



***DOI Bureau of Land Management and  
USDA Forest Service  
Protest Resolution Report***

**Bears Ears National Monument  
Proposed  
Resource Management Plan and  
Final Environmental Impact  
Statement**

January 10, 2025

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## *Acronyms*

<b>Term</b>	<b>Definition</b>
<b>ACEC</b>	Area of Critical Environmental Concern
<b>ADA</b>	Americans with Disabilities Act
<b>AIM</b>	Assessment, Inventory, and Monitoring
<b>APA</b>	Administrative Procedure Act
<b>AUM</b>	animal unit month
<b>BASE</b>	buildings, antennas, spans, and earth
<b>BEC</b>	Bears Ears Commission
<b>BEITC</b>	Bears Ears Inter-Tribal Coalition
<b>BENM</b>	Bears Ears National Monument
<b>BLM</b>	Bureau of Land Management
<b>CA</b>	Cooperating Agency
<b>CEQ</b>	Council on Environmental Quality
<b>CFR</b>	Code of Federal Regulations
<b>DEIS</b>	Draft Environmental Impact Statement
<b>Dingell Act</b>	John D. Dingell, Jr. Conservation, Management, and Recreation Act
<b>DRMP</b>	Draft Resource Management Plan
<b>DWR</b>	Division of Wildlife Resources
<b>EIS</b>	Environmental Impact Statement
<b>EPA</b>	U.S. Environmental Protection Agency
<b>ERMA</b>	Extensive Recreation Management Area
<b>ESA</b>	Endangered Species Act
<b>FAA</b>	Federal Aviation Administration
<b>FEIS</b>	Final Environmental Impact Statement
<b>FLPMA</b>	Federal Land Policy and Management Act
<b>FSH</b>	Forest Service Handbook
<b>GSENM</b>	Grand Staircase-Escalante National Monument
<b>ITK</b>	Indigenous Traditional Knowledge
<b>LMP</b>	Land Management Plan
<b>LWC</b>	Land with Wilderness Characteristics
<b>MUSYA</b>	Multiple-Use Sustained-Yield Act
<b>NEPA</b>	National Environmental Policy Act
<b>NFMA</b>	National Forest Management Act
<b>NFS</b>	National Forest System
<b>NGO</b>	Non-Governmental Organization
<b>NHPA</b>	National Historic Preservation Act
<b>NLCS</b>	National Landscape Conservation System
<b>NOA</b>	Notice of Availability
<b>NRHP</b>	National Register of Historic Places
<b>OHV</b>	off-highway vehicle
<b>PRMP</b>	Proposed Resource Management Plan
<b>Public Lands Rule</b>	Conservation and Landscape Health Rule
<b>R&amp;I</b>	relevant and important
<b>R.S.</b>	Revised Statute
<b>RMP</b>	Resource Management Plan
<b>ROS</b>	Recreation Opportunity Spectrum
<b>ROW</b>	right-of-way
<b>SHPO</b>	State Historic Preservation Officer
<b>SRMP</b>	State Resource Management Plan

<b>TCP</b>	Traditional Cultural Property
<b>TGA</b>	Taylor Grazing Act of 1934
<b>THPO</b>	Tribal Historical Preservation Officer
<b>TMP</b>	travel management plan
<b>Travel PA</b>	<i>Programmatic Agreement Among The Advisory Council on Historic Preservation, The Bureau of Land Management – Utah, and The Utah State Historic Preservation Office Regarding National Historic Preservation Act Responsibilities For Travel and Transportation Management Undertaking</i>
<b>U.S.C.</b>	U.S. Code
<b>UFBF</b>	Utah Farm Bureau Federation
<b>USFS</b>	United States Department of Agriculture, U.S. Forest Service
<b>USFWS</b>	U.S. Fish and Wildlife Service
<b>VRM</b>	Visual Resource Management
<b>WSA</b>	Wilderness Study Area

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## ***Introduction***

The Bureau of Land Management (BLM) Monticello Field Office and the United States Department of Agriculture, U.S. Forest Service (USFS) Manti-La Sal National Forest released the Bears Ears National Monument (BENM) Proposed Resource Management Plan (PRMP) and Final Environmental Impact Statement (FEIS) on October 4, 2024. The agencies received 40 unique protest letter submissions during the subsequent 30-day protest period, which ended on November 4, 2024.

The planning regulations at 43 Code of Federal Regulations (CFR) 1610.5-2 outline the requirements for filing a valid protest. The BLM and USFS evaluated all protest letters to determine which protest letters were complete and timely, and which persons have standing to protest. All 40 letters were complete and timely. Twenty of the letters were from parties who had standing to protest. Eleven of those protest letters contained valid protest issues. The agencies document the responses to the valid protest issues in this protest resolution report. The protest decision is recorded in writing along with the reasons for the decision in this protest resolution report.

The BLM and USFS have agreed to conduct a joint protest process utilizing the BLM's protest procedures codified at 43 CFR 1610.5-2. The agencies have determined that conducting a joint protest process instead of separate protest and objection processes for this planning effort will benefit each agency. These benefits include providing a consistent process that will reduce public and stakeholder confusion, a mechanism for consistent resolution of issues that affect both agencies, and increased procedural efficiency. The agencies signed a Memorandum of Understanding to document that (1) the USFS waives the administrative review processes under 36 CFR 219 Subpart B (per 36 CFR 219.59(a)) for all USFS planning decisions related to the Resource Management Plan (RMP) and instead adopts the administrative review procedures of the BLM (43 CFR 1610.5-2); (2) the BLM agrees to allow the USFS to adopt the administrative review protest procedures at 43 CFR 1610.5-2; and (3) the BLM and USFS will provide a joint agency response to those individuals or organizations who file for administrative review of this multi-agency effort.

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

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

***Protesting Party Index***

<b>Letter Number</b>	<b>Protestor</b>	<b>Organization</b>	<b>Determination</b>
PP-UT-BE-EIS-24-01	Samuel McVey	–	Dismissed: No Standing
PP-UT-BE-EIS-24-02	Spencer Solomon	–	Dismissed: No Standing
PP-UT-BE-EIS-24-03	Nic Lazzareschi	–	Dismissed: No Standing
PP-UT-BE-EIS-24-04	Connor Whyte	–	Dismissed: No Standing
PP-UT-BE-EIS-24-05	Ryan Enright	–	Dismissed: No Standing
PP-UT-BE-EIS-24-06	Reed Wolfe Wawrzynek	–	Dismissed: No Standing
PP-UT-BE-EIS-24-07	Nathan Ferrick	–	Dismissed: No Standing
PP-UT-BE-EIS-24-08	Grant Gillbert	–	Dismissed: No Standing
PP-UT-BE-EIS-24-09	Evan Wisheropp	–	Dismissed: No Standing
PP-UT-BE-EIS-24-10	Shaun Gregg	–	Dismissed: No Standing
PP-UT-BE-EIS-24-11	Jackson Schall	–	Dismissed: No Standing
PP-UT-BE-EIS-24-12	Lukas Distefano	–	Dismissed: No Standing
PP-UT-BE-EIS-24-13	Wes Jones	–	Dismissed: No Standing
PP-UT-BE-EIS-24-14	Peter Georgiou	–	Dismissed: No Standing
PP-UT-BE-EIS-24-15	Em Watson	–	Dismissed: No Standing
PP-UT-BE-EIS-24-16	RC Behbakht	–	Dismissed: No Standing
PP-UT-BE-EIS-24-17	Alex Stettner	–	Dismissed: No Standing
PP-UT-BE-EIS-24-18	Braiden Miller	–	Dismissed: No Standing
PP-UT-BE-EIS-24-19	Gregory Howard	–	Dismissed: No Standing
PP-UT-BE-EIS-24-20	Jeff Blockwick	–	Dismissed: No Standing
PP-UT-BE-EIS-24-21	Paul Polly Margaret Lewis Stuart Sumida Jessica Theodor	Society of Vertebrate Paleontology	Denied
PP-UT-BE-EIS-24-22	Jonathan Ratner	Sage Steppe Wild	Dismissed: Comments Only



Letter Number	Protestor	Organization	Determination
PP-UT-BE-EIS-24-23	Zach Eiten	–	Dismissed: Comments Only
PP-UT-BE-EIS-24-24	Gail Johnson	–	Dismissed: Comments Only
PP-UT-BE-EIS-24-25	Taylor Schmitz	Congressional Sportsmen’s Foundation	Denied
	Dan Foster	Archery Trade Association	
	Ron Regan	Association of Fish and Wildlife Agencies	
	Tony Schoonen	Boone and Crockett Club	
	Jeff Crane	Congressional Sportsmen’s Foundation	
	Erica Tergeson	Dallas Safari Club	
	John Devney	Delta Waterfowl	
	Randy Kozuch	National Rifle Association of America Institute for Legislative Action	
	Joseph Bartozzi	National Shooting Sports Foundation	
	Curt Dyroff	National Wild Turkey Federation	
PP-UT-BE-EIS-24-26	Mike Bronson	–	Denied
PP-UT-BE-EIS-24-27	Laura Welp	Western Watersheds Project	Denied
PP-UT-BE-EIS-24-28	Jamie Harvey	San Juan County, Utah	Denied
PP-UT-BE-EIS-24-29	Withheld	Moab BASE Association, Inc.	Denied
PP-UT-BE-EIS-24-30	Erika Pollard	National Parks Conservation Association	Dismissed: Comments Only
PP-UT-BE-EIS-24-31	Judi Brawer	Southern Utah Wilderness Alliance	Denied
	Bobby McEnaney	Natural Resources Defense Council	
	Jackie Feinberg	Sierra Club	
	Ronni Flannery	The Wilderness Society	
PP-UT-BE-EIS-24-32	Sindy Smith	State of Utah, Public Lands Policy Coordinating Office	Denied
	Redge Johnson		
PP-UT-BE-EIS-24-33	Terry Camp	Utah Farm Bureau Federation	Denied
	ValJay Rigby		
PP-UT-BE-EIS-24-34	Kenneth Black	Grazing Permittee	Dismissed: Comments Only

<b>Letter Number</b>	<b>Protestor</b>	<b>Organization</b>	<b>Determination</b>
PP-UT-BE-EIS-24-35	Lloyd Nielson	Sunrise Outfitting Scenic Adventures	Dismissed: Comments Only
PP-UT-BE-EIS-24-36	Simone Griffin	BlueRibbon Coalition	Denied
	Ben Burr		
PP-UT-BE-EIS-24-37	Stan Moore	–	Dismissed: Comments Only
PP-UT-BE-EIS-24-38	Josh Nielson	Sunrise Outfitting	Dismissed: Comments Only
PP-UT-BE-EIS-24-39	Clif Koontz	Ride with Respect	Denied
	Chad Hixton	Trails Preservation Alliance	
	Scott Jones	Colorado Off Road Enterprise	
	Marcus Trusty	Colorado Off-Highway Vehicle Coalition	
PP-UT-BE-EIS-24-40	Heidi Redd	–	Dismissed: No Standing

## ***BLM Regulations: Land Conservation and Health***

### ***Mike Bronson***

**Issue Excerpt Text:** Neither the RMP’s elements, nor the NEPA process that shaped them, explicitly reflect the BLM land conservation and health regulations in 43 CFR 6100. You’ll find no reference to those regulations in the Bears Ears RMP Environmental Impact Statement, Appendix B, listing the laws that the EIS took into account. That’s in spite of the fact that the Environmental Protection Agency Region 8 brought the omission to the BLM’s attention. (See the EPA’s comment 18082-14 and the BLM’s lame response in the EIS’s Appendix U.) You’ll find the RMP silent about how it fulfills the BLM’s own land conservation and health obligations that the new regulations lay out. Explicit adherence to 43 CFR 6100 is important on the ground in Bears Ears as well. Only by closely following 43 CFR 6100 can the BLM protect valuable objects to as expected by the monument’s proclamation. For example, a compliant RMP developed to meet 43 CFR 6100 would likely have adopted stricter travel changes to protect valuable objects at Arch creek, such as its leopard frogs, desert fish, erodible soil, stream-side vegetation, pre-Puebloan structures, and the water itself.

### ***Mike Bronson***

**Issue Excerpt Text:** The new regulation requires restoration of degraded landscapes, and it provides additional protection tools and decision-making methods to address competing uses over a wider range of circumstances. The new approaches differ from those that the Monticello BLM recently cited in its final RMP. “Conservation is a use on par with other uses of the public lands,” clarified the BLM in the federal register (Vol. 89, no. 91, 40308; May 9, 2024). A Bears Ears RMP that does not demonstrate how it implements the provisions outlined in the new regulations is not compliant with NEPA or the BLM’s own procedures.

### **Summary:**

Protestors claim that the BLM violated Federal land conservation and health regulations (43 CFR 6100) by failing to adopt stricter, more conservation-focused management actions to protect valuable objects including at Arch Creek. Additionally, protestors claim that the BLM did not address how the BENM PRMP/FEIS complies with the BLM’s land conservation and health regulations, which require the restoration of degraded landscapes and provision of additional protection tools and decision-making methods to address competing uses over a wider range of circumstances.

### **Response:**

On October 8, 2021, Presidential Proclamation 10285 reestablished BENM’s original boundaries and conditions as set by Presidential Proclamation 9558, while also preserving approximately 11,200 acres that were added under Proclamation 9681. Proclamation 10285 emphasizes that the entire area designated by the Proclamation is “an object of historic and scientific interest in need of protection” and asserts that, without designation under the Antiquities Act, the resources within the Monument would be insufficiently protected. It further clarifies that BENM is established to “ensure the preservation, restoration, and protection of the objects of scientific and historic interest on the Bears Ears region, including the entire monument landscape.”

Land use plans for a National Monument must analyze and consider measures to ensure that objects are conserved, protected, and restored (BLM Manual Section 6220.1.6.G.4). Through the land use planning process, the BLM identifies specific and measurable goals and objectives for each object (BLM Manual Section 6220.1.6.G.4.a). The BENM PRMP/FEIS was developed with the purpose of protecting and restoring Monument objects and values as described in the purpose and need section of the BENM PRMP/FEIS (see Section 1.2, pp. 1-2 through 1-4). As required by Presidential Proclamation 10285, the BENM PRMP/FEIS is designed to “Protect and restore Monument objects in

large, remote, rugged, and connected landscapes. This includes the entire landscape within the Monument and the objects for which the Monument was established to protect.” In accordance with this purpose and need, the BLM developed and analyzed a range of alternatives consistent with the protection of the physical, cultural, and spiritual landscapes within the Monument.

The BLM’s Conservation and Landscape Health Rule (commonly known as the Public Lands Rule) went into effect on June 10, 2024, updating the BLM’s planning regulations (see 43 CFR 1600 and 6100). The Public Lands Rule establishes the policy for the BLM to build and maintain the resilience of ecosystems on public lands in three primary ways: (1) protecting the most intact, functioning landscapes; (2) restoring degraded habitat and ecosystems; and (3) using science and data as the foundation for management decisions across all plans and programs. Under this rule, *conservation* is defined to include both protection and restoration efforts, acknowledging that the BLM must preserve intact natural landscapes while rehabilitating degraded areas to promote ecosystem resilience. To aid in these efforts, the rule clarifies that conservation is an equal use among other public land uses under the Federal Land Policy and Management Act’s (FLPMA) mandate for multiple use and sustained yield.

The PRMP aligns with the Public Lands Rule.<sup>1</sup> As demonstrated by the FEIS, the PRMP would protect and restore BENM objects including, but not limited to, the entire BENM landscape and use science as the foundation for management decisions across all plans and programs. Indeed, the entire purpose behind the PRMP is to preserve the BENM landscape while restoring degraded resources and Monument objects. The BLM therefore expects the PRMP to promote achievement of land health standards and ecosystem resilience consistent with the Public Lands Rule.

The BLM adhered to all relevant Federal regulations and associated planning requirements in the BENM PRMP/FEIS. Accordingly, this protest issue is denied.

## *Cooperating Agencies*

### *State of Utah, Public Lands Policy Coordinating Office*

*Sindy Smith and Redge Johnson*

**Issue Excerpt Text:** FLPMA, NFMA, and regulations implementing those imposed on Interior and BLM and on Agriculture and USFS the requirement that they provide an opportunity for meaningful involvement by the states and counties affected by resource management planning. E.g., 16 U.S.C. § 1604(a); 43 U.S.C. § 1712(c)(9); 36 C.F.R. § 219.4(b)); 43 CFR § 1610.3-1. The State and the affected counties have repeatedly throughout the planning process for the BENM objected to the agencies’ failure to engage in meaningful coordination with the State and the Counties within the planning area to address obvious problems with the various versions of the plan, with inconsistencies between those versions and RMPs, and with the agencies’ obligations under federal law. Accordingly, Utah objects to the entirety of the Proposed RMP/FEIS because the failure of coordination affects it systemically, but Utah also objects to each other area discussed in this Protest on coordination grounds because the agencies failed to meaningfully coordinate to resolve those specific issues at earlier opportunities.

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<sup>1</sup> Moreover, BLM guidance clarifies that the Public Lands Rule was not intended to apply to planning efforts already underway at the time the final rule went into effect (Instruction Bulletin 2024-048, Land Use Planning and the Conservation and Landscape Health Rule [August 6, 2024]). Notably, the Draft RMP/Environmental Impact Statement for this planning effort was published in March 2024, prior to the Public Lands Rule going into effect.

***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** There were also irregularities in the cooperation agency and consultation process beyond the BEC itself that further highlighted the lack of coordination with the State and key stakeholders. Besides the BEC tribes not found in the Monument itself, the agencies also elected to invite Grand County, Utah but no other neighboring counties, such as Kane or Wayne Counties. Grand County does not meet the CEQ requirements for CA status, certainly no more than other neighboring counties. Some counties were not invited because of their previous criticism of BLM. The State voiced this concern to Nicollee Gaddis-Wyatt on October 10, 2023. Ms. Gaddis-Wyatt indicated that the invitation was extended due to the “close economic ties” that Grand County has to the BENM. Ms. Gaddis-Wyatt conceded, however, that none of the lands within the BENM were within the jurisdictional boundaries of Grand County. The arbitrariness of this conduct is further demonstrated by BLM’s recent decisions to ignore the San Juan County RMP and invoke the Grand County RMP on a project within San Juan County, as well as BLM’s failure to invite San Juan County to participate as a CA on a recent Travel Management Plan that included lands and routes within the jurisdictional boundaries of San Juan County. The agencies excluded proper CAs entirely from the process.

***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** Since the State’s submission of comments responding to the Draft RMP/Draft EIS, the failure of coordination was not remedied but continued through the release of the Proposed RMP. The agencies have not engaged in any meaningful, substantive discussion of Utah’s concerns except through releasing the Proposed RMP/FEIS which, as discussed in this Protest, continues to fail to address or resolve Utah’s concerns. (By contrast, the agencies have engaged in substantive discussions with the BEC.) The agencies also failed to significantly respond to these objections to the failure to coordinate even in the Proposed RMP/FEIS. In the comments matrix, despite Utah raising concerns under both its CA status and the coordination obligation under FLPMA, Appendix U, 17573-1, the agencies addressed only the former. This fails to address and furthers another error, that FLPMA and NFMA coordination requirements are satisfied simply by designating Utah as a cooperating agency under NEPA. As discussed in the June 11 letter, the requirements of FLPMA and NFMA are legally distinct and generally more significant. Nevertheless, BLM repeats this error in Appendix O by not even addressing.

***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** As discussed above, the agencies are required under FLPMA, NFMA, NEPA, and the Dingell Act, among other legal authorities, to coordinate resource management planning with Utah and the counties. And they are required by the Constitution, FLPMA, NEPA, the APA, its own regulations, other statutes, and a wealth of administrative law to engage in reasoned decision making that does not fail to consider relevant factors. Yet the agencies necessarily cannot engage in proper coordination or reasoned decision making in creating the Proposed RMP/FEIS because they do not even know what objects are to be protected. Without knowing what the objects are, the Proposed RMP/FEIS cannot weigh protecting specific ones against other somewhat intangible values that are not necessarily objects of historic or scientific significance. This furthers the delegation problem discussed below. Because the agencies have not examined the Proclamation’s land use policies and instead adopted them unquestioned into every alternative, and because they have not made an intelligible decision regarding the Monument objects (much less one that conforms with law), the entire Proposed RMP is unlawful and the process must be restarted with an analysis of alternatives that interrogate the directions given by the Proclamation and perform independent land use planning.

*State of Utah, Public Lands Policy Coordinating Office**Sindy Smith and Redge Johnson*

**Issue Excerpt Text:** Beyond the BEITC LMP, the agencies also preferred whoever showed up from the BEC over State and other public involvement, so much that it becomes unlawful delegation. These problems started with Proclamation 9558, which provides that the agencies will not only “meaningfully engage” the BEC “in the development of the management plan and to inform subsequent management of the monument,” but must “carefully and fully consider integrating the traditional and historical knowledge and special expertise” of the BEC and if they “decide not to incorporate specific recommendations submitted to them in writing by” the BEC, they will provide the BEC “with a written explanation of their reasoning.” Proclamation 10285 adopted these same terms. In June 2022, the agencies entered into an “Inter-Governmental Cooperative Agreement” for “Cooperative Management” of the BENM with “the Tribal Nations whose representatives comprise the Bears Ears Commission.” That the agencies entered into the agreement with the Tribes themselves rather than the BEC or the BEITC shows the agencies’ awareness of the problems with those forms. Yet the agreement doubles down on the Proclamations by making a promise regarding the BEC-if the agencies decide “not to incorporate specific recommendations timely submitted by the [BEC] in writing during a planning-or implementation-level decision-making process, they will provide the [BEC] written explanation at least 30 days prior to issuing the planning document on which the comments were provided.” The BEC may also request a meeting with the BLM State Director or USFS Regional Forester to discuss disagreements with those explanations. These onerous obligations have led the agencies to effectively delegate management decision making to the BEC or whoever communicates ostensibly on its behalf.

*State of Utah, Public Lands Policy Coordinating Office**Sindy Smith and Redge Johnson*

**Issue Excerpt Text:** The agencies could have more readily avoided these charges had they incorporated the State and other jurisdictions in the discussions. But, as described above, they have not. By cutting the State out of substantive discussions and involvement, the agencies cannot credibly say that they have made an informed choice between competing options. Because in developing the Proposed RMP the agencies effectively delegated authority to an unlawful body and because the Proposed RMP requires further illegal delegation, and because all alternatives are affected by this unlawful action (see Section 2.1.1) despite Alternative A being the least affected, the Proposed RMP must be scrapped and an alternative developed, considered, and chosen that is consistent with the State RMPs.

*State of Utah, Public Lands Policy Coordinating Office**Sindy Smith and Redge Johnson*

**Issue Excerpt Text:** The difference in treatment between the State and the Bears Ears Commission (BEC) is stark. Unlike this limited access, the agencies held weekly and biweekly meetings with the BEC, Appendix O, Section 3, and even delegated functions to the BEC, as discussed below. The agencies discussed the extreme level and frequency of involvement that has been granted to the BEC with the CAs while lecturing them for not seeing the planning process “through tribal eyes.” Department of Interior and Department of Agriculture officials are on record discussing the agencies’ “competition” to see which agency can create the most tribal co- stewardship agreements. This not only highlights what could and should have been the coordination that the agencies had with the State, but it also contravenes FLPMA, NFMA, and NEPA coordination requirements that do not provide for such a gross disparity.

*State of Utah, Public Lands Policy Coordinating Office**Sindy Smith and Redge Johnson*

**Issue Excerpt Text:** Additionally, NEPA imposes coordination requirements on a lead agency in dealing with cooperating agencies that overlap with, but are different from, those in FLPMA and

NFMA. For one, the lead agency is to consider and “discuss all major points of view on the environmental effects of the alternatives, including the proposed action,” in its Draft EIS. See 40 C.F.R. § 1502.9(b). Here, although Utah and the affected Counties consistently provided comments in advance of the Draft EIS, the agencies made no effort at all to represent or discuss their points of view. Also, NEPA requires a lead agency to meet with a cooperating agency at the latter’s request. 40 C.F.R. §1501.7(h)(3). As discussed, the agencies consistently delayed or rejected such meetings and held them after they could have informed the next document or refused to substantively discuss or consider Utah’s concerns and the concerns of the affected Counties. These actions also frustrated necessary and legally required coordination. The agencies’ failure to coordinate and these related violations of law and regulations prejudiced the State.

**Summary:**

Protestors stated that the BLM and USFS violated the National Environmental Policy Act (NEPA), FLPMA, and the National Forest Management Act (NFMA) by:

- Inviting Grand County, Utah to be a cooperating agency while not inviting other neighboring counties such as Kane or Wayne Counties.
- Failing to offer the State of Utah and counties affected by the BENM PRMP/FEIS the opportunity for meaningful involvement, engagement, or substantive discussion throughout the planning process.
- Failing to comply with the requirement to meet with cooperating agencies at their request throughout the planning process as required under 40 CFR 1501.7(h)(3).
- Exceeding the obligation to engage with the Bears Ears Commission (BEC) as a cooperating agency and effectively delegate management decisions to the BEC. Additionally, protestors stated that the co-lead agencies favored engagement with the BEC over State and other local cooperating agencies and used language from Proclamation 9558 and Proclamation 10285 to rationalize the co-lead agencies’ processes.

**Response:**

The agencies’ respective planning regulations at 43 CFR 1610.3-1(b) and 36 CFR 219.4(a) require the agencies to invite other eligible Federal agencies, State and local governments, and federally recognized Indian Tribes to participate as cooperating agencies when developing or amending RMPs. In addition, the Department of the Interior’s NEPA regulations (43 CFR 46.225(c)) require the BLM, as co-lead agency, to consider any request by a government entity to participate as a cooperating agency. An entity must have jurisdiction by law or special expertise to be eligible to participate as a cooperating agency (see 43 CFR 46.225(a)), which the BLM determines on a case-by-case basis. Per Departmental regulation, the BLM works with cooperating agencies to develop and adopt a Memorandum of Understanding that includes their respective roles, assignment of issues, schedules, and staff commitments (43 CFR 46.225(d)).

The Planning Rule at 36 CFR 219.4(b)(1) also defines how USFS land management planning efforts shall be conducted with the equivalent and related planning efforts of federally recognized Indian Tribes, Alaska Native Corporations, other Federal agencies, and State and local governments.

All cooperating agency relationships are described in Appendix O, *Consultation, Coordination, and Public Involvement*, Section 4, *Cooperating Agencies*, of the BENM PRMP/FEIS (Appendix O pp. O-3 through O-5). The BLM and USFS sent letters to all eligible local, State, Federal, and Tribal government entities inviting them to participate as cooperating agencies. The BLM and USFS invited 14 non-Tribal entities and 34 Tribal entities to participate as cooperating agencies and eight non-Tribal entities and one Tribal entity agreed to participate in the development of the BENM

PRMP/FEIS as cooperating agencies, including the State of Utah, Public Lands Policy Coordinating Office. Grand County was invited to participate as a cooperating agency due to it being a tourism hub and potential gateway for tourism to BENM. Grand County was found to have special expertise in managing visitation in the region and had potential to be economically affected by visitation to BENM. Garfield and Kane Counties, while proximate to BENM, do not have the same special expertise with respect to visitation to BENM. They are not primary gateways for visitors to BENM and are less likely to be directly affected economically by visitation to the area. The BLM and USFS did not receive any requests from other governmental entities seeking to participate as cooperating agencies during development of the BENM PRMP/FEIS. As a result, only the entities described in Appendix O were cooperating agencies in the development of the BENM PRMP/FEIS.

Consistent with *A Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners* (BLM 2012), the BLM and USFS collaborated with other Federal, State, and local agencies throughout the planning process of the BENM PRMP/FEIS, including through public and cooperating agency engagement opportunities. See Appendix O, Section 6, *Meeting Summaries*, for a list of cooperating agency engagement opportunities and consultation, coordination, and public involvement meetings held for the planning process (BENM PRMP/FEIS Appendix O, pp. O-5 through O-8). The Memoranda of Understanding between the BLM and USFS and cooperating agencies, including the State of Utah, outline roles and responsibilities including, to the extent practicable, BLM and USFS consideration of proposals, comments, and recommendations provided by the cooperating agency during the planning process. All cooperating agencies were provided opportunities to participate during various steps of the planning process in accordance with the Memorandum of Understanding that each cooperating agency signed, including identification of issues and data during scoping, review of alternatives, and through requests for input on the administrative Draft RMP/Environmental Impact Statement (EIS). The State of Utah sent a letter to the BLM and USFS on January 10, 2024, requesting a cooperating agency meeting prior to the release of the Draft RMP/EIS, to which the BLM and USFS replied with a proposed meeting date. Due to unforeseen setbacks and scheduling conflicts, the meeting was rescheduled to the day after the release of the Draft RMP/EIS.

The coordination with the cooperating agencies, including the State of Utah, resulted in several changes to the BENM Draft RMP/EIS, including adjusting the range of alternatives related to recreational shooting based on input received. The BLM and USFS also made changes to the Proposed Plan based on feedback from the State of Utah where appropriate to ensure coordination on management and implementation of the BENM PRMP/FEIS and added right-of-way (ROW) open areas along paved highways (BENM PRMP/FEIS Management Action 249, p. 2-88), adjusted the management of Arch Canyon (BENM PRMP/FEIS Management Action 278, p. 2-107), and adjusted Visual Resource Management (VRM) areas (BENM PRMP/FEIS Management Action 177, p. 2-63).

Proclamation 10285 reestablished the BEC “in accordance with the terms, conditions, and obligations set forth in Proclamation 9558 to provide guidance and recommendations on the development and implementation of management plans and on management of the entire monument.” Proclamation 9558, in turn, requires the BLM to “meaningfully engage the Commission . . . in the development of the management plan [for the Monument] and to inform subsequent management of the monument.” Proclamation 9558 further directs the BLM to “carefully and fully consider integrating the traditional and historical knowledge and special expertise” of the BEC in developing the management plan.

Allegations concerning the lawfulness of the BEC are outside the scope of this planning process and are not addressed in this protest response. Moreover, inclusion of the BEC collaboration into many of the management actions does not preclude coordination and collaboration with the State. The agencies are required by law, regulation, and policy to coordinate with the State on various activities, such as 36 CFR 800, which is not changed by this plan, although sometimes coordination with the State, local government, or agencies is emphasized in certain sections. Additionally, in the



Overarching Management Section 2.4.2.1 in the Proposed Plan, State and local governments are noted for coordination on the plan, its implementation, and future maintenance or amendments to the plan.

Proclamation 9558 also directed the BLM and USFS to meaningfully engage with the BEC, including throughout the planning process, to ensure that management decisions affecting the BENM reflect expertise and traditional and historical knowledge of Tribal Nations. Consistent with their obligations under Proclamations 9558 and 10285, the BLM and USFS coordinated with the BEC throughout the development of the Proposed Plan, and the role of co-stewardship described in the Proposed Plan would facilitate ongoing coordination between the agencies and the BEC. However, no aspect of the Proposed Plan or the BLM and USFS's coordination with the BEC curtails the statutory and regulatory authorities and responsibilities of the agencies, cedes any inherently Federal function or decision-making authority over Federal land to the BEC, or otherwise exceeds the agencies' legal authority for managing Federal lands within BENM. The agencies retain all decision-making authority over management actions in BENM.

Additionally, as explained in Appendix O, *Monument Advisory Committee*, of the BENM PRMP/FEIS, a 15-member committee was established that includes the following: State and local government officials, Tribal members, representatives of the recreation community, local business owners, and private landowners in compliance with Proclamation 9558.

The BLM and USFS properly invited and engaged with all eligible cooperating agencies in the preparation of the BENM PRMP/FEIS. The lead agencies have complied with NEPA, NFMA, FLPMA, and other applicable Federal laws and regulations in the planning processes, in addition to following the direction in the relevant Proclamations. The BLM and USFS have worked with cooperating agencies on the development of the plan and environmental analysis and conducted such analysis adequately. Accordingly, this protest issue is denied.

## ***FLPMA: ACECs***

### ***BlueRibbon Coalition***

#### ***Simone Griffin and Ben Burr***

**Issue Excerpt Text:** BlueRibbon Coalition strongly opposes the proposed designation of an additional 115,000 acres as Areas of Critical Environmental Concern (ACEC) within an already heavily protected national monument. We believe this designation is not only unnecessary, given the extensive environmental safeguards already in place, but also poses a threat to sustainable, multiple-use access to public lands for all Americans. The proposed ACEC designation seeks to impose further restrictions in a landscape already governed by some of the strictest environmental laws in the nation. Under the Federal Land Policy and Management Act (FLPMA), the Bureau of Land Management (BLM) is required to manage public lands for multiple uses, including recreation, grazing, mineral development, and conservation. Additionally, the Clean Water Act, the Endangered Species Act (ESA), the Clean Air Act, and other stringent protections are already fully enforceable within this national monument, ensuring that both the ecosystem and endangered species receive appropriate protection without additional restrictions. This proposed ACEC designation raises significant concerns for several reasons: 1. Redundant Protections: The proposed ACEC designation would replicate protections that are already provided under existing environmental laws. Given the monument's current status, the BLM and other agencies already have the authority to enforce strict environmental protections. The additional ACEC designation is therefore redundant and does not add measurable conservation benefits, while it does, however, restrict public land access. 2. Impact on Access and Recreation: An additional ACEC designation could severely limit recreational access, which is essential to local communities, rural economies, and the American public who cherish their right to responsibly enjoy these lands. Hiking, camping, motorized and non-motorized recreation, and

other activities are part of the area's multiple-use mandate. The designation would likely impose new travel restrictions, limiting access points and closing existing routes, and could adversely affect the enjoyment and access that visitors, including outdoor enthusiasts and local residents, have come to rely on. 3. Economic Implications: The local economies are heavily reliant on responsible recreational use and access to these public lands. Restricting access through additional regulatory layers would have a direct impact on jobs, businesses, and communities that depend on tourism and recreation-based revenue. An ACEC designation could lead to decreased visitation, thus undermining economic stability for many already vulnerable rural communities. 4. Legal and Procedural Concerns: The process surrounding this ACEC proposal raises procedural issues under FLPMA. The designation of an ACEC is required to meet specific criteria demonstrating that existing protections are inadequate and that critical values are at risk. This proposal lacks sufficient evidence showing that current laws and protections are insufficient or that these additional 115,000 acres contain unique values necessitating heightened restriction. In our view, the BLM has not met the burden of proof to justify such an expansive designation. 5. Undue Burden on Rural Communities and Access: Rural communities often bear a disproportionate burden when land-use restrictions are imposed. Many of these communities are stewards of the land, maintaining a delicate balance between conservation and sustainable land use. Additional layers of restrictions limit these communities' ability to work on and enjoy public lands responsibly and ultimately erode public trust in land management agencies. BLM should focus on enforcing existing protections effectively and managing the land according to FLPMA's multiple-use mandate, which ensures balanced access for all stakeholders.

### **Summary:**

Protestors claim that the BLM and USFS violated FLPMA by unnecessarily designating 115,000 acres as ACECs within BENM, which is already heavily protected by other Federal laws and policies that therefore make ACEC designations redundant. Additionally, protestors claim that the proposed ACEC designations unlawfully restrict multiple-use access to public lands within BENM, which could have significant economic impacts on local communities that rely on tourism and recreation-based revenues.

### **Response:**

Section 202(c)(3) of FLPMA requires that the BLM give priority to the designation and protection of ACECs in the development and revision of land use plans (43 U.S. Code [U.S.C.] 1712(c)(3)). FLPMA defines ACECs as "areas within the public lands where special management attention 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, or to protect life and safety from natural hazards" (43 U.S.C. 1702(a)). ACECs differ from other special designations in that designation does not automatically prohibit or restrict other uses in the area. Instead, special management attention is designed through the land use planning process to protect the relevant and important (R&I) values of the ACEC.

The BLM's planning regulations address the identification, evaluation, and designation of ACECs during the development and revision of RMPs. Per the regulations, an area must meet at least one relevance criterion and one importance criterion to be considered as a potential ACEC and be analyzed for designation in an RMP alternative (43 CFR 1610.7-2(a)) (BLM Manual Section 1613.22.B). As such, the BLM shall review nominated ACECs to determine whether they have R&I values and need special management (43 CFR 1610.7-2(a), BLM IM 2023-013, and BLM Manual 1613). BLM Manual Section 1613.11 provides four relevance criteria and five importance criteria.

During the planning process, the BLM considered a full range of alternatives regarding areas previously designated as an ACEC or nominated for ACEC designation. Discussion of the ACECs

and their proposed management under all alternatives is provided in Management Actions 107 through 113 in Section 2.4.10.3 (BENM PRMP/FEIS pp. 2-39 through 2-43) and an analysis of potential impacts from these designations under each alternative is provided throughout the Chapter 3 and Appendix N resource and resource use sections.

Section 3.4.9 (pp. 3-83 through 3-93) and Appendix N (pp. N-68 through N-72) of the BENM PRMP/FEIS discusses the R&I values each ACEC was found to meet, as well as the potential impacts from special management on those R&I values. In general, the BLM found that special management was needed to protect certain R&I values in discrete areas of BENM. For example, special management including for VRM, ROWs, off-highway vehicles (OHV), and woodland harvest was developed to protect the scenic R&I values in the San Juan River ACEC, Indian Creek ACEC, and Valley of the Gods ACEC. The special management for Indian Creek ACEC protects the viewshed from the adjacent Canyonlands National Park, while the San Juan River ACEC and Valley of the Gods ACEC protect the unique scenic character of the landscape in areas adjacent to Front Country Zones and ROW Open Corridors. The Lavender Mesa ACEC contains relict vegetation and special management was specifically developed to protect the relict vegetation R&I value and focuses on managing uses that would affect vegetation (e.g., making unavailable to livestock grazing and limiting vegetation treatments); other management is consistent with the topographical limitations of the area (e.g., OHV closed, ROW avoidance), consistent with protecting vegetation, and consistent with the management of adjacent land. Shay Canyon ACEC represents unique cultural and paleontological resources and the special management was developed to limit potential impacts from grazing, vegetation management, and visitation on cultural and paleontological R&I values beyond what was provided for adjacent lands and resources. The Aquifer Protection ACEC was found to meet scenic, cultural, paleontological, and natural system/aquifer recharge R&I values. The special management for the Aquifer Protection ACEC recognizes the protection afforded by the BENM PRMP for scenic, cultural, and paleontological resources, and focuses its special management on that which would protect the natural system/aquifer recharge R&I values such as limiting surface-disturbing discretionary actions, prioritizing completion of a hydrologic study, and prohibiting new storage tanks for and avoiding use of hazardous materials (BENM PRMP/FEIS Management Action 113, p. 2-42). These special management actions would protect portions of the aquifers and aquifer systems serving as primary drinking water sources for communities near BENM, including White Mesa, Bluff, and Blanding, and the public drinking water systems at Natural Bridges National Monument and Sand Island Ranger Station. John's Canyon Paleontological ACEC would not be designated under the Proposed Plan because management actions under other resources were found to provide sufficient protections to the R&I values identified for the ACEC (BENM PRMP/FEIS p. 9-92).

The BENM PRMP/FEIS discusses the existing conditions and the potential impacts on recreation and socioeconomics associated with proposed special designations such as ACECs under each alternative in Section 3.5.7 (pp. 3-202 through 3-224), Section 3.5.5 (pp. 3-178 through 3-196), and Appendix N (pp. N-122 through N-137). For instance, the BENM PRMP/FEIS acknowledges that environmental justice communities may be disproportionately affected if certain designations on BLM-administered land contain restrictions on travel that adversely affect transportation and access, such as special designations (pp. 3-184). Regarding recreation-based tourism, the BENM PRMP/FEIS recognizes that the Proposed Plan would close ACECs to OHV use or limit OHV and mechanized routes, limiting the ability of such user groups to recreate in ACECs. However, camping or recreational use may be restricted in ACECs to protect R&I values such as cultural sites, and such management is necessary to preserve those values far into the future by preventing incidental impacts from visitors interacting with ACEC resources. However, outside of ACEC areas under the Proposed Plan, "The agencies would not require permits for private day and overnight use in all canyons, reducing the potential for restrictions on canyon-based recreation on BENM compared to Alternative E" (BENM PRMP/FEIS p. 3-220). Also, "The BLM and the BEC would collaborate to develop management

plans ([Recreation Area Management Plans]) for all Management Areas and Sub-Areas under the Proposed Plan. Such collaboration would ensure that recreation is managed to benefit visitors of all cultural backgrounds while prioritizing the protection of Monument objects. More Management Areas and Sub-Areas could be designated in the future through an RMP amendment process to address intense use and/or the protection of BENM objects” (BENM PRMP/FEIS p. 3-222).

The Proposed Plan includes changes to ACEC designations from those proposed under the alternatives in the BENM Draft RMP/EIS as a result of input from public comments, cooperating agencies, and Tribal Nations. For example, the amount of acreage proposed as ACECs under the Proposed Plan was reduced from the amount proposed under the preferred alternative (Alternative E) in the Draft RMP/EIS because John’s Canyon Paleontological ACEC would not be designated under the Proposed Plan.

The BLM and USFS have complied with FLPMA’s direction to give priority to the designation and protection of ACECs in the development and revision of land use plans. Accordingly, this protest is denied.

## ***FLPMA and NLCS: ERMAAs***

### ***Southern Utah Wilderness Alliance et al.***

#### ***Judi Brawer et al.***

**Issue Excerpt Text:** We also recognize the need to designate “nested Management Areas and Sub-Areas in order to provide more directed management for areas with activity-specific recreational considerations in those places where additional management is needed for specific recreational activities or to address complex recreation challenges.” FEIS, Vol. 2, App. E, p. E-8. However, managing these areas as ERMAAs is not a proper management strategy for Monument objects and places specially designated “to conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values” over discretionary uses such as recreation. 16 U.S.C. § 7202(a). While mentioned in the Proclamations, recreation is not “[an object] of historic and scientific interest designated for protection.” Instead, BENM was designated to protect its cultural, ecological and scientific objects and values at a landscape level. This means that protection of these objects and values must take priority over recreation use. ERMAAs are a recreation management strategy based on multiple-use principles. Specifically: \* “ERMAAs recognize existing recreation use, demand, or recreation and visitor services program investments; recreation is managed commensurately with other resources.” FEIS, Vol. 1, p. 3-202 (emphasis added). \* “ERMAAs manage recreational resources commensurate with the management of other resources and resource uses and do not include specific, measurable recreation outcomes.” FEIS, Vol. 2, App. N, p. N-147 (emphasis added). Although it uses the term frequently, the Proposed Plan fails to explain what commensurate management means. Commensurate is defined as “equal in measure or extent,” which suggests that BLM is considering recreation to be on equal footing with enumerated BENM objects and values.<sup>9</sup> The Proposed Plan’s Management Areas encompass almost 600,000 acres across BENM - approximately half of the Monument. Placing recreation uses on par with protection of BENM objects and values across this vast landscape is contrary to the Proclamations, FLPMA, and the NCLCS Act. BLM must clarify that management of recreation in Management Areas and Sub- Areas is “consistent with the designating . . . proclamation and other applicable law.” BLM Manual 6100, Section 1.6.M.1 (emphasis added); see also, BLM Manual 6220, Section 1.6.K.1.

#### **Summary:**

The protestors state the BLM and USFS violated the Proclamations creating BENM as well as FLPMA and the National Landscape Conservation System (NLCS) Act by designating Extensive

Recreation Management Areas (ERMA) within the Monument and thus elevating recreation to the same level of importance as Monument objects and values.

**Response:**

Land use plans for a National Monument must analyze and consider measures to ensure that the objects for which the Monument is proclaimed are conserved, protected, and restored (BLM Manual Section 6220.1.6.G.4). Through the land use planning process, the BLM identifies specific and measurable goals and objectives for each object and value (BLM Manual Section 6220.1.6.G.4.a). For designated areas, which include National Monuments, the USFS Responsible Official shall include plan components that will provide for appropriate management of designated areas based on the applicable authorities and the specific purposes for which each area was designated. Uses and management activities are allowed in designated areas to the extent that these uses are in harmony with the purpose for which the area was designated (Forest Service Handbook [FSH] 1909.12, 24.2).

The agencies developed the management goals, objectives, and actions under each action alternative with the purpose of protecting BENM objects and values (see Section 1.2 for the purpose and need of the BENM PRMP/FEIS on pp. 1-2 through 1-4). Based on the impact analysis conducted, the agencies included measures in the PRMP that protect Monument objects and values and contribute to meeting the goals and objectives for each object and value as set forth in the PRMP. Recreation is recognized in Proclamation 10285 as a use of the Monument, but it is not an object of the Monument; therefore, management direction in the PRMP for recreation ensures the agencies' legal and Proclamation-mandated responsibilities are simultaneously met.

The agencies designed recreation management actions that address both the protection of Monument objects and the presence of recreational use on Monument lands. These recreation management actions are provided in Section 2.4.20 (BENM PRMP/FEIS pp. 2-87 through 2-106). As detailed in these management actions, the BLM proposed ERMA's under Alternatives B and C. Under Alternatives D and E and the Proposed Plan, the agencies identify landscape-level recreation management zones to manage visitation and recreational uses to protect BENM objects and specify activities allowed within each zone (BENM PRMP/FEIS, p. 2-88 through 2-91). The zoned approach to recreation management within BENM was designed to protect Monument objects and values on a landscape level. Recreation, while identified as a resource that contributes to the social and economic well-being of the area's modern communities in Proclamation 10285, is specifically excluded from consideration as a BENM object to be protected. The BLM does not propose any ERMA's or Special Recreation Management Areas within the BENM PRMP/FEIS under Alternatives D and E and the Proposed Plan. Detailed descriptions of recreation activities, experiences, and benefits for the various Management Areas and sub-areas and the specific management for targeted recreation uses to protect Monument objects can be found in BENM PRMP/FEIS Appendix E.

The BLM adequately protects Monument objects and values from recreation impacts in compliance with FLPMA and the NLCS Act. Accordingly, this protest issue is denied.

## ***Consistency with State and Local Plans***

### ***State of Utah, Public Lands Policy Coordinating Office Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** The situation is doubly wrong because the FLPMA consistency provisions require that Utah's State Resource Management Plan (SRMP) trump the BEITC LMP. FLPMA's general consistency and coordination obligations run to "Indian tribes" as tribal sovereign entities, not to an ambiguous entity like the BEC or the BEITC. 43 U.S.C. § 1712(c)(9). But the regulation provides that federal "resource management plans" "shall be consistent with officially approved or

adopted resource related plans, and the policies and programs contained therein, of other Federal agencies, State and local governments, and Indian tribes,” or, in their absence, “officially approved and adopted resource related policies and programs” of those entities. 43 C.F.R. § 1610.3-2. BLM has consistently taken the position, in line with the regulation, that only officially approved or adopted plans matter. Yet there is no indication whatsoever, facially or otherwise, that the BEITC LMP is officially approved or adopted by any tribe. Even the agencies do not claim that it is. Yet the SRMP is officially approved and adopted. Accordingly, the federal government must take pains to ensure consistency with the SRMP, and certainly over and against the BEITC LMP. Yet the Proposed Plan takes precisely the opposite approach. The BEITC LMP motivates the entire Proposed Plan, and indeed, the agencies incorporated the BEITC LMP into the Proposed Plan “to the maximum extent possible consistent with laws and regulations,” Section 2.2, while they disregarded all inconsistencies with the SRMP, see Appendix O.

***State of Utah, Public Lands Policy Coordinating Office  
Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** The agencies and the Proposed RMP/FEIS fall short of the consistency requirements. As Utah has commented throughout the planning process, including in its July 26, March 24, and June 11 letters, the agencies have made no attempt to identify inconsistencies with the State RMPs, have not substantively considered or addressed those raised by the State, and have not acted to reduce them to only those necessary. Utah will separately provide the Governor’s consistency review promised by FLPMA regulations. But it protests here the entire Proposed RMP, as well as every discrete feature mentioned herein, as inconsistent with its own RMP and because the agencies have failed to act as required under FLPMA, NFMA, and implementing regulations to reduce or resolve those inconsistencies. There are many obvious inconsistencies with State RMPs and policies, including, merely for examples, policies pertaining to grazing, range improvements, area management designations, water improvements, and road access. The agencies’ failure to take their responsibility to achieve consistency seriously is evident in the Proposed RMP. The agencies cannot seriously maintain that the “Proposed RMP/Final EIS is generally consistent with state and county plans, as detailed in Appendix S.” Section 1.6. Appendix S makes it clear that they are not. Moreover, that review in Appendix S is itself deficient. It “focuses on the key issues raised by the state and local counties throughout the RMP/EIS process,” but it does not even address all major known inconsistencies, only “some key types and sources of inconsistencies.” Appendix S, Section 1. Even in doing so, the agencies reveal that they never took their charge seriously or attempted consistency. For instance, the agencies justify their designation of LWCs and restrictive management because it is “authorized by FLPMA”—not because the inconsistency with the State RMPs is required by any law. Appendix S, Section 2.1.1. The review effectively states that the Proposed RMP cannot be consistent with the State RMPs on grazing because the Proclamation prevents maintaining or expanding grazing—it makes no effort to justify the legality of this approach, much less to explore creative solutions that would make grazing healthier while remaining in line with the Proclamation, such as range improvements that would not reallocate forage, but create it, or increasing forage in areas that benefit BENM objects. Id., Section 2.1.3. On travel management, the Proposed RMP fails to demonstrate that the agencies considered how to facilitate the State’s transportation goals while protecting specific BENM objects rather than simply closing large areas to vehicle use to return the land to nature and without any affirmation of vested rights. Id., Section 2.1.4.

***Utah Farm Bureau Federation  
Terry Camp and ValJay Ribgy***

**Issue Excerpt Text:** The PRMP fails to adequately consider and incorporate local and state resource management plans, particularly those of San Juan County and the State of Utah. This oversight violates the principles of coordination and consistency required by federal law. The Federal Land Policy and Management Act (FLPMA) requires that the Secretary of Interior coordinate land use planning activities with state and local governments. The PRMP does not demonstrate sufficient

coordination with these entities. We protest the failure of the BLM and USFS to meaningfully coordinate with local and state governments in developing the PRMP and request that the plan be revised to align more closely with existing local and state resource management plans. The UFBF raised these issues in our comments on the DRMP submitted on June 11, 2024.

**Summary:**

Protestors stated that the BLM and violated FLPMA, the USFS violated the NFMA, and the agencies violated the Monument Proclamation by:

- Favoring consistency with the Bears Ears Inter-Tribal Coalition (BEITC) Land Management Plan (LMP) over consistency with Utah’s SRMP, which is not only not mandated under FLPMA, but in direct violation.
- Failing to adequately consider and incorporate local and State RMPs including those of San Juan County and the State of Utah, specifically regarding grazing, range improvements, area management designations, water improvements, and road access.

**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” (43 U.S.C. 1712(c)(9)). The BLM has interpreted this provision to mean that 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)). USFS regulations direct the responsible official to “review the planning and land use policies of federally recognized Indian Tribes, other Federal agencies, and State and local governments, where relevant to the plan area,” but do not require land use plans to conform with those other plans (36 CFR 219.4(b)(2) and (3)).

In accordance with these requirements, the BLM and USFS have considered State, local, and Tribal plans that are germane to the development of the BENM PRMP/FEIS. The BLM and USFS worked closely with State, local, and Tribal governments during preparation of BENM PRMP/FEIS. Appendix O describes coordination that has occurred throughout the development of the BENM PRMP/FEIS.

A list of the local, State, and Tribal plans that the BLM and USFS considered can be found in Appendix B, *Laws, Regulations, Policies, and Plans Considered in the Development of the Resource Management Plan and Environmental Impact Statement*. Additionally, consistent with 43 CFR 1610.3 and 36 CFR 219.4(b), the BLM and USFS reviewed applicable State and county plans to identify any inconsistencies with the BENM PRMP/FEIS and provided detailed discussions of said inconsistencies throughout BENM PRMP/FEIS Appendix S. The BENM PRMP/FEIS notes that the examination in Appendix B is “not intended to be a complete examination of each aspect of the state and county plans, which would be beyond the scope of this RMP and the intent of FLPMA. Instead, it is intended to clarify some key types and sources of inconsistencies between the BENM Proposed RMP/Final EIS and other plans” (BENM PRMP/FEIS Appendix S, p. S-1). Appendix S directly discusses compliance with both the SRMP and San Juan County’s RMP, and, on December 9, 2024, the BLM sent a letter to the Governor of Utah further explaining why certain inconsistencies between its SRMP, the San Juan County RMP, and the Proposed Plan exist. As noted in both Appendix S and the BLM’s letter to the Governor of Utah, certain aspects of the State’s and County’s plans are inconsistent with Federal law, policies, and programs and, therefore, cannot be incorporated into the Proposed Plan. Additionally, the BLM and USFS committed to ongoing coordination with State and

local governments “on future maintenance and/or amending of this plan, as necessary as well as in the site-specific, implementation-level management that follows this plan” (BENM PRMP/FEIS p. 2-11).

In addition to compliance with State and county plans, the BLM and USFS considered compliance with the BEITC LMP, consistent with Proclamation 10285’s emphasis on incorporating, as appropriate, traditional and historical knowledge of Tribal Nations into the management of BENM. Section 3.3 of the BENM PRMP/FEIS, *Traditional Indigenous Knowledge and the Bears Ears Landscape*, discusses how and why Traditional Indigenous Knowledge was incorporated into the planning process including use of information from the BEITC LMP. While Traditional Indigenous Knowledge from the BEITC LMP is incorporated throughout the BENM PRMP/FEIS, it is “integrated alongside Western scientific information throughout the Proposed RMP/Final EIS” (BENM PRMP/FEIS p. 1-9) and is not prioritized over compliance with other RMPs.

The BLM and USFS satisfied both FLPMA and NFMA consistency requirements and Proclamation 10285 in preparation of the BENM PRMP/FEIS. Accordingly, this protest issue is denied.

## *Multiple Use*

### *State of Utah, Public Lands Policy Coordinating Office*

#### *Sindy Smith and Redge Johnson*

**Issue Excerpt Text:** Utah protests the designation of large areas of the Monument as “lands with wilderness characteristics” (LWCs) and their management. Utah previously commented on this issue in its June 11 letter and throughout the process. As Row 106 of the Management Matrix explains, the Proposed RMP designates 205,594 acres as LWCs to be managed to protect wilderness characteristics, meaning allowing only those “discretionary uses” that do not impact the unit’s wilderness characteristics and that are consistent with the protection of Monument objects, including designating all such land as VRM Class I, closed to OHV travel, and ROW exclusion; and 216,371 acres as LWCs managed to minimize impacts on wilderness characteristics, meaning allowing discretionary uses only “in a manner that minimizes impacts” and consistent with protecting BENM objects. These mandates impose additional and severe restrictions on legitimate multiple uses, such as grazing, recreation, and camping- indeed, they effectively implement the general policy of non-use. They contradict even the stated goal of Section 2.4.9.1 of protecting “wilderness characteristics (appearance of naturalness and outstanding opportunities for primitive and unconfined recreation or solitude)” “considering manageability and the context of competing resource demands.” They simply override any resource demands that would “compete” with those characteristics, particularly in those areas designated for protection. To the extent they require a minimization analysis of the “manner” of use, they are also unmanageable. And while the “appearance of naturalness” could be taken care of through VRM designations, some of the restrictions actively undermine the ability of anyone to access the areas for “recreation or solitude,” and they are unnecessary to make that recreation or solitude appear “primitive and unconfined.” Smart OHV management, for instance, could protect the desired “naturalness and opportunities” without requiring closure in over 200,000 acres. The Proposed RMP cannot justify these designations as necessary to protect Monument objects, even in the aggregate, because protection of BENM objects is an independent condition. Thus, the Antiquities Act designation cannot trump the multiple use and sustained yield obligations. Moreover, these designations contravene the Wilderness Act of 1964, which states that “no federal lands shall be designated as wilderness areas except as provided for in this chapter,” 16 U.S.C. § 1131(a). Only Congress can designate wilderness areas, yet the Proposed RMP nakedly manages LWCs as wilderness, effectively designating them as such. Notably, the standard of only allowing discretionary uses if impacts are entirely avoided or minimized is even stricter than the management requirements for congressionally designated wilderness areas, where “discretionary uses” like livestock grazing are allowed without the need to minimize impacts. 43 C.F.R. § 6304.25. The closure of these areas to all



non- designated and even some designated roads-and, as discussed below, the apparent elimination even of vested rights-is also contrary to law, including FLPMA, NFMA, and the Wilderness Act. Congress mandated that only roadless areas of over 5,000 acres could be designated as WSAs; under FLPMA and NFMA, other areas must be managed for multiple use and sustained yield. Yet the management area setup flips this on its head and makes more areas roadless with WSA-like restrictions (and apparently even more restrictions) even though the agencies have no authority to designate more areas as WSAs.

***State of Utah, Public Lands Policy Coordinating Office  
Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** FLPMA provides that the Department of Interior must “manage the public lands under principles of multiple use and sustained yield,” and it may do differently only if the land is “dedicated to specific uses according to any other provisions of law.” 43 U.S.C. § 1732(a). NFMA and the Multiple-Use Sustained-Yield Act of 1960 similarly require that the Department of Agriculture manage forest resources under the same principles. 16 U.S.C. §§ 528, 1604. Even assuming that Proclamation 10285 properly invoked the protection of the Antiquities Act for objects within the BENM (which Utah rejects, as it maintains in litigation), the agencies must still manage the land in the BENM under principles of multiple use and sustained yield whenever possible consistent with preserving those objects. The Proposed RMP pays partial lip service to this obligation, stating that although “typical multiple use management is superseded by the direction in Proclamation 10285 to protect Monument objects,” multiple uses “are allowed only to the extent they are consistent with the protection of the objects within the Monument.” Section 2.2. Yet the Proposed RMP is inconsistent with even this tepid statement because it wholly denigrates multiple use and sustained yield principles. Utah has raised these issues previously, including in its June 11 letter. While Alternative A recognizes multiple uses in a few places, Section 3.4.2.2.2, the remainder of the plan and the Proposed RMP speak only of “discretionary uses,” and in fact that is the sole manner in which the agencies analyzed anything, see Table ES-1. The agencies cite no legal authority for such “discretion,” by which they apparently may permit or restrict use at will and without accountability or reason. Yet the Proposed RMP pushes this violation of mandatory statutory considerations even further because Alternative E, on which it is based, “emphasizes resources protection” over even discretionary uses-fully supplanting the statutory mandate. Effectively, the agencies are prioritizing non-use under the cover of respecting tribal interests, without even bothering to tie the two together; these huge, undifferentiated areas of land precluded from established uses like grazing or even recreation cannot be declared to have scientific, cultural, or other inconsistent uses throughout their entirety, much less ones that require ceasing the agencies’ disfavored uses. By demoting established uses to “discretionary” and failing to recognize their competing value claims, the agencies not only fail to maximize multiple uses and sustained yield as required; they engage in arbitrary and backwards decision making.

**Summary:**

Protestors claim that the BLM violated FLPMA’s multiple-use mandate and the USFS violated the NFMA and the Multiple-Use Sustained-Yield Act of 1960 (MUSYA) by:

- Stating that protection of Monument objects under Proclamation 10285 supersedes this mandate and, therefore, the BLM and USFS fail to manage for multiple uses and sustained yield within BENM.
- Relying on the incorporation of “discretionary uses” throughout the PRMP/FEIS while failing to state the legal authority for such discretion. Protestors also claim that the BLM and USFS prioritize resource protection and traditional knowledge over the requirement to plan for multiple uses.

- Designating large areas of the Monument as LWCs on BLM-administered lands, resulting in severe restrictions on legitimate multiple uses such as grazing, recreation, and camping. Protestors note that the BLM cannot justify these designations as necessary to protect Monument objects because protection of BENM objects is an independent condition; therefore, the Antiquities Act designation cannot trump the multiple-use and sustained-yield obligations.

**Response:**

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

The NFMA at 16 U.S.C. 1604 (e)(1) states that LMPs for National Forest System (NFS) units provide for multiple use and sustained yield of the products and services obtained therefrom in accordance with the MUSYA (16 U.S.C. 528–531). Through the MUSYA, Congress directed the Secretary of Agriculture to administer the NFS for multiple use and sustained yield of renewable resources without impairment of the productivity of the land (16 U.S.C. 528–531), thus establishing multiple use as the foundation for management of national forests and grasslands. The statute defines “multiple use” broadly, calling for management of the various uses in the combination that will best meet the needs of the American people (16 U.S.C. 531). Under this framework, courts have recognized that the MUSYA does not envision that every acre of NFS land be managed for every multiple use, and does envision some lands being used for less than all of the resources. As a consequence, the USFS has wide discretion to weigh and decide the proper uses within any area (*Wyoming v. USDA*, 661 F.3d, 1209, 1267-1268 (10th Cir. 2011); *Perkins v. Bergland*, 608 F.2d 803, 806-807 (9th Cir. 1979); *City & Cnty. of Denver v. Bergland*, 695 F.2d 465, 476 (10th Cir. 1982)).

Consistent with the MUSYA and the USFS land management planning regulations (i.e., Planning Rule) at 36 CFR 219.1(b), the USFS manages NFS lands to sustain the multiple use of its renewable resources in perpetuity while maintaining the long-term health and productivity of the land. Resources are managed through a combination of approaches for the benefit of communities and natural resources. The MUSYA makes that principle clear by explaining that “multiple use” means management to make “judicious use of the land for some or all” of the renewable resources thereon, with some land “used for less than all of the resources” (16 U.S.C. 531).

USFS LMPs guide sustainable and integrated resource management of resources within the plan area in the context of the broader landscape, giving due consideration to the relative values of the various resources in particular areas. The USFS land management planning directives provide direction on how plan components work together but does not mean that all uses must be provided for on all lands; from place to place within a plan, a plan will often provide for some uses but not others (FSH 1909.12, Ch. 20. Sec. 22).

Neither FLPMA, the MUSYA, nor the Planning Rule require that all uses be allowed on all areas of public or NFS lands. Rather, the BLM and USFS have wide latitude to allocate these lands to particular uses and to employ the mechanism of land use allocation to protect for certain resource values, or, conversely, develop some resource values over others, short of unnecessary or undue degradation. Through the land use planning process, the agencies evaluate and choose an appropriate balance of resource uses, which involves tradeoffs between competing uses.

Proclamation 10285 declares the lands within BENM as “an object of historic and scientific interest in need of protection” and ensures “the preservation, restoration, and protection of the objects... on the Bear Ears region, including the entire monument landscape” (BENM PRMP/FEIS p. 1-1). This

declaration established BENM lands for a specific use; therefore, typical multiple-use management within BENM is superseded by the direction in Proclamation 10285 to protect BENM objects, because prioritizing multiple uses over protection of BENM objects would be inconsistent with Proclamation 10285 and Section 302 of FLPMA. In other words, multiple uses are allowed only to the extent they are consistent with the protection of the objects within BENM.

In addition, Proclamation 10285 directs that BENM shall be managed as part of the NLCS, which was established “to conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations” under the Omnibus Public Land Management Act of 2009. Accordingly, the BLM is required to manage BENM “in a manner that protects the values for which the components of the system were designated” (16 U.S.C. 7202). This management mandate may be realized in various ways. The BENM RMP must reflect the unique issues, management concerns, and resource conditions of the management area while reflecting the purposes set forth in Proclamation 10285.

A stated purpose of the BENM PRMP/FEIS is to “provide for uses of Monuments lands, so long as those uses are consistent with the protection of BENM objects” (BENM PRMP/FEIS p. 1-3). Accordingly, all alternatives considered in the BENM PRMP/FEIS, as described in Chapter 2, provide an appropriate balance of uses on the public lands. All alternatives allow some of level of all uses present in the planning area, in a manner that is consistent with applicable statutes, regulations, and BLM policy.

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

The BLM’s proposed LWC designations in the BENM PRMP/FEIS are consistent with Sections 201 and 202 of FLPMA and BLM Manual 6320. Wilderness characteristics are included in the “resource and other values” the BLM is required to inventory on a continuing basis consistent with Section 201(a) of FLPMA (43 U.S.C. 1711(a)). As part of the land use planning process, FLPMA further provides the BLM with discretion to consider management of inventoried resources, including wilderness characteristics. Such discretion in analyzing potential management options for wilderness characteristics is neither prohibited nor constrained by the BLM’s obligations under Section 603 of FLPMA (43 U.S.C. 1782), i.e., the statutory direction for the BLM, in the 15 years that followed the passage of FLPMA, to inventory for areas suitable for Congress to designate as wilderness and to manage these areas so as not to impair the suitability of such areas for preservation as wilderness until Congress acts. As a result, the BLM may utilize its authority under Section 202 of FLPMA to manage areas identified as having wilderness characteristics for the protection of those characteristics.

For the BENM PRMP/FEIS, the BLM re-inventoried LWCs (on BLM-administered lands only) identified in BENM, identifying approximately 421,965 acres as possessing wilderness characteristics (BENM PRMP/FEIS p. 3-75). Under the Proposed Plan, a portion of the LWCs in BENM would be managed to protect their wilderness characteristics, only allowing “for discretionary uses that do not adversely impact the unit’s wilderness characteristics and are consistent with the protection of BENM objects” (BENM PRMP/FEIS Management Action 106, p. 2-37). Managing these areas to protect the wilderness characteristics will limit impacts on solitude and soundscapes, viewsheds, cultural

resources, and wildlife habitat, which is directed by Proclamation 10285 and necessary to the PRMP/FEIS's purpose of protecting and restoring Monument objects in large, remote, rugged, and connected landscapes. In addition, the BLM is within its legal authority to identify and manage areas as LWCs for the protection of wilderness resources and has not created de facto wilderness areas by doing so.

The BENM PRMP/FEIS satisfied FLPMA and MUSYA direction that the BLM and USFS manage the public and NFS lands under principles of multiple use and sustained yield, unless otherwise directed by law. Accordingly, this protest issue is denied.

## ***Impacts Analysis: Recreation***

### ***Moab BASE Association, Inc.***

#### ***Ryan Katchmar***

**Issue Excerpt Text:** Further, the agency failed to develop evidence of, and the Proposed RMP fails to articulate a reason why paragliding, hang gliding, BASE jumping, wingsuiting, and highlining (the "Banned Activities") are "inconsistent with the protection of BENM objects and the Bears Ears cultural landscape" Proposed RMP, at 2-103. Each Banned Activity has a long history in the Bears Ears National Monument ("Bears Ears"), notably in the Indian Creek Recreation Area and Valley of the Gods. The Banned Activities are derivative offshoots of the climbing community itself, which under the Proposed RMP enjoys continuing access to recreation in Bears Ears. The Banned Activities have little to no impact on the land, since they are primarily a means of descending from already-climbed objects without the environmental impact of climbing down. In addition, by the BLM's own estimation, these activities are of low environmental impact since they represent a small fraction of the recreational activity taking place within Bears Ears. As a substitute for investigation and evidence supporting these bans, the BLM has instead found each of the Banned Activities "inconsistent with the protection of Monument objects and the Bears Ears cultural landscape" based solely on unspecified "Traditional Indigenous Knowledge" and without engaging with other stakeholders as required. See Draft RMP, at 2-115, Proposed RMP, at 2-103. While "[i]ncorporating traditional Indigenous knowledge into management helps ensure that decisions are culturally sensitive," [Final Environmental Impact Statement, Vol 3, at Appendix U] such incorporation cannot operate as a wholesale substitute for the entire panoply of other regulations, law, and internal agency policy guiding management decisions, and cannot foreclose consideration of other factors. I respectfully request that BLM cull the Proposed RMP of the arbitrary and capricious prohibitions on paragliding, hang gliding, BASE jumping, wingsuit flying, and highlining which were proposed absent an evidentiary record of environmental or cultural degradation or opportunity for the public to comment in order to correct BLM's violation of 5 U.S.C. 706(2). "The reviewing court shall . . . hold unlawful and set aside agency actions found to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." *Id.* The Proposed RMP contravenes the APA's mandate that agency decisions (here, enacting a prohibition of the Banned Activities) rest upon a clearly articulated reason and facts—none of which are present in the Draft RMP or Proposed RMP. An agency action is arbitrary and capricious if the agency relied on factors which the legislature had not intended it to consider, if it entirely failed to consider an important aspect of the problem, if it offered an explanation for the decision that runs counter to the evidence, or if the decision is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. See *In re Space Ctr. Transp.*, 444 N.W.2d 575, 581 (Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co., 463 U.S. 29,43 (1983)).

**Summary:**

Protestors stated the BLM and USFS violated NEPA by failing to adequately analyze impacts on the Monument from paragliding; hang-gliding; buildings, antennas, spans, and earth (BASE) jumping; wingsuiting; and highlining or providing rationale behind their decision to prohibit these activities in BENM.

**Response:**

The Council on Environmental Quality's (CEQ) regulations implementing NEPA direct that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15) and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b), 1502.1).<sup>2</sup> The agencies are required to take a "hard look" at potential environmental impacts of adopting the BENM Proposed Plan.

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2; FSH 1909.15, Section 12.3). The BLM and USFS need not speculate about all conceivable impacts, but must evaluate the reasonably foreseeable significant effects of the alternatives.

A land use planning-level decision is broad in scope and programmatic in nature and would not result in on-the-ground planning decision or actions; as such, the scope of the analysis was conducted at a regional, programmatic level. 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 in the affected environment discussion provide the necessary basis to make informed land use plan-level decisions. The analysis in the BENM PRMP/FEIS identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

Regarding protestors' statement about paragliding, hang-gliding, BASE jumping, wingsuiting, and highlining within the Monument, per Management Action 272 the Proposed Plan would prohibit certain "[a]ctivities inconsistent with the protection of BENM objects and the Bears Ears cultural landscape, as determined in collaboration with the BEC and in accordance with Tribal expertise and Traditional Indigenous Knowledge" (BENM PRMP/FEIS p. 2-103). Based on Tribal expertise and Traditional Indigenous Knowledge obtained through coordination with the BEC, the agencies determined that the activities cited by protestors are inappropriate in the Bears Ears cultural landscape and could adversely affect Monument objects. The agencies note that very few visitors to the BENM region participate in those activities (BENM PRMP/FEIS Appendix U, pp. U-148 through U-149). As explained in Appendix N of the BENM PRMP/FEIS, in 2020, the BLM's Monticello Field Office commissioned recreational use studies by University of Alaska Fairbanks researchers in order to better understand public demand for specific recreational activities, experiences, and benefits in the Monument. The researchers conducted a total of 778 on-site surveys analyzing typical recreational visitor and recreation activities across two subunits of BENM, which found that rock climbing, day hiking, camping, and exploring cultural sites were the top recreational activities (BENM PRMP/FEIS Appendix N, p. N-150).

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<sup>2</sup> The BLM and USFS are aware of the November 12, 2024, decision in *Marin Audubon Society v. Federal Aviation Administration*, No. 23-1067 (D.C. Cir. Nov. 12, 2024). To the extent that a court may conclude that the CEQ regulations implementing NEPA are not judicially enforceable or binding on this agency action, the BLM and USFS have nonetheless elected to follow those regulations at 40 CFR 1500-1508, in addition to the Department of the Interior's procedures/regulations implementing NEPA at 43 CFR 46 and Part 516 of the Departmental Manual, to meet their obligations under NEPA, 42 U.S.C. 4321 et seq.

In addition, Traditional Indigenous Knowledge related to the development of BENM (BENM PRMP/FEIS Appendix L) demonstrates the Monument’s landforms as areas of Tribal importance and details impacts associated with these recreational activities. For example, as explained in Appendix L, Traditional Indigenous Knowledge indicates that, as a result of increased human visitation, much stress and impact, including damage to ancestral sites, vandalism, and pollution to the environment by trash and human waste, has been placed on the lands in the Monument, including the once near-pristine canyons, which is a major threat to the values held by the Tribal Nations of BENM. As a result, the Proposed Plan prohibits certain activities, including paragliding, hang-gliding, BASE jumping, wingsuiting, and highlining, because these activities contribute to these impacts.

Regarding recreation management areas, the agencies designed recreation management actions that address both the protection of Monument objects and continued recreational use on Monument lands. These recreation management actions are provided in Section 2.4.20 (BENM PRMP/FEIS pp. 2-87 through 2-106). As detailed in these management actions, the agencies proposed ERMAs under Alternatives B and C. Under Alternatives D and E and the Proposed Plan, the agencies identify landscape-level recreation management zones to manage visitation and recreational uses to protect BENM objects and specify activities allowed within each zone (BENM PRMP/FEIS p. 2-88 through 2-91). The zoned approach to recreation management within BENM was designed to protect Monument objects and values on a landscape level. Recreation, while identified as a resource that contributes to the social and economic well-being of the area’s modern communities in Proclamation 10285, is specifically excluded from consideration as a BENM object to be protected. The BLM does not propose any ERMAs or Special Recreation Management Areas within the BENM PRMP/FEIS under the Proposed Plan. Detailed descriptions of recreation activities, experiences, and benefits for the various management areas and sub-areas and the specific management for targeted recreation uses to protect Monument objects can be found in Appendix E, *Supporting Information for Recreation and Visitor Service Decisions*, of the BENM PRMP/FEIS.

The BLM and USFS complied with NEPA’s requirement to analyze the environmental impacts on and from recreation in the BENM PRMP/FEIS. Accordingly, this protest issue is denied.

## ***Impacts Analysis: Travel and Transportation Management***

### ***BlueRibbon Coalition***

#### ***Simone Griffin and Ben Burr***

**Issue Excerpt Text:** The Biden Administration’s focus on equity, however, changes the equation. 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 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 FEIS. This FEIS fails to comply with the Department of Interior Equity Action Plan.

***BlueRibbon Coalition***

***Simone Griffin and Ben Burr***

**Issue Excerpt Text:** The BLM failed to respond to concerns we raised regarding persons with disabilities. The BLM did not analyze the RMP’s compliance with the Equity Action Plan. In April 2022 the Department of Interior released its Equity Action Plan which states, “Public land visitation data collected from the Department’s bureaus suggests that certain underserved communities are underrepresented as public land visitors, relative to their presence in the U.S. population at large.” This includes persons with disabilities and limited physical access. This project proposal will help decrease access within this area for underserved communities.

***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** Whether the agencies consider in-use roads, routes, and trails to be valid or not (and there are reasons they cannot consider them invalid), by failing to consider them at all in the Proposed RMP/FEIS while closing them through area-wide determinations, the agencies fail to consider reliance interests, the current environment, and an important aspect of the problem. The agencies’ flippant response that “constraining motorized or mechanized recreational use to designated roads and trails could impact the public’s ability to access certain portions of the Monument,” Section 3.5.8.2.1, fails to take seriously all of the downsides of this approach. The agencies cannot make an informed decision without considering them all in the context of what in-use roads are being closed. Further, the agencies’ failure to acknowledge actual roads and routes are being closed thwarted public comment on the closures. The Proposed RMP also prevents any routes, roads, or trails not yet designated from becoming so later, making any closures permanent. Proclamation 9558 provided: “Any additional roads or trails designated for motorized vehicle use must be for the purposes of public safety or protection of [BENM] objects.” The agencies appear to believe that this directive was incorporated into Proclamation 10285 and that they must obey it. Although the management directives suggest that this applies only in sensitive areas, Row 288, elsewhere the Proposed RMP implies that it applies everywhere and adds the condition of BEC coordination, Section 3.5.8.2.3; Appendix H, Section 2. These requirements are unlawful as explained above, including because the Proclamation cannot perform land use planning like this and the involvement of the BEC in every travel management decision is contrary to statute. Regardless, this contribution to closing travel without analysis renders it arbitrary and unlawful too.

***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** The Proposed RMP designates an additional 200,000 acres as OHV closed over Alternative E. It provides no explanation or justification for this massive change, which cannot be justified by either BENM objects or even from input by the BEC. Beyond being arbitrary, unreasonable, and unlawful for all of the reasons discussed here, and beyond exacerbating all of the problems with the agencies not considering what is being closed, this change is additionally a material change that requires a new comment period.

***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** One of the biggest errors in simply closing large portions of the BENM to OHV travel and instituting large areas of ROW exclusions or avoidance, Rows 233, 278, is that those actions conflict with Utah’s and the Counties’ vested rights and rights under R.S. 2477 and effect an unlawful Fifth Amendment taking. As a District Court recently ruled, in explicitly rejecting the federal government’s policy of not accepting or recognizing these rights until adjudicated, Utah and the Counties must be treated as vested title holders under R.S. 2477 because such rights are “vested property rights.” See Mem. Decision and Order, Dkt. No. 792, Kane Cnty. v. United States, No. 2:11-cv-1045, at \*32 (D. Utah Aug. 9, 2024). The opinion recognized that the previous monument plans

have failed to do this. The State and County rights exist regardless of whether “claimed,” Appendix S, Section 2.14. The State and Counties as R.S. 2477 holders have the right to manage and maintain the ROWs without federal consultation, the right to regulate activities on these ROWs (such as posting signage), and the right to assert police powers over them. When these court rulings were raised by the State at the October 1, 2024 “information only” CA meeting, the agencies stated that they were familiar with the decisions but not concerned and proceeded to close, restrict, and otherwise dispose of State and County property rights without further consideration. The agencies’ unilateral and categorical decision to close or restrict these ROWs disregards these vested rights and constitutes an unlawful interference with State and County property.

***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** The Proposed RMP closes multiple State and County vested ROWs without recognizing those rights. One the Proposed RMP recognizes as affected is Arch Canyon Road. In the Proposed RMP, Arch Canyon is designated as “limited” rather than “closed,” but the agencies then require access permits to travel through it for both motorized and non-motorized uses. Row 278. The Proposed RMP/FEIS does not justify this action, including based on current environmental effects. Such an action fits squarely within the bounds of implementation-level travel planning and outside the parameters of land use planning. The agencies have reserved all of the critical details, e.g., how many permits will be issued or group sizes for each permit, for a later decision that will be made in coordination with the BEC only. Besides being arbitrary because the agencies have failed to consider how a permit system would even work, this also impermissibly interferes with the vested property rights of the State and the County (and unlawfully shifts authority to the BEC). But the agencies also failed to consider the specific points Utah noted in its June 11 letter, including that BLM previously determined to acknowledge Arch Canyon Road’s R.S.2477 status in 1990 and the environmental analyses showing that it had no negative impacts on the riparian areas or fish habitat, or even on cultural resources by motorized access.

***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** Additionally, the State also protests the effective closure of backcountry airstrips until implementation planning might open them (under every alternative). Row 286. These airstrips similarly qualify for consideration under Section 106. Furthermore, their being open to the public is critical for public safety and search and rescue within BENM. These airstrips are generally maintained through use or by non-profit organizations that use them. Without public access, these airstrips will quickly be reclaimed and become unusable. The Proposed RMP/FEIS provides no analysis or rationale for why closure is necessary, whether to protect BENM objects or for other reasons. The agencies failed to substantively respond or even acknowledge the effective closure of in-use airstrips. Appendix U, 17573-40.

***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** The Proposed RMP also violates the agencies’ policies to conduct travel management planning as an implementation-level decision. The Proposed RMP states that roads would generally remain the same in OHV-limited areas and decisions would be made through implementation-level travel planning, (Rows 281, 287; Appendix H). This fails to consider that the broad designations of ROW exclusion and OHV closed routes and trails affect implementation-level decisions. Additionally, designating areas OHV limited and recognizing only designated routes and trails without conducting further analysis of those in use is equally problematic. The Proposed RMP fails to consider the possibility of leaving formal and actual route closures to such planning. If the agencies plan to postpone grazing permit decisions to a later date for implementation-level NEPA analysis, the same should be true for travel management. While the Proposed RMP recognizes



numerous “beneficial impacts of designating routes through a TMP,” there is no countervailing justification for proceeding with categorical closures and exclusions. ES-5.2.8. The agencies’ only response to this comment by Utah is that BLM regulations require designations, Appendix U, 17573-31, which is unavailing as explained above. Flexibility is particularly important for the RMP because, as demonstrated through other monument planning efforts, it is necessary to manage the physical impacts of increased visitation on infrastructure. The agencies should recognize this based on their own experience. Decades of problems within the Grand Staircase Escalante National Monument arose under the restrictive Monument Management Plan when roads required repair or improvement and became public safety problems. Here, the State encouraged the agencies to build flexibility into this RMP/EIS for all infrastructure, but most importantly for roads and the areas around trailheads. For example, managing land according to the Proposed RMP’s prescriptions for LWCs around a trail or trailhead will handicap the ability to provide adequate parking or bathroom facilities at that trailhead. The agencies failed to substantively respond to these comments. Appendix U, 17573-32.

***Ride With Respect et al.***

***Clif Koontz et al.***

**Issue Excerpt Text:** These three designations would obstruct the due consideration to re-open many other existing routes, including hundreds of miles of primitive roads claimed by San Juan County and the State of Utah. For one thing, the R.S. 2477 bellwether case in Utah District Court recently favored Garfield and Kane counties, putting onus on the BLM to refute R.S. 2477 claims rather than operating as if the claims are unaffected by closing more routes and areas in southern Utah. For another thing, even when it comes to existing routes not claimed by the counties or state, such routes were not necessarily given a fair shake by the travel management plan (TMP) that was wrapped into the 2008 Monticello RMP. Persistent controversies could be partly resolved by more thorough travel planning, but such planning would be precluded by the designation OHV Closed, Primitive Zone, or LWCs to be managed for wilderness characteristics.

***Ride With Respect et al.***

***Clif Koontz et al.***

**Issue Excerpt Text:** NEPA and FLMA require the BLM to invite meaningful public participation, and Executive Order 11644 as amended states “The respective agency head shall ensure adequate opportunity for public participation in the promulgation of such regulations and in the designation of areas and trails under this section.” Accordingly 43 CFR § 8342.2(a) Public Participation states: The designation and redesignation of trails is accomplished through the resource management planning process described in part 1600 of this title. Current and potential impacts of specific vehicle types on all resources and uses in the planning area shall be considered in the process of preparing resource management plans, plan revisions, or plan amendments. Prior to making designations or redesignations, the authorized officer shall consult with interested user groups, Federal, State, county and local agencies, local landowners, and other parties in a manner that provides an opportunity for the public to express itself and have its views given consideration. For each of the 637,615 acres that would become OHV Closed, the PRMP/FEIS doesn’t provide analysis of the current and potential impacts of specific vehicle types on all resources and uses, which is needed for the public to meaningfully participate.

***Ride With Respect et al.***

***Clif Koontz et al.***

**Issue Excerpt Text:** Beyond the Remote Zone, LWC, and WSA designations, the purpose and need for an enormous OHV Closed designation is claimed by statements like “the management of these areas as closed to OHV uses is consistent with the requirement at 43 CFR 8342.1, which includes minimization of impacts to cultural resources, soundscapes, wildlife, wilderness characteristic policy for the BLM, and limit recreational conflicts.” However the PRMP/FEIS lacks details. The agencies’ response to comments includes that the “effects of those area designations are addressed in several

sections of the EIS including, but not limited to the Paleontological Resources and Geology, Water Resources, Terrestrial Habitat, Lands with Wilderness Characteristics, Wildlife and Fisheries, Recreation and Travel and Transportation Management sections in Chapter 3.” However the sections merely make generalized assertions, many of which pertain to misuse that is clearly not a matter of managerial designations, rather one of law enforcement, education, and perhaps trail work. The PRMP/FEIS must become far more specific about the problems and potential solutions in each location of the planning area. If major negative impacts are occurring, demonstrate them as well as a comprehensive analysis of alternative actions along with their positive and negative effects, as it would be far more fruitful than simply converting the majority of the planning area from OHV Limited to OHV closed. The Organizations are aware of the four criteria from Executive Order 11644 as amended, but the PRMP/FEIS hasn’t even begun to show the BLM’s work of applying these criteria to the 637,615 acres that would become OHV Closed, especially the hundreds-of-thousands of acres beyond the WSAs.

***Ride With Respect et al.***

***Clif Koontz et al.***

**Issue Excerpt Text:** The PRMP/FEIS seems to imply that thorough travel planning of these routes is unwarranted because the agency proposes to close the entire area rather than closing just the routes. However, the area of closure includes the designated routes (along with other existing routes along with proposed ones), so the fact that the BLM proposes to close more than just the routes doesn’t justify shortchanging the meaningful public participation of these proposed actions. The PRMP/FEIS provides no analysis because it provides no route reports. Far beyond the 32 miles of route, the PRMP/FEIS makes major travel planning decisions by removing hundreds of thousands of acres from any further discussion. This enormous area goes far beyond the WSAs and wilderness area. It contains county-claimed roads, other existing routes, and locations where a new route may become entirely appropriate for some kind of mechanized use over the lifecycle of an RMP.

***Ride With Respect et al.***

***Clif Koontz et al.***

**Issue Excerpt Text:** The PRMP/FEIS essentially dismisses concerns about travel management planning since it will be done subsequently, but the PRMP/FEIS would in fact make travel planning decisions that would be irreversible without amending the RMP. It would close 32 miles of routes that may be of lower use levels but are also of higher recreational value to motorized trail enthusiasts due to their more primitive characteristics. The Organizations’ DRMP comments carefully provided descriptions and photographs of two of these routes, specifically the winter access road to Beef Basin northwest of Boundary Butte (D1870) and John’s Canyon western overlook road (D0053), yet the agencies have provided no response.

***BlueRibbon Coalition***

***Simone Griffin and Ben Burr***

**Issue Excerpt Text:** Furthermore, BLM Manual 16261 states this at section 6.2: 6.2 Revised Statute 2477 Assertions Travel management planning is not intended to address the validity of any R.S. 2477 assertions. Unless BLM determines otherwise after consultation with the Office of the Solicitor, all RMPs and TMPs at a minimum should include the following statement with regard to R.S. 2477 assertions: “A travel management plan is not intended to provide evidence, bearing on, or address the validity of any R.S. 2477 assertions. R.S. 2477 rights are determined through a process that is entirely independent of the BLM’s planning process. Consequently, [this RMP/TMP] did not take into consideration R.S. 2477 evidence. The BLM bases travel management planning on purpose and need related to resource uses and associated access to public lands and waters given consideration to the relevant resources. At such time as a decision is made on R.S. 2477 assertions, the BLM will adjust its travel routes accordingly.” In 2008 Kane County filed a lawsuit to quiet title over specific RS2477 roads within Kane County. On August 9, 2024, the court denied the United States’ motion to dismiss

this case (Kane County, Utah v. United States, No. 2:11-cv-01045-CW, D. Utah Aug. 9, 2024). On August 22nd the Final GSENM RMP was released. The Kane County motion to dismiss further established that any effort to close RS2477 roads through an RMP or TMP is an assertion against the validity of those roads. In order to be consistent with the findings of this very recent court activity in the Kane County case, BLM Manual 1626 needs to be updated to indicate that BLM's default position on RS 2477 roads should be to keep them open unless the validity of the ROW is effectively contested. The Kane County motion to dismiss is a substantial rollback of administrative discretion that is violated by the Bears Ears RMP. Arch Canyon road which is being restricted through this RMP is an RS2477 County B road and therefore should not be closed in any capacity as a result of this planning process. Arch Canyon road provides valuable access to historically and culturally significant areas.

### **Summary:**

Protestors stated the BLM and USFS violated NEPA by failing to adequately analyze impacts from motorized use and OHV area designations within BENM or justify travel management decisions that should be outside the scope of this planning effort, such as directives on backcountry airstrips, which qualify for protection under Section 106 and are critical for public safety and search and rescue efforts. Protestors also stated that the BLM's travel management restrictions are not in compliance with the Equity Action Plan and restrict access for underserved communities, specifically persons with disabilities. Protestors stated the agencies failed to analyze if managing LWCs as OHV limited or closed would protect Monument values and objects, and did not provide sufficient opportunity for the public to provide meaningful input on OHV designations. Protestors stated the agencies failed to sufficiently respond to public comments regarding the travel planning process and impacts of proposed closures. Protestors also stated the agencies failed to treat Utah and the counties as vested titled holders under Revised Statute (R.S.) 2477, which grants them the right to manage and maintain ROWs without Federal consultation, including Arch Canyon Road. Protestors stated the agencies unlawfully incorporated travel management direction from Proclamation 9558 into the current planning process.

### **Response:**

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

The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2; FSH 1909.15, Section 12.3). The agencies need not speculate about all conceivable impacts, but must evaluate the reasonably foreseeable significant effects of the proposed action and alternatives.

BLM regulations define OHVs as "any motorized vehicle capable of, or designed for, travel on or immediately over land, water, or other natural terrain," except, among other exceptions, any military, fire, emergency, or law enforcement vehicle while being used for emergency purposes, and any vehicle whose use is expressly authorized by the BLM or is otherwise officially approved. Pursuant to its OHV regulations, the BLM must designate all public lands as open, limited, or closed to OHV use. The BLM makes these "area designations" in land use plans. In OHV open areas, all types of vehicular use are allowed at all times, and the BLM need not designate certain routes as available for public OHV use through implementation-level travel planning. In limited areas, the BLM may restrict

OHV use at certain times, in certain areas (e.g., designated routes), and/or to certain vehicular use. The BLM imposes such restrictions through implementation-level travel planning that occurs after it completes land use planning. Finally, in OHV closed areas, OHV use is prohibited, regardless of whether a route exists on the ground.

In the BENM PRMP/FEIS, OHV area designations vary across alternatives and were developed based on the protection of the BENM objects. In identifying area designations, the BLM applied OHV closures to areas within BENM that (1) would minimize damage to soil, watersheds, vegetation, air, and other resources; (2) would minimize harassment of wildlife or significant disruption of wildlife habitats; (3) would 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; and (4) would minimize potential adverse effects on primitive areas consistent with the intent of the area designation (BENM PRMP/FEIS Appendix H, p. H-1). These OHV travel closures were designed to meet the purpose and need of the BENM PRMP/FEIS. Section 3.5.8 of the BENM PRMP/FEIS discusses the affected environment and environmental consequences of travel and transportation management (pp. 3-224 through 3-228). As part of implementation-level travel management planning, the agencies will conduct route-by-route analysis in collaboration with the BEC and other Tribes and stakeholders including State and local governments.

Several miles of route that are currently available for public OHV use are within areas that would be designated as OHV closed under the Proposed Plan. Those routes would become closed to OHV use as a result of the area designations in the Proposed Plan. The effects of those area designations, and the resulting route closures, are addressed in several sections of the BENM PRMP/FEIS including, but not limited to, *Paleontological Resources and Geology* (pp. 3-6 through 3-17), *Water Resources* (pp. 3-25 through 3-40), *Terrestrial Habitat and Vegetation Resilience and Conservation* (pp. 3-40 through 3-60), *Lands with Wilderness Characteristics* (pp. 3-75 through 3-80), *Wildlife and Fisheries* (pp. 3-96 through 3-120), *Recreation Use and Visitor Services* (pp. 3-202 through 3-224), and *Travel, Transportation, and Access Management* (pp. 3-224 through 3-228).

Proclamation 9558 states, “Any additional roads or trails designated for motorized vehicle use must be for the purposes of public safety or protection of such objects.” Proclamation 10285 expressly “incorporated by reference” the “terms, conditions, and management direction... provided by Proclamation 9558.” Thus, the restriction on the designation of additional roads and trails for motorized vehicle use in Proclamation 9558 was incorporated into Proclamation 10285 and applies throughout the entirety of the restored Monument boundaries, as well as the approximately 11,200 acres added to the Monument by Proclamation 9681. The protestor is therefore incorrect that this limitation on the designation of new motorized roads and trails does not apply in all areas of BENM.

Regarding protestors’ statements about the closure of backcountry airstrips within BENM, the only airstrips within the Planning Area currently designated as open to motorized use, including use by aircraft, are the Fry Canyon Airstrip and the Bluff Airport. Motorized aircraft meet the definition of OHV under 43 CFR 8340.0-5(a) when taking off and landing and, under the Proposed Plan, airstrips could be designated for public use during implementation-level travel planning in accordance with 43 CFR 8342.1. Landing of aircraft on NFS lands outside of a designated airstrip is prohibited without authorization and there are no designated airstrips on the USFS portion of BENM. The protestor is incorrect that the BLM has not provided any rationale for its decision to maintain the closure of several backcountry airstrips in BENM. As made clear by the FEIS, limiting the landing and taking off of aircraft to only those airstrips that are designated for such use during implementation-level travel planning would limit adverse impacts on BENM’s soundscapes (BENM PRMP/FEIS pp. 3-131 through 3-135).

Under the Proposed Plan, motorized vehicle use is authorized for emergency and administrative purposes, including the use of motorized aircraft, throughout BENM, even in areas that are designated as OHV closed. Therefore, authorized administrative use or routes would not be affected, as discussed in Section 3.5.8, *Travel, Transportation, and Access Management* (BENM PRMP/FEIS pp. 3-224 through 3-228).

As discussed in detail in the section of this protest report concerning compliance with the National Historic Preservation Act (NHPA), the agencies have determined that the Proposed Plan would have no adverse effect on potentially eligible historic roads in BENM. The Utah State Historic Preservation Officer (SHPO) concurred with the agencies' determination.

Regarding access, the PRMP is consistent with the Department of the Interior's Equity Action Plan, a strategic initiative aimed at advancing equity across the Department's operations and engagements. The Equity Action Plan does not prevent the BLM from prohibiting OHV use in certain areas in order to facilitate resource protection and other policy goals. Moreover, the PRMP complies with the Rehabilitation Act of 1973, and the BLM's analysis of how the PRMP could affect people with disabilities in Section 3.5.5 of the BENM PRMP/FEIS complies with NEPA.

Regarding concerns about OHV access in Arch Canyon, the BLM analyzed a full range of alternatives, which can be found in Management Action 278 (BENM PRMP/FEIS p. 2-107). Arch Canyon would be limited to motorized travel under Alternatives A, B, and C, and closed to motorized travel under Alternatives D and E. Under the Proposed Plan, motorized travel would be limited in Arch Canyon, specifically, "[i]ndividual Special Recreation Permits would be required for motorized and non-motorized use in Arch Canyon Sub-Area. Permit systems would be developed in implementation in collaboration with the BEC and may include, but not limited to, seasonal limitations and timing restrictions. Motorized events would be prohibited in the Arch Canyon Sub-Area" (BENM PRMP/FEIS p. 2-107). The protestors points to a discussion in Appendix E regarding conflicting recreational use in Arch Canyon. Arch Canyon is one of two canyons in the Cedar Mesa Management Area that allows for driving on a motorized road, and is attractive to both motorized and non-motorized users. The implementation of a permit system would allow the agencies to better manage the different user groups in Arch Canyon. Potential impacts on travel and transportation from implementation of these designations under each alternative are analyzed in Section 3.5.8.2 (BENM PRMP/FEIS pp. 3-225 through 3-228).

Multiple opportunities to comment were provided throughout the BENM PRMP/FEIS planning process, including public open houses where comments could be made in addition to mailing letters or using the ePlanning site. Approximately 18,700 comment letters were received on the BENM Draft RMP/EIS and seven public open houses were held for the Draft EIS comment period (see BENM PRMP/FEIS Appendix O). In addition, implementation-level planning will occur for future travel management, which will also include public participation as described in BENM PRMP/FEIS Appendix H, *Travel Management Plan Criteria*.

Finally, the PRMP does not violate R.S. 2477 and respects valid existing rights. Of the claimed R.S. 2477 ROWs in areas designated by the PRMP as OHV closed, all but 19 (comprising 15.7 miles) have been closed to public OHV use since 2008 or earlier. As a result, pursuant to 28 U.S.C. 2409a(b), the United States is and has been exercising full possession and control over the roads that have been closed since at least 2008. Additionally, consistent with 28 U.S.C. 2409a(b), unless and until title over those roads is perfected in the State or counties' favor, the State and counties may not disturb the United States in its possession and control over the closed roads. Therefore, while the BLM does not concede that the recent district court rulings in *Kane County v. United States* are correct, it is nevertheless the case that, under the logic of those rulings, the BLM retains authority to issue an RMP containing OHV area designations that result in claimed R.S. 2477 ROWs remaining

unavailable to public OHV use. As such, the PRMP's treatment of those roads does not violate R.S. 2477 and respects valid existing rights.

Similar logic applies to the backcountry airstrips referenced by a protestor. The BLM expressly declined to designate all but two backcountry airstrips as available for public use in the 2008 Monticello RMP. As such, the BLM is and has been exercising full possession and control over the airstrips that have not been designated for public use, and the State and San Juan County may not disturb the United States in its possession and control over those airstrips unless and until title over them is perfected in the State or county's favor. Accordingly, the Proposed Plan's treatment of those airstrips does not violate R.S. 2477 and respects valid existing rights.

The PRMP's treatment of the 15.7 miles of roads that have not been closed to public OHV use since at least 2008 also does not violate R.S. 2477 and respects valid existing rights. Unlike the class B roads that were the focus of the Utah District Court's recent rulings, the BLM has no reason to believe that the State or San Juan County has vested title to the 15.7 miles of roads under the logic of the court's recent decisions. As noted in those decisions, a mere assertion of title does not afford one the status of a holder and, to date, neither the State nor San Juan County has shown that it was expending time and money to maintain those roads prior to 1976. Accordingly, the area closures in the PRMP that have the effect of closing the 15.7 miles of roads that are currently open to public OHV use, and the permit requirement that would be imposed on motorized travel in Arch Canyon, do not contravene a valid existing right and do not violate R.S. 2477. The agencies complied with NEPA and BLM travel management regulations and guidance in their management of OHVs. The agencies also did not violate R.S. 2477 or contravene valid existing rights. Accordingly, this protest issue is denied.

## *OHV Designation Criteria*

### *Southern Utah Wilderness Alliance et al.*

#### *Judi Brawer et al.*

**Issue Excerpt Text:** The Proposed Plan would manage 216,371 acres of BLM-identified LWC as OHV Limited. Based on BLM's self-imposed limits, these wilderness-quality areas-which are identified by name in the BENM Proclamations-would be managed pursuant to less protective management designations. For example, LWC managed to "minimize" impacts to wilderness characteristics (as opposed to managed to "protect" wilderness characteristics); Outback or Passage recreation zones (as opposed to a Remote recreation zone); VRM Class II or III (as opposed to VRM Class I); and ROW open or avoidance (as opposed to ROW exclusion). *Id.* These designations would allow for additional developments and discretionary uses and, importantly, the FEIS fails to analyze whether the less protective designations would protect BENM's objects and values.

### *Southern Utah Wilderness Alliance et al.*

#### *Judi Brawer et al.*

**Issue Excerpt Text:** Allowing Motorized Use in Arch, Moqui, and Dark Canyons Violates the Minimization Criteria by Failing to Minimize Resource Damage and User Conflicts Executive Order 11644, as amended by Executive Order 11989, imposes a substantive obligation on the BLM and Forest Service to locate designated OHV areas in order to minimize damage to natural and cultural resource, and to minimize conflicts with other existing or proposed recreational uses. See 43 C.F.R. § 8342.1; 36 C.F.R. § 212.55(b); Attach. 1, pp. 58-59. Federal courts have repeatedly made clear that federal agencies must meaningfully apply and implement-not just identify or consider-the minimization criteria when designating areas (as open, closed or limited), trail systems, or individual trail, and to demonstrate in the administrative record how they did so. See, e.g., *WildEarth Guardians*, 790 F.3d at 929-32; *Ctr. for Biological Diversity*, 746 F. Supp. 2d at 1071-81. The minimization

criteria requires that all OHV area designations “shall be based on the protection of the resources of the public lands, the promotion of the safety of all the users of the public lands, and the minimization of conflicts among various uses of the public lands.” 43 C.F.R. § 8342.1. In meeting these goals, BLM must comply with the following criteria: (a) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, air, or other resources of the public lands, and to prevent impairment of wilderness suitability. (b) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats. Special attention will be given to protect endangered or threatened species and their habitats. (c) 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, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors. (d) Areas and trails shall not be located in officially designated wilderness areas or primitive areas. Areas and trails shall be located in natural areas only if the authorized officer determines that off-road vehicle use in such locations will not adversely affect their natural, esthetic, scenic, or other values for which such areas are established. 43 C.F.R. § 8342.1(a)-(d). Here, there is no evidence that BLM considered these criteria, much less implemented them. The DEIS and FEIS contain no information concerning the impacts of motorized roads, trails, and use in Moqui Canyon and the Dark Canyon area. As discussed above, the motorized route in Arch Canyon is already impairing an important riparian area, including ongoing adverse impacts to water quality and fish and wildlife habitat. Further, according to the FEIS, Arch Canyon suffers from “the concentration of potentially conflicting recreation uses (OHV, hiking, and backpacking) in a narrow riparian system with a high density of significant archaeological structures and rock imagery.” FEIS, Vol. 2, Appendix E, p. E-18. Closing Arch Canyon would remove these significant conflicts by reducing noise and dust. FEIS, Vol. 1, p. 3-216.

**Summary:**

The BLM failed to comply with 43 CFR 8342.1 by allowing motorized use in certain areas, including LWCs, and not minimizing impacts in accordance with its regulatory obligation. The BLM must meaningfully apply and implement, not just identify and consider, the minimization criteria through area designations.

**Response:**

The BLM’s OHV regulations at 43 CFR 8342.1 require the BLM to designate all public lands as either open, closed, or limited to OHVs during the land use planning process. The BLM’s area designations must be based on the protection of resources, the promotion of safety of public lands users, and the minimization of conflicts among various uses of the public lands.

The Proposed Plan would manage 591,185 acres of BENM as OHV closed, approximately 201,540 acres more than current management. These additional OHV closures, which occur primarily in areas of the Monument that are more remote and pristine, are designed to minimize impacts on soils and vegetation, minimize harassment of wildlife and disruption of wildlife habitats, and minimize conflicts between OHV users and non-motorized users who tend to recreate in the Monument’s less developed areas. For example, the Proposed Plan would manage 205,594 acres of LWCs as OHV closed in order to minimize impacts on wilderness characteristics from OHV use (BENM PRMP/FEIS p. 3-80). Furthermore, the Proposed Plan would manage an additional 216,371 acres of BLM-inventoried land as OHV limited, and the BLM would have the opportunity to further minimize impacts and user conflicts from OHV use in these areas during implementation-level travel planning.

Section 3.4.3 of the BENM PRMP/FEIS provides, “The designated road and subsequent OHV use in Arch Canyon is a minor influence on drainage functionality... Past road realignments were designed to limit flood influences and reduce impacts to potential beaver habitat, which is limited to the lower

canyon corridor where there is perennial water.” Appendix E notes that, “Arch Canyon Sub-Area is distinct within the Cedar Mesa Management Area due to the concentration of potentially conflicting recreation uses (OHV, hiking, and backpacking) in a narrow riparian system...” (BENM PRMP/FEIS Appendix E, p. E-18). Managing Arch Canyon through a permit system under the Proposed Plan would provide the BLM with sufficient management flexibility to ensure that resource impacts from OHV use in the canyon are minimized. For example, if necessary, the BLM could limit the number of permits issued to avoid adverse impacts associated with less-regulated OHV use. Notably, 43 CFR 8342.1 requires the BLM to minimize impacts from OHV use. It does not require the BLM to eliminate OHV use in an area. Accordingly, the BLM may comply with its regulatory obligations under Section 8342.1 without prohibiting OHV use in an area entirely.

In OHV limited areas, through implementation-level planning, the BLM may restrict OHV use at certain times, in certain areas (e.g., designated routes), and/or to certain vehicular use. Implementation-level travel planning would be consistent with 43 CFR 8342. Accordingly, this protest is denied.

## ***Livestock Grazing***

### ***BlueRibbon Coalition***

#### ***Simone Griffin and Ben Burr***

**Issue Excerpt Text:** The closures of areas available to grazing under Alternative E do not comply with the Federal Land Policy and Management Act (FLPMA) and the Taylor Grazing Act for several reasons: FLPMA mandates that public lands be managed under the principle of “multiple use and sustained yield,” ensuring a balance between resource protection and economic uses such as livestock grazing. The designation of key grazing allotments as unavailable under Alternative E prioritizes resource protection over grazing without adequate demonstration of harm caused by grazing activities. This blanket reduction in grazing access contradicts the mandate for multiple-use management, as it significantly curtails an important economic activity without sufficient consideration of the multiple-use framework. The Taylor Grazing Act was enacted to regulate grazing on public lands, ensuring that grazing continues in a sustainable manner to promote rangeland health while preserving the rights of ranchers who depend on public lands for livestock grazing. By making grazing allotments unavailable without sufficient evidence that grazing is the primary source of ecological harm, the closures could be seen as unjustifiably removing legally permitted uses of the land. This undermines the grazing privileges established under the Act, disrupting local ranching operations without following the Act’s intent to provide for regulated but sustained grazing. Both FLPMA and the Taylor Grazing Act require that any changes to grazing permits or the availability of grazing lands be based on formal assessments of land health and consultation with affected permit holders. Under Alternative E, allotments are being preemptively closed without completing the necessary land health assessments or providing clear evidence that grazing is incompatible with resource protection. This process fails to meet the procedural requirements outlined in these laws, which require transparent and science-based decision-making before restricting grazing rights. The significant reduction of grazing areas in the final plan will have adverse economic impacts on local ranchers who rely on public lands. The closures do not fully consider the socio-economic balance required by FLPMA and the Taylor Grazing Act, which both emphasize the importance of supporting rural economies through continued access to public lands for grazing.

### ***Western Watersheds Project***

#### ***Laura Welp***

**Issue Excerpt Text:** The Proposed Plan Fails to Take A “Hard Look” at Acres Available and Unavailable for Grazing Our comments in Grand Canyon Trust et al. (2024) detail specific monument values that are inconsistent with livestock grazing, and which therefore should be made unavailable. 8



The BLM proposed plan, by contrast, protects the least amount of land among the action alternatives from livestock grazing. It does this with no analysis or explanation; it simply lists areas that are unavailable without providing a detailed discussion. BLM cannot evaluate consequences to the environment or determine avoidable or excessive degradation 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 courts are very clear with respect to an agency's statements in its NEPA analysis that "[a] conclusory statement unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind not only fails to crystallize the issues, but affords no basis for a comparison of the problems involved with the proposed project and the difficulties involved in the alternatives." *Seattle Audubon Society v. Moseley*, 798 F. Supp. 1473, 1479 (W.D. Wash. 1992), *aff'd* 998 F.2d (9th Cir. 1993).

### ***Western Watersheds Project***

#### ***Laura Welp***

**Issue Excerpt Text:** 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 reiterate that making data and methods available to the public permits independent reanalysis by qualified members 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 decision making 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). As we noted in our comments on the draft RMP on page 78, many of these acres are already not grazed, so this alternative provides no more protection of objects than the former field office did. Given the degraded states in several of the allotments, this alternative fails to provide the protections for monument objects called for in the Proclamation and in doing so improperly elevates discretionary activity above the objects the monument must protect (see discussion above on page 2). We also note that none of the allotments in question have had permits renewed via NEPA or land health assessments in decades. This lack of analysis fails the "hard look" provision of NEPA and does not allow the public to make an informed decision among alternatives.

### ***San Juan County, Utah***

#### ***Jamie Harvey***

**Issue Excerpt Text:** In the lower Indian Creek area it appears that the area unavailable for livestock grazing has been expanded in the Proposed Plan. The unavailable area has been extended south and west to the National Park boundary (parts of T29 1/2S, R20E. Sec. 31; T30S, R19E Sec. 1; and T30S, R20E Sec. 6). This new area unavailable for grazing was never analyzed for exclusion from grazing in any of the alternatives (Alternatives A - E). There is no explanation in the EIS for this change. Such a practice is out of compliance with the requirements of a NEPA analysis. We request that an explanation be given and corrective action taken to comply with NEPA.

### ***State of Utah, Public Lands Policy Coordinating Office***

#### ***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** The agencies should be able to reallocate allotments freely; instead, the Proclamation imposes a standard inconsistent with the Antiquities Act-that the reallocation vaguely "advance the purposes of" Proclamations 10285 and 9558-rather than solely ensuring that designated objects are protected. The agencies adopt Proclamation 10285's standard wholesale. Section 2.4.22, Row 305. The agencies were required to analyze that standard and reject it under FLPMA and

NFMA, but they did not do that. Similarly, under the Taylor Grazing Act, BLM cannot permanently retire grazing permits in the BENM because the land remains in a district designated “chiefly valuable for grazing.” The agencies’ simple assertion that reclassification is not a requirement for permanent retirement after a voluntary relinquishment, Row 305, is baseless.

***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** The Proposed RMP/FEIS also fails to consider key points regarding flexibility in AUMs. For one, it fails to consider that AUMs can and should be increased temporarily in good seasons to benefit the industry, the State, and even the soil and environment, as described below. Instead, it effectively caps AUMs despite environmental conditions. On the other side, the Proposed RMP allows seasonal reductions in AUMs and reductions for a myriad of reasons and prohibits even maintenance feeding to avoid temporary reduction in drought. Row 303, 319-20; Section 3.5.9.2. All management actions described are only to reduce AUMs, not even to restore those that might be temporarily reduced. Restrictions on water developments and range improvements regardless of the need for them for grazing would further ensure only reduction. This lopsided system is arbitrary and unreasonable and fails to consider key aspects of the issue (including those raised by Utah) or respect multiple use and sustained yield principles.

***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** The Proposed RMP adds the BLM closures included in Alternative B, which consist of 14 pastures/areas that are currently not used for grazing. Section 3.5.9.2.3. Consistent with the agencies’ general policy of opposing grazing, these closures are not justified based on any environmental analysis or determination that grazing would be inconsistent with other uses or with protecting BENM objects. Indeed, the pastures are not identified as having any problems, including with rangeland health. The closures therefore cannot be justified under FLPMA, NEPA, the APA, or the Antiquities Act.

***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** With regard to John’s Canyon, the decision to permanently close the pasture to grazing is arbitrarily based on poor data. The single AIM terrestrial plot being used as representative of it was established and read on June 19, 2024. Appendix K, Section 4.2. This one-time sampling of site conditions may not be representative of long-term conditions. However, if this recent data is used, the ecological site to which the study site conditions are compared (R035XY215UT Semidesert Sandy Loam 4-Wing Saltbush) may not be appropriate as the photo of the study site appears to be a blackbrush site and includes significant numbers of blackbrush plants. This would indicate that the more appropriate ecological site would be R035XY211UT Desert Sandy Loam (Blackbrush). When the 2024 AIM study plot data is compared to the blackbrush ecological site description, existing grass cover of 12.7% is within the parameter of 3-20%, biological soil crust of 0.67% is within the 0-40% range, and bare soil of 41.33% is within the 15-60% range of the blackbrush ecological site description. The statement on page K-52 about soil stability condition being inadequate and “likely a symptom of excessive compaction/trampling” is also unfounded. A desert sandy loam soil is unlikely to be “excessively compacted” under past light or moderate stocking rates and light to moderate forage utilization levels. The use of one-time AIM sampling data and comparing that data to an ecological site description inappropriate for the study site as the basis for excluding livestock grazing is flawed science.

***State of Utah, Public Lands Policy Coordinating Office******Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** The agencies' decision to forego any analysis of the potential countervailing benefits of grazing, including soil health, vegetation management, fire mitigation, and climate change also renders its environmental analysis deficient and its decisions arbitrary. Utah has explained these benefits at length, including in its June 11 letter, which cited numerous scientific articles and studies, including specific studies that Utah provided the agencies. In response, the agencies merely respond that the "agencies have analyzed the impacts of livestock grazing in Chapter 3 Livestock Grazing, including beneficial impacts." Appendix U, 17573-48. This response is false. While the FEIS lists what it sees as numerous negative effects from grazing, Section 3.4.2.2.1, 3.5.9.2.1, the only statement that could be construed as a benefit is that the "closure of allotments could also lead to a buildup of fine fuels, thus increasing the potential for a wildfire," Section 3.5.9.2.1. This utterly fails to account for the benefits that Utah identified. By intentionally avoiding considering any information and science on one side of the ledger, the agencies are necessarily failing to perform their duties under NEPA and failing to consider an important aspect of the problem, including because the one-sided analysis underlies BENM-wide conclusions and determinations regarding permanent grazing limitations.<sup>9</sup> The agencies stack the deck against grazing even where it might be compatible with protecting (unidentified) objects and other uses given its countervailing benefits.

***State of Utah, Public Lands Policy Coordinating Office******Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** the permanent limitation of North Cottonwood to trailing is also based on insufficient data and flawed reasoning. The FEIS states that there "was no clear trend in conditions at this site" with some indicators trending better, others worse, and some "had minor changes in indicator values but no change in departure." Appendix K, Section 4.1. The most significant negative trends were in water and riparian conditions. *Id.* This is based on only one of two lotic AIM sites with repeat samples, which were taken during a severe drought. See *id.* That is simply poor-quality data and insufficient to take any action.

***State of Utah, Public Lands Policy Coordinating Office******Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** BLM's approach is further undermined by its choice to ignore the wealth of data accumulated through over a century of grazing management in these areas. For more than 100 years, BLM has employed a "stock and monitor" system in which grazing is managed according to the scientific method: hypotheses about the impact of grazing are tested, results are reviewed, and management practices are adjusted accordingly. This process of continual observation, experimentation, and adjustment has allowed BLM to develop a scientifically sound system of grazing management in these pastures. BLM's decision to close the pastures flies in the face of the existing historical data and experience, and instead relies on unrelated data points not developed for grazing management purposes. It is particularly troubling that BLM dismisses the best available science supporting the continuation of grazing under current practices in favor of anecdotal or irrelevant data.

***State of Utah, Public Lands Policy Coordinating Office******Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** the BEC is inexplicably involved in decisions to "prioritize the review and processing of grazing permits and leases," to "identify pastures in allotments for closure or periodic rest (year-round or seasonal) pursuant to federal regulations, to "reassess stocking levels, seasons of use, and management approach," and to "identify resource thresholds, monitoring, and automatic responses related to land health." *Id.* These are all decisions determined by federal regulation and science, and the BEC and the Tribes have no proper role in them. BEC involvement violates the

federal statutes and regulations that determine these decision-making processes and is improper for all of the reasons discussed above, including because it represents an unlawful delegation.

***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** To begin, the agencies started from the faulty premise that they legally can and must follow the President’s direction in Proclamation 10285 that if grazing permits or leases are voluntarily relinquished by existing holders, “the Secretaries shall retire from livestock grazing the lands covered by such permits or leases pursuant to the processes of applicable law” and “[f]orage shall not be reallocated for livestock grazing purposes unless” it will “advance the purposes of” Proclamations 10285 and 9558. The Antiquities Act does not give the President authority to make these specific land use decisions. But because Proclamation 10285 also stated that the agencies were required to “manage livestock grazing as authorized under existing permits or leases, and subject to appropriate terms and conditions in accordance with existing laws and regulations,” the agencies were required to independently assess the appropriateness of expansions or contractions in the grazing allotments and the forage allocated to grazing under FLPMA and NFMA, including under multiple use and sustained yield principles, subject only to the constraint of being consistent with protecting the (unspecified) objects. Utah repeatedly noted this, including in its June 11 letter. Instead, the Proposed RMP/Final EIS did not consider any expansion. It excludes any grazing expansion alternative from analysis in Section 2.1 in reliance solely on the Proclamation. Utah objects to this decision everywhere it is found, including in Section 2.4.22 and Rows 302 and 305. In illegally relying on Proclamation 10285, the agencies also failed to consider a reasonable range of alternatives or ones consistent with multiple use and sustained yield principles under FLPMA, NFMA, and NEPA.

***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** Consistent with BLM’s failure to consider any option that expands AUMs, it failed to consider Utah’s proposals and the scientific basis for them in Utah’s June 11 letter and prior correspondence and CA discussions explaining that total allocatable AUMs can and should be increased. The agencies also completely ignore the most scientific and common procedure- stock and monitor-for evaluating carrying capacity. They fail to even explain why all alternatives started with current closures instead of examining whether any areas should be opened to grazing-an expansion is not even included in the alternatives that were considered but not analyzed in detail, Section 2.2.

***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** Utah also protests the restrictions on range improvements. The Proposed RMP prohibits “new range improvements or modifications to existing range improvements, for livestock grazing purposes, unless the primary purpose is to protect BENM objects.” Row 308. It also prohibits “vegetation treatments and nonstructural range improvements with a primary purpose of increasing forage for livestock.” Row 66. The general prohibition on merely improving grazing, much less improving grazing as one of the multiple primary purposes (which is how that ambiguous restriction could be interpreted, necessitating clarification), finds no support in the Proclamation or any laws.

***Utah Farm Bureau Federation***

***Terry Camp and ValJay Ribgy***

**Issue Excerpt Text:** The PRMP’s provisions for permanently retiring grazing allotments within BENM violate current federal law. The Taylor Grazing Act of 1934 (TGA) established that lands within Taylor Grazing Districts are “chiefly valuable for grazing.” The majority of BENM is located within Utah TGA District 6, meaning the Secretary of the Interior has determined that most of the area is chiefly valuable for grazing. The PRMP allows for the permanent closure of allotments to

livestock grazing if the permit is voluntarily relinquished. This provision violates existing federal law, which does not allow for the permanent retirement of grazing allotments unless a detailed environmental analysis shows that those lands are no longer “chiefly valuable for grazing.” We protest this violation of federal law and request that all provisions for the permanent retirement of grazing allotments be removed from the PRMP. The TGA’s intent was to establish grazing as the primary use of these lands. Permanently retiring allotments from grazing is contrary to this purpose. Additionally, the lack of National Environmental Policy Act (NEPA) review and appeal rights for what is a significant land use change violates administrative law principles. Accepting relinquishments and permanently retiring allotments should be subject to normal environmental review processes. The UFBF raised these issues in our comments on the DRMP submitted on June 11, 2024.

**Summary:**

Protestors stated that the BLM and USFS violated FLPMA’s multiple-use and sustained-yield mandate, NEPA, the Administrative Procedure Act (APA), the Antiquities Act, and the TGA by:

- Allowing the permanent closure of grazing allotments if the permit is voluntarily relinquished, which violates the part of the TGA that does not allow for the permanent retirement of grazing allotments unless a detailed environmental analysis shows that those lands are no longer “chiefly valuable for grazing.” Protestors noted that this process should be subject to its own NEPA review and appeal process.
- Closing areas of available grazing under Alternative E (preferred alternative) in the Proposed Plan. Protestors note that both FLPMA and the TGA require that any changes to grazing permits or the availability of grazing lands be based on formal assessments of land health and consultation with affected permit holders. Protestors claim that under Alternative E, allotments are being preemptively closed without completing the necessary land health assessments or providing clear evidence that grazing is incompatible with resource protection. Protestors note that this process fails to meet the procedural requirements outlined in these laws, which require transparent and science-based decision-making before restricting grazing rights.
- Failing to take a hard look at impacts associated with grazing on Monument objects and values due to improper data and analysis. Protestors stated that the BLM and USFS improperly analyzed impacts from grazing for the John’s Canyon Allotment, using a one-time, single-plot Assessment, Inventory, and Monitoring (AIM) analysis and therefore inadequately concluded effects on the landscape as a result of livestock grazing.
- Failing to use the best available science and data in their analysis of grazing and subsequent limitation of North Cottonwood to trailing.
- Failing to use the best available science, the accumulated data and experience gathered from the “stock and monitor” system, to inform the decision to close grazing areas in BENM.
- Failing to provide adequate protection to Monument objects from grazing and elevate discretionary activity above protection of objects.
- Failing to analyze the areas available and unavailable to livestock grazing in the Proposed Plan. The areas unavailable to grazing are not explained or justified based on environmental analysis.
- Failing to analyze the expanded area unavailable to grazing in the lower Indian Creek area in the Proposed Plan and not providing an explanation for the change from the range of alternatives.
- Failing to provide an alternative that considered expanding the area within the Monument for livestock grazing, illegally relying on Proclamation 10285 to justify the failure to consider a reasonable range of alternatives or ones consistent with multiple-use and sustained-yield principles. Protestors stated that the BLM and USFS forewent an analysis on the potential countervailing benefits of grazing, including soil health, vegetation management, fire mitigation, and climate change.

- Adopting Proclamations 10285 and 9558 without proper analysis as it applies to reallocation of grazing allotments and proposing closures or permanently retiring grazing permits without justifying said closures through environmental analysis or determinations that grazing would be inconsistent with other uses or with protecting BENM objects.
- Involving BEC in grazing management decisions, which violates Federal statutes and regulations. Protestors state that the BEC and the Tribes have no role in these decision-making processes and all decisions should be based on Federal regulations and the best available science.
- Failing to adequately consider flexibility in animal unit months (AUM) in the analysis of livestock grazing potential by failing to consider an alternative that expands AUMs. Protestors stated that the BLM and USFS disregarded previous cooperating agency comments on this topic and did not use the best available science for evaluating carrying capacity.
- Failing to ensure consistency with the Monument Proclamations by prohibiting new range improvements and modifications, including structural and non-structural improvements like vegetation treatments to increase forage, unless the primary purpose is to protect BENM objects.

**Response:**

The Antiquities Act of 1906 grants the President authority to designate National Monuments to protect “historic landmarks, historic and prehistoric structures, or other objects of historic or scientific interest” (16 U.S.C. 431-433). For BENM, both Proclamation 9558 and Proclamation 10285 allow for the continuation of existing grazing permits and leases in accordance with existing laws and regulations, consistent with the care and management of the Monument objects.

NEPA requires the agencies to take a “hard look” at potential environmental impacts of adopting the BENM PRMP/FEIS. The level of detail of the agencies’ NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2; FSH 1909.15, Section 12.3). The agencies need not speculate about all conceivable impacts, but must evaluate the reasonably foreseeable significant effects of the proposed action and alternatives.

Section 302(a) of FLPMA directs the BLM to manage public lands on the basis of multiple use and sustained yield, unless otherwise provided by law (43 U.S.C. 1732(a)). “Multiple use” is defined as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people. FLPMA grants the Secretary of the Interior the authority to make land use planning decisions, taking into consideration multiple use and sustained yield, ACECs, present and potential uses of the land, relative scarcity of values, and long-term and short-term benefits, among other resource values (43 U.S.C. 1711 Section 201(a)).

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

Per the BLM’s grazing regulations at 43 CFR 4100.0-8, the BLM shall manage livestock grazing on public lands in accordance with applicable land use plans. Furthermore, the BLM may designate lands as “available” or “unavailable” for livestock grazing through the land use planning process (BLM Handbook H-1601-1, Appendix C).

The BLM is not required to prepare land health assessments when making planning-level allocation decisions related to livestock grazing. To the extent a subsequent grazing decision is necessary to

align existing grazing permits or leases with the applicable RMP, those decisions may require preparation of a land health assessment and would need to comply with whatever consultation, cooperation, and coordination obligations attach under the BLM's livestock grazing regulations. In the case of the allotments in BENM that the Proposed Plan would make unavailable to livestock grazing, no implementation-level decision would be required so long as there are no active livestock grazing permits associated with those allotments. For areas that would be limited to trailing only under the Proposed Plan, or any allotments that would be made unavailable but have active livestock grazing permits, the BLM would have to issue implementation-level decisions that change the terms and conditions of any active permits to effectuate the management action in the Proposed Plan. While those implementation-level decisions may require land health assessments and consultation, cooperation, and coordination, allocation decisions being made at the land use planning level do not. Accordingly, the livestock grazing allocation decisions in the Proposed Plan comply with applicable law.

Protestors expressed concerns about language in the Proposed Plan regarding the requirement that lands in BENM subject to a livestock grazing permit or lease that is voluntarily relinquished be retired from future livestock grazing and the forage associated with the relinquished permit or lease not be reallocated for livestock grazing purposes unless doing so would advance the purposes of Proclamations 10285 and 9558. That requirement, however, does not stem from the Proposed Plan. It stems from Proclamation 10285, the legality of which is outside the scope of this planning process. The Proposed Plan merely restates the Proclamation language, which the agencies have no discretion to deviate from as part of this planning process. Concerns regarding the legality of the voluntarily relinquishment provision are properly addressed in a challenge to Proclamation 10285, not in a protest to the Proposed Plan. Additionally, even if the relinquishment language did not stem from Proclamation 10285, the Proposed Plan would still comply with the TGA. The retirement of lands from grazing following a voluntary relinquishment of the grazing permit or lease associated with those lands does not require the BLM to change the classification of any area within such lands that has been established as a grazing district under the TGA. Establishment of a grazing district under the TGA makes those lands available for grazing permits but does not require grazing to occur or prohibit other uses. Although a process exists under the TGA to identify lands for other uses, that process has been largely supplanted by FLPMA's land use planning process. Additionally, because the land use planning process, as opposed to the classification process, establishes grazing use, it is neither required nor appropriate to determine whether Federal land remains chiefly valuable for grazing when establishing grazing levels. That is particularly true here, where the voluntary relinquishment provision at issue leaves discretion to the Secretary of the Interior to reallocate the forage associated with the voluntarily relinquished permit or lease where doing so would advance the purposes for which BENM was designated. Accordingly, the BLM is not obliged to make a determination about whether the lands in BENM remain chiefly valuable for grazing as part of this planning process.

Under the Proposed Plan, approximately 97 percent of BENM lands that are currently available would remain available to grazing, highlighting the continued viability of grazing in the Monument. The agencies would develop and implement Allotment Management Plans to further manage livestock grazing on the Monument (BENM PRMP/FEIS p. 2-117). In addition, the analysis in the FEIS provides clear information on how management direction will protect Monument objects regarding areas that would be available for grazing in the FEIS. Additional analysis would occur during implementation-level planning on future permit renewals on areas that are available for grazing. Moreover, the Proposed Plan would not alter currently allocated AUMs as outlined in Section 2.4.22.3, *Management Actions by Alternative*, in the livestock grazing section (BENM PRMP/FEIS Chapter 2). Modifications to allocated AUMs would be done during the site-specific implementation-level planning process, consistent with Federal law, regulation, and policy using the best available science. The PRMP does not permanently close any livestock grazing allotments, and

any decision to make certain allotments unavailable may be revisited through a future RMP amendment or revision process.

The Proposed Plan makes 162,217 acres unavailable/not suitable to livestock grazing, allocating an additional 27,208 acres as unavailable compared to current management. The areas made unavailable/not suitable under the PRMP include areas not actively grazed and without active AUMs, as well as areas actively grazed that show departure from expected reference ecological conditions, as informed by best available science (BENM PRMP/FEIS Appendix K). Of the additional 27,208 acres unavailable to livestock grazing, 21,661 of those acres are a collection of small areas that cannot be accessed by livestock due to topographic restraints and are not actively grazed, and making them unavailable would allow the BLM to maintain and improve the current ecological conditions, which will contribute to the overall goal of protecting and restoring the Monument objects and landscape. The remainder of the 27,208 acres unavailable to livestock grazing were those areas found to be departed from ecological conditions. All other allotments and areas that would remain available/suitable for livestock grazing comply with Proclamation 10285's directive to ensure that continued grazing in BENM is consistent with the care and management of Monument objects.

Analysis of the existing conditions and potential impacts on livestock grazing within BENM from implementation of proposed management under each alternative is found within Chapter 3, Section 3.5.9 (pp. 3-328 through 3-336) and Appendix N, Section 2.5.10 of the BENM PRMP/FEIS. Analysis of impacts from livestock grazing on other resources including Monument objects and values is woven throughout the Chapter 3 *Environmental Consequences* sections for each resource. The BLM uses the best available information and science to help inform land management decisions and will continue to do so during implementation-level planning efforts. The RMP's overall goal is the protection of BENM objects. Additional impact analysis including potential benefits associated with grazing would also be analyzed at the permit renewal level, where site-specific NEPA is completed on an allotment-level scale.

As discussed in Section 3.5.9, the BLM relied upon available AIM data and trend studies for analysis of livestock grazing management. The AIM data were used to determine whether and where it was necessary to make certain areas within or near departed watershed unavailable to grazing or to prioritize land health assessments in order to protect and improve the watersheds given that proper riparian management and improvement continue to be a high priority. As explained in Appendix K, the BLM reviewed 226 terrestrial AIM plots across 15 Hydrologic Unit Code 10 watersheds and 41 lotic AIM data plots within 33 distinct reaches across eight Hydrologic Unit Code 10 watersheds. The analysis also included assessing remote sensing data for trends in bare ground, annual forbs/grasses, perennial forbs/grasses, and shrubs from 1993 to 2023, and analysis of trend reports collected by the BLM. AIM data were compared to either the 25th or 75th percentile (not average or median) of the respective ecology of each point. Depending on the strata, each of the AIM points within BENM were compared against hundreds of other observations in similar ecosystems. By using the 25th/75th percentile, areas were flagged as departed and identified as being in potentially poor condition and needing immediate attention. For more information, please refer to BLM Tech Notes 453 and 455.

The data collected from lotic AIM reaches in the North Cottonwood Pastures indicated departure from expected conditions. The John's Canyon pasture, as part of the Utah Department of Environmental Quality San Juan River-1 Tributaries assessment unit, was found to not support beneficial uses and to be impaired for total dissolved solids (BENM PRMP/FEIS Appendix K). The terrestrial AIM plots also suggested departure from reference conditions. Two terrestrial AIM plots were located in John's Canyon pasture with one considered not representative and the other being sampled on June 19, 2024. The terrestrial AIM plot sampled in the North Cottonwood pasture was last sampled on July 24, 2024. In response to the data described in Appendix K, and to prevent additional departure from existing watershed conditions, the BENM PRMP/FEIS makes one pasture unavailable to livestock grazing and two pastures limited to trailing only. As explained in the BENM



PRMP/FEIS, making pastures unavailable to livestock grazing and limited to trailing only would reduce impacts grazing would have on watershed health, including riparian ecosystems. Therefore, the BLM and USFS used the best available science and up-to-date data to develop the BENM PRMP/FEIS.

In regard to these pastures, the BLM intends to revise the management in the Record of Decision. Specifically, the BLM intends to incorporate adaptive management into the management action that will allow the John's Canyon pasture and the North Cottonwood pasture to become fully available for livestock grazing if the BLM determines that all land health standards are met. Additionally, the BLM intends to reduce the size of the North Cottonwood Upper pasture limited to trailing-only allocation to just the canyon bottoms and make the upland portions of the pasture available to grazing. This change would allow the BLM to work with the permittees toward meeting all land health standards. However, until all land health standards are met, the pastures would remain unavailable or limited to trailing only. Notably, these intended changes are within the range of alternatives included in the Draft RMP/EIS.

The BLM uses causal factor determinations as a component of the land health evaluation process, which is associated with application of the standards and guidelines for grazing administration applied during implementation of RMP decisions and is described in 43 CFR 4100. Causal factor determinations are not made during the land use planning process, which is intended to identify areas of use, resource conditions and goals, and program constraints and general management practices needed to achieve management objectives. The BLM will continue to use causal factor determinations to inform grazing decisions, including range improvements.

NEPA requires Federal agencies to develop and evaluate a reasonable range of alternatives to any proposed action (40 CFR 1502.14(a)). NEPA specifies that the range of alternatives must address the Purpose and Need of the proposed action. As identified in Section 1.2, *Purpose and Need*, "Presidential Proclamation 10285 directs the BLM and USFS to prepare and maintain a new management plan for the entire monument for the specific purposes of protecting and restoring the objects identified [in Proclamation 10285] and in Proclamation 9558" (BENM PRMP/FEIS p. 1-2). Therefore, the range of alternatives addresses the primary goal to protect and restore Monument objects. While livestock grazing is identified as a use in the Proclamation, it is not itself an object; therefore, the expansion of livestock grazing was not considered within the range of alternatives because it does not represent the protection and restoration of Monument objects. The BENM PRMP/FEIS provides a range of alternatives regarding livestock grazing management in Section 2.4.22 (pp. 2-116 through 2-126). A summary of impacts on livestock grazing is found within Chapter 3. The analysis primarily focuses on potential adverse effects in response to the purpose and need; however, Section 3.5.9.2.2 provides an example of the benefits of livestock grazing: "Creating grazing management plans should help the permittees and the agencies manage grazing public lands in a way that provides for the care and management of Monument objects and could maintain or improve range conditions" (BENM PRMP/FEIS p. 3-229). Grazing benefits are also recognized in fire and fuels management (BENM PRMP/FEIS p. 3-171).

Under the PRMP, new range improvements are prohibited unless the primary purpose is to protect BENM objects and a current land health assessment has been completed (BENM PRMP/FEIS Management Action 308, p. 2-121). The agencies intend to clarify this management action by adding the criteria of improving vegetation and soil conditions as exceptions to the prohibition against new range improvements. These provisions align with Proclamation 10285's requirement to protect Monument objects. As noted above, livestock grazing is not a Monument object.

The agencies will follow all applicable laws, such as the NHPA, when implementing discretionary actions, such as the removal of range infrastructure.

Additionally, Proclamation 10285 does identify certain objects associated with grazing that are protected by the Proposed Plan. Historic sites associated with grazing will be evaluated for their eligibility for the National Register of Historic Places (NRHP) by the agencies pursuant to Federal regulations found in 36 CFR 60 and 36 CFR 63. The Proposed Plan specifically discusses management and goals to protect historic properties generally and sites associated with the historic period. See Section 2.4.14, *Cultural Resources*, in Chapter 2 of the BENM PRMP/FEIS.

Collaboration with the BEC and Tribal Nations in the development of the RMP and implementation of management of BENM is directly aligned with directives set forward in Proclamations 9885 and 10285. However, the agencies retain the exclusive responsibility for decision-making in the BENM.

The BLM and USFS lawfully developed the BENM PRMP/FEIS in response to the directives established in Proclamation 10285. The Proposed Plan does not permanently close grazing allotments and does not violate the TGA through the retirement of grazing permits through voluntary relinquishment, as provided for in Proclamation 10285. The Proposed Plan was developed through analysis of an appropriate range of alternatives relevant to the purpose and need in alignment with NEPA, FLPMA, and MUSYA regulations. The analysis of alternatives considered the appropriate level of detail commensurate with programmatic-level land use planning. Involvement of the BEC in decision-making, review, and monitoring is lawful and substantiated by Proclamation 10285. Accordingly, this protest issue is denied.

## ***NEPA: Best Available Data – Traditional Indigenous Knowledge***

### ***State of Utah, Public Lands Policy Coordinating Office Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** Thus, the agencies’ consultation with and reliance on the BEC is unlawful, and the problem pervades the entirety of the Proposed RMP. Alternative E “maximizes the consideration and use of Tribal perspectives on managing the landscape of BENM,” including to “emphasize resource protection and the use of Traditional Indigenous Knowledge and perspectives.” Section 2.1.6. The Draft RMP/Draft EIS chose this as the preferred alternative “because it would emphasize Traditional Indigenous Knowledge and a holistic approach to stewardship of this sacred landscape that addresses tangible and intangible aspects of the Monument.” Section 2.3. That section does not explain why emphasizing such knowledge and a holistic approach justifies choosing that alternative, but Section 1.6.3 does. It quotes the BEITC LMP at length for how “Traditional knowledge of Tribal Nations with ancestral ties to the region is fundamental to collaborative management of BENM and long-term preservation of the cultural landscape.” Then Section 1.6.3 states: “For this reason, Traditional Indigenous Knowledge is integrated alongside Western scientific information throughout the Proposed RMP/Final EIS.” Id. (emphasis added). The agencies also state that they “have been using [the BEITC LMP] in collaboration with the BEC to guide the development of the Proposed RMP/Final EIS.” Id. The Proposed Plan “is based on Alternative E, with a combination of components from the various alternatives,” which the agencies state “similarly emphasizes resource protection and the use of Traditional Indigenous Knowledge and perspectives on the stewardship of the Bears Ears landscape.” Section 2.1.7. Accordingly, the Proposed RMP was chosen to maximize tribal perspectives, which were represented formerly through the BEC but practically outside of any formal tribal government, and is based on the BEITC LMP, which was prepared outside either the BEC or tribal government framework found in the statute.

### ***State of Utah, Public Lands Policy Coordinating Office Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** FLPMA and NFMA provide that BLM and the USFS must “use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and

other sciences.” 43 U.S.C. § 1712(b); 16 U.S.C. § 1712(b). NEPA regulations have also always required the same. See, e.g., 40 C.F.R. § 1502.6. While NFMA regulations provide that, as part of public participation, the USFS “shall request information about Indigenous Knowledge, land ethics, cultural issues, and sacred and culturally significant sites,” this is separate from the “role of science in planning” regulation that requires the USFS to “use the best available scientific information to inform the planning process.” 36 C.F.R. §§ 291.3, 291.4. NEPA regulations were recently updated to provide that for “environmental documents, agencies shall use high-quality information, including reliable data and resources, models, and Indigenous Knowledge.” 40 C.F.R. § 1506.6. Yet those Phase 2 regulations do not apply to actions began before May 1, 2024—meaning the Proposed RMP/FEIS—and in any event the Council on Environmental Quality has confirmed that those regulations cannot force agencies to act on Indigenous Knowledge. FLPMA makes no such general provision at all for it. For the substantive decisions under FLMPA and NFMA, the planning process must be based on science, with “Indigenous Knowledge” serving only to inform relevant issues like cultural site locations. Indigenous knowledge cannot supplant science or sit on par with it for scientific questions. Yet that is exactly what has happened. Utah has previously raised these issues, including in its June 11 letter. Proclamation 10285 stated that the BEC was to be recreated “[i]n recognition of the importance of knowledge of Tribal Nations about these lands and objects and participation in the care and management of the objects identified above, and to ensure that management decisions affecting the monument reflect expertise and traditional and historical knowledge of Tribal Nations.” In apparent reliance on this, again without analysis, the agencies rely on the BEITC LMP, which in turn of course elevates “Traditional knowledge of Tribal Nations” including their “understandings of time, space, and valid modes of knowledge,” so the agencies again reflexively decided that “Traditional Indigenous Knowledge is integrated alongside Western scientific information.” Section 1.6.3. Those statements already go beyond anything allowed in the regulations, which go beyond the statutes. But the agencies went even further. The Proposed RMP, like Alternative E, “emphasizes . . . the use of Traditional Indigenous Knowledge and perspectives on the stewardship of the Bears Ears landscape.” It goes far beyond incorporating such knowledge where useful for site protection and intrudes on areas where it is irrelevant, with no guide for what occurs when that knowledge conflicts with “Western” science. For instance, the Proposed RMP provides that the “agencies would use Traditional Indigenous Knowledge regarding paleontological resources as a management approach, together with Western science,” Row 4, even though fossils pre-existed the Tribes by millions of years and have nothing to do with them. For another, “Traditional Indigenous Knowledge and Tribal policies and guidelines, peer-reviewed literature based on the best available Western science, and best management practices would be applied to restore [biological soil crusts].” Row 23. The FEIS does not establish that these fragile biological systems are within the ken of indigenous knowledge or that there is any reason to expect its utility. Indigenous knowledge would be used alongside “agency data and standards” to determine fence locations for wildlife. Row 149. “Fire management in areas of traditional use . . . would emphasize Traditional Indigenous Knowledge and traditional techniques” regardless of the demonstrated capacity for that knowledge to manage fires or the threat it would cause to other areas. Row 225. And the agencies would also “incorporate Traditional Indigenous Knowledge into the livestock grazing decision-making processes” regardless of its relevance to a use that exists now in line with non-Tribal ranchers who have grazed over a hundred years. Row 302. Including indigenous knowledge in these decision-making points is purely arbitrary and accomplishes little beyond supplanting solid science. It effectively hands decisional authority over to the Tribes or BEC. Indeed, it is even arbitrary because the Proposed RMP does not bother to say what happens when indigenous knowledge comes from a tribe with no basis in experience for what it is opining on—such as a cultural site irrelevant to it.

***State of Utah, Public Lands Policy Coordinating Office  
Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** Instead of engaging in their own analysis, the agencies simply adopt statements in Proclamation 10285 as sufficient to justify sweeping policies. Up front, the Proclamation states that “the objects identified within the full 1.36-million-acre boundary of BENM are not adequately protected,” so the agencies simply follow that by taking more protective actions for every aspect of the Monument. Section 1.1. Because the Proclamation reestablishes the BEC “to ensure that ‘management decisions affecting the monument reflect expertise and traditional and historical knowledge of Tribal Nations,’” id., the Proposed RMP will simply adopt such “knowledge” wholesale throughout the plan and in implementation, as detailed below. This appears to be the genesis of the agencies effectively delegating decision making to the BEC and BEITC, as discussed below. Similarly, because the Proclamation prescribes limits on grazing, the Proposed RMP will limit grazing. And so on. These actions are unlawful. The Antiquities Act does not give the President authority to make specific land use decisions, much less those the agencies assert that Proclamation 10285 has made. The Antiquities Act allows only the declaration of objects to be protected and the reservation of land to care for and manage those objects. It nowhere suggests that the President may designate with unreviewable discretion (not subject to FLPMA, NFMA, NEPA, the APA, or other laws) specific activities that may or may not occur on the land. Whatever determination is to be made about how to protect the Monument objects or to accomplish other purposes—such as incorporating tribal knowledge—is subject to the constraints of those laws.

***State of Utah, Public Lands Policy Coordinating Office  
Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** the agencies’ consultation with and reliance on the BEC is unlawful, and the problem pervades the entirety of the Proposed RMP. Alternative E “maximizes the consideration and use of Tribal perspectives on managing the landscape of BENM,” including to “emphasize resource protection and the use of Traditional Indigenous Knowledge and perspectives.” Section 2.1.6. The Draft RMP/Draft EIS chose this as the preferred alternative “because it would emphasize Traditional Indigenous Knowledge and a holistic approach to stewardship of this sacred landscape that addresses tangible and intangible aspects of the Monument.” Section 2.3. That section does not explain why emphasizing such knowledge and a holistic approach justifies choosing that alternative, but Section 1.6.3 does. It quotes the BEITC LMP at length for how “Traditional knowledge of Tribal Nations with ancestral ties to the region is fundamental to collaborative management of BENM and long-term preservation of the cultural landscape.” Then Section 1.6.3 states: “For this reason, Traditional Indigenous Knowledge is integrated alongside Western scientific information throughout the Proposed RMP/Final EIS.” Id. (emphasis added). The agencies also state that they “have been using [the BEITC LMP] in collaboration with the BEC to guide the development of the Proposed RMP/Final EIS.” Id. The Proposed Plan “is based on Alternative E, with a combination of components from the various alternatives,” which the agencies state “similarly emphasizes resource protection and the use of Traditional Indigenous Knowledge and perspectives on the stewardship of the Bears Ears landscape.” Section 2.1.7. Accordingly, the Proposed RMP was chosen to maximize tribal perspectives, which were represented formerly through the BEC but practically outside of any formal tribal government, and is based on the BEITC LMP, which was prepared outside either the BEC or tribal government framework found in the statute.

***BlueRibbon Coalition  
Simone Griffin and Ben Burr***

**Issue Excerpt Text:** Resource Management Plan (RMP) for Bears Ears National Monument due to its elevated reliance on Indigenous Traditional Knowledge (ITK) in determining land management practices, while other communities, cultures, and religions with historical connections to this landscape appear to have been marginalized in this collaborative process. Additionally, the Bureau of Land Management’s (BLM) coordination efforts appear to disproportionately favor tribal entities,

raising questions of equal consideration and representation under federal law. First, while ITK is a valuable resource in land management, the legal framework guiding BLM decisions—namely, the Federal Land Policy and Management Act (FLPMA)—emphasizes coordination with both state and tribal governments to achieve multiple-use, sustained-yield management (43 U.S.C. § 1701). However, BLM’s practice of meeting more frequently with tribal representatives than with state representatives or our organization and other stakeholders such as BRC creates an imbalance in representation, potentially overlooking the knowledge and concerns of other stakeholders who also maintain historical, cultural, or religious ties to the land. Courts have previously ruled that federal agencies must operate equitably in consultation efforts, such as in *Klamath Water Users Protective Ass’n v. Patterson*, where the court addressed the agency’s duty to consult with all relevant stakeholders in good faith (*Klamath Water Users Protective Ass’n v. Patterson*, 204 F.3d 1206 (9th Cir. 1999)).

### ***BlueRibbon Coalition***

#### ***Simone Griffin and Ben Burr***

**Issue Excerpt Text:** Bears Ears is designated as a national monument, which mandates it be managed for multiple uses under federal oversight, including recreational, scientific, cultural, and conservation purposes. Federal land laws such as the Federal Land Policy and Management Act ensure that public lands remain accessible to all, preserving the principle that no single group should hold exclusionary rights over federally protected lands. Indigenous knowledge and cultural practices can and should play a vital role in land stewardship, particularly through cooperative management arrangements, but this involvement should not translate into exclusive access or control. Lastly, an exclusive focus on tribal perspectives risks contravening established legal precedent against exclusionary access. The U.S. Court of Appeals ruled in *Lyng v. Northwest Indian Cemetery Protective Association* that while Indigenous interests in land use are important, they must be balanced with the public’s access to public lands (*Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439 (1988)). Exclusionary access, based solely on religious or cultural affiliation, could set a precedent that marginalizes the broader public and overlooks the rights and contributions of non-tribal groups who also have substantial historical knowledge and interests in the area.

#### **Summary:**

Protestors stated that the BLM and USFS violated the Antiquities Act, FLPMA, NEPA, NFMA, and APA by:

- Relying on the BEC, Traditional Indigenous Knowledge, and the BEITC LMP to inform management decisions and develop the preferred alternative (Alternative E) and the Proposed Plan, rather than the best available scientific knowledge. Protestors state that it is outside the BEC and the Tribal Government framework required under regulations.
- Asserting that Proclamation 10285 and traditional knowledge of Tribal Nations justifies grazing limitations, delegating decision-making to the BEC and BEITC without proper analysis.
- Elevating Tribal interests and Indigenous Traditional Knowledge above other stakeholders, particularly State representatives.
- Unlawfully delegating the management of wildlife within the BENM to the BEC, Tribal Nations, Utah Division of Wildlife Resources (DWR), and the U.S. Fish and Wildlife Service (USFWS) when this management is reserved exclusively for the State of Utah.

#### **Response:**

NEPA requires the BLM and USFS “ensure the professional integrity, including scientific integrity, of the discussions and analyses in an environmental document” (42 U.S.C. 4332(d)). CEQ’s NEPA

regulations further require that agencies use information that is of “high quality” (40 CFR 1500.1(b)). Additionally, FLPMA and NFMA require that agencies must “use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences” (43 U.S.C. 1712(b); 16 U.S.C. 1604(b)).

The BLM NEPA Handbook also directs agencies 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). USFS regulations direct the responsible official to use the best available scientific information to inform the planning process and to determine what information is the most accurate, reliable, and relevant to the issues being considered (36 CFR 219.3). Additionally, the responsible official is directed to request information about Indigenous Knowledge, land ethics, cultural issues, and sacred and culturally significant sites (36 CFR 219.4(a)(3)). On November 30, 2022, the White House Office of Science and Technology Policy issued guidance to Federal agencies to recognize and include Indigenous Knowledge in research, policy, and decision-making. The use of Traditional Indigenous Knowledge has been implemented into NFS Land Management Planning (36 CFR 219.19) as well as FSH 1909.12 Section 7.13(3).

Throughout the preparation of the BENM PRMP/FEIS the BLM and USFS used a systematic, interdisciplinary approach and integration of natural and social science, based on the best available science. This approach included incorporating both the best available scientific reports and data, as well as Traditional Indigenous Knowledge, as mandated by NEPA (40 CFR 1506.6). The information presented in the BENM PRMP/FEIS is the best available information in the Planning Area and the use of Traditional Indigenous Knowledge is consistent with all applicable Federal laws and regulations. Furthermore, Traditional Indigenous Knowledge is considered in tandem with peer-reviewed literature and data to inform the management decisions to be outlined in the BENM PRMP/FEIS.

Traditional Indigenous Knowledge is a body of observations, oral and written knowledge, innovations, practices, and beliefs that promote sustainability and the responsible stewardship of cultural and natural resources through relationships between humans and their landscapes. The relevance and importance of Traditional Indigenous Knowledge in the creation of the BENM PRMP/FEIS is emphasized by Proclamation 10285, which re-established the BEC of Tribal Nations “to provide guidance and recommendations on the development and implementation of management plans and on management of the entire monument” and to ensure that “management decisions affecting the monument reflect expertise and traditional and historical knowledge of Tribal Nations” (BENM PRMP/FEIS p. 1-1). Additionally, the BEC is “supported by and works in concert with the Bears Ears Inter-Tribal Coalition (BEITC). Together, the BEC and BEITC developed and presented to the agencies the Bears Ears Inter-Tribal Coalition: A Collaborative Land Management Plan for the Bears Ears National Monument... which the agencies have been using in collaboration with the BEC to guide the development of the Proposed RMP/Final EIS to align with Presidential Proclamation 10285’s mandate that Monument management reflect the expertise and historical and traditional knowledge of Tribal Nations” (BENM PRMP/FEIS p. 1-9).

While Traditional Indigenous Knowledge from the BEITC LMP is incorporated throughout the BENM PRMP/FEIS, it is “integrated alongside Western scientific information throughout the Proposed RMP/Final EIS” (BENM PRMP/FEIS p. 1-9) and not prioritized over compliance with State and local RMPs or peer-reviewed literature. This is demonstrated by the discussion in Appendix S, *Consistency with State and Local Land Use Plans*, the inclusion of scientific reports and data throughout the affected environment and environmental consequences discussions (BENM

PRMP/FEIS Chapter 3, pp. 3-1 through 3-243), and the list of the references cited (BENM PRMP/FEIS Volume 2, pp. 1 through 48).

While Traditional Indigenous Knowledge was used as a mechanism to inform decision-making, it was not utilized as a mechanism to avoid adequate resource analyses throughout the BENM PRMP/FEIS. Consistent with CEQ's regulations implementing NEPA, the BLM and USFS incorporated both Traditional Indigenous Knowledge and Western scientific information into the affected environment and environmental consequences sections of the RMP and conducted in-depth, resource-specific analyses for resources in both the natural and built environments in BENM. These analyses are what informed the selection of Alternative E as the preferred alternative in the Draft RMP/EIS and informed the development of the Proposed Plan in the BENM PRMP/FEIS. A more detailed discussion related to the impact analysis for livestock grazing is available in the *Livestock Grazing* section of this protest report. Further discussion of cooperating agency involvement is available in the *Cooperating Agencies* section of this protest report.

Contrary to the protestors' assertions, the Proposed Plan does not delegate decision-making authority to the BEC or any other groups. The BLM and USFS would retain sole discretion to make land management decisions within BENM, even on issues that the Proposed Plan would require the agencies to coordinate with the BEC on. Moreover, the coordination with the BEC required by the Proposed Plan does not elevate Tribal interests over the interests of any other stakeholders. While the Proposed Plan requires coordination with the BEC in certain instances, it does not prohibit coordination with other stakeholders in any instance. Notably, such coordination may be required by other statutes and regulations in a variety of circumstances.

Also, the Proposed Plan does not unlawfully delegate the management of wildlife within the BENM to the BEC, Tribal Nations, DWR, and USFWS instead of to the State of Utah. The Proposed Plan merely would require that "management actions intended to benefit wildlife and fisheries would include incorporation of Tribal and state conservation strategies and collaboration with the BEC and the State of Utah, which could contribute to the protection of habitat for wildlife" (BENM PRMP/FEIS p. 3-101). Authority to make decisions concerning the management of wildlife in BENM would remain with BLM and the State of Utah, however. Additionally, there are numerous management actions common to all action alternatives in BENM PRMP/FEIS Section 2.4.11.2, *Wildlife and Fisheries*, that detail coordination that would occur with the State of Utah and its agencies in the management of wildlife and fisheries resources (pp. 2-48 through 2-57). The management actions in the BENM PRMP/FEIS make no attempts to supersede or diminish the jurisdiction of the State of Utah with regard to management of wildlife resources within the Monument. Future authorizations for any actions that could affect wildlife resources on BLM-administered land would require additional site-specific decision-making and environmental analysis in compliance with NEPA and compliance with other applicable environmental laws and regulations, including, where applicable, those of the State of Utah.

The BLM and USFS relied on high-quality information derived from both Traditional Indigenous Knowledge and Western scientific literature and the best available data in preparation of the BENM PRMP/FEIS and, in doing so, complied with NEPA, FLPMA, the Antiquities Act, NFMA, and APA. The BLM and USFS also do not unlawfully delegate the management of wildlife resources to other parties. Accordingly, this protest issue is denied.

## ***Impacts Analysis: Monument Objects and Values***

### ***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** Additionally, the agencies' failure to wrestle with the Monument object designation creates many additional problems. For one, if the President has failed to "declare" specific objects to be protected in Proclamation 10285-which he did by not clearly designating them-the agencies lack the power under the Antiquities Act to do so themselves. The agencies cannot engage in the planning process without first having a proper list of those objects. Even if they could designate objects, they have not yet done an inventory, so they cannot know what those objects are. It is doubly unlawful to leave object designation to implementation-level planning or to decision by the BEC (as discussed below), yet that is effectively what the plan does. As discussed above, the agencies are required under FLPMA, NFMA, NEPA, and the Dingell Act, among other legal authorities, to coordinate resource management planning with Utah and the Counties. And they are required by the Constitution, FLPMA, NEPA, the APA, its own regulations, other statutes, and a wealth of administrative law to engage in reasoned decision making that does not fail to consider relevant factors. Yet the agencies necessarily cannot engage in proper coordination or reasoned decision making in creating the Proposed RMP/FEIS because they do not even know what objects are to be protected. Without knowing what the objects are, the Proposed RMP/FEIS cannot weigh protecting specific ones against other somewhat intangible values that are not necessarily objects of historic or scientific significance.

### ***Southern Utah Wilderness Alliance et al.***

***Judi Brawer et al.***

**Issue Excerpt Text:** The Proposed Plan's Management Prescriptions for Lands with Wilderness Characteristics, Recreation, Rights-of-Way, and Visual Resources Fail to Protect Monument Objects and Values. Portion of the Plan Being Protested: Limiting remote recreation zones, visual resource management (VRM) Class I areas, and right-of-way (ROW) exclusion areas. FEIS, Vol. 1, p. 2- 37, p. 2-63, 2-80, 2-107. Because they are inextricably linked to BLM's OHV area designations, the Proposed Plan's management prescriptions for lands with wilderness characteristics (LWC), recreation zones, VRM, and ROW are not consistent with the protection of Monument objects and values. Under the Proposed Plan, outside of protected areas (WSAs, scenic ACECs, and Wild and Scenic Rivers), BLM takes the position that only areas identified as OHV Closed would be LWC managed to protect their wilderness characteristics. In turn, only these areas would be managed as remote recreation zones, VRM Class I, and ROW exclusion areas. Compare FEIS, Vol. 2, App. A, Figures 2-23 (p. A-26), with 2-29 (p. A-32), with 2-39 (p. A-42), and 2-46 (p. A-49); see also, FEIS, Vol. 1, p. 2-37, 2-63, 2-80, 2-107. BLM failed to explain its conclusion that these designations are co-dependent and, in doing so, it appears to be tying its hands for no apparent reason. Such self-imposed limits on BLM's ability to implement stronger management prescriptions is incompatible with the overarching goal of protecting Monument objects and values.

### **Summary:**

Protestors stated that the BLM and USFS failed to define Monument objects and values or to protect them by only closing areas to OHV use in special designation areas or in LWCs and only managing these areas as remote recreation zones, VRM Class I, and ROW exclusion areas. Protestors claim that the other areas in BENM not managed in this way is incompatible with the overarching goal of protecting Monument objects and values.



**Response:**

On October 8, 2021, Proclamation 10285 reestablished BENM's original boundaries and the conditions as set by Proclamation 9558, while also retaining approximately 11,200 acres that were added to BENM by Proclamation 9681. Proclamation 10285 emphasizes that the entire area designated by the Proclamation is "an object of historic and scientific interest in need of protection" and asserts that, without designation under the Antiquities Act, the resources within the Monument would be insufficiently protected. It further clarifies that BENM is established to "ensure the preservation, restoration, and protection of the objects of scientific and historic interest on the Bears Ears region, including the entire monument landscape." Land use plans for a National Monument must analyze and consider measures to ensure that objects are conserved, protected, and restored (BLM Manual Section 6220.1.6.G.4). Through the land use planning process, the BLM identifies specific and measurable goals and objectives for each object (BLM Manual Section 6220.1.6.G.4.a). For designated areas, which include National Monuments, the USFS Responsible Official shall include plan components that will provide for appropriate management of designated areas based on the applicable authorities and the specific purposes for which each area was designated. Uses and management activities are allowed in designated areas to the extent that these uses are in harmony with the purpose for which the area was designated (FSH 1909.12, 24.2).

The BENM PRMP/FEIS was developed with the purpose of protecting and restoring Monument objects and values as described in the purpose and need section of the BENM PRMP/FEIS (see Section 1.2, pp. 1-2 through 1-4). Specifically, "Protect and restore the unique and varied natural and scientific resources of these lands. This includes objects identified in Presidential Proclamation 10285 such as biological resources, including various plant communities, relict and endemic plants, diverse wildlife, including unique species, and habitat for Endangered Species Act (ESA)-listed species" (BENM PRMP/FEIS p. 1-2). In accordance with this purpose and need, the BLM developed and analyzed a range of alternatives consistent with the protection of the objects identified in Proclamation 10285 and the physical, cultural, and spiritual landscapes within the Monument.

Proclamation 10285 does not require the BLM and USFS's management decisions to be those that are the most protective of Monument objects. Instead, it requires that, on balance, the BLM and USFS's management decisions be consistent with the overall protection of the identified objects. The BENM PRMP/FEIS must comply with the purposes and objectives outlined in Proclamation 10285, but multiple uses may be allowed to the extent they are consistent with Proclamation 10285.

The BLM and USFS developed the management under each action alternative in the BENM PRMP/FEIS with the purpose of protecting Monument objects and values as described in the purpose and need for the BENM PRMP/FEIS (see Section 1.2, p. 1-2 through 1-4). Based on the impact analysis in the FEIS, the Proposed Plan includes measures that would protect Monument objects and contribute to meeting the goals and objectives for objects as set forth in the BENM PRMP/FEIS. The analysis identifies impacts that may result in some level of change to the resources in BENM, but on balance demonstrates that Monument objects will be protected, consistent with Proclamation 10285.

BLM Manual 6320 allows for BLM discretion to manage LWCs and minimize impacts on wilderness characteristics by identifying management restrictions. Section 2.4.9 provides management actions specific to LWCs under all alternatives. Under the Proposed Plan, LWCs would be managed to protect their wilderness characteristics, consistent with the protection of BENM objects, including OHV closed, VRM Class I, and ROW exclusion area management decisions (BENM PRMP/FEIS p. 2-37). Section 3.4.7 provides discussion of impacts on LWCs, including how OHV, ROW, and VRM can affect wilderness characteristics and Monument objects (BENM PRMP/FEIS p. 3-75). Due to LWCs being closed to OHVs, the impacts of OHVs on Monument objects within LWCs are effectively eliminated (BENM PRMP/FEIS p. 3-80). Section 3.4.7.2 states that recreation activities within LWCs "would be designed in collaboration with the BEC to ensure that standards are guided

by Traditional Ecological Knowledge and Indigenous expertise” (BENM PRMP/FEIS p. 3-79). This collaboration with the BEC will ensure all recreation-specific management actions prioritize the protection of Monument objects. All LWCs would be identified as ROW exclusion areas, minimizing the impacts of surface disturbances (BENM PRMP/FEIS p. 3-76). Finally, all LWCs would be managed as VRM Class I, restricting most types of surface-disturbing activities, effectively eliminating impacts from surface disturbance (BENM PRMP/FEIS p. 3-78).

The BLM and USFS analyzed a range of alternatives regarding management of recreation, which is provided in Section 2.4.20 (BENM PRMP/FEIS pp. 2-87 through 2-106). Under the Proposed Plan, landscape-level management zones would be utilized in collaboration with BEC consistent with the protection of BENM objects. See Table 2-19 for a detailed discussion of recreation management zones and the recreational activities allowed within each zone under the Proposed Plan (BENM PRMP/FEIS p. 2-88 through 2-90). Section 3.5.7 provides discussion of the current conditions and potential impacts on recreation and visitor services from the proposed management under each alternative (BENM PRMP/FEIS pp. 3-202 through 3-224). As stated in Section 3.5.7.2, under the Proposed Plan, the BLM and USFS would collaborate with the BEC to protect objects “in a manner that respects traditional uses, values, and perspectives of Tribal Nations” (BENM PRMP/FEIS p. 3-203). BENM PRMP/FEIS Appendix E, *Supporting Information for Recreation and Visitor Services Decisions*, also provides information regarding Recreation Area Management Plans that would be tiered to the PRMP but would be developed at the implementation level and would include management and education strategies in order to protect BENM objects (BENM PRMP/FEIS Appendix E, p. E-8). Although OHV status is dependent on the recreation management zone, under the Proposed Plan no areas are designated as OHV open, and management of OHV limited areas would prioritize preservation of Monument objects to benefit remote recreation (BENM PRMP/FEIS p. 3-221). The management of OHV use is consistent with the regulations at 43 CFR 8342.1, the protection of Monument objects, the Wilderness Act, and FLPMA’s direction on LWCs. Any necessary restrictions to recreation for the protection of BENM objects under implementation-level planning will be evaluated on a case-by-case basis through a public process regardless of whether a future project is proposed within a special designation area or in LWCs. Also under the Proposed Plan, dispersed camping would not be allowed within 0.5 mile of any developed campground or surface waters except in existing campsites or camping areas to protect BENM objects (BENM PRMP/FEIS p. 3-220). See BENM PRMP/FEIS Section 3.5.7.2 and Appendix E for additional detailed discussion on recreation and visitor services.

BENM PRMP/FEIS Section 2.4.19 provides management actions specific to ROWs under each alternative. This section provides detailed management decisions regarding ROW open areas, exclusion areas, and avoidance areas under all alternatives (BENM PRMP/FEIS p. 2-79 through 2-87). Under the Proposed Plan, U.S. Highway 163 and U.S. Highway 191 corridors would be the only retained existing designated corridors and no new corridors would be designated, although ROWs could be authorized within existing corridors and ROW avoidance areas (BENM PRMP/FEIS p. 3-201). BENM PRMP/FEIS Section 3.5.6 provides discussion of the existing conditions and potential impacts of ROW management decisions under all alternatives on Monument objects (pp. 3-197 through 3-202). The majority of BENM currently is designated as ROW avoidance or ROW exclusion and, under all alternatives, each ROW application submitted to the BLM or USFS will be analyzed on a case-by-case basis, prioritizing the protection of BENM objects (BENM PRMP/FEIS p. 3-198). BENM PRMP/FEIS Section 3.5.8 provides additional analysis of potential travel management impacts under each alternative (pp. 3-224 through 3-228).

BENM PRMP/FEIS Section 2.4.13 provides management actions specific to visual resources under all alternatives including detailed identification of VRM classifications (pp. 2-62 through 2-65). Under the Proposed Plan, no BLM-administered lands would be managed as VRM Class IV and no USFS lands would be managed as scenic integrity objective Low or Very Low (BENM PRMP/FEIS

p. 2-64). BENM PRMP/FEIS Section 3.4.12 provides discussion of the affected environment and potential impacts on visual resources from proposed management under each alternative (pp. 3-121 through 3-131). VRM Class I lands include Wilderness Study Areas (WSA), specific ACECs, LWCs, and Wild and Scenic Rivers and the USFS assigned a Very High scenic integrity objective to all lands within designated wilderness areas (BENM PRMP/FEIS p. 3-123). As stated in Section 3.4.12.2, the BLM and USFS “would collaborate with the BEC to protect viewsheds and visual resources consistent with Tribal Values” (BENM PRMP/FEIS p. 3-123). Site-specific NEPA analysis would determine appropriateness of specific locations and actions of proposed projects. Additionally, under the Proposed Plan, existing ROW corridors would be managed as VRM Class II, requiring future utility projects to meet more stringent management objectives to reduce their impacts on visual resources (BENM PRMP/FEIS p. 3-129).

The BLM and USFS complied with the Proclamations’ requirement to protect Monument objects and analyzed the environmental consequences/impacts of proposed management of LWCs, recreation, ROW, and visual resources on Monument objects in the BENM PRMP/FEIS. Accordingly, this protest issue is denied.

### ***NEPA: Public Participation***

#### ***Moab BASE Association, Inc.***

##### ***Ryan Katchmar***

**Issue Excerpt Text:** BLM’s adoption of the Proposed RMP with respect to the Banned Activities would be arbitrary and capricious. The March 2024 Draft RMP failed to propose a ban of highlining at all. BLM did not propose to ban this activity until its appearance in the October, 2024 Proposed RMP, thus depriving public stakeholders of the opportunity for public comment or engagement with the agency at all, contrary to the requirements of 43 C.F.R. 1610.2(A) and the Administrative Procedures Act, 5 U.S.C. 706(2) (the “APA”).

#### ***Moab BASE Association, Inc.***

##### ***Ryan Katchmar***

**Issue Excerpt Text:** Because BLM failed to engage participants of the Banned Activities, the Proposed RMP in the case of prohibiting paraglider and hang glider launching or landing presents direct legal conflicts with federal aviation regulations (notably 14 C.F.R. 91.3(a) and Title 14, Part 103) granting pilots suffering a flight emergency discretion to land wherever is practicable. These activities received little or, in the case of highlining, no mention in the March 2024 Draft RMP. Draft RMP, at 2-115. BLM further failed to notify our known public communities of proposed prohibitions consistent with 43 C.F.R. 1610.2(d), depriving affected stakeholders of the opportunity to engage with and educate the commission, and depriving them of the opportunity to comment on these uninformed management decisions. My comments on the draft plan reflect the absence of notice to the highlining community. The recreating public expects equal treatment for all similarly situated groups. While the Bears Ears Commission worked closely with the climbing community and offered several alternatives to managing climbers within the Monument, there was no similar effort extended to the BASE community, which counts Moab, Utah and its surrounding areas (including Bears Ears) as the center of its universe.

#### ***State of Utah, Public Lands Policy Coordinating Office***

##### ***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** Throughout the planning process, the agencies repeatedly failed to provide sufficient material for the public to adequately comment on the RMP/EIS. They have not provided adequately detailed maps specifically showing existing routes or trails within proposed OHV closed areas and allotment boundaries on the grazing maps. They have failed to respond to public questions

posed during the public comment period. When questioned regarding missing definitions and inadequate maps, agency staff simply and dismissively said, “this is just a draft, so include those concerns in your comment letter.” This approach conflicts with NEPA regulations, which provide that a draft is to be as final as possible, 40 C.F.R. § 1502.9, but it more generally frustrates coordination, including with the State by preventing meaningful comments when basic terminology and the substance of proposals is not reflected in the draft.

***State of Utah, Public Lands Policy Coordinating Office  
Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** The protest process in which this Protest is being submitted is itself legally insufficient within the context of the planning process for the BENM RMP/EIS. The State appreciates the candor of the agencies in acknowledging that their Proposed RMP effectively constitutes a new alternative that makes material changes to Alternative E. See cover sheet; p. 2-7. Yet BLM is failing to follow through on the obligations that flow from creating a new plan not contained in the Draft RMP/Draft EIS rather than selecting the preferred alternative in that document, Alternative E. To be clear, Alternative E itself has serious problems that render it unusable, but many of the changes in the Proposed RMP have made those problems worse. The Proposed RMP makes numerous changes described more fully below, including layering a duplicative zonal management system on top of management areas, closing areas to off-highway vehicle (OHV) use, closing new areas to livestock, and other new management directions and new goals and objectives. Proceeding without a new public comment period violates BLM’s obligations under FLPMA, NFMA, NEPA, and other statutes. For instance, in addition to the substantive coordination and consistency requirements of FLPMA and NFMA and related requirements in NEPA that are thwarted by these significant late alterations, BLM regulations envision that the Field Manager will merely “select” a plan from the alternatives commented upon in the Draft RMP, 43 C.F.R. § 1610.4-8, not create a new one, and if there is any “significant change” from then on, “there shall be public notice and opportunity for public comment,” 43 C.F.R. § 1610.5-1. Similarly, USFS regulations envision that “the proposed plan,” the one there was “an opportunity to comment on,” is “the proposal” that “is approved,” not a new plan—a new plan requires revising the EIS. 36 C.F.R. § 219.5(a)(2). Similarly, under these same statutes and regulatory schemes, the agencies cannot select from outside the alternatives and finalize the EIS without considering new impacts from the revisions. The agencies do not even bother to assert that the Proposed RMP is “within the range of alternatives.” It is not. As discussed, the agencies made numerous significant changes, the effects of which were not analyzed anywhere in the Draft RMP/Draft EIS. Especially where the agencies increase restrictions in the Proposed RMP, the agencies cannot claim that they have analyzed them sufficiently. Alternative D, which (contrary to law) broadly disallowed many uses, was never a real option and cannot inform lesser additional restrictions contained in the Proposed RMP. To be clear, the agencies’ protest process, limited as it is by regulation and by informal guidance, cannot suffice for the separate public comment period required for this new plan, much less for the substantive coordination and consistency required by FLPMA, NFMA, NEPA, the Dingell Act, and other statutes and regulations. Utah has previously commented on these substantive and procedural deficiencies throughout the planning process, including in its June 11, 2024, comment letter on the Draft RMP/Draft EIS and the letters described in the next section,<sup>1</sup> and it extends those criticisms here.

***Ride With Respect et al.  
Clif Koontz et al.***

**Issue Excerpt Text:** The PRMP/FEIS finally shows the current ROS zones and current designated routes accurately and completely for the first time in the Bears Ears planning process, but the fact that these things were portrayed inaccurately (in both text and maps) during all of the comment periods should compel the agencies to initiate another round of public comments before the protest period. Accurately portraying the status quo is fundamental to NEPA compliance.

**Summary:**

Protestors claimed that the BLM and USFS violated NEPA and the APA by:

- Failing to adequately notify or provide opportunity for adequate public participation and public/stakeholder comment on the banned activities in the PRMP/FEIS, such as highlining.
- Failing to provide sufficient material for the public to adequately comment on the Draft RMP/EIS including failing to provide detailed OHV and grazing maps. Additionally, protestors stated that the BLM and USFS failed to adequately respond to public questions during the public comment period.
- Introducing a new alternative in the Proposed Plan that was not presented in the Draft RMP without giving the public adequate opportunity to comment on this new alternative.
- Waiting until the PRMP to include current Recreation Opportunity Spectrum zones and current designated routes accurately and completely. Protestors claim that this delay in providing accurate information directly affected the opportunity for the public to comment on these topics prior to the protest period.

**Response:**

Public involvement is an important part of the NEPA process. The level of public involvement varies with the different types of NEPA compliance and decision-making. The CEQ regulations require that agencies seek and consider public comments in the NEPA process (e.g., 40 CFR 1501.9 and 1503.1), but there are a wide variety of ways to engage the public in the NEPA process (BLM NEPA Handbook, H-1790-1, pp. 62 and 63, and 36 CFR 219.4). The agencies' planning regulations require a minimum 90-day public review period (43 CFR 1610.2(e)) for Draft RMPs supported by an EIS. Pursuant to NEPA, the BLM and USFS must assess, consider, and respond to all substantive comments received (40 CFR 1503.4). Substantive comments are those that reveal new information, missing information, or flawed analysis that would substantially change conclusions (BLM Handbook H-1601-1, pp. 23 and 24).

The BLM and USFS provided robust public participation opportunities, in compliance with NEPA and CEQ regulations implementing NEPA. The agencies solicited written comments during the scoping period in response to the Notice of Intent (issued in August 2022) and held five public scoping meetings in 2022 (BENM PRMP/FEIS p. O-1). The BLM and USFS published the BENM Draft RMP/EIS for a 90-day public comment period on March 15, 2024, and notified and involved the public and other agencies via *Federal Register* notices, public and informal meetings, individual contacts, media releases, and the effort's ePlanning website: <https://eplanning.blm.gov/eplanning-ui/project/2020347/510> (BENM PRMP/FEIS pp. O-1 through O-9). The agencies held five open-house style public meetings during the 90-day public comment period for the Draft RMP/EIS in multiple locations throughout the planning area and held two virtual meetings to allow various opportunities and mechanisms for engagement with this planning effort (BENM PRMP/FEIS pp. O-8 through O-9). The specific opportunities for public involvement are described in the BENM PRMP/FEIS, Appendix O, *Consultation, Coordination, and Public Involvement* (BENM PRMP/FEIS pp. O-1 through O-14).

The BLM and USFS also engaged with 32 local Tribal Governments and their members through the government-to-government consultation process as outlined in BENM PRMP/FEIS Appendix O Section 2.4, *Government-to-Government Consultation* (p. O-2), and ensured opportunities for community engagement to share publicly available information as described in Table O-5, *Community Engagement* (p. O-6).

NEPA requires the BLM and USFS to assess, consider, and respond to all substantive comments received on a Draft EIS. Accordingly, it is common for changes to occur between a Draft EIS and an

FEIS based on public comment. In response to comments received on the BENM Draft RMP/EIS, the agencies developed the Proposed Plan as a blend of elements from the range of alternatives analyzed in the BENM Draft RMP/EIS. Section 1.4, *Issues Considered*, outlines the BLM and USFS issues and related resource topics identified through scoping (BENM PRMP/FEIS pp. 1-5 through 1-7). Section 1.7, *Summary of Key Changes from the Draft RMP/EIS*, describes the changes the BLM and USFS made between the BENM Draft RMP/EIS and the BENM PRMP/FEIS. Light gray highlighted text is shown throughout the BENM PRMP/FEIS to indicate the changes that were made between the BENM Draft RMP/EIS and the BENM PRMP/FEIS. These changes were made for consistency, clarity, and accuracy and are based on public comments received and input from cooperating agencies, the BEC, and the agency interdisciplinary team (BENM PRMP/FEIS pp. 1-9 through 1-10).

After review of revisions since the Draft RMP/EIS, the BLM and USFS have determined that there are no new significant circumstances or information relevant to environmental concerns bearing on the Proposed Plan or its impacts, including the addition of prohibited activities. As explained in the BLM's NEPA Handbook, "[t]he identification of a preferred alternative does not constitute a commitment or decision in principle, and there is no requirement to select the preferred alternative in the [Record of Decision]. The identification of the preferred alternative may change between a draft EIS and final EIS" (BLM NEPA Handbook, H-1790-1, p. 95). The Proposed Plan is within the range of alternatives previously discussed and analyzed in the Draft RMP/EIS and therefore no substantial changes or substantial new circumstances or information about the significance of adverse effects are present. Because the Proposed Plan comprises elements of the alternatives analyzed in the Draft EIS, and the public had an opportunity to comment on the alternatives in the Draft EIS, the public was given an adequate opportunity to comment on the elements of the Proposed Plan. The protestor is therefore incorrect that the public was not given an adequate opportunity to comment on the Proposed Plan.

Regarding the limitation of certain recreational activities, the BLM and USFS would implement resource rest and closure as informed by Traditional Indigenous Knowledge, collaboration with the BEC, and Tribal Nations in accordance with applicable law (BENM PRMP/FEIS pp. 2-87 through 2-88). As discussed in Section 3.5.7.2.6, under Alternative E, "Launching or landing of paragliders, hang gliders, base jumpers, and wing-suit flyers; highlining; geocaching; and rock stacking would be prohibited in the Monument, which would limit recreational opportunities for participants of those activities" (BENM PRMP/FEIS p. 2-103). Alternative E was analyzed in the Draft EIS and available for public comment during the Draft EIS 90-day public comment period. However, very few visitors to the BENM region participate in most of these activities, limiting the extent of impacts on recreational opportunities (BENM PRMP/FEIS Appendix U, p. U-148). The BLM's Monticello Field Office commissioned University of Alaska Fairbanks researchers to conduct recreational use studies, which discuss in detail the typical recreational visitor and recreation activities across two subunits of BENM. The study found that rock climbing, day hiking, camping, and exploring cultural sites were the top recreational activities (BENM PRMP/FEIS p. N-150). Traditional Indigenous Knowledge related to the development of BENM is provided in BENM PRMP/FEIS Appendix L and demonstrates the area's landforms as areas of Tribal importance and provides a basis for oppositions to the impacts associated with these recreational activities, including highlining. As the above activities fall under this category, they are therefore prohibited within BENM under Alternative E and the Proposed Plan.

Regarding the availability of OHV and grazing maps, Appendix A, *Figures*, of the BENM PRMP/FEIS contains all maps. Figure 2-41 through Figure 2-52 (BENM PRMP/FEIS Appendix A, pp. A-44 through A-55) provide maps detailing the OHV area designations and routes for all alternatives and the Proposed Plan. Figure 2-53 through Figure 2-57 (BENM PRMP/FEIS Appendix A, pp. A-56 through A-60) provide maps detailing grazing and trailing and grazing and trailing with allotments. In addition, there are interactive maps available on the project's ePlanning webpage, which allows for

comparison of data at a fine scale: <https://eplanning.blm.gov/eplanning-ui/project/2020347/580>. These maps for Alternatives A through E and the interactive maps were also available for review during the 90-day public comment period of the Draft EIS.

The BLM and USFS provided adequate opportunity for public comment during the planning process, adequately responded to public comments on the BENM Draft RMP/EIS in the BENM PRMP/FEIS, and appropriately developed the Proposed Plan. Accordingly, this protest issue is denied.

## ***National Historic Preservation Act***

### ***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** The decision to close areas to livestock grazing and otherwise restrict it in the Proposed RMP also violates the National Historic Preservation Act (NHPA) because it authorizes an undertaking before considering the effect on any historic property, namely livestock grazing lands that may qualify as Traditional Cultural Properties (TCPs). See 54 U.S.C. §306108; 36 C.F.R. §800.16(l), (y). Under the NHPA, the agencies are required to assess the effects of its undertakings on historic properties and give the Advisory Council on Historic Preservation a reasonable opportunity to comment before it authorizes such undertakings. Here, the Proposed RMP makes over 162,217 acres of land unavailable to livestock grazing. One type of historic property affected by the undertaking is livestock grazing TCPs. The agencies have failed their Section 106 obligations at the second step of the NHPA's implementing regulations because they failed to "make a reasonable and good faith effort to carry out appropriate identification efforts," 36 C.F.R. §800.4(b)(1), especially regarding the livestock grazing TCPs. Because of this misstep, they incorrectly deemed it unnecessary to assess effects and resolve adverse effects to these historic properties.

### ***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** BLM knows that it is the statutory obligation of the Federal agency, not consulting parties or members of the public, "to fulfill the requirements of section 106 and to ensure that [BLM's] official with jurisdiction an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of [36 C.F.R. Part 800]." 36 C.F.R. §800.2(a). The information about a livestock grazing TCP provided by consulting parties was sufficient to require the BLM to engage in further investigations, which could have included, minimally, asking consulting parties for more information. The BLM did not ask for additional information. In sum, BLM neglected to make its own reasonable and good-faith effort to determine if livestock grazing lands within the monument qualify as a TCP.

### ***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** BLM's process, its response that insufficient information was provided, and its response in the Proposed RMP fall short of its legal obligations. Once BLM was made aware of the potential existence of the TCP, it was legally obligated to evaluate the historical significance. See 36 C.F.R. §800.4(c)(1)-(2). BLM had an affirmative duty under the NHPA to seek more information and conduct its own research. The information presented in Utah's letters clearly demonstrate there is sufficient likelihood of a livestock grazing TCP in the BENM to warrant further investigation. BLM's decision to make grazing allotments unavailable without completing a thorough Section 106 review creates the risk of adverse effects to historic properties that may have deep historical and cultural significance to local communities and indigenous groups. Limitations and closures will prevent ranchers from engaging in a cultural practice rooted in the community's centuries-long history and that is important to maintaining the community's continuing cultural identity. By proceeding with the

limitations on and closures of these livestock grazing pastures without a full and proper Section 106 review, the agencies are compromising the integrity of their decision-making process.

***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** The closure of nearly half of the BENM to motorized travel, effectively rendering many roads and trails within these areas unavailable for public use, violates the NHPA by authorizing potential adverse effects to historical roads that may be eligible for the National Register of Historic Places without properly evaluating those impacts or conducting the required consultation process under Section 106 of the NHPA. See 54 U.S.C. § 306108.

***Utah Farm Bureau Federation***

***Terry Camp and ValJay Ribgy***

**Issue Excerpt Text:** Ranching and grazing in the Bears Ears region significantly predates both the national monument designation and the establishment of the BLM and USFS. As a long-standing cultural practice, deeply rooted in the area's history and crucial to maintaining the cultural identity of local communities, ranching should be considered for designation as a Traditional Cultural Property (TCP) under the National Historic Preservation Act (NHPA). National Register Bulletin 3818 defines a traditional cultural property as a property that is eligible for inclusion in the National Register of Historic Places (NRHP) based on its associations with the cultural practices, traditions, beliefs, lifeways, arts, crafts, or social institutions of a living community.<sup>2</sup> TCPs are rooted in a traditional community's history and are important in maintaining the continuing cultural identity of the community. The ranching tradition in BENM, spanning generations and integral to the local way of life, clearly fits this definition. However, the BLM and USFS' actions in shutting down grazing allotments and allowing voluntary relinquishments and permanent retirement of grazing rights appear to lack a thorough analysis of this cultural significance. This oversight is particularly concerning given that Section 106 of the NHPA requires federal agencies to consider the effects of their actions on historic properties, including TCPs. The BLM and USFS' failure to adequately consider ranching and grazing as a potential TCP in its decision-making process regarding grazing allotments raises questions about compliance with federal historic preservation laws and the potential loss of an important cultural heritage. The UFBF raised these issues in our comments on the DRMP submitted on June 11, 2024.

**Summary:**

Protestors stated that the BLM and USFS violated the NHPA by:

- Failing to consider grazing and ranching as a TCP and failed to analyze the impacts associated with the permanent retirement of grazing rights on TCPs under the NHPA.
- Failing to engage in adequate Section 106 consultation regarding livestock grazing TCPs and neglecting to make their own reasonable and good-faith effort to determine if livestock grazing lands within the Monument qualify as a TCP.
- Closing nearly half of the Monument to motorized travel, effectively rendering many roads and trails within these areas unavailable for public use, which could authorize potential adverse effects on historical roads that may be eligible for the NRHP without properly evaluating those impacts or conducting the required consultation process under Section 106 (54 U.S.C. 306108).

**Response:**

Section 106 of the NHPA requires Federal agencies to consider the impact of Federal undertakings on historic properties (54 U.S.C. 306108). Upon determination that an action is a Federal undertaking, NHPA regulations direct agencies to consult with the SHPO and, where applicable, Tribal Historical



Preservation Officers (THPO) in a manner appropriate to the agency planning process for the undertaking and to the nature of the undertaking and its effects on historic properties (36 CFR 800.3(c)(3)). Consultation with the SHPO and THPOs involves identifying historic properties (36 CFR 800.4), assessing adverse effects (36 CFR 800.5), and resolving adverse effects (36 CFR 800.6). NHPA regulations further specify that Federal agencies should make a “reasonable and good faith effort” to identify historic properties within the area of potential effect (36 CFR 800.4(b)).

BENM PRMP/FEIS Appendix O, Section 2.3, discusses the agencies’ consultation under NHPA Section 106 including with the Utah SHPO, the Advisory Council on Historic Preservation, and Tribes (BENM PRMP/FEIS Appendix O, pp. O-1 through O-2).

For the reasons articulated in their November 27, 2024, letter to the Advisory Council on Historic Preservation, the agencies complied with the NHPA as part of this planning effort. In particular, the agencies’ efforts to identify historic properties in the area of potential effect was reasonable, and the agencies correctly determined that the Proposed Plan would have no adverse effect on historic properties. The BLM manages 1,075,000 acres of Federal land in BENM. Under current management, 91,700 acres of the BLM-managed acres in BENM are unavailable to grazing. Under the PRMP, an additional 27,208 acres would be made unavailable to livestock grazing, bringing the overall total to 118,908 acres. However, 19,671 of the 27,208 acres in BENM that would become newly unavailable to livestock grazing under the PRMP are not covered by an existing livestock grazing permit and have not been grazed for a decade. As a result, the PRMP would have no impact on the amount of grazing occurring within those 19,671 acres. The PRMP would also not adversely affect historic properties associated with grazing in those 19,671 acres, because the management decisions in the PRMP would not change the physical characteristics of any potentially eligible historic sites, objects, structures, or buildings in the allotments, either through affirmative acts taken by the BLM or through neglect and reclamation, nor would it prevent the BLM from changing the decision and making those lands available to livestock grazing through a subsequent land use plan amendment. Although 7,537 of the 27,208 acres that the PRMP would make newly unavailable to livestock grazing are covered by an existing grazing permit, that change amounts to a mere 0.6 percent of the 1.35-million-acre National Monument. Additionally, because the change is limited to a single pasture (i.e., not an entire allotment), the rancher at issue would be able to retain their permit and the PRMP would not reduce the number of livestock AUMs available to the permittee. In sum, while the PRMP would make a small change in the amount of land in BENM that is unavailable to livestock grazing, it would not result in any ranchers losing a livestock grazing permit in the Monument. Accordingly, because the PRMP would not prevent anyone from engaging in the “traditional cultural practice” of livestock grazing in BENM, the agencies appropriately determined that the PRMP would not adversely affect a potential livestock grazing TCP associated with the Monument.

Given that the PRMP would not affect a potential livestock grazing TCP in BENM, the agencies’ efforts to identify a TCP as part of the current undertaking were reasonable. *National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties* (National Park Service 1998) explains that the level of effort that should be allocated to identifying a TCP depends in part on whether the project under consideration is the type of project that could affect TCPs, and, as the prior paragraph illustrates, the PRMP would not have an adverse effect on either grazing use or grazing-related historic properties in BENM. Extensive efforts to identify a potential grazing-related TCP at this time were therefore unnecessary. If future implementation-level undertakings have the potential to affect a possible livestock grazing TCP, the agencies will follow the identification procedures outlined in *National Register Bulletin 38* (National Park Service 1998). Moreover, consulting parties did not provide sufficient information to identify a grazing-related TCP in BENM at this time. As *National Register Bulletin 38* points out, a TCP must be tied to a tangible area or property and the traditional practice must be associated with a living community.

Accordingly, the input provided did not include sufficient information for the agencies to identify, document, and evaluate a potential livestock grazing TCP at this time.

The agencies' identification efforts and no-adverse-effect determination were similarly correct with respect to potentially eligible historic roads in BENM. Under current management, 685,403 acres of the lands in BENM administered by the BLM are designed as OHV limited areas, and 389,645 acres are designated as OHV closed. None of the BLM-administered lands in BENM are currently designated as OHV open. Consistent with the direction in 43 CFR 8342.1 to designate all public lands as either open, limited, or closed to OHV use, the PRMP would designate 483,917 acres of the BLM-administered portions of BENM as OHV limited and 591,185 acres of the BLM-administered portions of BENM as OHV closed. The PRMP would not designate any acres in BENM as OHV open. The PRMP would result in 201,540 more acres being designated as OHV closed than under current management.

There are several roads in the areas that would be newly designated as OHV closed that have been closed to public OHV use since 2008. Because the public has not been authorized to use OHVs on those roads for more than 15 years, designating the areas in which those roads are located as OHV closed as part of the current planning effort would merely carry forward the status quo. It would not affect the level of use on those roads, nor would it change the physical characteristics of those roads. Therefore, to the extent that any of those already-closed roads are potentially eligible historic properties, they would not be adversely affected by the Proposed Plan. Per 36 CFR 800.5, it was therefore unnecessary for the agencies to expend time and resources surveying and reviewing those roads at this time.

By comparison, 73 road segments in BENM would become newly unavailable to public OHV use as a result of the OHV area designations in the Proposed Plan. Accordingly, the BLM conducted a cultural resource survey and literature review for those 73 road segments, which could experience a change in their level of use under the Proposed Plan. Of the 73 road segments included in the BLM's survey and literature review, the BLM determined that seven were historic and met the definition of "sites" at 36 CFR 60.3(l) or the Utah Professional Archaeological Council's linear site guidelines. The BLM determined that the other 66 road segments were not historic or did not qualify as sites under the regulatory definition or the Utah Professional Archaeological Council's linear site guidelines.

In light of this information, the BLM had ample reason to determine that no potentially eligible historic roads would be adversely affected by the Proposed Plan. First, because 66 of the road segments do not qualify as sites in 36 CFR 60 or historic properties under 36 CFR 800.16(l), changes to those road segments cannot constitute an adverse effect under 36 CFR 800.5. Second, the PRMP would not change the physical characteristics of any potentially eligible historic roads in BENM, either through affirmative acts taken by the BLM or through neglect and reclamation. Notably, the PRMP does not include management direction that would affect the physical characteristics of any routes, or potentially historic roads, in those portions of BENM that the PRMP would designate as OHV closed.<sup>3</sup> The Proposed Plan does not contain any management direction to affirmatively reclaim or decommission any historic roads in areas designated as OHV closed.<sup>4</sup> Therefore, even if the BLM's determination about the potential eligibility of some of the 73 road segments was flawed, it

<sup>3</sup> The BLM would need to issue a separate implementation-level decision to physically decommission the routes. That decision-making process, which is separate and distinct from the current undertaking, would need to comply with applicable laws including, but not limited to, NEPA and the NHPA

<sup>4</sup> Even if the PRMP did not contain management direction to decommission or reclaim potentially historic roads, it is not clear that such management direction would constitute an adverse effect on a historic property. The United States District Court for the District of Utah has explained that "route closures are not permanent," and "[a]ny route," even those that have been reclaimed, "can be reestablished in the future." *BlueRibbon Coal, Inc. v. United States BLM*, 2020 U.S. Dist. LEXIS 49991, at \*29 (D. Utah Mar. 20, 2024).

would still be the case that Proposed Plan would not adversely affect the physical characteristics of any of those roads.

Third, to the extent the Proposed Plan changes the public’s ability to use any potentially eligible historic roads in BENM,<sup>5</sup> that change would not diminish the integrity of such roads through “neglect.” There are numerous examples of historic properties that were used as historic and Indigenous trails and roads that still retain the integrity to convey their significance and eligibility for the NRHP despite being in disuse for decades and, in some cases, over a century. Examples include the Hole-in-the Rock Trail and Chacoan Great Roads (approximately 800 years old). The integrity aspects of location, setting, feeling, and association that would be necessary to convey association with a significant event or person (Criterion A or B) and qualify a property for listing under the NRHP would not be affected by discontinued use. As explained above, many roads in BENM have been closed to public OHV use for more than a decade, and the physical remains of those roads continue to be present.

Fourth, and finally, the notion that the area designations in the Proposed Plan would adversely affect potentially eligible historic roads is inconsistent with direction in the *Programmatic Agreement Among The Advisory Council on Historic Preservation, The Bureau of Land Management – Utah, and The Utah State Historic Preservation Office Regarding National Historic Preservation Act Responsibilities For Travel and Transportation Management Undertaking* (Travel PA) executed in 2018. Stipulation VI.A. of the Travel PA specifically provides that “[d]esignating closed OHV areas in RMPs and RMP amendments, and closing routes to OHV use” are the types of travel and transportation management undertakings that will be considered exempt from the Section 106 identification and consultation process. Indeed, because of its benign nature on historic properties, Stipulation II.A.1a of the 2018 Travel PA explained that designating areas of public lands as OHV closed was the type of undertaking that “is exempt from the Section 106 survey and consultation requirements[,] and the identification of [areas of potential effect] for closed area is therefore unnecessary.”

The BLM and USFS complied with all requirements for NHPA Section 106 consultation in preparation of the BENM PRMP/FEIS and appropriately analyzed potential impacts on cultural resources from the proposed management under all alternatives. Accordingly, this protest issue is denied.

## ***Paleontological Resources***

### ***Society of Vertebrate Paleontology***

***Paul Polly et al.***

**Issue Excerpt Text:** The Proposed RMP and EIS text asserts that collection and curation are incompatible with traditional ecological knowledge, but this stipulation is made without analysis and contradicts the collaborative land management plan from the Bears Ears Tribal Coalition that was circulated as Appendix L of the Draft RMP and EIS, as well as the practices of tribes and tribal

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<sup>5</sup> The Proposed Plan would not prevent all motorized vehicle use on such roads. Under the BLM’s regulations, specific uses authorized by the BLM are excluded from the definition of OHV and, therefore, may occur on routes that are designated as closed to public OHV use. Authorized uses can include, but are not limited to, grazing permittees who need to use a route to access their grazing allotments or range improvements, private landowners who obtain a ROW to access their inholding, or various entities who obtain a ROW to access Utah State Trust Land Administration parcels. Therefore, even if the Proposed Plan would change the level of public OHV use on certain potentially eligible historic roads, such roads could continue to experience some level of motorized travel.

members who value collecting, exhibiting, studying, and being inspired by fossils. The decision thus appears to be arbitrary and capricious.

### ***Society of Vertebrate Paleontology***

***Paul Polly et al.***

**Issue Excerpt Text:** We are writing in protest of the Resource Management Plan (RMP) and Environmental Impact Statement (EIS) for Bears Ear National Monument (BENM) because its provision in Table 2-3.9 (“Agencies would minimize collection and curation of fossils and would consider collection only in cases where paleontological objects are threatened by potential impacts including, but not limited to erosion, development, or other discretionary actions”) is incompatible with scientific research, and indeed incompatible with other management actions listed in the RMP and with Proclamations 9558 and 10285.

### **Summary:**

Protestors claim that the BLM and USFS contradict Proclamations 9558 and 10285 and the BEITC LMP (BENM PRMP/FEIS Appendix L) through restricting the collection and curation of fossils within BENM because these actions are incompatible with traditional ecological knowledge.

### **Response:**

Proclamation 9558 established BENM and protected approximately 1.35 million acres of sacred cultural, historical, and archaeological resources. The Proclamation indicated that the boundaries of the Monument are confined to the smallest area compatible with the proper care and management of the objects to be protected. Proclamation 10285 confirmed, restored, and supplemented the boundaries and protections provided by Proclamation 9558, noting the importance of protecting its vast fossil record for archaeological and paleontological study. Additionally, Proclamation 10285 specified that BENM ensures “the preservation, restoration, and protection of the objects of scientific and historic interest on the Bears Ears region, including the entire monument landscape,” and it re-established the BEC of Tribal Nations in accordance with the terms, conditions, and obligations set forth in Proclamation 9558 to ensure that “management decisions affecting the monument reflect expertise and traditional and historical knowledge of Tribal Nations.”

The BENM PRMP/FEIS provides a full range of alternatives regarding management of paleontological resources in Section 2.4.4 (pp. 2-13 through 2-17). Section 2.4.4.2, *Management Actions Common to All Alternatives*, outlines consistent management actions across all alternatives to protect paleontological resources and BENM objects while ensuring public access for scientific education and study, as well as promoting and facilitating scientific investigation of fossil resources (BENM PRMP/FEIS p. 2-14). Per Management Action 9, under the Proposed Plan collection and curation of paleontological resources would be allowed by permit only in certain cases as determined by the agencies in consultation with the BEC, with specific stipulations for excavation (BENM PRMP/FEIS p. 2-15). This management would provide the most protections for paleontological resources. The BENM PRMP/FEIS clarifies in Section 3.4.1.2.1, *Impacts Common to All Alternatives*, that continued promotion and facilitation of scientific investigations would occur and scientific work by qualified researchers would help inform future management of paleontological resources within the Monument (p. 3-10). The Paleontological Resources Preservation Act of 2009 (16 U.S.C. 470aaa-3) and regulations at 43 CFR 49.100 authorize the BLM to issue paleontology collection permits. According to the Paleontological Resources Preservation Act, a permit may be required for collection and paleontological research or paleontological consulting activities that do not involve collection. Consistent with Proclamations 9558 and 10285, the BENM PRMP/FEIS directs agencies to coordinate with the BEC on implementation of the PRMP and management of the

entire Monument. In short, contrary to the protestor's assertion, the Proposed Plan is consistent with continued scientific research in BENM, particularly with respect to paleontological resources.

Additionally, the protestor is incorrect that the Proposed Plan will prevent Tribes from engaging in traditional practices concerning paleontological resources. While the Proposed Plan would generally prohibit the casual collection of paleontological resources, it would specifically allow such collection where the general prohibition would constitute a substantial burden on the practice of religion. Thus, the Proposed Plan would allow the collection of paleontological resources where required by the Religious Freedom Restoration Act and other applicable laws. Accordingly, this protest issue is denied.

## ***Public Access and Use Restrictions***

### ***BlueRibbon Coalition***

#### ***Simone Griffin and Ben Burr***

**Issue Excerpt Text:** The imposition of strict group size limitations and permit requirements may infringe upon the right to assemble. The First Amendment guarantees citizens the right to peaceably gather in public spaces. By restricting group sizes to as few as 12 individuals in some areas, the plan unduly limits the ability of individuals to gather, organize, or engage in group activities on public land. This could disproportionately affect groups seeking to exercise their constitutional rights in larger assemblies for purposes such as protests or religious gatherings. Many of these areas are of religious and cultural importance. Due to these restrictions, families would not be able to gather to honor their family heritage in certain areas of the monument. The requirement for permits for noncommercial recreational use could be seen as a form of prior restraint, where individuals or groups must seek governmental permission before exercising their rights to free expression or assembly. The vague criteria under which permits are required, such as "resource damage" or "crowding," could be used to selectively or unjustly limit gatherings, impacting individuals' rights to engage in lawful activities without arbitrary interference. The plan's language that permits will be issued or restricted based on subjective criteria such as "cultural sensitivity" or "crowding" raises concerns about unequal enforcement. Decisions made on a case-by-case basis without clear, objective standards could lead to inconsistent application of the rules, potentially violating the principle of equal protection under the law. Thus, these restrictive measures imposed by Alternative E are unconstitutional limitations on public access and use of public lands, potentially infringing on fundamental rights guaranteed by the Bill of Rights.

### ***BlueRibbon Coalition***

#### ***Simone Griffin and Ben Burr***

**Issue Excerpt Text:** Restricting drone use for the purpose of filming and photography is a violation of 1st Amendment rights. Requiring a special permit is still in violation of these rights. We would like to include for the records of this planning process the United States District Court for the District of Columbia's Opinion for *Gordon M. Price v. William P. Barr*.<sup>2</sup> In the opinion the Federal Court decided that restrictions on commercial filming in NPS managed lands, which include film permit requirements, violate the First Amendment. It should also be recognized that if commercial film permits are unconstitutional, then non-commercial filming is also an activity protected by the First Amendment. Most drone users use their drones for the purposes of filming, and federal agencies should only regulate this activity through the least restrictive means possible with the understanding that the same safety concerns and resources concerns that exist in National Parks also exist in national monuments. Safety and resource concerns weren't enough to justify film permit requirements in National Parks. Drone use is already regulated by the FAA and the BLM and USFS should stay in their own jurisdiction. Drone users who have gone through the FAA permitting process shouldn't

have their 1st Amendment rights curtailed by duplicative policies that are bluntly applied by this RMP.

**Summary:**

Protestors claim that the lead agencies are in violation of the First Amendment by restricting the right to assemble on BLM and USFS lands, by limiting group size under permit requirements, and by restricting the use of drones for filming and photography.

**Response:**

The Proposed Plan is consistent with all applicable laws, including the U.S. Constitution.

The Proposed Plan employs landscape-level Management Zones and other specific Management Areas and Sub-Areas to manage for specific recreational uses with the purpose of protecting BENM objects, which include the overall BENM landscape (see BENM PRMP/FEIS Appendix E, *Supporting Information for Recreation and Visitor Services Decisions*). While private group size thresholds are identified in the Proposed Plan for Management Zones, larger group sizes may be considered under a special use permit. The zones establish desired private group size thresholds for casual (non-permitted) use, but future development of a Recreation Area Management Plan would impose limits on private group size thresholds, among other topics. In addition, current allocations and group sizes for commercial use would remain as they are currently managed, until again future Recreation Area Management Plans complete analysis and decisions regarding any potential changes in this type of group size. Importantly, the group size limits and constraints in the Proposed Plan are content and viewpoint neutral and would apply to all members of the public equally. Accordingly, they are reasonable time, place, and manner restrictions that are designed to protect sensitive resources and comply with the First Amendment to the U.S. Constitution. Moreover, contrary to the protestor's assertion, the Proposed Plan would place no cultural sensitivity requirements on members of the public seeking a permit (that would be a requirement for guides operating under a special recreation permit), and "crowding" also would not be part of the relevant criteria.

Drone use in airspace is managed by the Federal Aviation Administration Civil Operations Part 107. However, the agencies have the authority to manage the casual use landing or taking off of drones on BLM- and USFS-administered lands. Additionally, the agencies have the discretion to dictate all aspects of drone use if that drone is being used as part of a permitted activity. Restrictions concerning where drones can be operated in the BENM PRMP/FEIS for the purpose of protecting Monument objects is consistent with applicable law. Note that the U.S. Court of Appeals for the Fifth Circuit found that the operation of a drone is not inherently expressive and, therefore, regulating the ability of users to fly drones does not implicate the First Amendment. Moreover, the Proposed Plan's restrictions on drone video/photography do not distinguish between commercial and non-commercial use and, therefore, cannot be characterized as a content-based restriction. Rather, it is a reasonable time, place, and manner restriction that comports with the First Amendment. BENM PRMP/FEIS Appendix N, Section 3.4.13, provides an analysis of the impacts of drone use on natural soundscapes and rationale for limitations on drone use (BENM PRMP/FEIS Appendix N, pp. N-84 through 86). Restrictions on drone use in the BENM PRMP/FEIS for the purpose of protecting Monument objects is consistent with applicable law.

The BLM and USFS complied with the U.S. Constitution and all other applicable laws in the creation of the BENM PRMP/FEIS. Accordingly, this protest issue is denied.

## ***Recreational Shooting***

### ***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** the agencies’ determination that “closure of the [entire] Monument to recreational shooting is necessary for the protection of BENM objects, traditional and cultural values, and health and safety, and is consistent with the agencies’ authorities and purposes,” Appendix S, Section 2.1.2, is arbitrary and unjustified. It violates not only the Dingell Act and the APA but also FLPMA and NFMA principles of multiple use and NEPA requirements.

### ***Congressional Sportsmen’s Foundation et al.***

***Taylor Schmitz et al.***

**Issue Excerpt Text:** On behalf of the millions of Americans who utilize public lands for recreational shooting, we submit the following protest of the Bureau of Land Management (BLM) final Resource Management Plan for Bears Ears National Monument in accordance with 43 C.F.R. § 1610.5-2. Our protest is simply stated: the BLM violated the Dingell Act, 16 U.S.C. §§ 7901-7933, by prohibiting recreational shooting in its entirety on Bears Ears National Monument.

### ***Congressional Sportsmen’s Foundation et al.***

***Taylor Schmitz et al.***

**Issue Excerpt Text:** Although the agency acknowledged our comment letter in the final Management Plan, we cannot agree with the BLM that “consistent with the Dingell Act, the Proposed Plan would designate as closed to dispersed recreational shooting the smallest area for the least amount of time that is required for public safety, administration, and compliance with applicable law”. See, e.g., Appendix U, U-100. There is nothing in the final rule to suggest that the BLM carefully considered alternatives, as required under the Dingell Act, and thus it appears the agency decided to take the most politically expedient route instead of what is required by law. “The smallest area for the least amount of time” only equals 100% if such is the case. Our comments are hereby incorporated and attached to support this protest.

### ***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** The State protests the blanket closure of recreational shooting across the entire BENM in the Proposed RMP. Row 271. Utah has previously discussed recreational shooting with the agencies and objected to closures throughout the planning process, as the Proposed RMP notes, Appendix S, Section 2.1.2, and in correspondence, including the March 8 and June 11 letters. On substance, the agencies have failed to engage in reasoned decision making and justify the closure under applicable laws. As the Proposed RMP recognizes, the Dingell Act requires that any closure must be “the smallest area for the least amount of time that is required for public safety, administration, or compliance with applicable laws.” 16 U.S.C. §7913(a)(2). Yet the Proposed RMP provides no analysis demonstrating current problems with recreational shooting or threats that shooting poses to Monument objects or resources, much less any other reason for closing the entirety of the Monument or any area within it to shooting.

### ***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** In addition to FLPMA, NFMA, and NEPA coordination requirements, the Dingell Act requires consultation with state agencies and a notice of intent to be published in numerous places describing the proposed closure and the justification for it, “including an explanation of the reasons and necessity for the decision to close the area to hunting, fishing, or recreational shooting,” and then a 60-day comment period. The agencies failed to satisfy these obligations. They did not meaningfully consult with Utah. As discussed in email correspondence between the State and

Jared Lundell, Assistant Field Manager, on November 3 and 6, 2023, the Agencies did not initiate consultation with the State and failed to apprise the State of the rationale for any potential closures or incorporate the State’s input before developing the Draft RMP/Draft EIS. Yet even that document did not contain a justification as required. The Agencies never provided a public justification for the closures until the Proposed RMP itself, which is deficient per the above. While in the Proposed RMP’s new Appendix O, Section 7.1, the agencies purport to explain their compliance with the Dingell Act, they did not comply. The Notice of Intent that the Agencies intermixed within the Notice of Availability for the Draft RMP/Draft EIS did not contain any justification at all. To date, the agencies have still not published a notice of intent that qualifies. It must do so, and then have a subsequent comment period as the statute requires. Even then, the agencies must fulfill their coordination obligations under the various statutes, which they have failed to do.

***BlueRibbon Coalition***

***Simone Griffin and Ben Burr***

**Issue Excerpt Text:** Public lands are intended to be managed for the enjoyment of a wide range of recreational activities, including traditional uses such as target shooting. By prohibiting target shooting, the plan denies lawful recreational users’ access to this historically permitted activity, violating the spirit of public land use for multiple purposes as mandated by the Federal Land Policy and Management Act (FLPMA). While the prohibition is aimed at preventing potential resource damage and conflicts with other recreational activities, the plan lacks clear, documented evidence that target shooting has caused widespread or irreparable harm to natural or cultural resources within BENM. Target shooting, when conducted responsibly, can be managed through designated shooting areas and clear safety guidelines, rather than imposing an outright ban across large areas. Incidents of resource damage or safety concerns related to target shooting have typically been isolated and could be addressed through targeted management solutions rather than a sweeping closure. Establishing designated shooting zones or implementing time and location-based restrictions would mitigate any negative impacts while still allowing this lawful activity to continue. Target shooting is a long-standing tradition for many public land users and an important recreational activity for families and sports enthusiasts alike. Closing large areas to this activity could alienate a segment of the public who have a vested interest in the use and stewardship of public lands. By unnecessarily restricting this use, the plan disregards the recreational diversity that public lands are meant to support. This blanket closure shows that the BLM failed to sufficiently document site-specific conclusions. Rather than implementing a blanket closure, the BLM could adopt management strategies that both protect sensitive resources and maintain public access for shooting. These include establishing designated shooting areas, implementing stricter enforcement of safe practices, and increasing educational outreach to ensure that users understand their responsibilities. Such alternatives would uphold the BLM’s mission to balance resource protection with public use, without resorting to unnecessary restriction.

***BlueRibbon Coalition***

***Simone Griffin and Ben Burr***

**Issue Excerpt Text:** In conclusion, the prohibition of target shooting under the BENM RMP is an overly restrictive measure that limits public access without sufficient justification. A more balanced approach—one that allows for responsible shooting in designated areas—would better serve both the public and the protection of BENM’s resources. This policy not only infringes upon Second Amendment rights but also conflicts with the Federal Land Policy and Management Act (FLPMA), which mandates that public lands be managed under a principle of “multiple use and sustained yield” (43 U.S.C. § 1701).



**BlueRibbon Coalition****Simone Griffin and Ben Burr**

**Issue Excerpt Text:** Furthermore, FLPMA requires the Bureau of Land Management (BLM) to manage public lands “in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition” (43 U.S.C. § 1702). However, FLPMA does not prioritize conservation above all other uses; instead, it mandates a balanced approach that respects diverse recreational and traditional uses. By implementing a total ban on target shooting, the Bears Ears RMP disregards the statute’s call for multiple-use management, which should include recreation consistent with environmental protection. Prohibiting target shooting across the entire Bears Ears landscape rather than applying targeted restrictions where needed sets a concerning precedent that could lead to broader limitations on lawful activities on public lands nationwide. The BLM has a responsibility to support the lawful, traditional, and recreational uses of public lands while managing conservation concerns through measures that respect Americans’ rights.

**Summary:**

Protestors stated that the BLM and USFS violated FLPMA’s multiple-use mandate, the Second Amendment, the John D. Dingell, Jr. Conservation, Management, and Recreation Act (Dingell Act), APA, NFMA, and NEPA by:

- Closing the entirety of BENM to recreational shooting for the purpose of protecting Monument objects.
- Failing to analyze alternatives related to recreational target shooting to ensure the “smallest area for the least amount of time.”
- Failing to demonstrate the current problems with recreational shooting or threats that shooting poses to Monument objects or resources, and therefore not providing sound reasoning for closing the Monument to shooting.
- Failing to meaningfully consult with the State of Utah, failing to apprise the State of the rationale for any potential closures or incorporate the State’s input before developing the Draft RMP/EIS, and failing to provide a public justification for the recreational shooting closures until the PRMP itself.

**Response:**

The Dingell Act allows for the closure of Federal lands to recreational shooting, hunting, and fishing and establishes processes for when and how these lands can be closed (16 U.S.C. 7913). These closures must be limited to the smallest areas and for the least amount of time that is required for public safety, administration, or compliance with applicable laws.

The Dingell Act generally requires the BLM and USFS to consult with State fish and wildlife agencies and provide public notice and comment before closing public lands to hunting, fishing, or recreational shooting. The Dingell Act requires that the public comment period be initiated by a Notice of Intent that is published in the *Federal Register*, among other places. The notice must describe the proposed closure and the justification for the proposed closure, including an explanation of the reasons and the need for the proposed closure. The Dingell Act does not, however, prescribe the form that the notice must take.

As detailed in BENM PRMP/FEIS Appendix B, the BLM and USFS complied with the Dingell Act in the development of the BENM PRMP/FEIS (Appendix B, p. B-1). In this instance, the agencies incorporated the Notice of Intent required by the Dingell Act into the Notice of Availability (NOA) for the BENM Draft RMP/EIS, which published in the *Federal Register* on March 13, 2024. The

NOA satisfied the requirements of the Dingell Act by providing that the preferred alternative would close the entire BENM to recreational shooting to protect the objects identified in Proclamation 10285. The NOA also explained that it was initiating a public comment period on the proposed shooting closure. The agencies provided public notice of the proposed closure through notices in local newspapers and consulted with Utah's DWR and Public Lands Policy Coordinating Office over the course of two meetings. The agencies even provided a 90-day public comment period where the statute only prescribes a 60-day comment period.

In order to determine the necessary closure area, the BLM and USFS developed a reasonable range of alternatives that meet the purpose and need of the BENM PRMP/FEIS and that address resource issues identified during the scoping period. The BENM PRMP/FEIS analyzed six alternatives including the Proposed Plan, which are described in Section 2.1, *Description of the Alternatives Analyzed in this Proposed Resource Management Plan and Final Environmental Impact Statement* (BENM PRMP/FEIS pp. 2-1 through 2-7), and Section 2.4, *Detailed Descriptions of the Alternatives* (BENM PRMP/FEIS pp. 2-10 through 2-126). Recreational shooting specifically is analyzed in Management Action 271 (BENM PRMP/FEIS pp. 2-102 through 2-103). The alternatives analyzed in the BENM PRMP/FEIS cover a full spectrum by varying in: (1) degrees of protection for the resource use; (2) approaches to management for the resource use; (3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and (4) levels and methods for restoration.

While the Proposed Plan would prohibit recreational shooting throughout all of BENM, the agencies intend to allow recreational shooting across the majority of BENM and preclude it only in campgrounds, developed recreation sites, rock writing sites, and structural cultural sites. Assuming they are adopted, these more limited prohibitions will be for purposes of public safety, administration, and compliance with applicable laws. For example, these more limited prohibitions on recreational shooting would eliminate potential safety issues and conflicts with other users within BENM, particularly in those areas of the Monument that are most visited, and assist in protecting scenic qualities, including natural soundscapes. The more limited prohibitions would also reduce the threat of damage and destruction to cultural resources. Consistent with the Dingell Act, the agencies will provide the specific justification for any approved recreational shooting closures in their respective decision documents. Contrary to the protestors' assertions, however, such justification need not be included in the FEIS or Proposed Plan.

Closing portions of BENM to recreational shooting does not violate the multiple-use mandates in either FLPMA or NFMA. To begin with, multiple uses are allowed in National Monuments only to the extent they are consistent with the proper care and management of Monument objects. Moreover, even in areas where multiple uses are allowed, courts have made clear that not all uses must occur on any given parcel of Federal lands. Accordingly, the agencies may prohibit certain uses, such as recreational shooting, where, as here, doing so is necessary to protect resources or provide for public safety or sound administration.

Finally, closing portions of BENM to recreational shooting does not violate the Second Amendment, which protects the right to possess firearms. Notably, the Proposed Plan would not contain any limitations on the public's ability to possess a firearm in any portion of BENM; it would merely place limitations on the public's ability to discharge firearms in the Monument. Accordingly, the Proposed Plan does not implicate the Second Amendment.

The BENM PRMP/FEIS satisfies FLPMA and NFMA's multiple-use policies. In addition, in developing the BENM PRMP/FEIS, the BLM and USFS have fully complied with the Dingell Act. Finally, the BLM and USFS considered a reasonable range of alternatives in the BENM PRMP/FEIS in full compliance with NEPA. Accordingly, this protest issue is denied.

## ***Roles, Authorities***

### ***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** The agencies' failure to allow the field office staff to draft the RMP or even be substantively involved, as required by 43 C.F.R. § 1601.0-4 and by 36 C.F.R. § 219(b)(3) (because the only responsible official designated was the forest supervisor), exacerbated the problems caused by a lack of coordination with Utah and the affected Counties. It independently affected the content of the Proposed RMP in ways detrimental to Utah and unnecessarily increased the inconsistencies with State RMPs. FLPMA regulations require that the field manager draft the resource management plan, with only "national level policy and procedure guidance for planning" coming from BLM headquarters. 43 C.F.R. § 1601.0-4. Yet that is not what occurred. Local BLM and USFS offices were significantly bypassed in the push to move this planning process forward at the expense of reasoned deliberations, consistency, and cooperation.

### ***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** Given that Alternative E "maximizes" Tribal perspectives, Section 2.1.6, this essentially means that that Alternative and the Proposed RMP are consistent "to the maximum extent" possible, subject only to clear federal laws and regulations, with the ideas of the BEC and the BEITC. It is simply not credible for the agencies to claim that they retained decision-making authority when they functionally agreed to whatever the BEC and BEITC sought whenever possible. This delegation of authority would be unlawful even if it were the Tribes themselves, and the agencies agree that they cannot delegate authority to tribes. But it is doubly so because the entities to whom the agencies have functionally delegated authority-the BEC and perhaps the BEITC, along with whomever might appear for those groups-are not even governments.

### ***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** The delegation even displaces the proper role of the State. Alternative E required the agencies to coordinate law enforcement efforts only with the BEC and Tribal Nations. Row 191. Although the Proposed RMP/FEIS includes "state and county agencies" in this consultation, it is improper for the agencies to involve tribes and even the BEC (including its attached NGO) in the policing of federal lands within the State and outside of federally recognized "Indian Country." See 18 U.S.C. § 1151.

### ***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** The Proposed RMP provides that the agencies "would coordinate with the BEC, Tribal Nations, DWR, and USFWS in the introduction, transplantation, augmentation, and re-establishment of both native and naturalized species." Row 148. Unless a species is protected under the Endangered Species Act, that authority is Utah's. The states have broad trustee and police powers over wild animals on federal lands within their jurisdiction unless Congress explicitly declares otherwise. Here, the management of wildlife is not reserved to the federal government in the Antiquities Act or any other applicable law. Thus, the management of wildlife within the BENM must be reserved exclusively for Utah.

### ***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** The Utah Legislature has provided the Utah Division of Wildlife Resources (DWR) management authority over wildlife and its parts, including shed antlers, in the State of Utah. See Utah Code Title 23A. Yet the Proposed RMP/FEIS prohibits the collection of bones, animals,

fish, and other products from animals unless it constitutes the legal harvest of the game. Section 2.4.2.1. This conflicts with the DWR’s authority and State Code. The limitation is not required by the Proclamations, which provide, “Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of Utah, including its jurisdiction and authority concerning fish and wildlife management.” Thus, those things are not BENM objects. And there is no other authority by which the agencies can prohibit their stewardship by DWR—indeed, the Tenth Amendment and the Property Clause to the Constitution respect State wildlife management. Moreover, the current provision also does not allow for the issuance of collection permits (outside of harvesting), which are regularly issued by DWR for the collection of protected wildlife. Thus, the restrictions must be lifted.

***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** More generally, the agencies’ coordination with DWR is critical on wildlife issues, and it is effectively required by FLPMA given DWR’s authority. Yet only the BEC is recognized on many such issues. Additionally, the Proposed RMP fails to specifically provide for administrative access for the use of helicopters, OHVs, and other tools for wildlife and habitat monitoring, collaring, and surveys that is essential for the DWR to manage wildlife. All items where wildlife habitats are referenced, including vegetation, forestry, or fuels management, should include coordination with the DWR. Where absent, that must be added.

***State of Utah, Public Lands Policy Coordinating Office***

***Sindy Smith and Redge Johnson***

**Issue Excerpt Text:** The State protests the Proposed RMP’s treatment of water resources. It previously commented on these issues, including in its June 11 letter. The Proposed RMP/FEIS prohibits “new water developments and modifications to existing water developments for livestock grazing purposes unless the primary purpose is to protect BENM objects.” Row 307. More generally, groundwater withdrawals are also prohibited unless “necessary to ensure the protection of BENM objects.” Row 39. The agencies provide no reasoning for why groundwater withdrawals must be banned across the BENM. They fail to identify specific objects that would be harmed by the development of water resources. The State administers water rights in Utah, and these provisions restrict the valid use of water. Some holders of water rights within BENM have been developing and using water for over a hundred years. The agencies fail to consider these conflicting rights claims and reliance interests or justify these actions.

**Summary:**

Protestors stated that the BLM and USFS violated FLPMA by:

- Allowing BLM Headquarters to draft the PRMP/FEIS while FLPMA mandates that these documents be drafted by Field Managers.
- Unlawfully delegating their authority to the BEC and BEITC, and improperly involving Tribes and the BEC in the policing of Federal lands.
- Failing to provide administrative access for the use of helicopters, OHVs, and other tools for wildlife and habitat monitoring, collaring, and surveying that is essential for the DWR to manage wildlife.
- Prohibiting the collection of bones, animals, fish, and other products from animals unless it constitutes the legal harvest of game, which is in direct violation of the authority of the Utah DWR, which has jurisdiction over wildlife and its parts, including shed antlers.
- Violating the State of Utah’s right to administer water rights within its jurisdiction.

**Response:**

FLPMA directs the Secretary of the Interior to “develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. Land use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses” (43 U.S.C. 1712(a)). These responsibilities have been delegated to Field Managers and require State Director approval as defined under 43 CFR 1601.0-4. Additionally, 43 CFR 1601.1-1 requires that “a resource management plan shall be prepared and maintained on a resource or field office area basis, unless the State Director authorizes a more appropriate area.” While the Secretary of the Interior has delegated land use planning authority to BLM Field Managers and State Directors through Federal planning regulations (43 CFR 1601.0-4), this delegation does not preclude a supervisor of the delegee (including the BLM Director) from exercising that authority themselves, as is the case with the BENM PRMP/FEIS.

Additionally, the agencies did not delegate any planning or decision-making authority to any other entity, including the BEC and BEITC, under the BENM PRMP/FEIS. Proclamation 10285 re-established the BEC of Tribal Nations “in accordance with the terms, conditions, and obligations set forth in Presidential Proclamation 9558 to provide guidance and recommendations on the development and implementation of management plans and on management of the entire monument” to ensure that “management decisions affecting the monument reflect expertise and traditional and historical knowledge of Tribal Nations” (BENM PRMP/FEIS p. 1-1). “The BEC is supported by and works in concert with the Bears Ears Inter-Tribal Coalition (BEITC). Together, the BEC and BEITC developed and presented to the agencies the Bears Ears Inter-Tribal Coalition: A Collaborative Land Management Plan for the Bears Ears National Monument...which the agencies have been using in collaboration with the BEC to guide the development of the Proposed RMP/Final EIS to align with Presidential Proclamation 10285’s mandate that Monument management reflect the expertise and historical and traditional knowledge of Tribal Nations” (BENM PRMP/FEIS p. 1-9). In order to achieve these desired outcomes, the BLM and USFS entered into an Intergovernmental Cooperative Agreement with the Tribal Nations that make up the BEC and have developed a co-stewardship agreement as outlined in Section 2.4.2.2 (BENM PRMP/FEIS pp. 2-11 through 2-12).

Both the Proposed Plan and the Intergovernmental Cooperative Agreement make clear that the BLM and USFS maintain decision-making authority for Federal lands in BENM, and neither the Proposed Plan nor the Intergovernmental Cooperative Agreement delegate any of that authority to outside entities. In addition, the agreement makes clear that it is only intended for information sharing, coordination, and planning purposes and does not involve the BEC or Tribes in the policing of Federal lands. Coordination with the BEC and Tribes, along with State and local law enforcement entities, would be used to help with tasks such as the identification of areas in BENM that would benefit from increased law enforcement efforts to protect cultural resources. However, the actual enforcement of laws within the Monument would remain with agency, county, and State law enforcement. Policing of BENM is reserved to and by Federal, State, and county law enforcement authorities. As such, the agencies’ engagement with the BEC is consistent with the mandate under Proclamation 10285 and does not constitute a delegation of power contrary to FLPMA or other applicable law.

The BENM PRMP/FEIS states that the agencies would “prohibit collection of BENM objects and resources, including but not limited to...bones; parts of plants, animals, fish, insects, or other invertebrate animals; other products from animals; or other items from within BENM, except where the collection is specifically allowed in Proclamation 9558 or 10285 and permitted under applicable BLM/USFS authority pursuant to the legal harvest of game (including shed antlers and horns), or the prohibition is inconsistent with the Religious Freedom Restoration Act or other applicable law” (BENM PRMP/FEIS p. 2-11). Accordingly, DWR’s laws regarding wildlife and its parts would be included as an “applicable law” and would not be prohibited under the BENM PRMP/FEIS. In

particular, the Proposed Plan would not prohibit the gathering of shed antlers in accordance with State law.

The protestors are incorrect that the Proposed Plan would not allow administrative access concerning the use of helicopters, OHVs, and other tools for wildlife and habitat monitoring, collaring, and surveying by DWR to manage wildlife. The Proposed Plan would commit the BLM and USFS to working with government agencies on “site-specific, implementation-level management that follows this plan” (BENM PRMP/FEIS p. 2-11) and “administrative access will continue to be allowed under any of the proposed alternatives” (BENM PRMP/FEIS Appendix U, p. U-283). Moreover, authorized use and emergency vehicles are expressly excluded from the definition of OHVs in the BLM’s OHV regulations (43 CFR 8340.0-5(a)). Accordingly, under the Proposed Plan, such use would not be prohibited, even in areas that are designated as OHV closed. In short, the Proposed Plan would allow for continued administrative use, where necessary and appropriate, in the Monument.

Finally, the Proposed Plan would not violate the State of Utah’s right to administer water rights within its jurisdiction. Future authorizations for any actions that could affect water resources on BLM and USFS land would require additional site-specific decision-making and environmental analysis in compliance with NEPA and other applicable environmental laws and regulations, including those of the State of Utah. For example, any permit applications for underground water would have to be approved in accordance with State law, which governs the ownership of water rights. The BLM and USFS would not have the authority to prevent water from being allocated by the State Engineer for any project, private or commercial. The BLM and USFS only retain the regulation of site-specific development of surface facilities on Federal land.

The BLM and USFS complied with FLPMA and MUSYA regulations on roles and authority related to land use planning efforts for the BENM PRMP/FEIS and did not supersede or diminish the jurisdiction of the State of Utah. Accordingly, this protest issue is denied.

## ***References***

- U.S. Department of the Interior, Bureau of Land Management (BLM). 2012. *A Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners*. <https://archive.legmt.gov/content/Committees/Interim/2013-2014/EQC/Meetings/March-19-20-2014/sj15-blmcoordinatingagencies-guide.pdf>.
- U.S. Department of the Interior, National Park Service. 1998. *National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties*. <https://www.nps.gov/subjects/nationalregister/upload/NRB38-Compleweb.pdf>.