, Mt. Ellen, Dirty Devil, Bull Mountain, Mt. Pennell and French Springs WSAs.²⁸

The PRMP fails to state a purpose and need for designating these 60 miles of ways as open to motor vehicle use, which must be compelling in light of the mandates of both the IMP and the ORV regulations to avoid damage to wilderness values from motorized use. As stated in Appendix N of the Monticello PRMP, designating "ways" as open to motor vehicle use *should be avoided*, and a "very reasonable and clear justification must be made for "ways" that BLM proposes to designate in WSAs." Monticello PRMP Appendix N, at 24 (emphasis added).

To the extent that BLM fully knows the location of inventoried ways in WSAs, SUWA disputes that BLM will follow the proposed action in the PRMP to "limit" use of these routes or "close them" in the event that "use and/or non-compliance are found through monitoring efforts to impair the area's suitability for wilderness designation." PRMP at 2-102. The PRMP fails to include a monitoring schedule for the "ways" that will be designated as open routes in the WSAs or clear standards or commitments to closure. Accordingly, the PRMP is neither preventing impairment of wilderness suitability nor

²⁷ The list of WSAs with designated "ways" shown in Table 2-19 for the PRMP is incorrect and misleading. The mileage in the PRMP column (44 miles) is not the mileage for the PRMP, but rather the mileage for the No Action alternative. The number of miles of ways designated in the PRMP is 59.5. PRMP at 4-06. The PRMP fails to disclose to the public the miles of ways in each WSA that BLM proposes to designate as open for motor vehicle use. In addition, the PRMP at 4-343 states that only 3 additional miles of ways would be open in WSAs in comparison with the current management (Alt. N). This is incorrect, as is clear from Table 4-55 at 4-405 - -406, which states correctly that 18 additional miles of ways would be open in the PRMP. The PRMP fails to provide accurate data and analyses to the public as required by NEPA. 40 C.F.R. §§ 1502.8 and 1500.1(b).

²⁸ To ascertain which ways currently closed BLM is proposing to open and officially designate as routes, one must go to Alt. N in the DRAFT RMP Route Inventory Maps, which shows closed ways in WSAs and then compare this map to PRMP Map 2-18. Table 4-55 in the PRMP is incorrect, as it directs the reader and decision-maker to Map 3-10 Proposed Route Inventory. This map does not indicate what ways are currently closed and what ways are currently open. The PRMP fails to provide accurate data and analyses to the public as required by NEPA. 40 C.F.R. §§ 1502.8 and 1500.1(b).

meeting the other requirement to protect wilderness character imposed by the IMP and the ORV regulations.

In addition, the PRMP fails to analyze and disclose any adverse effects to the wilderness resources from the designation of these “ways,” other than noting “[u]se of OHVs within WSAs could impact wilderness characteristics, however this use is mitigated by the IMP . . . but an additional 18 miles of ways would be designated as open to motor vehicle use, resulting in more potential impacts to wilderness characteristics than Alternatives N, C and D, but less than A.” *Id* at 4-408. Designating ways as open to motor vehicle use does not minimize impacts to wilderness suitability as required by the ORV regulations. The PRMP presents no documentation of the current appearance of either the closed or open ways, or evidence that current motorized use on these ways is not causing impairment to the WSAs. BLM’s decision to designate the currently open ways plus an *additional* 18 miles of ways (that are currently closed) as official routes is arbitrary and capricious.

BLM’s proposal to designate nearly 60 miles of ways in the WSAs will certainly encourage motorized use, and such use will eventually denude the trails of all vegetation. As vegetation is worn away and trails become linear swaths of sand and dirt, these trails will become a noticeable impact to the casual visitor and will affect the naturalness of the areas – which could deprive these WSAs of future wilderness designation. *See Southern Utah Wilderness Alliance*, 164 IBLA 33 (2004) (even ongoing use of existing motorized recreational routes can lead to more damage to other resources, especially as interest in an area increases).

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

IM 2000-096 directs WSAs be managed as Visual Resource Management (VRM) Class I. The object of VRM Class I is “to preserve the existing character of the landscape” and management is so that the “level of change to the characteristic landscape should be very low and must not attract attention” *See*, BLM official Visual Resource Management information website at: <http://www.blm.gov/nstc/VRM/vrmsys.html>. The PRMP provides that it will, pursuant to BLM policy (and presumably the IMP), manage WSAs as VRM Class I. *See* PRMP at 4-405.

Although SUWA supports BLM’s proposal to manage the WSAs as VRM Class I, other management decisions made in the PRMP do not reflect the protection that should be afforded to VRM Class I areas. Specifically, the designation of 59.5 miles of ways as open routes for motorized vehicles will encourage motorized use of these ways, decreasing vegetation in these ways, and thereby increasing the visual impact

of these ways in the various WSAs. Closing these ways to motor vehicle use would more fully comply with the stated goals of the IMP to make wilderness values paramount to other uses.

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

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

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

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

The PRMP's impacts discussion is limited to one statement: "Use of OHVs within WSAs could impact wilderness characteristics, however this use is mitigated by the IMP . . ." PRMP at 4-408. This statement is not an analysis. It is insufficient, both under the IMP and under NEPA, for BLM not to analyze all direct, indirect, and cumulative impacts that are likely to occur, including those explicitly listed in the IMP. BLM must take a hard look at the impacts of designated ways and ORV use in WSAs, and revise the PRMP to reflect this analysis.

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

The PRMP proposes to manage *fewer* WSA acres under the "closed" category, than the current management plan. *See* PRMP at 4-405 (187,000 acres closed under the No

Action alternative, and only 175,300 acres will be managed as closed under the PRMP).²⁹ Closure and restoration of all ways in WSAs is most consistent with the IMP and with protection of the other natural and cultural resources in the Richfield Field Office. As SUWA noted in its comments on the DRMP at 75, Alternatives C and D are most consistent with applicable standards for management of WSAs. The proposed plan fails to comply with the IMP and ORV regulations.

4. PRMP must Include an Alternative Designating new Wilderness Study Areas.

As discussed in SUWA's comments on the Richfield DRMP, BLM violated FLPMA and NEPA when it failed to consider and fully analyze an alternative that would designate new wilderness study areas pursuant to the agency's broad authority under 43 U.S.C. § 1712. *See* SUWA DRMP Comments at 19.

5. WSAs Should Not be Excluded from other Management Designations

In designating WSAs, the BLM has recognized that these areas have wilderness characteristics. If Congress releases WSAs from management, then such areas can and should be managed to protect these wilderness characteristics. The PRMP provides that if any of the WSAs are released from wilderness consideration by Congress, then the areas would be examined "on a case-by-case basis for consistency with the goals and objectives of the RMP decisions," but does not provide further specificity. PRMP at 2-104. This approach does not give sufficient consideration to protecting the wilderness characteristics of these areas.

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

²⁹ The PRMP fails to provide accurate data and analyses to the public as required by NEPA. 40 C.F.R. §§ 1502.8 and 1500.1(b). The PRMP contains contradictory and misleading statements regarding the management of WSAs. PRMP at 4-343 states that the WSA acreage designated as closed and limited is the same as the No Action alternative. However, the PRMP at 4-405 states that 187,000 acres are closed in the No Action, and 175,300 acres of WSA will be closed in the PRMP. In addition, Table 2-19 is incorrect – the information shown in the PRMP column is the acreage amounts for the No Action alternative. The PRMP fails to disclose which WSAs are proposed to be managed as closed and limited, and it fails to disclose that some currently closed WSAs would no longer be closed in the PRMP. The only way the public and decision-maker can ascertain this is to compare Off-Highway Vehicle Area Designations Map 2-12 with Map 2-14.

Office RMP and Supplement to the Vernal RMP, both of which provide for management of released WSAs to protect their wilderness characteristics. Supplement to Price RMP, p. 2-22; Supplement to Vernal RMP, p. 2-16). In responding to comments on the Moab PRMP, BLM has acknowledged that WSAs can have additional “layers” of management prescriptions to protect the wilderness and other resource values inherent in these areas:

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

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

The values protected by the WSA management prescriptions do not necessarily protect those values found relevant and important in ACEC evaluation, and vice versa. . . . The ACECs are evaluated and ranked on the presences and absence of the stated R&I values. None of these values include wilderness characteristics. Additionally, the management prescriptions for the ACECs are limited to the scope to protect the R&I values and the BLM maintains that the size of the ACEC areas is appropriate to the R&I values identified (emphasis added).

Moab PRMP Response to Comments at 121-9, sorted by Commentor,

Thus, in order to ensure ongoing protection of the wilderness characteristics in the WSAs, the PRMP should provide for the WSAs to be managed to protect wilderness characteristics in the event that all or part of any WSA is released by Congress.³⁰

³⁰ BLM notes that the BLM Manual states “ACEC designation shall not be used as a substitute for wilderness suitability recommendation.” PRMP Response to Comments at 224, sorted by Commentor. This may be correct. However, SUWA is not requesting that ACEC designation be used as a substitute for

B. Wilderness Character Areas

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

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

As SUWA explained in its comments on the Richfield DRMP, BLM should recognize the wide range of values associated with lands with wilderness character, including scenic values, recreation, wildlife habitat, riparian areas, and cultural resources, as well as manage for a balanced use of the lands and resources. See SUWA comments to the DRMP, at 22-24; see also 43 U.S.C. § 1711(a), § 1702(c), and § 1712.

1. PRMP Ignores Significant New Information Provided by SUWA

BLM’s failure to consider and/or the agency’s rejection of numerous SUWA-nominated wilderness character areas that were submitted to BLM during the planning process with supporting narrative, maps, photographs, and other information is arbitrary and capricious.

wilderness suitability recommendation, SUWA is merely requesting that BLM designate ACECs in areas that have wilderness characteristics, including WSAs, in order to protect those characteristics.

In *Oregon Natural Desert Association v. Rasmussen*, CV 05-1616-AS, Findings and Recommendations (D. Or. April 20, 2006); Order (D.Or. Dec. 12, 2006), the court found that BLM's failure to re-inventory lands for wilderness values and to consider the potential impact of decisions regarding management of a grazing allotment violated its obligations under NEPA and FLPMA, then enjoined any implementation of the decision until the agency re-inventoried the lands at issue and prepared an environmental document taking into account the impacts of its decisions on wilderness values. In *Oregon Natural Desert Association v. Rasumussen*, the district court found that BLM had violated NEPA by failing to consider significant new information on wilderness values and potential impacts on wilderness values, and had also failed to meet its obligations under FLPMA by failing to engage in a continuing inventory of wilderness values. It concluded:

The court finds BLM did not meet its obligation under NEPA simply by reviewing and critiquing [a local environmental group's] work product. *It was obligated under NEPA to consider whether there were changes in or additions to the wilderness values within the East-West Gulch, and whether the proposed action in that area might negatively impact those wilderness values, if they exist.* The court finds BLM did not meet that obligation by relying on the one-time inventory review conducted in 1992. *Such reliance is not consistent with its statutory obligation to engage in a continuing inventory so as to be current on changing conditions and wilderness values.* 43 U.S.C. § 1711(a).

BLM's issuance of the East-West Gulch Projects [environmental analysis] and the accompanying Finding of No Substantial Impact (FONSI) in the absence of current information on wilderness values was arbitrary and capricious, and, therefore, was in violation of NEPA and the [Administrative Procedure Act].

Id. (emphasis added).

Prior to the release of the DRMP, SUWA provided to the RFO detailed narratives, maps, and photographic documentation that demonstrated that the full extent of wilderness characteristics have yet been identified as required by 43 U.S.C. §1711(a) for the following areas/units: Bull Canyon, Bullfrog Creek, Cane Spring Desert, Dirty Devil-French Spring, Fiddler Butte, Flat Tops, Freemont Gorge, Horseshoe Canyon South, Jones Bench, Kingston Ridge, Labyrinth Canyon, Limestone Cliffs, Long Canyon, Mount Ellen-Blue Hills, Mount Hillers, Mount Pennell, Muddy Creek-Crack Canyon, Notom Bench, Phonolite Hill, Pole Canyon, Ragged Mountain, Red Desert, Rock Canyon, Rocky Ford, Sweetwater Reef, Wildcat Knolls, and Wild Horse Mesa wilderness character units.

BLM's "Evaluation of New Information Suggesting That an Area of Public Land has Wilderness Characteristics" (included in the administrative record located at the RFO)

addressed many, but not all of the previous shortcomings of the RFO's wilderness characteristics inventory. Most notably, SUWA provided new wilderness characteristics information demonstrating BLM used arbitrary boundaries for particular wilderness character areas, such as canyon rims, cliff bases, washes, straight and arbitrary section lines, and/or ½ or ¼ section lines. SUWA demonstrated that wilderness values extended beyond these boundaries to human-caused impacts.

Upon the release of the DRMP, SUWA again provided extensive comments and supplemental new information to BLM regarding non-WSA lands with wilderness character not yet identified by the agency. *See* SUWA comments to the DRMP and Exhibit D – Supplemental and New Information, attached to SUWA's comments to the DRMP. This supplemental and new information included narratives and site-specific information, detailed maps, and additional aerial photographs of many of the areas where BLM had yet to identify all or a portion of the lands with wilderness characteristics. SUWA submitted new information for the following areas: Bullfrog Canyon, Cane Spring Desert, Fiddler Butte, Freemont Gorge, Mount Ellen-Blue Hills, Mount Hillers, Mount Pennell, Muddy Creek-Crack Canyon, Ragged Mountain, Wildcat Knolls, South Sevier Plateau, North Sevier Plateau, Tushar Mountains, Aquarius Plateau, Thousand Lake Mountain, Wasatch Plateau, and Pahvant Range wilderness character units.

Throughout this planning process, SUWA has submitted significant new information documenting wilderness characteristics that are present within the RFO and errors in the agency's wilderness character inventories, but BLM has improperly and illegally ignored this vital data.

a. PRMP Failed to Consider Significant New Information Regarding Boundaries

One of the more common issues SUWA raised, and submitted corroborating evidence in support of, concerned BLM's erroneous use of a natural feature (i.e. ridge, cliff face), a section line, ½ section line, ¼ section line, or a "BLM-created" line across the natural landscape, as a wilderness characteristic boundary. As a result of these errors, BLM failed to include the full extent of BLM lands with naturalness and a wilderness resource.

An example of information provided by SUWA to BLM includes the Mount Ellen-Blue Hills wilderness character unit, where SUWA noted that the boundary used to separate lands having wilderness character and lands that lack wilderness character was a BLM-created line or straight section lines running across the natural landscape, rather than a legitimate human impact. BLM's use of these arbitrary boundaries excludes wilderness characteristics that are present to the west, including impressive scenic badlands and canyon systems east of Sandy Creek, all part of the larger wilderness character area, free of any significant human impacts. SUWA requested that BLM use the edge of the human disturbances near the Notom-Bullfrog Road, including a few cherry-stem exclusions, as the boundary for the wilderness characteristics area. SUWA submitted photographs of this area to support its narrative. BLM responded:

BLM has inventoried the lands in 1996 to 1999, evaluated proposals received during the planning process, and has fully identified wilderness resources which exist on any information for any area inventoried or evaluated. BLM will not reinventory lands inventoried in 1996 to 1999 or other evaluations further at this time.

PRMP Response to Public Comments at 227, sorted by Commentor.

BLM's response to SUWA's new information, which the agency used for several areas submitted by SUWA, essentially ignores SUWA's new information that included a detailed narrative, a supplemental map of the area in question detailing BLM's arbitrary section line and/or "created line" boundary (a feature that could not be located or identified on the ground). Rather than using this new information to ground-truth and assess the area for wilderness characteristics, BLM chose to disregard this new information and continue to rely on its flawed inventory data.

Another example of BLM essentially ignoring significant new information provided by SUWA concerns the Indian Springs Bench wilderness character unit. This isolated area was assessed as part of the larger BLM Mount Pennell wilderness character area, but due to a route and a pipeline, BLM dropped this area from the larger wilderness character unit. SUWA supplied BLM with new information during the RMP scoping process and again during the DRMP comment period that demonstrated that although the Indian Springs Bench area is not part of the larger Mount Pennell wilderness character area due to these impacts, the Indian Springs Bench area is greater than 5,000 acres and has wilderness characteristics and must be considered as a stand-alone wilderness character unit. Again, rather than using this new information to ground-truth and assess the Indian Spring Bench area, BLM decided not to reassess and update its erroneous wilderness character area determination:

The commentor submitted information on these areas. BLM made a determination on the wilderness characteristics for these areas. The determination is that these areas lack wilderness characteristics. The information was provided and is included in the administrative record.

BLM used this generic response for numerous areas where SUWA raised concerns and submitted new substantive information. See PRMP Response to Comments at 227-233, sorted by Commentor. In particular, BLM's employed this response for the following areas for which SUWA provided significant new information regarding boundaries and wilderness characteristics (the letter indicates SUWA's specific comment in the information submitted with its DRMP comments):

Cane Spring Desert Wilderness Character Unit: Comment A
Fiddler Butte Wilderness Character Unit: Comment A and B
Freemont Gorge Wilderness Character Unit: Comment A
Mount Ellen Wilderness Character Unit: Comment A
Mount Hillers Wilderness Character Unit; Comment A

Mount Pennell Wilderness Character Unit: Comment A
Muddy Creek Wilderness Character Unit” Comment A
Ragged Mountain Wilderness Character Unit: Comment A
Wildcat Knolls Wilderness Character Unit: Comment A and B

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

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

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

(quoting *Utah Wilderness Ass’n.*, 72 IBLA 125, 129 (1983)) (internal citations omitted). SUWA meets this standard in regard to the Richfield PRMP because SUWA has demonstrated that not only did BLM arbitrarily draw *ad hoc* boundaries using natural features, section lines, and/or BLM-created lines, but also that these decisions had a real and immediate effect on BLM’s conclusion that hundreds of thousands of acres of public lands documented by SUWA and listed above, lack wilderness characteristics. If remanded to the Richfield Field Office, with instructions to reevaluate the areas found not to have wilderness character, it is likely BLM would determine that the areas do retain their wilderness character.

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

As explained in SUWA’s comments on the Richfield DRMP, BLM’s outright rejection of SUWA-nominated wilderness character areas that are contiguous with roadless areas managed by the U.S. Forest Service or the National Park Service (combined lands over 5,000 acres) is arbitrary. See SUWA DRMP comment – Exhibit D. As noted in

SUWA's DRMP comments, the Wilderness Act does not preclude BLM from considering lands outside of its jurisdiction to calculate a 5,000 acre unit. In its response to comments, however, BLM continues to insist that it will not consider areas less than 5,000 acres if they are not contiguous with roadless lands that are "administratively endorsed" for wilderness by another agency. *See* PRMP Response to Comments at 229-234, sorted by Commentor.

However, as noted in SUWA's DRMP comments and discussed above, the Bureau's Manual, Wilderness Inventory and Study Procedures (H-6310-1), from which this practice is derived was rescinded and the current guidance (IM 2003-275) does not contain a requirement for lands to be managed for their wilderness characteristics to comprise a unit of 5,000 acres. Therefore, this BLM wilderness inventory policy – that contiguous lands must be "administratively endorsed" for wilderness designation in order to permit the local field office to consider cumulative areas with wilderness characteristics – is no longer valid. *See* SUWA's DRMP Comments at 27. BLM wilderness character review should be based on the Wilderness Act and FLPMA, neither of which contain any requirement that adjacent agency lands must be "administratively endorsed for wilderness" in order to permit BLM to find wilderness characteristics in areas less than 5,000 that are adjacent to roadless lands managed by other federal agencies.

BLM's current guidance for such situations must rely exclusively on the Wilderness Act and FLPMA, neither of which contain any requirements that adjacent agency lands must be "administratively endorsed for wilderness" in order to permit cumulative review. Section 2(c)(3) of the Wilderness Act states that an area meets the size definition by having "at least five thousand acres of land or is of sufficient size to make practicable its preservation and use in an unimpaired condition." Further, FLPMA directs the BLM to inventory its landscape for wilderness character. Section 603(c) mandates that the BLM inventory "those roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 201(a) of this Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964."

SUWA provided information to the RFO for each BLM area and larger area of public lands (which included BLM parcels), where naturalness and opportunities for solitude and/or a primitive recreational activity is present. *See* SUWA DRMP comments – Exhibit D. The areas retaining wilderness characteristics the RFO arbitrarily rejected due to an improper determination that they were of insufficient size are listed below:

- Cane Spring Desert Comment A
- South Sevier Plateau Parcel 1
- North Sevier Plateau Parcels 1-20
- Tushar Mountains Parcels 1-7
- Aquarius Plateau Parcels 1-14
- Thousand Lake Mountain Parcels 1-5
- Wasatch Plateau Parcels 1-5
- Pahvant Range Parcels 1-4

BLM must revisit each of these proposed wilderness units and consider whether standing alone they have the requisite attributes to be wilderness character areas of less than 5,000 acres and whether together with adjacent public lands – administratively endorsed or not – they constitute 5,000 acres of wilderness quality lands, identified as required by 43 U.S.C. §1711(a).

3. Proposed Management of Wilderness Character Lands Does Not Provide Sufficient Protection and BLM Must take a Hard Look at the Impacts

The PRMP states that 78,600 acres out of 682,600 acres identified as having wilderness characteristics will be managed to “*protect, preserve and maintain* their wilderness characteristics” (emphasis added). PRMP at 4-231 BLM acknowledges that “[t]he presence and noise of vehicles using these routes, however, would reduce visitors’ opportunity to find solitude in these areas, especially in proximity to the routes. . . . Motorized uses would conflict with primitive and unconfined recreation opportunities sought in these non-WSA areas” PRMP at 4-271 – 4-272. Nevertheless, BLM proposes to designate 429.2 miles ORV routes in identified non-WSA lands with wilderness characteristics, including 25.1 miles of route in areas BLM is purporting to manage to “protect and preserve” their wilderness characteristics. See PRMP at 4-230, 4-271-72, Map 2-18, Map 3-9-D. BLM contends that “[l]imiting OHV use [to designated routes would] result[] in no additional change to the natural character of the non-WSA lands,” even though “motor vehicles would be allowed to pull off of a designated route as far as 50 feet to either side . . . (for parking/staging) . . . would be allowed to use existing spur routes for ingress and egress to established campsites within 150 feet of the centerline of designed routes . . .” *Id.* The PRMP concludes that these parking, camping and spur route uses would “confi[n]e the area in which soil and vegetation disturbance would occur, resulting in limited change to the natural character of the non-WSA lands. *Id.*

If, in fact, BLM’s statements were accurate, then any route, no matter the extent of vehicle use would retain natural values and thus, be included within the non-WSA lands with wilderness character. Obviously, that is not the case. Vehicle use on routes leads to a visual impact on the naturalness of the area, which is described in the Wilderness Act meaning affected primarily by the forces of nature and “ . . . the imprint of man’s work [is] substantially unnoticeable.” 16 U.S.C. § 1131(c)(1).

Clearly, not designating routes in wilderness character areas—especially the areas BLM proposes to manage to “protect and preserve wilderness characteristics”—would minimize impacts from ORV use on wilderness characteristics, based on BLM’s own acknowledgement that motorized uses impact opportunities for both solitude and primitive recreation. BLM must take a hard look and analyze the loss or the potential loss of naturalness due to the increased ORV use on these routes. In addition, the agency must analyze and disclose the impacts to resources from motor vehicles driving 50 feet off route on either side of the designated routes and 150 feet off of the routes to look for campsites. BLM must revise the PRMP to accurately reflect the impacts to all of the

wilderness character lands from route designations within these areas, including the parking and camping provisions.

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

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

XIV. Visual Resources

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

BLM utilizes visual resource inventories during the RMP process to establish management objectives, organized into four classes. These objectives are as binding as any other resource objectives contained in the RMP. *See Southern Utah Wilderness Alliance*, 144 IBLA 70, 84 (1998). BLM may not permit any actions that fail to comply with these objectives and “[p]roposed activities that could not be mitigated [can] not be authorized.” PRMP at 4-115.

These statutory and regulatory responsibilities are especially important to the areas managed by the Richfield Field Office, which includes lands world famous for their scenic vistas. BLM should establish Visual Resource Management (VRM) objectives that limit surface disturbance within these special viewsheds.

All WSA lands and non-WSA lands managed for wilderness characteristics should be managed as Class I, and other non-WSA lands with wilderness characteristics, such as those contained in the proposed America’s Red Rock Wilderness Act, should be managed as Class II. BLM guidelines for assigning VRM Classes clearly states that “Class I is assigned to those areas where a management decision has been made previously to maintain a natural landscape. This includes areas such as national wilderness areas . . . and other congressionally and administratively designated areas where decisions have been made to preserve a natural landscape.” BLM, BLM Manual 8410 – Visual Resource Inventory at V(A)(1).

Lands with popular and easily accessible vantage points should be managed for visual resources, such as VRM Class II, to “retain the existing character of the landscape,” including clear provisions dealing with oil and gas development and other human disturbance. Indeed, the BLM guidelines for assigning VRM Classes includes distance zones as one of the three factors considered when assigning VRM Classes. BLM, BLM Manual 8410 – Visual Resource Inventory at V(A)(1).

ACECs and other special management designations and prescriptions should be used to protect scenic landscapes and viewpoints within the resource area with stipulations specifically addressing and managing human development impacts, including VRM Class I to “preserve the existing character of the landscape” or VRM Class II to “retain the

existing character of the landscape” as appropriate. Without such classification assignments, the PRMP fails to protect the viewsheds in ACECs.

We commend BLM for upgrading 446,900 acres of WSAs to Class I, where the Richfield Field Office previously had no areas managed as Class I. We also commend BLM for designating 12 non-WSA lands with wilderness characteristic areas, covering 78,600 acres, as VRM Class II.

However, the Richfield Field Office failed to adequately protect the visual resources in its two ACECs. Comparing Map 2-3, Visual Resource Management Classes – Proposed RMP, and Map 2-45, Proposed RMP Areas of Critical Environmental Concern, it appears that most of North Caineville Mesa ACEC will be designated as VRM Class II and some of it will be designated as VRM Class III, and all of Old Woman Front ACEC will be designated as Class IV. Because Classes III and IV allow significant disturbance, they are improper classifications for areas within ACECs.

Also troublesome is the PRMP’s treatment of ROWs; the PRMP designates all ROWs as Class IV. PRMP at 2-21. The Richfield Field Office appears to be passing up the opportunity to require strong mitigations that would help preserve visual resources in areas with ROWs. The PRMP mandates that BLM, “[t]o the extent practicable, bring existing visual contrasts into VRM class conformance as the opportunity arises.” PRMP at 2-21. BLM should utilize the opportunity presented by ROWs to mitigate the impact of development on visual resources.

Further, aside from Class designation decisions that fail to adequately protect visual resources, there are several major deficiencies in how BLM conducted its analysis of visual resources in the RMP process. First, the visual resource inventory on which BLM’s visual resource management decisions are based is old and outdated. Most of the visual resource inventory was completed in the 1970s. PRMP at 3-47. *See also* PRMP Response to Comments, sorted by Category, at 10 (comment by Rosanne Runkel, National Park Service: “portions of the most recent VRI were developed no later than 1977;” BLM response: “Your comment is accurate, no new inventory was done for the VRI.”). BLM admits in the Richfield PRMP that the “[l]andscape and the visual resource conditions may have changed since” the last visual resource inventory was conducted three decades ago. PRMP at 4-115. Several commentors raised concerns about this problem in comments on the Draft RMP. Commentor Roxanne Runkel from the National Park Service commented: “the very foundation upon which decisions have been made . . . fails . . . because of their reliance on the” old visual resource inventory. *Id.* at 10. Commentor Gary Cukjati from the National Outdoor Leadership School commented: “The RFO should consider conducting a new viewshed inventory, which would significantly improve its ability to assess the existing quality and significance of viewsheds.” *Id.* at 230. Commentor Robert Emrich commented:

I would venture to guess that a lot has changed in the past 25-30 years and would question whether the VRI is consistent with FLPMA statements “current” and “maintain on a continuing basis.” The outdated lack of

information makes it impossible for the public to evaluate the proposed actions comprehensively. A current VRI is therefore needed for this plan to be properly evaluated.

Id. at 230–31. Commentor David Nimkin from the National Parks Conservation Association commented: “FLPMA requires the agency to keep these inventories reasonably up to date. BLM must conduct a comprehensive and current visual resource inventory and base the RMP’s impact analysis on this up-to-date inventory.” *Id.* at 229. The National Parks Service explained in their comments to the Draft RMP:

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

National Park Service, comments submitted to the Draft RMP, at 4.

Relying on an inventory conducted over three decades ago to make management decisions that will impact visual resources for the next several decades is arbitrary and capricious and violates FLPMA and NEPA. As many commentors pointed out, much has changed since the 1970s. NEPA requires BLM to understand the consequences of the decisions it makes during the RMP process. BLM cannot possibly fully understand the consequences of its visual resource management decisions without knowing the current conditions of the Field Office’s visual resources. BLM must conduct a new visual resources inventory to assess actual modern day conditions. Once BLM possesses such information, it can understand the real consequences of any future disturbance and can make new, informed visual resource management decisions.

Second, the PRMP does not provide sufficient information for the reader to understand BLM’s management decisions or the impacts they will have on visual resources. The PRMP does not explain which inventory classes the Richfield Field Office’s visual resources were inventoried as back in the 1970s, nor does it explain the inventory classes that accurately reflect current conditions. Because of this omission, the reader cannot

determine the relationship between the PRMP's visual resource management decisions and the Field Office's visual resources, as they currently exist.

Third, BLM failed to adequately respond to comments on the draft RMP. BLM received many comments about the inadequacy of the old visual resource inventory and BLM's inadequate protection of visual resources in its management decisions. BLM failed to adequately respond to both of these types of comments. In response to several comments about the old, outdated inventory, BLM responded: "The Draft/EIS uses the existing Visual Resource Inventory. The best available data was used in developing the Draft RMP/EIS." *See, e.g.*, PRMP Response to Comments, sorted by Category, at 229–31. The fact that BLM used the "best available data" does not address the problem. BLM's usage of an outdated, decades-old inventory to make management decisions is inappropriate. BLM must conduct a new visual resource inventory.

In response to comments about BLM's inadequate protection of visual resources, BLM repeatedly stated: "The Draft RMP/EIS considers a range of alternatives." *See, e.g.*, PRMP Response to Comments, sorted by Category, at 228, 230. Commentor Andrew Blair commented: "Fewer places in the US have the visual resource of Southern Utah. BLM should increase its protection for these resources for future generations." *Id.* at 228. Commentor Bonnie Mangold said the Richfield Field Office is an "area containing some of the most stunning visual resources in the world. . . . visitors do not come to see 'modified landscapes' *Id.* at 228. In response to these and other similar comments, BLM responded with the same statement about its consideration of a range of alternatives. This response fails to address the concerns raised in the comments or explain why BLM chose the alternative that it did. These commentors are concerned that BLM is not doing enough to protect its unique visual resources; BLM's response to these commentors failed to explain why BLM believes it is doing "enough."

XV. Habitat Fragmentation

A. BLM must not only conduct a thorough analysis of the impacts of habitat fragmentation, but also use this information to adopt a management alternative that properly mitigates these impacts.

We reiterate our comments on the Draft RMP that in order to comply with the requirements of NEPA to conduct a thorough analysis of impacts of the management alternatives and to facilitate meaningful public participation and review of the RMP/EIS, the BLM must thoroughly analyze the specific impacts of habitat fragmentation on affected species. The RFO's analysis of fragmentation is insufficient. There is a wealth of accepted and available scientific tools that can assist in adequately analyzing habitat fragmentation; BLM should take advantage of this knowledge and data on the impacts of motorized routes to develop and select appropriate desired conditions and management actions.

BLM must provide sufficient favorable habitat for the species on the public lands and take steps to reduce and mitigate fragmentation where possible, as part of its obligations under FLPMA and NEPA. The mitigation strategies listed in the PRMP, while good strategies, must be specific in order to reduce fragmentation and be considered as legally adequate bases for mitigating the impacts of other damaging activities. BLM must determine specifically how and when these strategies will be employed to ensure their use and effectiveness. Furthermore, without a fragmentation analysis that quantifies specific impacts, BLM cannot conclude that its proposed mitigation measures will be effective.

- 1. Requested Remedy:** BLM should perform a more detailed analysis of habitat fragmentation using the factors proposed in our comments on the Draft RMP. BLM should also make available maps of habitat fragmentation as the Vernal Field Office did during the planning process. Finally, BLM must incorporate the results of its habitat fragmentation analyses into reconsideration of the selected management approach and mitigation measures in the PRMP.

B. BLM should protect wildlife habitat and reduce fragmentation by managing more lands to protect wilderness characteristics.

The PRMP acknowledges the many benefits to wildlife, including special status species, from managing areas to maintain wilderness characteristics, including by reducing fragmentation. The management alternatives, including the Preferred Alternative, should include managing more lands outside WSAs to maintain wilderness characteristics based on the benefits to wildlife.

BLM identifies 435,700 acres that have wilderness characteristics, but proposes to manage only 78,600 acres to protect these values. This does not represent a balanced approach to land management. Furthermore, the PRMP designates over 450 miles of

routes in lands identified with wilderness characteristics and opens 79% of these lands to oil and gas development. BLM should take advantage of management prescriptions, such as designating lands with wilderness characteristics in order to reduce habitat fragmentation and its impacts on wildlife in the Richfield planning area.

Managing non-WSA land to maintain wilderness characteristics would generally benefit wildlife by reducing habitat degradation and fragmentation. The management of these areas would prohibit surface-disturbing activities in areas managed as NSO or closed. Management of non-WSA lands with wilderness characteristics currently includes limiting vehicles to designated roads, and designating as an Avoidance Area for ROWs. PRMP at A16-2. While these prescriptions include some additional protections for habitat, as discussed elsewhere in this protest, all lands with wilderness characteristics should be managed as closed to ORVs in order to truly protect their wilderness values, which would also maximize the benefits to wildlife habitat.

- 1. Requested Remedy:** The PRMP manage more lands outside of WSAs to protect wilderness characteristics, and manage those lands to limit damage from motorized use, thereby improving habitat and reducing fragmentation.