



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

**Cedar Fields Proposed Plan
Amendment / Final
Environmental Impact
Statement for the Monument
Resource Management Plan**

May 4, 2023

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Acronyms

<u>Term</u>	<u>Definition</u>
ADA	Americans with Disabilities Act
AFAD	American Falls Archaeological District
AIRFA	American Indian Religious Freedom Act
ATV	all-terrain vehicle
BEA	Bureau of Economic Analysis
BLM	Bureau of Land Management
BOR	Board of Regents
BRC	BlueRibbon Coalition
Cedar Fields Draft PA/DEIS	<i>Cedar Fields Draft Plan Amendment/Draft Environmental Impact Statement</i>
Cedar Fields Proposed RMPA/FEIS	<i>Cedar Fields Proposed Plan Amendment/Final Environmental Impact Statement for the Monument Resource Management Plan</i>
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
DEIS	Draft Environmental Impact Statement
EICC	East Idaho Climbers Coalition, Inc.
EIS	Environmental Impact Statement
EO	Executive Order
FEIS	Final Environmental Impact Statement
FLPMA	Federal Land Policy and Management Act of 1976
IDPR	Idaho Department of Parks and Recreation
MTP	Master Title Plats
NEPA	National Environmental Policy Act
NRHP	National Register of Historic Places
OHV	Off-Highway Vehicle
PA	Programmatic Agreement
RAC	Resource Advisory Council
Reclamation	U.S. Bureau of Reclamation
ROD	Record of Decision
ROW	right-of-way
SRMA	Special Recreation Management Area
U.S.C.	United States Code
USFS	U.S. Department of Agriculture Forest Service

Introduction

The Bureau of Land Management (BLM) Idaho Field Office released the *Cedar Fields Proposed Plan Amendment/Final Environmental Impact Statement for the Monument Resource Management Plan* (Cedar Fields Proposed RMPA/FEIS) on October 26, 2022. The BLM received 10 protest letters during the subsequent 30-day protest period.

The planning regulations at 43 Code of Federal Regulations (CFR) 1610.5–2 outline the requirements for filing a valid protest. The BLM evaluated all protest letters to determine which protest letters were complete and timely and which persons held standing to protest. Of the 10 letters received, four met these criteria. Five letters were dismissed from consideration due to lack of standing. One letter was dismissed because the author neglected to file a protest electronically via the BLM’s ePlanning website. Four of the letters had valid protest issues. The BLM documented the responses to the valid protest issues in this Protest Resolution Report. The decision for each protest was recorded in writing, along with the reasons for the decision.

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

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

Protesting Party Index

Letter Number	Protester	Organization	Determination
PP-ID-CF-EIS-22-01	Scott Astaldi	Individual	Dismissed – Standing
PP-ID-CF-EIS-22-02	Greg Collins	Individual	Dismissed – Standing
PP-ID-CF-EIS-22-03	Chuck Swenson	Individual	Dismissed – Standing
PP-ID-CF-EIS-22-04	Samuel Johnson	Individual	Dismissed – Standing
PP-ID-CF-EIS-22-05	Merlin Kulicke	Individual	Dismissed – Standing
PP-ID-CF-EIS-22-06	Thierry Legrain	East Idaho Climbers Coalition, Inc.	Denied
PP-ID-CF-EIS-22-07	Alex Ernst	Idaho Department of Parks and Recreation, Recreation Bureau	Denied
PP-ID-CF-EIS-22-08	Lisa Kuscu	Individual	Denied
PP-ID-CF-EIS-22-09	Ben Burr	BlueRibbon Coalition	Denied
PP-ID-CF-EIS-22-10	Ron Funk	Power County Board of Commissioners	Dismissed – Not a Valid Protest*

*Protest was submitted via email rather than to BLM’s ePlanning website, as required. It is therefore not a valid protest.

FPLMA – Consistency with Other Plans

East Idaho Climbers Coalition, Inc

Thierry Legrain

Issue Excerpt Text: Throughout the entire FEIS [1], statements (noted in references below) are made stating that designation of the SRMA shall continue to be in place and supports management practices. However, the Preferred Alternative, which removes the SRMA, is not supported by any documents or any text within the FEIS...A SRMA is an administrative unit where existing or proposed recreation opportunities are recognized for their unique value, importance, and/or distinctiveness, especially as compared to other areas used for recreation. BLM Handbook 8320-1 Planning For Recreation Services (2014). An SRMA is an area where special or more intensive types of recreation management are needed and greater investments for recreation management are anticipated due to the intensity of the use the area receives. BLM's planning regulations direct BLM Field Offices to use the SRMA designation to guide recreation management in areas where recreation is the primary focus.

East Idaho Climbers Coalition, Inc

Thierry Legrain

Issue Excerpt Text: The BLM's Preferred Alternative is to close all climbing routes on federal land. Closing ALL federal land to climbing is inconsistent with Executive Order 13007 cited by the BLM sites [1]. Section 1.2.iii of this EO [5] states that the site must be "specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe". The BOR's Condition Assessment [6, p. 45] states that "Reclamation cannot allow 'exclusive use' of its land [...] per Subpart B of 43 CFR Part 423". The BLM states that the decision to consider the AFAD as one site was decided upon in verbal communications, thereby justifying a blanket closure to all climbing. A specific number of cultural sites and site locations have been identified. Using the data/documents identifying the 158 archeological sites, it is evident that removing rock climbing from the AFAD will not in any ways protect those archeological sites. The BOR's Cultural Resources website states that "there are over 150 contributing sites that range from small prehistoric lithic scatters to larger features such as historic structures, representing homesteading or mining-related activities" [7]. These archeological sites are located at specific, discrete, and narrowly delineated locations within the AFAD. To draw a boundary that has NO specific definition outside of the AFAD (Project Area) and then defining the total area within (including the AFAD) to be closed to specific recreation is NOT mandated by definition of Executive Order 13007. To close recreational activities within the entire boundary of the "Project Area" is not defining sacred sites that are specific, discrete, and narrowly delineated. As stated in another study [8], 158 archeological sites located within the AFAD have been identified. However, federal land managers in other parts of the country apply Executive Order 13007 as it is intended - to identify specific locations, resulting in cooperation with all stakeholders to continue to allow access to public lands.

BlueRibbon Coalition

Ben Burr

Issue Excerpt Text: The Agency Should Recognize Equity Action Plan. The BLM failed to respond to concerns we raised regarding persons with disabilities. Because this DEIS relies on scoping feedback from 10 years ago, it has clearly missed numerous important developments in the policy landscape governing planning processes such as this...Historically there has been no group more greatly marginalized and excluded by public land management policies, and motorized travel management policies in particular, than people with disabilities. Outdoor enthusiasts with ambulatory disabilities frequently rely on motorized travel as their sole means to enjoy recreating on public lands. Not everyone has the ability to hike into a remote wilderness area, but many such

people are still able to drive Jeeps, side-by-sides, and ATVs, which are restricted to the designated motorized route network. It is also entirely possible that many of the Shoshone-Bannock tribal members who wish to access the sacred sites of the AFAD currently or will at some point suffer from mobility impairment disabilities. Because the elimination of motorized access from the AFAD would prevent disabled tribal members from accessing sacred sites, the motorized restrictions in Alternative 2 would likely be contrary to EO 13007, EO 13985, and AIRFA.

BlueRibbon Coalition

Ben Burr

Issue Excerpt Text: While the ADA focuses only on equality of opportunity, equity inherently focuses on equality of outcome. Any policy that is facially neutral but disproportionately harms a disadvantaged or marginalized group is considered inequitable. The BLM is therefore required by this executive order and others mandating that federal agencies consider "environmental justice" in NEPA proceedings to consider whether any route closures in the DEIS would disproportionately harm disabled users' ability to access public lands - especially disabled tribal members wishing to access sacred sites. Any approach to travel management that presumes the superiority of non-motorized forms of recreation like hiking over motorized recreation, or that justifies closing motorized access on the basis that people can still hike on those routes, is inherently discriminatory toward people with disabilities. Any large-scale closures of existing routes would unfairly and inequitably deprive people with disabilities of the ability to recreate in the area using the only means available to them. It is imperative that the BLM consider the access needs of disabled users, and it has failed to address them in the alternatives for this SEIS. This SEIS fails to comply with the Department of Interior Equity Action Plan.

BlueRibbon Coalition

Ben Burr

Issue Excerpt Text: By ignoring this serious concern BLM is choosing an alternative that is in violation of the Establishment Clause of Constitution. By choosing an alternative that privileges the spiritual and religious experiences of the Shoshone Bannock tribe over the spiritual and religious experiences of the other users of the area, BLM is adopting an alternative that is discriminatory.

BlueRibbon Coalition

Ben Burr

Issue Excerpt Text: The focus of this Executive Order is to ensure that tribal access to sacred sites is not denied. Nowhere does this order require the BLM to grant exclusionary or exclusive access to sacred sites, which is what will be the effect of adopting Alternative 2 of the DEIS. The accommodation of access is a very different standard than accommodation of exclusive access. This distinction is crucial because the accommodation of exclusive access to public land for one group for justifications that are decidedly religious is a violation of the Establishment Clause of the First Amendment to the Constitution. Alternative 2 emphasis on closure and restricting access to public-land users to accommodate the...Our comment referred to Establishment Clause concerns raised by granting exclusive access to the spiritual benefits of the area to the Shoshone/Bannock Tribes, while denying access to the same benefits to those who want to use the area for rock climbing. This is a discriminatory violation of the Establishment Clause, and BLM's response to this serious concern was to acknowledge the geographic boundaries of the AFAD.

BlueRibbon Coalition

Ben Burr

Issue Excerpt Text: These are the two most relevant passages of the DEIS that make it clear that BLM was adopting a landscape level restriction in order to exclusively accommodate the religious beliefs of a preferred religious belief system. In this case the BLM is exceeding its statutory

authority to adopt a discriminatory plan that violates the Establishment Clause. Additionally, BLM's violation of the Establishment Clause would be less severe if the agency had used secular reasons to justify its selection of Alternative 2. Section 4.2.1 makes it clear that the primary and only reason BLM is adopting Alternative 2 is to advance the preferential treatment of the spiritual benefits of the landscape for one group while disfavoring the spiritual interests of another group. The removal of climbing bolts and prohibition of rock climbing throughout most of the area is a desecration of the spiritual values of rock climbing and the significance of the area to climbing culture, history, traditions, and current belief systems.

Individual

Lisa Kuscu

Issue Excerpt Text: Furthermore, my spiritual values and sacredness of the rock as a climber are being ignored and one group is being favored based on the "landscape" values and "feelings" of one particular group, rather than tangible cultural resources. Furthermore, if the BLM is authentically trying to protect cultural resources, the presence and activities of cattle trampling the ground unquestionably and clearly violate cultural resources. Singling out climbing and OHV use is arbitrary and capricious and clearly violates the NEPA process.

Summary:

The Cedar Fields Proposed RMPA/FEIS is inconsistent with policies, plans, and programs of other Federal agencies and is therefore in violation of the Federal Land Policy and Management Act of 1976 (FLPMA). The Cedar Fields Proposed RMPA/FEIS is inconsistent with:

- BLM Handbook 8320-1, by removing the Cedar Fields Special Recreation Management Area (SRMA) designation in areas where recreation opportunities are the primary focus;
- The Executive Order (EO) on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (EO 13985), the American Indian Religious Freedom Act (AIRFA), and the EO on Indian Sacred Sites Act (EO 13007) by its elimination of motorized access from the American Falls Archaeological District (AFAD);
- The Department of Interior Equity Action Plan and the Americans with Disabilities Act (ADA) by unfairly and inequitably depriving people with disabilities of the ability to recreate; and
- The Establishment Clause of the First Amendment of the Constitution by favoring the religious beliefs of tribal groups over the interests of climbers and Off-Highway Vehicle (OHV) users.

Response:

Section 202 (c)(9) of FLPMA requires that "land use plans of the Secretary under this section shall be consistent with state and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act." However, BLM land use plans may be inconsistent with state, local, and tribal plans where it is necessary to meet the purposes, policies, and programs associated with implementing FLPMA and other Federal laws and regulations applicable to public lands (43 CFR 1610.3-2(a)). In accordance with this direction, the BLM has given consideration to state, local, and other Federal plans that are germane to the development of the Cedar Fields Proposed RMPA/FEIS.

Sections 1.4 and 1.5 of the Cedar Fields Proposed RMPA/FEIS discuss how the BLM considered applicable laws, regulations, programmatic documents, and implementation plans in the preparation of the document (Cedar Fields Proposed RMPA/FEIS, pp. 13–16). The BLM will discuss why any remaining inconsistencies between the Cedar Fields Proposed RMPA/FEIS and relevant local, state, and tribal plans cannot be resolved in the Record of Decision (ROD).

The BLM designates recreation management areas, including SRMAs, based on recreational demands and issues, recreational setting characteristics, resolving use/user conflicts, compatibility with other resource uses, and resource protection needs. There is no requirement for the BLM to designate lands as recreation management areas (BLM Handbook 8320-1, p. I-7). An SRMA is an administrative unit where recreational opportunities and recreational setting characteristics are recognized for their unique value, importance, or distinctiveness, especially as compared to other areas used for recreation. An SRMA is an area where special or more intensive types of recreation management are needed and greater investments for recreation management are anticipated due to the intensity of the recreational use the area receives. The proposed management for the Cedar Fields SRMA in the proposed amendment addresses the need to protect cultural resources in the area and, although recreational opportunities and the recreational value of this planning area remain, the BLM has determined that the Cedar Fields SRMA area no longer has the recreational characteristics or expected intensity of recreational use for designation as an SRMA described in the BLM's policy. Therefore, management actions to remove the SRMA in the Preferred Alternative the Cedar Fields Proposed RMPA/FEIS are consistent with BLM Handbook 8320-1 guidance for recreation management area designation.

EO 13007 does not mandate or address the eligibility of sacred sites to the National Register of Historic Places (NRHP). A *sacred site* or *sacred land* means any space, including an archaeological site, of ritual or traditional significance in the culture and religion of Native Americans that is listed or eligible for listing on the NRHP (16 United States Code [U.S.C.] 470a, as amended) or the State Register of Historic Places defined in 16 U.S.C. section 10-410, including, but not limited to: marked and unmarked human burials, burial areas, and cemeteries; monumental geological or natural features with sacred meaning or a meaning central to a group's oral traditions; sites of ceremonial structures, including sweat lodges; rock art sites; and sites of great historical significance to a tribe native to this state. Because the AFAD contains many of these features, the entire district is appropriately classified as a sacred area. Therefore, the closure of climbing in the AFAD is consistent with EO 13007.

The programs and facilities of Federal agencies, including the BLM, are not governed by the ADA, except for the section that applies to Federal wilderness areas (ADA of 1990, Title V § 12207, *Federal Wilderness Areas*). Accessibility laws and regulations do not change or infringe on the resource having priority status under those sites that the U.S. Access Board's *Guidelines for Outdoor Developed Areas* governs, which includes tribal sacred sites where the physically undisturbed condition of the land is an important part of the sacred observance (U.S. Access Board's *Guidelines for Outdoor Developed Areas*, Condition for Exemption 4). Accessibility laws and regulations, including EO 13985, EO 13007, the *U.S. Department of Interior Equity Action Plan*, and the ADA, require equal treatment and access to recreational facilities, sites, and information. These laws do not grant or advocate, in any way, a special opportunity or exemption to persons with impairments and accessibility needs. Therefore, the Cedar Fields Proposed RMPA/FEIS is consistent with these accessibility laws and regulations.

The alternatives analyzed within the Cedar Fields Proposed RMPA/FEIS do not privilege the religious belief system of one user group over that of another. In fact, the Cedar Fields RMPA/FEIS did not consider or analyze the religious belief system of any user group. The BLM satisfied the purpose and function of the National Environmental Policy Act (NEPA) by considering relevant environmental information and informing the public of the decision-making process with respect to the project per 42 CFR, section 1500.1(a). The Cedar Fields Proposed RMPA/FEIS evaluated seven resource areas in detail in Sections 3.1, 3.2, 4.2, and 4.3, including Cultural Resources and Native American Rights and Interests, which appear tangentially relevant to this protest point (Cedar Fields Proposed RMPA/FEIS, pp. 36–43 and 73–94). In Cultural Resources Section 3.1, the BLM defined

cultural resources as “physical evidence or place of past human activity: site, object, landscape, structure; or a site, structure, landscape, object or natural feature of significance to a group of people traditionally associated with it” (Cedar Fields Proposed RMPA/FEIS, p. 36). The definition does not include a user group’s religion, nor is there a discussion of a particular religious belief system in Section 3.1 or 4.2 (Cedar Fields Proposed RMPA/FEIS, pp. 36–40 or 73–83). Instead, the BLM disclosed, discussed, and analyzed such things as cultural and historical time periods, people, locations, uses, and physical objects, such as archeological artifacts (Cedar Fields Proposed RMPA/FEIS, pp. 36–40 or 73–83).

Under Sections 3.2 and 4.3 (Cedar Fields Proposed RMPA/FEIS, pp. 40–43 and 84–94) pertaining to Native American Interests and Rights, again, the BLM’s focus is not on a user’s particular religious belief system, but instead on the fact that the agency must:

take into account the effects of [its] actions on Native American values, such as tribal treaty rights/trust resources, ethnographic resources, access to traditional use areas and/or religious/sacred sites, preservation of archaeological sites, the handling of NAGPRA (Native American Graves Protection and Repatriation Act) materials, and the maintenance of suitable habitat for subsistence species of importance to the Tribes (Cedar Fields Proposed RMPA/FEIS, p. 84).

The focus in Sections 3.2 and 4.3 (Cedar Fields Proposed RMPA/FEIS, pp. 40–43 and 84–94) is much the same as the Cultural Resources section, with an emphasis on ethnography and a discussion of treaty rights and trust obligations. These sections do not consider or analyze religious belief systems. Instead, the BLM discloses in the Cedar Fields Proposed RMPA/FEIS that the tribes consider the AFAD to be sacred and that traditional religious ceremonies have been performed in the area as part of the tribes’ culture. Although the history and value of the area is described in religious terms, that does not imply that the area’s historical or cultural significance is based on a religious belief system, nor does it diminish the area’s historical, cultural, and archaeological significance. Furthermore, this situation also does not mean that proposing to close an area to certain types of recreation to protect archeological, historical, and cultural resources implies an endorsement of a particular religious belief system of one group over another.

Although the Cedar Fields Proposed RMPA/FEIS does not have a religious purpose nor endorse a particular religious belief system, the Establishment Clause of the First Amendment does allow for time, place, and manner restrictions. As stated in the BLM’s response to protest issues related to *NEPA – Range of Alternatives* (p. 11, below), the BLM’s analysis of each of the alternatives within the Cedar Fields Proposed RMPA/FEIS demonstrated that the BLM fully considered a reasonable range of alternatives that varied in: (1) degrees of protection for each resource and use; (2) approaches to management for each resource and use; and (3) mixes of allowable, conditional, and prohibited uses in various geographic areas. None of the alternatives analyzed within the Cedar Fields Proposed RMPA/FEIS provide any user group, including the tribes, with exclusive use or access to the project area (Cedar Fields Proposed RMPA/FEIS, pp. 47–55). The AFAD would still be open to all members of the public for hiking, camping, fishing, hunting, and other nonmotorized uses. Moreover, none of the alternatives analyzed within the Cedar Fields Proposed RMPA/FEIS privilege the religious belief system of one group over that of another. Therefore, to the extent the Establishment Clause is even relevant, the Cedar Fields Proposed RMPA/FEIS is consistent with the clause (U.S. Const., Amend. I).

The BLM discloses potential impacts from livestock grazing on cultural resources in Section 4.2 of the Cedar Fields Proposed RMPA/FEIS (Cedar Fields Proposed RMPA/FEIS, pp. 73–83). As discussed in that section, potential effects on cultural resources can include trampling of cultural sites in high-congregation areas, such as near a water source. Under Alternative 2, installation of a border fence between the AFAD lands and the Snake River would relieve adverse effects on cultural

resource sites within congregation areas near the river. The BLM complied with NEPA's requirement to analyze the environmental impacts from livestock grazing in the Cedar Fields Proposed RMPA/FEIS.

The BLM satisfied FLPMA's consistency requirement and is consistent with the other laws the protest identified in preparation of the Cedar Fields Proposed RMPA/FEIS. Therefore, these protests are denied.

NEPA – Impacts Analysis – Socioeconomics

Individual

Lisa Kuscu

Issue Excerpt Text: The original DEIS issued in 2013 (DOI-BLM-ID-T020-2013-0029-EIS) has not been updated in terms of socioeconomic impacts to the local economy. Section 4.8.2, page 126 states that "The total dollar impact per year would be a reduction of approximately \$21,000 in regional recreation spending. There would also be a loss of approximately 0.3 jobs within the travel and tourism industry in the region." However, in Section 4.7.2, page 136 of the 2013 DEIS (DOI-BLM-ID-T020-2013-0029-EIS), it is stated that "The total dollar impact per year would be a reduction of approximately \$21,000 in regional recreation spending. There would also be a loss of approximately 0.3 jobs within the travel and tourism industry in the region.", which is verbatim from the 2022 FEIS. Clearly, the economic impact estimate of potential regional recreation spending has not been updated. The recreation and tourism industry is reported by the USFS, another federal agency, to be in the billions of dollars per year. Per the USFS, in 2020, the industry brought in \$13.5 billion and creates economic opportunities in rural America, particularly where public lands exist with recreational opportunities (<https://www.fs.usda.gov/features/recreation-makes-healthy-economies>). Significant change in the recreational and tourism has occurred since the Covid-19 pandemic. NEPA Section 1501.10. establishes time limits for the NEPA process. "Environmental impact statements within 2 years unless a senior agency official of the lead agency approves a longer period in writing and establishes a new time limit. Two years is measured from the date of the issuance of the notice of intent to the date a record of decision is signed." The issue of the age of the scoping document was brought up in my public comments and in public meetings in 2021. BLM needs to provide an updated and realistic impact to Power and Bannock Counties as a result of closure of 3,846 acres of public land.

BlueRibbon Coalition

Ben Burr

Issue Excerpt Text: The socioeconomic analysis of the DEIS failed to acknowledge the direct financial impact that will occur to organizations like ours if the agency were to adopt the preferred alternative. The BLM provided the following response: The preferred alternative retains and enhances numerous recreational opportunities Blue Ribbon Coalition members. Opportunities for climbing and OHV recreation exist within the project area outside of the District boundaries. The preferred alternative retains numerous climbing opportunities on Idaho State lands within the project area and designates a 1/4 mile cliff face on BLM land for climbing. It increases access for other types of solitude-based recreation seekers while protecting the District cultural resource. Because these alternative locations and enhancements exist, minimal economic impacts could be anticipated. There was not adequate socioeconomic analysis. The Bureau of Economic Analysis (BEA) released 2021 data showing outdoor recreation generated \$862 billion in economic output and 4.5 million jobs. The BLM's response didn't reflect the massive influence outdoor recreation has on the economy. It also relied on economic data from the scoping period, which doesn't account for a decade of explosive growth in the outdoor recreation industry.

Summary:

The Cedar Fields Proposed RMPA/FEIS failed to adequately analyze socioeconomic impacts from proposed recreation management actions by using out-of-date recreation and tourism information obtained during scoping that is more than 10 years old.

Response:

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

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

A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative, rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan-level decisions.

Section 4.8 of the Cedar Fields Proposed RMPA/FEIS addresses socioeconomic impacts from each of the alternatives, including the economic impact of a potential reduction in regional recreation spending under the Preferred Alternative (Cedar Fields Proposed RMPA/FEIS, pp. 124–128). As stated in that Section, although the Proposed Amendment would remove recreational opportunities in AFAD, local expenditures by recreation users would remain unchanged because most recreational activities would shift to other locations within the region, and expenditures by people from outside of the region of economic analysis would cease. The impact on the regional economy would be small (Cedar Fields Proposed RMPA/FEIS, pp. 124–128).

The BLM has reviewed the scoping comments and coordination with the state, local, and tribal governments that occurred during the planning process for the Cedar Fields Proposed RMPA/FEIS. The BLM consulted with the tribes, Cooperating Agencies, and the Twin Falls Resource Advisory Council (RAC) in 2017 through 2018 to determine whether conditions in the Planning Area had changed to the extent that the issues identified during the scoping process were no longer accurate. Consultation consisted of numerous meetings, presentations, and communication via email, all of which are documented in the project record for the Cedar Fields Proposed RMPA/FEIS. Notable revisions included: clarification of which reservations occur in the study area; removal of specifically identifying which tribal lands are not included in the land ownership statistics; and edits to analysis for Bannock County. Following consultation, the BLM determined that the issues raised during scoping for the Cedar Fields Proposed RMPA/FEIS were still valid, and more recent scoping information would not result in effects beyond those already discussed within the analysis. The affected environmental and impact analyses have been updated with best-available information.

Additionally, the Cedar Fields Draft EIS was released in 2021, not in 2013, as a protestor suggested, and the socioeconomic data did not rely solely on scoping information from 2013. The analysis in the socioeconomic sections of the Draft and Final EIS (Cedar Fields Proposed RMPA/FEIS, pp. 56–71 and 124–128) relied on the best-available information in its analysis, including IMPLAN modeling, using the most up-to-date data from the U.S. Department of Commerce, the Bureau of Economic Analysis, the Census Bureau, and other data sources (Cedar Fields Proposed RMPA/FEIS, p. 64).

Assumptions used in the modeling are provided in the Cedar Fields Proposed RMPA/FEIS on pages 65–66, including that all spending amounts were estimated in 2017 dollars using 2015 data because 2015 data was the most-recent data year available. Furthermore, this issue of outdated socioeconomic data was raised previously in the planning process and, therefore, is not a valid protest issue. As provided in BLM WO IM 2008-186, *Revised Land Use Plan Process*,

Concerns that have not been raised previously in the planning process... will be identified as comments rather than valid protest issues. Although they will be identified during the protest resolution process, comments will not result in any changes to the plan, nor will they be further analyzed as part of the protest resolution process.

Therefore, this issue is dismissed from analysis, and the BLM did use the best-available information in its socioeconomic analysis for the Cedar Fields Draft EIS and RMPA/FEIS.

The BLM relied on current information in preparation of the Cedar Fields Proposed RMPA/FEIS and complied with NEPA's requirement to analyze socioeconomic impacts. Accordingly, these protests are denied.

NEPA – Impacts Analysis

Individual

Lisa Kuscu

Issue Excerpt Text: Section 3.1, Page 39; Section 4.2, Page 73; Section 4.3.3, Page 121: BLM is using a flawed, biased, and statistically unsound study to falsely accuse climbers of doing damage to the environment and justifying closure to rock climbing. Paragraph 1 discusses a vegetation/ecological study performed by Henrikson, 2012 which unjustly and inaccurately accuses climbers of having an adverse effect on the environment. The paper's author is an archaeologist, not a biologist and is not qualified to perform a vegetation study. The study has been found by university biologists and statisticians to be flawed and statistically unsound and unreliable. Since the study was performed by a BLM archaeologist, employed by the BLM during the scoping of this EIS and for the purpose of this EIS, it is not an objective study, but is quite subjective. NEPA states the following in Section 1502.23 Methodology and Scientific Accuracy: "Agencies shall ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents. Agencies shall make use of reliable existing data and resources. Agencies may make use of any reliable data sources, such as remotely gathered information or statistical models. They shall identify any methodologies used and shall make explicit reference to the scientific and other sources relied upon for conclusions in the statement." This issue was previously raised in my public comments in the DEIS, in discussions with Ken Crane (BLM), and during the Power County public hearing in November 2021.

Individual

Lisa Kuscu

Issue Excerpt Text: The BLM needs to comply with NEPA and ensure professional and scientific integrity in drawing conclusions in this FEIS. The FEIS damages the perception of climbers everywhere with this information going on public record.

Individual

Lisa Kuscu

Issue Excerpt Text: Application of NEPA in a biased manner, targeting rock climbing and OHV use, to evaluate impacts on cultural resources and has not given "full and fair discussion of significant environmental impacts", per NEPA, particularly to the obvious impact of livestock grazing. BLM implies that grazing impacts and other uses are not addressed because the Tribes only

raised the issues of OHV use and rock climbing that "were determined to be causing an adverse impact to cultural resources" and the DEIS/FEIS "is the agencies attempt to resolve that adverse impact". If the objective is truly and authentically to protect cultural resources, then all uses of the public land must be considered by BLM, rather than reacting to one stakeholder's opinion that adverse impacts are occurring without any studies or data to back up the opinion. Per NEPA, Section 1502.1 Purpose of environmental impact statement of NEPA states "The primary purpose of an environmental impact statement prepared pursuant to section 102(2)(C) of NEPA is to ensure agencies consider the environmental impacts of their actions in decision making. It shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence environmental analyses. An environmental impact statement is a document that informs Federal agency decision making and the public. Furthermore, BLM entered this NEPA process to prove the Tribes opinion that rock climbing and OHV use cause damage to the environment. BLM's approach with a foregone conclusion violates NEPA regulations: Section 1502.2 Implementation (g) Environmental impact statements shall serve as the means of assessing the environmental, rather than justifying decisions already made.

East Idaho Climbers Coalition, Inc

Thierry Legrain

Issue Excerpt Text: Regarding the BLM's assertion that rock climbers are affecting the environment, the BLM uses inaccurate and false information to justify climbers are making an impact.... There is no evidence that standing or walking at climbing walls has caused damage. BLM's own data clearly shows there are insufficient climbers to cause damage in the project area. BLM is presenting the public and establishing guidelines/rules/restrictions based on false information. The EIS needs to be revisited to portray accurate information. As it stands, false information is being used to justify closure and restrict public access.

East Idaho Climbers Coalition, Inc

Thierry Legrain

Issue Excerpt Text: The BLM is falsely blaming climbers for destroying vegetation at "Play Pen" wall and that restoration is needed. In fact, "Play Pen" is a wall of low rock quality and is not popular; it is erosional forces that result in a lack of vegetation. There are many areas at Massacre Rocks that have never supported vegetation due to erosional forces. The BLM states they would like to introduce vegetation at a "Play Pen", however, Henrikson and Camp's 2015 [9] faulty study does not take into account natural environmental conditions. A valid vegetation study by a qualified biologist should occur, one in which does not falsely accuse one particular group of causing environmental and cultural resource impacts.

East Idaho Climbers Coalition, Inc.

Thierry Legrain

Issue Excerpt Text: BLM has claimed that sport climbing is causing de-vegetation at climbing walls and produced a report, Henrikson-Camp (2015) [9]. The EICC has repeatedly pointed out that this report is flawed; the statistics and conclusions are wrong. Idaho State University biologists and statisticians have also pointed out significant flaws in this Henrikson-Camp study. However, BLM dismisses these serious concerns, stating that they used "best available data" and "a published study". There is no information presented in the FEIS to support the assertion that "staging" at

climbing walls is causing de-vegetation at Massacre Rocks. This assertion is repeated throughout the FEIS and needs to be corrected as to not vilify the climbing community.

Summary:

The BLM has violated NEPA by not taking a “hard look” in its analysis of impacts from climbing and OHV use in the Cedar Fields Proposed RMPA/FEIS. The BLM failed to incorporate the best-available information and failed to adequately describe the information used in its analysis.

The Cedar Fields Proposed RMPA/FEIS failed to adequately analyze impacts from climbing and OHV use by relying on a vegetation/ecological study, which has been found to be statistically unreliable. Therefore, the analysis is flawed.

Response:

The Council on Environmental Quality’s (CEQ) regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)). NEPA regulations require the BLM to ensure “the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24).

The *BLM NEPA Handbook* also directs the BLM to “use the best available science to support NEPA analyses and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55). Under the BLM’s guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

The BLM incorporated several sources in its analysis of impacts on soils and vegetation from climbing. The peer reviewed citation, *Evaluating the Physical Effects of Rock Climbing on Archaeological Sites: A Case Study in Southern Idaho* (Camp and Henrikson 2015) is cited once in the Cedar Fields Proposed RMPA/FEIS, in Section 4.2, discussing potential impacts on cultural resources (Cedar Fields Proposed RMPA/FEIS, p. 73). The study notes that loss of vegetation because of climbing could potentially affect cultural resources due to impacts from soil instability, exposure, and trampling. Section 4.4 (Cedar Fields Proposed RMPA/FEIS, pp. 94–99) analyzes impacts on soils and vegetation from recreational use, including climbing, in detail. The Cedar Fields Proposed RMPA/FEIS includes a bibliography (Cedar Fields Proposed RMPA/FEIS, Appendix A), which lists information considered by the BLM in preparation of the Cedar Fields Proposed RMPA/FEIS, including from the Natural Resources Conservation Service’s 2022 Soil Survey (Cedar Fields Proposed RMPA/FEIS, p. 43; Appendix A, p. A-2).

The BLM reviewed the best information available during the planning process for the Cedar Fields Proposed RMPA/FEIS to determine if published information exists that is substantially different than the information considered and cited in the Cedar Fields Proposed RMPA/FEIS. Additionally, the protester does not cite or reference a technical study that would result in effects to vegetation that are different than what is already discussed in the Cedar Fields Proposed RMPA/FEIS. The BLM relied on high-quality information and best-available data in preparation of the Cedar Fields Proposed RMPA/FEIS, Appendix A). Accordingly, these protests are denied.

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

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

The Cedar Fields Proposed RMPA/FEIS thoroughly analyzes impacts on soils and vegetation from livestock grazing (Cedar Fields Proposed RMPA/FEIS, Section 4.4.1, pp. 95–96; Section 4.4.2, pp. 96–97; Section 4.4.3, pp. 97–98; Section 4.4.4, p. 98; Section 4.4.5, p. 99). The analysis within these sections adequately acknowledges impacts on soil and vegetation from grazing, including localized soil loss and vegetation disturbance. The Proposed Amendment includes implementation-level actions to retain a fire-protection fence and install gates in the existing U.S. Bureau of Reclamation (Reclamation)/BLM boundary fence. The analysis within the Cedar Fields Proposed RMPA/FEIS concluded that these actions would better control livestock and would therefore reduce the impact from livestock grazing on soils and vegetation (Cedar Fields Proposed RMPA/FEIS, Section 2.3, p. 22; Table 3, p. 34).

Section 4.4 of the Cedar Fields Proposed RMPA/FEIS addresses impacts on soils and vegetation from recreational uses, including climbing and OHV use (Cedar Fields Proposed RMPA/FEIS, Section 4.4.1, pp. 95–96; Section 4.4.2, pp. 96–97; Section 4.4.3, pp. 97–98; Section 4.4.4, p. 98; Section 4.4.5, p. 99). The BLM’s analysis within those sections concluded that impacts on soil and vegetation are expected to continue to be directly affected by unmanaged recreation through crushing and trampling as a result of OHV and pedestrian trailing. By closing the AFAD under the BLM’s Preferred Alternative, these impacts would be reduced.

The BLM adequately complied with NEPA’s requirement to analyze the environmental impacts on soils and vegetation from livestock grazing and recreational use in the Cedar Fields Proposed RMPA/FEIS. Accordingly, these protests are denied.

NEPA – Range of Alternatives

Individual

Lisa Kuscu

Issue Excerpt Text: BLM did not provide viable and reasonable alternatives even though the BLM presents five Alternatives in the DEIS, Alternatives 3-5 are immediately discounted in Chapter 4 of the DEIS as being inadequate to mitigate the adverse effects on the AFAD. As a result, Alternative 2 (the agency preferred alternative) is presented as the only viable alternative that meets the purpose and need of the project. The agency must present various alternatives that provide alternative means to accomplish the goal of the action. The fact that the agency has been unable to provide multiple alternatives that accomplish the goal signals a broader problem with the process. Per NEPA, Section 1502.1 Purpose of environmental impact statement of NEPA states "The primary purpose of an environmental impact statement prepared pursuant to section 102(2)(C) of NEPA is to ensure agencies consider the environmental impacts of their actions in decision making. It shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence environmental analyses. An environmental impact statement is a document that informs Federal agency decision making and the public. I protest the fact that the BLM misused the NEPA process to develop only one alternative, one that supports their foregone conclusion that only rock climbing

and OHV use cause an adverse effect on cultural resources. BLM states "It would be unreasonable and thus not required, to consider alternatives that do not meet the Purpose and Need for the Action." Chapter 4 of the DEIS makes it clear that Alternatives 3, 4, and 5 did not meet the purpose and need of the action. BLM has never produced or analyzed an alternative other than Alternative 2 that according to BLM would adequately satisfy the purpose and need of the action. Therefore the BLM has considered one alternative that meets the purpose and need and is therefore reasonable - Alternative 2 - and three alternatives that do not meet the purpose and need of the action and are therefore unreasonable - Alternatives 3,4, and 5.

Individual

Lisa Kuscu

Issue Excerpt Text: BLM used unreliable sources for reaching its conclusion to support Alternative 2. An adequate response would have been to address our concerns about the sources or to identify new and more reliable resources for justifying BLM's conclusion to support Alternative 2. By failing to adequately consider evidence that runs counter to the agency's preferred alternative, and relying on questionable resources, BLM made a decision that is arbitrary and capricious. We protest BLM's disregard of best available science. To the extent BLM relied on external sources of information to decide a final agency action, it only considered sources that validated its preferred alternative. This failure to consider all important aspects of the problem and the full range of evidence adds weight to our concern that BLM has failed to comply with NEPA by offering a fatally flawed set of alternatives that would result in the preferred alternative being the only acceptable alternative.

BlueRibbon Coalition

Ben Burr

Issue Excerpt Text: NEPA imposes a mandatory procedural duty on federal agencies to consider a reasonable range of alternatives to Preliminary Proposals or preferred alternatives analyzed during a NEPA process. We also shared this concern in Letter/Comment Number 20211110Burr_BRC_121-3: Even though the BLM does acknowledge 5 separate Alternatives in the DEIS, Alternatives 3-5 are immediately discounted in Chapter 4 of the DEIS as being inadequate to mitigate the adverse effects on the AFAD. As a result, Alternative 2 (the agency preferred alternative) is presented as the only viable alternative that meets the purpose and need of the project. The agency must present various alternatives that provide alternative means to accomplish the goal of the action. The fact that the agency has been unable to provide multiple alternatives that accomplish the goal signals a broader problem with the process... Chapter 4 of the DEIS makes it clear that Alternatives 3, 4, and 5 did not meet the purpose and need of the action. BLM didn't simply disclose why one alternative was preferred. BLM's analysis made it clear that Alternatives 3,4, and 5 were inadequate. BLM has never produced or analyzed an alternative other than Alternative 2 that according to BLM would adequately satisfy the purpose and need of the action. Therefore the BLM has considered one alternative that meets the purpose and need and is therefore reasonable - Alternative 2 - and three alternatives that do not meet the purpose and need of the action and are therefore unreasonable - Alternatives 3,4, and 5. By only including one viable alternative and three counterfeit alternatives, BLM has created a sham NEPA process that has been rigged from the start. Acknowledging resource and time constraints and the uncertainty of other management alternatives as a reason for not producing a range of actual reasonable alternatives reiterates the point the BRC and others have made that the BLM hasn't given this EIS appropriate time or attention even though it's been in process for over ten years. Stating BLM complied with statutory requirements of NEPA and FLPMA doesn't actually mean BLM complied with these statutes.

BlueRibbon Coalition**Ben Burr**

Issue Excerpt Text: BLM also failed to acknowledge in any substantive way the numerous sources we shared in Appendix A - Relevant Academic Research of BRC's November 9, 2021 comment. In Letter/Comment 20211110Burr_BRC_121-26 we stated the following: we have made the effort to emphasize our point that the BLM's preferred alternative to implement landscape scale management through this project for the stated purpose of privileging the religious belief system of one group of public land users is wholly problematic, contrary to statutory authorities, and unconstitutional. At the very least, BLM should develop at least one viable alternative that doesn't suffer from these deficiencies. The BLM made the following response: The BLM solicited and received a range of alternatives from EICC, Power County and the Twin Falls RAC that were analyzed in the EIS. Chapters 1 and 2 of the DEIS describe the scoping meetings and alternative development that took place. Section 2.7 describes several alternatives considered but eliminated from detailed analysis and the rationale. The DEIS demonstrates that BLM fully considered a reasonable range of alternatives. Unfortunately, even though BLM solicited and received a range of alternatives, it failed to analyze a viable alternative that didn't suffer from the statutory and constitutional deficiencies of Alternative 2.

Summary:

The BLM failed to analyze a reasonable range of alternatives as required by NEPA by:

- Analyzing only one alternative that is viable and meets the purpose and need;
- Analyzing three alternatives that did not meet the purpose and need, and failing to consider alternatives received during public comment that also did not meet the purpose and need; and
- Failing to analyze an alternative submitted by the public that does not privilege the religious belief systems of one group.

Response:

When preparing an EIS, NEPA requires an agency to rigorously explore and objectively evaluate all reasonable alternatives and, for alternatives that were eliminated from detailed study, to briefly discuss the reasons for their elimination (40 CFR 1502.14(a)). When there are potentially a very large number of alternatives, the BLM may only analyze a reasonable number to cover the full spectrum of alternatives (*BLM NEPA Handbook* H-1790-1, Section 6.6.1, quoting Question 1b, CEQ, *Forty Most Asked Questions Concerning CEQ's NEPA Regulations*, March 23, 1981). *Reasonable alternatives* include those that are practical or feasible from technical and economic standpoints and using common sense, rather than those simply desirable from the standpoint of the applicant (*BLM NEPA Handbook*, H-1790-1, at page 50 (citing Question 2a, CEQ, *Forty Most Asked Questions Concerning CEQ's NEPA Regulations*, March 23, 1981); see also 40 CFR § 1502.14).

As stated in Section 1.1 of the Cedar Fields Proposed RMPA/FEIS, the purpose of the amendment is to update management for the Project Area to make it consistent with current laws, regulations, and policies regarding recreational use, cultural resource management, and Native American Traditional Cultural Properties/sacred sites. The amendment is needed to address impacts from OHV use, rock climbing, and livestock congregation on the cultural resource sites and the Native American Traditional Cultural Properties/sacred sites located in the Project Area (Cedar Fields Proposed RMPA/FEIS, p. 5).

The BLM developed a reasonable range of alternatives that meet the above-stated purpose and need of the Cedar Fields Proposed RMPA/FEIS and that address resource issues identified during the

scoping period. Section 6.6.3 of the *BLM NEPA Handbook* provides criteria for eliminating alternatives from detailed analysis. Section 2.7 of the Cedar Fields Proposed RMPA/FEIS (p. 30) describes alternatives that were proposed by the public and considered, but ultimately eliminated from detailed study, and includes rationale as to why they were eliminated. Public and agency input received during the scoping process was taken into consideration during the development of the alternatives. The Cedar Fields Proposed RMPA/FEIS analyzed five alternatives, described in Chapter 2 (Cedar Fields Proposed RMPA/FEIS, pp. 18–35). The alternatives analyzed in the Cedar Fields Proposed RMPA/FEIS cover the full spectrum by varying in: (1) degrees of protection for each resource and use; (2) approaches to management for each resource and use; (3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and (4) levels and methods for restoration. Each alternative analyzed in detail the values of each resource, including the values of recreation. The analysis of each of these alternatives within the Cedar Fields Proposed RMPA/FEIS demonstrates that the BLM fully considered a reasonable range of alternatives to meet the purpose and need (Cedar Fields Proposed RMPA/FEIS, pp. 47–55). Therefore, these protests are denied.

The protester claims that the BLM did not evaluate an alternative submitted during the scoping period that equally considered the values of recreation with the values of livestock grazing and cultural resources. As stated in Chapter 2 of the Cedar Fields Proposed RMPA/FEIS, no OHV or climbing closures would be proposed under the No Action Alternative (Alternative 1). The Proposed Amendment (Alternative 2) includes management actions that close sensitive sites to OHV use and climbing in the AFAD, while still allowing climbing in other locations in the Planning Area (Cedar Fields Proposed RMPA/FEIS, p. 22). Alternatives 3 and 4 incorporate management actions that include only temporary closures of popular OHV and climbing areas to allow for revegetation (Cedar Fields Proposed RMPA/FEIS, pp. 24–26). Alternative 5 includes management actions to only allow traditional (i.e., non-bolted) climbing within the AFAD, while still allowing sport climbing and OHV use in other locations in the Planning Area (Cedar Fields Proposed RMPA/FEIS, p. 28). Therefore, the BLM did analyze, in detail, an alternative that equally considered the values of recreation with the values of cultural resources and livestock grazing, consistent with NEPA’s requirements.

Therefore, the BLM properly considered all alternatives submitted by the public, including the protester’s noted alternative that equally prioritizes recreational values and cultural values. Accordingly, these protests are denied.

NEPA – Response to Public Comments

East Idaho Climbers Coalition, Inc

Thierry Legrain

Issue Excerpt Text: The purpose of the draft EIS and the comments/answers initiated in 2021 were to address any issues/concerns not clearly addressed previously and incorporate those concerns/issues into the final EIS to provide a document that better addresses issues being addressed in the EIS. The BLM clearly states that over 400 comments were substantive comments [1, p. 7]. Over 207 comments were identified as “worthy” of being addressed in the FEIS APPENDIX B [2]. However, of those 207 comments, none were determined to be significant by the BLM to be implemented into the FEIS. The EICC disagrees with the BLM. Significant and specific comments were given “blanket answers” that did not address the specific issue stated in the comments. The same blanket response, verbatim, was given to several different questions of different content. This is clearly negligence by the BLM, and the EICC requests that these comments be addressed in a meaningful and comprehensive manner.

Idaho Department of Parks and Recreation***Thierry Legrain***

Issue Excerpt Text: IDPR submitted substantive commentary with supporting documentation in support of “Alternative 3: RAC,” dated November 8, 2021. However, we cannot find confirmation of BLM’s consideration of our input since Appendix B contains no reference to our commentary nor response to the issues presented in detail. A copy of the November 8, 2021 cover letter is attached to this Protest letter for reference. Notably in the November 8, 2021 letter, we cited proof of Power County’s ownership of a Right of Way (ROW) into the Project area. We assert that public motorized access would remain by public right on this ROW and recognize that the official designation of OHV routes proposed by RAC would require use of that ROW to make the connection from roads outside the Project area.

Individual***Lisa Kuscu***

Issue Excerpt Text: In response to public comments, BLM provided the same boilerplate answers to different questions. BLM did not provide meaningful answers to public input. BLM stated that many comments were not substantial and chose not to address them...I protest the fact that the public provided meaningful input, the BLM considered these questions to be substantive but failed to provide clear, concise, and meaningful answers to the public. This issue of BLM’s lack of meaningful response and ignoring meaningful comments is new since it has arisen per issuance of the FEIS.

Summary:

The BLM violated NEPA by failing to adequately respond to meaningful comments provided by the public during the *Cedar Fields Draft Plan Amendment/Draft Environmental Impact Statement* (Cedar Fields Draft PA/DEIS) public commenting period, including comments regarding Power County’s right-of-way (ROW) in the Project Area.

Response:

After preparing a DEIS and before preparing a FEIS, the BLM is required to request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected (40 CFR 1503.1). The BLM must assess and consider all comments received and respond to timely filed substantive comments by either: (1) modifying alternatives, including the proposed plan; (2) developing and evaluating alternatives not previously given serious consideration; (3) supplementing, improving, or modifying analysis; (4) making factual corrections; or (5) explaining why comments do not warrant further response (40 CFR 1503.4 and *BLM Handbook H-1601-1*, p. 23). Substantial changes to the proposed action or significant new information/circumstances collected during the comment period would require supplements to either the DEIS or FEIS (40 CFR 1502.9(c)).

In compliance with NEPA, the BLM considered all public comments submitted on the Cedar Fields Draft PA/DEIS. The BLM complied with 40 CFR 1503.4 by soliciting comments from the public and by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix B, *DEIS Comment Responses*, of the Cedar Fields Proposed RMPA/FEIS presents the BLM’s responses to all substantive comments. The BLM summarized the issues raised by each comment letter and provided a meaningful response. The BLM’s response identifies any modifications to the alternatives, improvements to the impacts analysis, or factual corrections made as a result of public comment. The BLM’s response also explains why certain public comments did not

warrant further agency response. The BLM is not required to provide a unique individual response for each comment submitted.

During the revisions to the Cedar Fields Draft PA/DEIS, BLM reviewed information submitted by the public during the draft public comment period. As noted in Appendix B, the BLM considered and incorporated additional data and resource information related, where appropriate. It is important for the public to understand that the BLM's comment response process does not treat public comments as if they were a vote for a particular action, because these comments are not substantive. *BLM Handbook H-1790-1* provides guidance in Section 6.9.2.1 regarding determining whether a comment is considered substantive. Appendix B also notes that the BLM responded to substantive public and cooperating agency comments in Table B-1; however, non-substantive comments are not included in that table (Cedar Fields Proposed RMPA/FEIS, p. B-1). The comment-response process simply ensures that every comment is considered at some point when preparing the Cedar Fields Proposed RMPA/FEIS.

The BLM considered the protester's noted comments regarding Power County's ownership of ROW into the project area. On December 20, 2021, the BLM Realty Specialist reviewed the Master Title Plats (MTP) that shows all ROWs and easements administered to and from the BLM to verify whether there was an easement administered to the BLM on old West Lake Channel Road across private property to the BLM. The MTP showed that there is not currently an easement administered to the BLM within this location (T. 9 S., R. 29 E., sec 4). On January 4, 2023, the BLM Realty Specialist reached out to Power County Highway District to inquire if the county had an easement across the private property in the section running from Lake Channel Road to the BLM parcel. Power County Highway District stated that the county had never relinquished the easement and that it is still in place. Because the BLM does not hold an easement across private lands in that area, public access cannot be guaranteed. The protestor's support for the Alternative 3, RAC Alternative, was noted. Non-substantive comments, such as support for a particular alternative, are not included in Appendix B of the Cedar Fields Proposed RMPA/FEIS, nor is there any requirement for the BLM to respond to comments that are not substantive. The BLM fully analyzed the RAC Alternative in the Cedar Fields Proposed RMPA/FEIS (Cedar Fields Proposed RMPA/FEIS, pp. 79–80, pp. 90–91, pp. 97–98, p. 101, pp. 122–123, pp. 126–127).

The BLM adequately considered and responded to public comments on the Cedar Fields Draft PA/DEIS; therefore, these protests are denied.

National Historic Preservation Act – Section 106 Consultation

BlueRibbon Coalition

Ben Burr

Issue Excerpt Text: It isn't clear to us why the consultation necessary for identifying appropriate mitigation measures wasn't completed during the 10 years since the scoping period. This negligence underlies our claim that this NEPA process is rigged and invalid. Had this consultation occurred, it is likely Alternative 3 could be taken more seriously. Instead of closing the approximately 9 miles of proposed designated routes in the project area, the BLM should perform the necessary consultation to mitigate impacts to the 14 recognized sites using the full range of conservation measures included in BLM Handbook 8140. The BLM provided the following response: The Bureau of Land Management (BLM) has the authority to grant or deny consulting party status to organizations and individuals pursuant to 36 CFR Part 800.2(c)(5). The BLM typically executes a Programmatic Agreement (PA) under 36 CFR 880.14(b)(1)(ii) when effects on historic properties cannot be fully determined prior to approval of an undertaking. A consulting party is an entity that has a demonstrated interest in an undertaking's effect on historic properties and may aid the agency

in developing methods to avoid or mitigate adverse effects to such properties through the development of a PA or other agreement. Recreational organizations with no focus on historic preservation would generally not qualify as consulting parties. Potential effects for this undertaking have been determined through the Section 106 and NEPA process, including public scoping, and no adverse effects to historic properties are anticipated. Therefore, no PA will be developed, and no individuals or organizations will be invited to participate as consulting parties for this undertaking. BRC would like to note that our organization has qualified as a Section 106 consulting party by the BLM for Grand Staircase-Escalante National Monument and for travel management planning efforts. BLM shouldn't make false assumptions about the qualifications of an organization as a justification for not even inviting them to be Section 106 consulting parties. To then continue to refuse to invite BRC to be a consulting party after we made the formal request to be involved at this level based on the same false assumptions is insulting and negligent.

Summary:

The BLM violated Section 106 of the NHPA by failing to adequately consult with a qualified consulting party, therefore resulting in unnecessary closures of designated routes in the Project Area, where impacts on recognized cultural sites could have been mitigated.

Response:

Parties that have consultative roles in the NHPA Section 106 process are defined in 36 CFR 800.2(c). Per 36 CFR 800.2(c)(5), individuals and organizations “with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties” at the BLM’s discretion. The BLM considered all requests for consulting party status, but determined that recreational organizations with no focus on historic preservation would not qualify as consulting parties for this undertaking.

The BLM complied with all requirements for State Historic Preservation Officer/Tribal Historic Preservation Officer consultation in preparation of the Cedar Fields Proposed RMPA/FEIS. Accordingly, these protests are denied.