



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

**Organ Mountains-Desert  
Peaks National Monument  
Proposed Resource  
Management Plan and Final  
Environmental Impact  
Statement**

January 2, 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>APA</b>	Administrative Procedure Act
<b>AUM</b>	animal unit month
<b>BLM</b>	Bureau of Land Management
<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 of 2019
<b>EIS</b>	Environmental Impact Statement
<b>EO</b>	Executive Order
<b>ESA</b>	Endangered Species Act
<b>FEIS</b>	Final Environmental Impact Statement
<b>FLPMA</b>	Federal Land Policy and Management Act
<b>GIS</b>	geographic information system
<b>LHE</b>	land health evaluation
<b>LWC</b>	Land with Wilderness Characteristics
<b>NEPA</b>	National Environmental Policy Act
<b>NLCS</b>	National Landscape Conservation System
<b>NM</b>	National Monument
<b>OMDP</b>	Organ Mountains-Desert Peaks
<b>OMDPNM</b>	Organ Mountains-Desert Peaks National Monument
<b>PRMP</b>	Proposed Resource Management Plan
<b>RMP</b>	Resource Management Plan
<b>Service</b>	U.S. Fish and Wildlife Service
<b>SMART</b>	specific, measurable, attainable, relevant and time-specific
<b>SRMA</b>	Special Recreation Management Area
<b>SSS</b>	Special Status Species
<b>TTMP</b>	Travel and Transportation Management Plan
<b>U.S.C.</b>	United States Code
<b>UAV</b>	unmanned aerial vehicle
<b>USFWS</b>	U.S. Fish and Wildlife Service
<b>WSA</b>	Wilderness Study Area

## ***Introduction***

The Bureau of Land Management (BLM) Las Cruces District Office released the Organ Mountains-Desert Peaks (OMDP) National Monument (NM) Proposed Resource Management Plan (PRMP) and Final Environmental Impact Statement (FEIS) on October 11, 2024. The BLM received seven unique protest letter submissions during the subsequent 30-day protest period, which ended on November 12, 2024.

The planning regulations at 43 Code of Federal Regulations (CFR) 1610.5-2 outline the requirements for filing a valid protest. The BLM evaluated all protest letters to determine which protest letters were complete and timely, and which persons have standing to protest. One letter was complete and timely but was dismissed because the protesting party who submitted the letter did not have standing to protest because they did not participate in the planning process previously. The remaining six letters were complete and timely and were from parties who had standing to protest. Of those, four letters contained valid protest issues. The BLM documents the responses to the valid protest issues in this protest resolution report. The protest decision is recorded in writing along with the reasons for the decision in this protest resolution report.

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

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

***Protesting Party Index***

<b>Letter Number</b>	<b>Protestor</b>	<b>Organization</b>	<b>Determination</b>
PP-NM-OMDP-EIS-24-01	Matthew Wardell	Bold Visions Conservation	Dismissed: No Standing
PP-NM-OMDP-EIS-24-02	John Cornell	Dona Ana County Associated Sportsmen	Denied
PP-NM-OMDP-EIS-24-03	Sally Paez	New Mexico Wilderness Alliance (New Mexico Wild)	Denied
	Patrick Nolan	Friends of Organ Mountains-Desert Peaks	
	Brian Nowicki	Center for Biological Diversity	
	Michael Casaus	The Wilderness Society	
	Romir Lahiri	Conservation Lands Foundation	
	Antoinette Reyes	Southern New Mexico and El Paso Organizer Sierra Club: Rio Grande Chapter	
PP-NM-OMDP-EIS-24-04	Cyndi Tuell	Western Watersheds Project	Denied
PP-NM-OMDP-EIS-24-05	Brian Nowicki	Center for Biological Diversity	Dismissed: Comments Only
PP-NM-OMDP-EIS-24-06	Russell Johnson	–	Dismissed: Comments Only
PP-NM-OMDP-EIS-24-07	Simone Griffin	BlueRibbon Coalition	Denied
	Ben Burr		

## *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.

### ***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 travel management that presumes the superiority of non-motorized forms of recreation like hiking over motorized recreation, or that justifies closing motorized access on the basis that people can still hike on those routes, is inherently discriminatory toward people with disabilities. Any large-scale closures of existing routes would unfairly and inequitably deprive people with disabilities of the ability to recreate in the area using the only means available to them. It is imperative that the BLM consider the access needs of disabled users, and it has failed to address them in the alternatives for this FEIS. This FEIS fails to comply with the Department of Interior Equity Action Plan.

#### **Summary:**

Protestors stated that the BLM violated the Department of Interior Equity Action Plan by failing to consider accessibility needs of people with disabilities in the alternatives presented in the OMDP PRMP/FEIS, which they claim is an environmental justice issue. Protestors noted that the BLM does not adequately consider travel management for disabled users who rely on motorized means to recreate on public lands, particularly Tribal members with disabilities wishing to access sacred sites. Protestors also stated that the BLM failed to respond to concerns regarding accessibility of public land for people with disabilities and underserved communities.

#### **Response:**

Executive Order (EO) 13985 (also referred to as the Equity Action Plan), signed on January 20, 2021, directs the Federal government to revise agency policies to account for racial inequities in their implementation and is intended to address systemic racism and improve opportunities for historically underserved communities. In the spring of 2023, Congress amended the National Environmental Policy Act (NEPA) as part of the Fiscal Responsibility Act in tandem with EO 14096, which defined environmental justice to mean the “just treatment and meaningful involvement of all people” in agency decision-making and actions “regardless of income, race, color, national origin, Tribal affiliation, or disability.” NEPA provides a procedural framework by which agencies may consider the environmental effects of their actions and, through EO 14096, agencies are encouraged to include

effects that relate to environmental justice. EO 13007, adopted May 24, 1996, addresses protecting and preserving Indian Sacred Sites, including requiring Federal land managing agencies to accommodate access to and ceremonial use of these locations (Section 1 (1)).

The programs and facilities of Federal agencies, including the BLM, are not governed by the Americans with Disabilities Act (ADA), except for the section that applies to Federal wilderness areas (ADA of 1990, Title V, Section 12207, Federal Wilderness Areas). Accessibility laws and regulations do not change or infringe on the resource having priority status under those sites that the U.S. Access Board's Guidelines for Outdoor Developed Areas governs, which include Tribal sacred sites where the physically undisturbed condition of the land is an important part of the sacred observance (U.S. Access Board's Guidelines for Outdoor Developed Areas, Condition for Exception 4). Accessibility laws and regulations, including EO 13985, EO 13007, and the ADA, require equal treatment and access to recreational facilities, sites, and information. These laws do not grant or advocate, in any way, a special opportunity or exemption to disadvantaged and marginalized groups or persons with impairments and accessibility needs.

The BLM considered accessibility and travel management for users with disabilities in the development of the OMDP PRMP/FEIS. In Appendix C, *Special Recreation Management Areas*, the OMDP PRMP/FEIS states that a future implementation decision will be to “develop an integrated Travel and Transportation Management Plan (TTMP)/Recreation Area Management Plan to designate routes for motorized, mechanized, and non-motorized use to provide for a variety of skill levels and abilities and identify other specific recreation management as needed.” (OMDP PRMP/FEIS p. C-6). Section 3.21.3, *Environmental Consequences*, states “under all alternatives, the goal to produce recreation opportunities that facilitate beneficial outcomes for visitors and community residents, while protecting the Monument's values, would continue to support quality recreation experiences and associated social benefits” (OMDP PRMP/FEIS p. 3-227).

As required by NEPA and its implementing regulations, the BLM considered a reasonable range of alternatives including varying planning-level allocations for travel management (OMDP PRMP/FEIS pp. 2-51–2-55). Travel management planning-level allocations include designating areas as open, closed, or limited to motorized, mechanized, or non-motorized travel. Presidential Proclamation 9131 states “Except for emergency or authorized administrative purposes, motorized vehicle use in the monument shall be permitted only on designated roads, and non-motorized mechanized vehicle use shall be permitted only on roads and trails designated for their use” (Proclamation 9131). Proclamation 9131 also prohibits the creation of new roads and trails stating “No additional roads or trails shall be established for motorized vehicle or non-motorized mechanized vehicle use unless necessary for public safety or protection” of Monument remotely operated vehicles (Proclamation 9131). Management Action 268 provides off-highway vehicle travel designations under each alternative and Management Action 269 provides mechanized travel designations under each alternative (OMDP PRMP/FEIS p. 2-53). Under all alternatives mechanized travel would be closed only in designated wilderness areas, which is required by section 4(c) of the Wilderness Act (16 U.S.C. 1133(4(c))). Under all alternatives, all areas of the Monument that are not closed to off-highway vehicle travel would limit it to designated roads (OMDP PRMP/FEIS p. 3-162). Route-specific management actions will take place during the development of a subsequent TTMP or other implementation-level decision-making (OMDP PRMP/FEIS p. 3-158). The BLM will follow all requirements of transportation planning as laid out in Manual 1626, including additional NEPA compliance and opportunities for public involvement.

Additionally, the BLM did consider environmental justice communities in the formulation of its alternatives and evaluation of impacts from travel management decisions for the OMDP PRMP/FEIS. The BLM discusses potential impacts on environmental justice communities from implementation of each alternative in Section 3.22.3, *Environmental Justice* (OMDP PRMP/FEIS pp. 3-243–3-244). This section concludes that there is no indication that any of the BLM actions proposed in any of the



alternatives would cause disproportionate effects on environmental justice communities in the planning area. Supporting information to the recreation and visitor services decisions in the OMDP PRMP/FEIS including those regarding accessibility and recreational opportunities for varying skill levels within each Special Recreation Management Area (SRMA) are identified in Appendix C, *Special Recreation Management Areas* (OMDP PRMP/FEIS pp. C-1–C-38). Section 3.20.3, *Environmental Consequences*, evaluates potential impacts on Tribal Interests, and notes that “The BLM would continue to ensure Tribes and Pueblos have access to natural resources for use in traditional, religious, or ceremonial purposes without a permit, consistent with Proclamation 9131; and the BLM would also seek to collaborate with Tribes through consultation to incorporate Tribal traditional ecological knowledge into land management practices and decision-making” (OMDP PRMP/FEIS p. 3-181).

Route-specific improvements for ADA consideration or varying skill levels are implementation-level decisions that will occur subsequent to this Resource Management Plan (RMP). This RMP is intended to guide specific management on the Monument for the next 20 years based on the best available data and existing conditions on the Monument. Restrictions and closures are implemented in order to protect, conserve, and enhance Monument resources, objects, and values. The BLM has drafted the OMDP PRMP/FEIS in accordance with the relevant plans and policies, including in compliance with all NEPA requirements and has responded to previously raised concerns regarding the issue of equitable access to public lands. Substantive public comments on the OMDP Draft RMP/Draft Environmental Impact Statement (DEIS) and the BLM’s responses are documented in Appendix F, *Public Comments and BLM Response* (OMDP PRMP/FEIS pp. F-1–F-228). The BLM is committed to fair treatment and meaningful involvement with all the people who are affected by the decisions made regarding preservation, protection, and sustainable development of the natural resources on the public lands managed by the BLM.

The BLM complied with all Federal regulations regarding environmental justice including the Department of Interior Equity Action Plan, and adequately considered the accessibility needs and impacts on people with disabilities when creating a range of alternatives for the OMDP PRMP/FEIS. The BLM also adequately responded to previous concerns raised regarding this issue. Accordingly, this protest issue is denied.

## ***FLPMA: Lands with Wilderness Characteristics Inventories and Designation***

### ***New Mexico Wild et al.***

#### ***Sally Paez et al.***

**Issue Excerpt Text:** Section 201 of FLPMA imposes an affirmative legal duty on BLM to “prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern.” This inventory must include LWCs, as described in the Wilderness Act. The BLM must keep this inventory “current so as to reflect changes in conditions and to identify new and emerging resource and other values.” Additionally, FLPMA mandates that BLM must inventory and consider LWCs during the resource management planning process. BLM Manual 6310 reiterates the requirement for BLM to maintain a current inventory of wilderness resources on public lands and identifies circumstances when a new inventory may be necessary. Specifically, it may be necessary for the BLM to update its wilderness characteristics inventory when (1) the public or BLM “identifies wilderness characteristics as an issue when the BLM is conducting an analysis under the National Environmental Policy Act (NEPA) process,” (2) “BLM is undertaking a land use planning process,” or (3) “BLM has new information concerning resource conditions, including wilderness characteristics information submitted by the public,” among other reasons. In our previous comments, we recommended that the BLM update its LWC inventory and

manage all qualifying LWCs within the Monument to protect and maintain wilderness characteristics. We attached relevant excerpts from our 2007 Citizen’s Inventory to both our Scoping Comments and our Comments on the Draft RMP/EIS. Based on that inventory, we identified what we believe are numerous distinct LWCs that have not yet been designated by Congress as wilderness nor recognized by BLM as LWCs. These lands are in the Organ Mountains, the greater Potrillo Mountains, and in particular, the Robledo Mountains and Sierra de Las Uvas. In our Comments on the Draft RMP/EIS, we further provided a table showing 12 areas that merit consideration for LWC inventory and management, as well as maps based on an updated GIS assessment, illustrating the location of these potential LWCs.

*New Mexico Wild et al.*

*Sally Paez et al.*

**Issue Excerpt Text:** First, BLM Manual 6310 states that the size criteria for lands with wilderness characteristics are “Roadless areas with over 5,000 acres of contiguous BLM lands” and, Roadless areas of less than 5,000 acres of contiguous BLM lands where any one of the following apply: They are contiguous with lands that have been formally determined to have wilderness or potential wilderness values, or any Federal lands managed for the protection of wilderness characteristics ... [including] designated Wilderness. In our Comments on the Draft RMP/EIS we identified 12 roadless areas that should have been evaluated for wilderness characteristics. Seven of these areas exceed 5,000 acres of continuous BLM lands in size (including several that are contiguous with designated Wilderness) and the remaining five of these areas are less than 5,000 acres in size but are contiguous with designated Wilderness.<sup>22</sup> All 12 of these areas therefore meet the size criteria set forth in BLM Manual 6310 and were improperly dismissed from analysis for their wilderness characteristics based on an erroneous interpretation of the BLM’s size criteria.

*New Mexico Wild et al.*

*Sally Paez et al.*

**Issue Excerpt Text:** In sum, although the Dingell Act included guidance that lands in Dona Ana County that were not designated as wilderness are no longer subject to section 603(c) of FLPMA, this section does not prohibit or preclude future consideration of these lands for management to protect their wilderness characteristics. BLM Manual 6310 – Conducting Wilderness Characteristics Inventory on BLM Lands still applies to all lands within OMDP that have not been designated as wilderness. Furthermore, the Dingell Act only designated preexisting WSAs as Wilderness, including the release of small portions of some of these WSAs. The 12 areas that we identified in scoping and in our comments on the Draft RMP/EIS as meriting consideration for LWC inventory were comprised entirely of lands outside of the previous WSAs within OMDP and are therefore not subject to any provisions within the Dingell Act that relate to the designation of Wilderness or release of WSA status. As such, the BLM has improperly dismissed these 12 areas from study for their wilderness characteristics based on an erroneous interpretation of the Dingell Act.

*New Mexico Wild et al.*

*Sally Paez et al.*

**Issue Excerpt Text:** The BLM also states that LWCs were not considered in this planning effort because “No additional areas of the Monument have wilderness characteristics.” We strongly disagree with the BLM’s assertion that there are no additional areas of the Monument with wilderness characteristics, and we continue to urge the BLM to exercise its discretion to update its Wilderness inventory in OMDP, in accordance with BLM Policy. The BLM is undertaking a land use planning process for the Monument, and there have been recent changed circumstances that warrant an updated wilderness characteristics inventory, including the designation of the Monument and the passage of the Dingell Act, which designated new Wilderness areas and removed portions of some previous WSAs from Wilderness consideration. These change circumstances, as well as the proposed Organ

Mountains-Desert Peaks State Land Exchange currently in progress, warrant an updated inventory of the wilderness resources in OMDP.

***New Mexico Wild et al.***

***Sally Paez et al.***

**Issue Excerpt Text:** Moreover, the BLM should revise the Final RMP/EIS and protect qualifying LWCs for the following policy reasons. First, by failing to manage qualifying LWCs to protect wilderness characteristics, the BLM is missing a critical opportunity to “protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; . . . preserve and protect certain public lands in their natural condition; [and] provide food and habitat for fish and wildlife,” as required by FLPMA. Managing LWCs to protect wilderness characteristics furthers the BLM’s ability to protect these related resources and values, as well as the objects the Monument was designated to protect. Second, the current versions BLM Policy Manuals 6310 and 6320 were issued in 2021, providing new policy guidance for conducting wilderness characteristics inventories and considering wilderness characteristics in the land use planning process. Third, the BLM should strive to protect LWCs as part of the Biden Administration’s 30x30 Initiative. On January 27, 2021, President Biden signed Executive Order 14008, Tackling the Climate Crisis at Home and Abroad. The Executive Order, among other ambitious goals, committed the administration to preserve 30% of lands and waters by 2030, often referred to as 30x30. The Executive Order was followed by the publication of the America the Beautiful report. The State of New Mexico has likewise committed to a 30x30 conservation plan. These new commitments and goals are intended to protect biodiversity and help address the current crises of climate change and mass extinction. The Biden Administration’s adoption of the 30x30 initiative in the interim between the 2017 inventory and the BLM’s development of the RMPA/EA warrants a new inventory of LWCs and a commitment to protect wilderness characteristics on qualifying lands.

**Summary:**

Protestors stated that the BLM violated the Federal Land Policy and Management Act (FLPMA) by failing to update an inventory of Lands with Wilderness Characteristics (LWCs) for the OMDP NM, as the designation of the Monument, passage of the John D. Dingell Jr. Conservation, Management, and Recreation Act of 2019 (Dingell Act), BLM Manuals 6310 and 6320 2021 update, and the Biden Administration’s 30x30 Initiative have all occurred with no update to wilderness inventory. Additionally, protestors stated that the BLM’s finding that no additional areas of the Monument have wilderness characteristics is incorrect and they have identified 12 areas of potential LWCs. However, these areas were erroneously dismissed based on differing interpretations of the Dingell Act.

**Response:**

Section 201(a) of FLPMA requires that the BLM “prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values” and that “this inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values.” FLPMA also authorizes the Secretary of the Interior to use land use planning as a mechanism for allocating resource use, including wilderness character management, amongst the various resources in a way that provides for current and future generations.

Section 202(c)(4) of FLPMA requires that “in the development and revision of land use plans, the Secretary shall...rely, to the extent it is available, on the inventory of the public lands, their resources, and other values.” The BLM’s wilderness characteristics inventory process does not require that the BLM conduct a completely new inventory and disregard the inventory information that it already has for a particular area when preparing a land use plan (BLM Manual Section 6310.06.B).

Additionally, under NEPA, agencies are allowed to “eliminate from detailed study the issues that are not important or have been covered by prior environmental reviews, narrowing the discussion of these issues in the environmental impact statement to a brief presentation of why they will not be important or providing a reference to their coverage elsewhere” (40 CFR 1502(4)(d)(1)).

The BLM continues to use the 2007 LWC report to inform the BLM and the U.S. Congress with regard to the wilderness characteristics of Federal lands within the OMDP NM boundaries in compliance with FLPMA and BLM Manuals 6310 and 6320. There has not been a need to update this inventory due to the passage of the Dingell Act, which designated most of the Wilderness Study Areas (WSA) identified in the Mimbres RMP as wilderness, and the areas that were not included in the wilderness boundaries were released from further wilderness consideration (OMDP PRMP/FEIS p. 3-3). Furthermore, no areas of the OMDP NM were identified outside designated wilderness that meet the criteria for LWCs, specifically with regard to the minimum size requirement. No additional areas of the Monument proposed by protestors meet the size criterion to be considered as an LWC. For these reasons, LWCs are not considered further in this planning effort as discussed in OMDP PRMP/FEIS Section 3.1.1 (OMDP PRMP/FEIS p. 3-3). Further discussion as to why the OMDP PRMP/FEIS does not analyze LWCs is available in Section 2.1.14 in the 2021 OMDP NM *Analysis of the Management Situation*, which is available on the project’s ePlanning website: <https://eplanning.blm.gov/eplanning-ui/project/92170/570>.

As required by FLPMA, the BLM relied on its current inventory of public lands, to the extent it was available, in developing the OMDP PRMP/FEIS in compliance with FLPMA and BLM Manuals 6310 and 6320. The BLM is not required to conduct a new inventory when preparing a land use plan per BLM Manual Section 6310.06.B, and reasonably determined that LWCs did not need to be analyzed under the OMDP PRMP/FEIS. Accordingly, this protest issue is denied.

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

### ***BlueRibbon Coalition***

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

**Issue Excerpt Text:** The BLM’s focus on conservation alone disregards its statutory responsibility under FLPMA for multiple-use management, which mandates a balance among various uses, including recreation and resource extraction. This plan’s overreach—favoring conservation at the expense of public access and use—fails to uphold these principles.

#### **Summary:**

Protestors stated that the BLM violated FLPMA by failing to balance conservation among various other uses in the RMP, including recreation and resource extraction. Protestors noted that the BLM’s focus on conservation alone does not uphold the principles of FLPMA’s multiple-use management.

#### **Response:**

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

FLPMA’s multiple-use policy does not require that all uses be allowed on all areas of the public lands. Rather, the BLM has wide latitude to allocate the public lands to particular uses, and to employ the mechanism of land use allocation to protect for certain resource values, or, conversely, develop some resource values to the detriment of others, short of unnecessary and undue degradation.

Through the land use planning process, the BLM evaluates and chooses an appropriate balance of resource uses, which involves tradeoffs between competing uses.

Section 302(a) of FLPMA states that public lands are to be managed under the principles of multiple use and sustained yield “except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it will be managed in accordance with such law.” For this planning effort, the area will therefore be managed in accordance with FLPMA and the enabling legislation that created the area, Proclamation 9131. Land use planning decisions for each National Landscape Conservation System (NLCS) unit must be consistent with the purposes and objectives of the designating proclamation (BLM Manual Section 6100.1.6.B).

Proclamation 9131 mandates the protection of the “objects of scientific and historic interest on the Organ Mountains-Desert Peaks lands” and “the wilderness character of the area” as the highest management priority within the OMDP NM (OMDP PRMP/FEIS p. 1-2). The BLM’s range of alternatives in the OMDP PRMP/FEIS are designed to provide a framework that protects Monument objects while managing the OMDP NM in accordance with the provisions of the Proclamation 9131 and other authorities such as FLPMA and other Federal regulations, as applicable. Proclamation 9131 established OMDP NM lands for a specific use; therefore, typical multiple-use management within OMDP NM is superseded by the direction in Proclamation 9131 to protect OMDP NM objects, as prioritizing multiple uses over protection of OMDP NM objects would be inconsistent with Proclamation 9131 and Section 302 of FLPMA. In other words, multiple uses are allowed only to the extent they are consistent with the protection of the Monument resources, objects, and values within the OMDP NM.

Under the OMDP PRMP/FEIS, the BLM designated Alternative E as the Proposed Plan as a mechanism to adequately balance the protection of Monument objects and values while also allowing for multiple uses as specified in Proclamation 9131. Table 2-2, *Alternatives Matrix – Monument*, provides the goals, objectives, and management actions proposed under the range of alternatives for the OMDP PRMP/FEIS (pp. 2-9–2-69). Table 2-2 includes management actions that acknowledge multiple-use objectives for resources such as livestock grazing, recreation, and transportation and access (OMDP PRMP/FEIS pp. 2-14–2-52). Additionally, “to ensure the BLM meets its multiple-use mandate in land management actions, the alternatives’ impacts on resource uses are identified and assessed as part of the planning process” (OMDP PRMP/FEIS p. 3-2). The projected impacts on land use activities and the environmental impacts of land uses are characterized and evaluated for each alternative throughout Chapter 3 of the OMDP PRMP/FEIS.

Additionally, a land use planning–level decision is broad in scope. For this reason, analysis of land use plan management alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provides the necessary basis to make informed land use plan–level decisions. Specific management actions related to topics of specific transportation or recreational uses will take place during a subsequent implementation-level planning effort such as a TTMP and are beyond the scope of this planning effort. Information specific to implementation-level planning is outlined in Appendix B, *Implementation and Action-Level Planning*.

All alternatives considered in the OMDP PRMP/FEIS, as described in Chapter 2, provide an appropriate balance of uses on the public lands consistent with the requirements of Proclamation 9131, FLPMA, and other applicable statutes. Accordingly, this protest issue is denied.

## ***FLPMA: Unnecessary or Undue Degradation***

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

***Cyndi Tuell***

**Issue Excerpt Text:** We previously noted that FLPMA mandates that the Secretary of Interior “shall” take any action necessary to prevent “unnecessary or undue degradation” of public lands. *Id.* § 1732(b). *WWP et al.* 2024 at 34-35. FLPMA further provides that BLM public lands “shall” be managed “for multiple use and sustained yield.” *Id.* § 1732(a). The definition of “multiple use” calls for “harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.” *Id.* § 1702(c) (emphasis added). Both the “non-impairment” and “unnecessary and undue degradation” provisions constrain BLM’s discretion in adopting or revising its land use plans. We again alert BLM that its proposed amendment violates these mandates by allowing unnecessary/undue degradation and permanent impairment of habitat and populations of protected species and protected Monument objects. For the OMDPNM, the BLM has a higher standard of duty to protect Monument objects under the Antiquities Act of 1906, 54 U.S.C. § 320301. But here the BLM has even violated its obligation to balance the multiple uses of public lands because the proposed land use plan amendment uniformly benefits one particular land use, while uniformly harming all others. The failure to adopt a plan amendment that moves the management of the OMDPNM toward true conservation not only violates BLM’s obligations to protect the Monument, but it also does not follow BLM’s internal policies that mandate species protection. BLM Manual 6840 “provide[s] policy and guidance for the conservation of BLM special status species and the ecosystems upon which they depend on BLM-administered lands.”

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

***Cyndi Tuell***

**Issue Excerpt Text:** Here, and as we detail in section C above, the BLM has evidence that livestock grazing is impairing Monument resources and the perceived “need” for authorizing livestock grazing throughout nearly the entire Monument at a level that has not been utilized in nearly two decades, is both unnecessary and undue. Livestock grazing in the OMDPNM does not comport with the fundamental tenets of the FLPMA because the risk to the resources is both unnecessary and undue and has the potential to permanently impair the very values the OMDPNM was designated to protect. The BLM has violated FLPMA at § 302(a) because the decision and EIS are not in compliance with the Proclamation that directs it to protect the resources of the OMDPNM. BLM fails to comply with FLPMA because it fails to protect the precious lands and resources of the OMDPNM and fails to utilize the best available science in the decision-making process.

### **Summary:**

Protestors stated that the BLM violated FLPMA’s mandates, the Antiquities Act, and BLM Manual 6840 by allowing unnecessary or undue degradation and permanent impairment of habitat and populations of protected Monument objects by authorizing livestock grazing throughout the Monument. Protestors stated that the BLM failed to utilize the best available science in the decision-making process related to livestock grazing in particular. Protestors also stated that the BLM violated its obligations under the Antiquities Act and FLPMA to balance the multiple uses of public land because the proposed land use plan amendment benefits one particular land use, livestock grazing, while harming all others.

**Response:**

Section 302(b) of FLPMA requires that “in managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” Additionally, 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 this planning effort, the area will be managed in accordance with FLPMA as well as Proclamation 9131. Land use planning decisions for each NLCS unit must be consistent with the purposes and objectives of the designating proclamation (BLM Manual Section 6100.1.6.B).

Section 302(a) of FLPMA directs the BLM to manage public lands on the basis of multiple use and sustained yield, unless otherwise provided by law (43 U.S.C. 1732(a)). Section 103(c) of FLPMA defines “multiple use” as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people. FLPMA’s multiple-use principle does not require that all uses be allowed on all areas of the public lands. Rather, the BLM has wide latitude to allocate the public lands to particular uses, and to employ the mechanism of land use allocation to protect for certain resource values, or, conversely, develop some resource values to the detriment of others. The issue of multiple use is described in detail under the *FLPMA: Multiple Use* section of this Protest Resolution Report.

The OMDP PRMP/FEIS provides for the balanced management of the public lands in the planning area. In developing the OMDP PRMP/FEIS, the BLM fully complied with its planning regulations (43 CFR Part 1610), the requirements of Proclamation 9131, NEPA, FLPMA, the Antiquities Act, BLM Manual 6840, and other statutes, regulations, and EOs related to environmental quality. The OMDP PRMP/FEIS identifies appropriate allowable uses, management actions, and mitigation measures that prevent unnecessary or undue degradation of public lands, much less any that would result in unnecessary or undue degradation. Authorization for the site-specific use of public lands would occur during implementation of the RMP and would be subject to future, site-specific NEPA analysis.

All alternatives considered in the OMDP PRMP/FEIS, as described in Chapter 2 of the OMDP PRMP/FEIS, provide an appropriate balance of uses on public lands consistent with the Proclamation. All alternatives allow some level of all uses present in the planning area, in a manner that is consistent with applicable statutes, regulations, and BLM policy. Proclamation 9131 mandates the protection of the “objects of scientific and historic interest on the Organ Mountains-Desert Peaks lands” and “the wilderness character of the area” as the highest management priority within the OMDP NM (OMDP PRMP/FEIS p. 1-2). The BLM’s range of alternatives in the OMDP PRMP/FEIS is designed to provide a framework that protects Monument objects while managing the OMDP NM in accordance with the provisions of the Proclamation 9131 and other authorities, such as FLPMA and other Federal regulations, as applicable. Table 2-2, *Alternatives Matrix – Monument*, includes the goals, objectives, and management actions proposed under the range of alternatives for the OMDP PRMP/FEIS (pp. 2-9–2-69). Under the OMDP PRMP/FEIS, the BLM designated Alternative E as the Proposed Plan as a mechanism to adequately balance the protection of Monument objects and values while also allowing for multiple uses.

Regarding grazing permits and leases on Monument lands, Proclamation 9131 states that “laws, regulations, and policies followed by the BLM in issuing and administering grazing permits on leases or lands under its jurisdiction shall continue to apply with regard to the lands in the monument, consistent with the protection of the objects identified...” Additionally, the BLM is obligated to align with the Dingell Act, which allows for the continued use of livestock grazing within the Monument and within wilderness (OMDP PRMP/FEIS p. 1-12). The BLM’s proposed management for livestock

grazing under all alternatives is provided in Chapter 2, Management Actions 183 through 193 (OMDP PRMP/FEIS pp. 2-34–2-35). Analysis of the existing conditions and potential impacts on livestock grazing within the Monument from implementation of proposed management under each alternative is found within Section 3.15, *Livestock Grazing* (OMDP PRMP/FEIS pp. 3-134–3-137). Analysis of impacts from proposed management for livestock grazing under each alternative to other resources including Monument objects and values is woven throughout the sections for each resource in Chapter 3, *Environmental Consequences*, of the OMDP PRMP/FEIS. Additionally, all future management activities associated with livestock grazing within the Monument will be evaluated at the implementation level, described in Appendix B (OMDP PRMP/FEIS p. B-2). Further information related to the proposed management of livestock grazing under each alternative and associated impacts are described under the *NEPA: Impacts Analysis – Livestock Grazing* section of this Protest Resolution Report.

Because the OMDP PRMP/FEIS would not authorize any site specific authorizations or uses of the public lands, and the alternatives evaluated in the OMDP PRMP/FEIS would comply with all applicable statutes, regulations, and policy, the OMDP PRMP/FEIS will not result in “unnecessary or undue degradation of the lands” under Section 302(b) of FLPMA. Accordingly, this protest issue is denied.

## ***NEPA: Impact Analysis – Livestock Grazing***

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

***Cyndi Tuell***

**Issue Excerpt Text:** On lands within the NLCS, the BLM intends to “[l]imit discretionary uses to those compatible with conservation, protection, and restoration of the values for which NLCS lands were designated,” and in order to do this, BLM will “[u]se the best available science to conduct capacity studies, establish specific, measurable, attainable, relevant and time-specific (SMART) objectives, and develop monitoring plans for compatible uses to ensure the NLCS values are protected, consistent with the designation legislation or presidential proclamation.” See 15-Year Strategy for the NLCS at 10, available at:

[http://www.blm.gov/pgdata/etc/medialib/blm/wo/Communications\\_Directorate/public\\_affairs/news\\_release\\_attachments.Par.16615.File.tmp/NLCS\\_Strategy.pdf](http://www.blm.gov/pgdata/etc/medialib/blm/wo/Communications_Directorate/public_affairs/news_release_attachments.Par.16615.File.tmp/NLCS_Strategy.pdf).

The BLM should have applied this clarity of vision for the NLCS lands to the OMDPNM. It did not. Instead, the BLM maintains its focus on deleterious multiple uses, justifying the impacts that livestock have on the OMDPNM under the wrong statutory basis and contrary to the best available science, and for this reason, we protest.

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

***Cyndi Tuell***

**Issue Excerpt Text:** We protest this EIS and decision on the grounds that it has failed to thoroughly analyze the proposed levels of livestock grazing within the OMDPNM and thereby fails to comply with the National Environmental Policy Act (NEPA), 42 U.S.C. § 4231 et seq., and failed to prevent the undue degradation of the resources of these public lands, and thereby failed to comply with the 2014 Proclamation for the OMDPNM, the Federal Lands Policy and Management Act (FLPMA), 43 U.S.C. § 1701 et seq., the Administrative Procedures Act (APA), 5 U.S.C. § 701-708, as well as other federal laws and policies. We raised our concerns regarding these issues in comments submitted to BLM on July 1, 2024, during the comment period on the draft plan and Environmental Impact Statement (EIS). We provided evidence to support our comments. BLM has not adequately incorporated our comments nor the best available science related to the impacts of



livestock grazing into the analysis and decisionmaking process for this project. Additionally, there is new information the BLM must consider before moving forward with this decision.

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

***Cyndi Tuell***

**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 for implementing the Data Quality Act also 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 decisionmaking process and the implementation of that decision.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. at 349. NEPA not only requires that BLM have detailed information on significant environmental impacts, but also requires that the agency make this information available to the public for comment. The analysis in the EIS should have separated out the economic impacts of livestock grazing from those of recreation. Instead, the BLM chose to combine the information, which hides the fact that livestock grazing authorizations contribute very little to the local (or regional) economy while costing taxpayers substantial amounts of money to manage those grazing permits: Based on current levels of use, a total of 392 jobs and \$12.3 million in labor income are supported by recreation and livestock grazing in the regional economy. 2024 EIS at ES-15, 3-226. We raised this issue in our July 2024 comments at page 4 and BLM failed to respond to our concerns.

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

***Cyndi Tuell***

**Issue Excerpt Text:** The analysis of livestock grazing is inadequate. The DEIS does not analyze the site-specific impacts of authorizing livestock grazing and instead defers that analysis to a later process. 2024 EIS at 3-134. We raised this issue in our July 2024 comments at pages 4 – 6 and the BLM failed to adequately respond to our concerns. The EIS uses the phrases “sustainable grazing” and “traditional practices” (referring to grazing) yet does not define these terms. 2024 EIS at 3-45, DEIS at 3-90. We asked BLM to disclose what “traditional” grazing practices the BLM was using as a reference and they failed to do so. The analysis of grazing impacts to waters in the Monument is simply a list of the number of miles or acres of waters impacted by alternative, which does not vary across any of the action alternatives. D16. This level of analysis is inadequate even for a high level, or “programmatically” analysis. The assumption that “grazing would not be considered a surface-disturbing activity under proper livestock management that would minimize any disturbance and its associated impacts on air quality[,]” is incorrect. 2024 EIS at 3-109. Livestock hoof action does disturb the ground, removes biological soil crusts, and increases dust in the Monument. This analysis is missing.

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

***Cyndi Tuell***

**Issue Excerpt Text:** The impacts of livestock grazing on cultural resources is also woefully inadequate, largely because the vast majority of the Monument has not been surveyed for cultural resources: The EIS indicates that “livestock grazing is another source of potential impacts on cultural resources. The congregation of cattle within archaeological sites is a particular concern because such areas suffer significant surface disturbance and denuding of the vegetation. Similarly, cattle trails going through sites, cattle rubbing up against historic structures, and trampling of artifacts are all potential adverse impacts on cultural resources from livestock grazing.” 2024 EIS at 3-121. When most of the project area remains unsurveyed for cultural resources and livestock grazing is an acknowledged source of damage to those same resources, the BLM has an obligation

to reduce those impacts, or at least understand them, rather than continue to authorize such a use without adequate analysis.

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

***Cyndi Tuell***

**Issue Excerpt Text:** In our 2020 comments, we noted that previous land health evaluations conducted by BLM showed that livestock grazing was having a negative impact on Monument objects. See Mimms Well 2019 LHE, attached previously as an appendix (B) and herein as Exhibit 2. The billed AUMs for the Mimms Well allotment were well below the permitted number of AUMs for 16 of the 17 years covered by the LHE (2002 through 2018) and supplemental feeding was required for both dry and lactating cows, indicating the Monument lands were both unsuitable for livestock grazing use and were being harmed by livestock grazing use.

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

***Cyndi Tuell***

**Issue Excerpt Text:** The Administrative Procedures Act (APA) provides for judicial review of agency action. 5 U.S.C. §702. Under the APA, a final agency action must be set aside if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. §706(2)(A). For all the reasons outlined in the sections above, the decision for the OMDPNM is arbitrary and capricious in the standards it evaluates various land uses against, in its inclusion or exclusion of relevant data, and in its decision to ignore entirely certain relevant issues. BLM’s responsibilities under FLPMA to protect and preserve the natural resources cannot be fulfilled if BLM doesn’t even know the current state of the public lands in question. The BLM has failed to make a finding that livestock grazing is compatible with the purposes of the OMDPNM designation. There is insufficient evidence in the EIS to support the agency’s conclusions, the evidence in the EIS could only lead a reasonable person to a decision contrary to that of the BLM, and for this reason, the decision violates the APA.

### **Summary:**

One protestor expressed multiple claims that the BLM violated NEPA by doing the following.

- Failing to analyze the proposed levels of livestock grazing within the OMDP NM. Protestors noted that the BLM did not address previously raised concerns in the OMDP Draft RMP/DEIS regarding best available science to analyze impacts of livestock grazing and justify its livestock grazing management decisions within the OMDP NM.
- Failing to disclose data and analyses to the public by combining information on the economic impacts of livestock grazing with those of recreation, hiding the fact that livestock grazing authorizations contribute very little to the local or regional economy while costing taxpayers substantial amounts of money in permit management.
- Failing to analyze site-specific impacts of authorizing livestock grazing and instead deferring that analysis to a later process.
- Failing to adequately analyze the impacts of livestock grazing on cultural resources and failing to meet its obligation to protect Monument resources because most of the project area remains unsurveyed for cultural resources and livestock grazing is an acknowledged source of damage to cultural resources.
- Failing to include the disturbance to biological soil crusts, increased dust, and associated impacts on air quality caused by livestock hoof action in the livestock grazing impact analysis.
- Failing to acknowledge that previous land health evaluations (LHE) conducted by the BLM showed that livestock grazing was having a negative impact on Monument objects, indicating the Monument lands were both unsuitable for livestock grazing use and were being harmed by

livestock grazing use, as the protestor also noted in 2020 comments on the OMDP Draft RMP/DEIS.

- Making arbitrary and capricious land use management decisions regarding livestock grazing in violation of the Administrative Procedure Act (APA) because, the protester claims, the BLM does not know the current state of the public lands and because the BLM failed to make a finding that livestock grazing is compatible with the purposes of the OMDP NM.
- Failing to adequately respond to a number of these issues that were previously raised on the OMDP Draft RMP/DEIS.

**Response:**

Section 302(a) of FLPMA directs the BLM to manage public lands on the basis of multiple use and sustained yield, unless otherwise provided by law (43 U.S.C. 1732(a)). Section 103(c) of FLPMA defines “multiple use” as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people. FLPMA grants the Secretary of the Interior the authority to make land use planning decisions, taking into consideration multiple use and sustained yield, Areas of Critical Environmental Concern (ACEC), 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 201 (a)). 43 CFR 4100.0-8 provides that 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 NEPA Handbook H-1601-1, Appendix C).

FLPMA’s multiple-use policy does not require that all uses be allowed on all areas of the public lands. Rather, the BLM has wide latitude to allocate the public lands to particular uses, and to employ the mechanism of land use allocation to protect for certain resource values, or, conversely, develop some resource values to the detriment of others, short of unnecessary or 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.

The APA (5 U.S.C. 551–559), enacted in 1946, is a key Federal statute that governs how administrative agencies of the U.S. Federal government propose and establish regulations. The APA specifies that courts can set aside agency actions if they are found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. This standard is used to ensure that agency decisions are based on a rational connection between the facts found and the choices made. If an agency fails to provide a reasonable explanation for its actions or if its decision lacks a rational basis, it can be deemed arbitrary and capricious.

NEPA requires the BLM to “ensure the professional integrity, including scientific integrity, of the discussions and analyses in an environmental document” (42 U.S.C. 4332(d)). The Council on Environmental Quality’s (CEQ) regulations implementing NEPA further require that agencies use information that is of “high quality” (40 CFR 1500.1(b)). The effects analysis must demonstrate that the BLM took a “hard look” at the impacts of the action, which is defined as “a reasoned analysis containing quantitative or detailed qualitative information” (BLM NEPA Handbook, H-1790-1, 6.8.1.2, *Analyzing Effects*).

NEPA also directs that 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 NEPA Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable effects of the proposed action. A land use planning–level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-

specific actions. The baseline data provide the necessary basis to make informed land use plan-level decisions.

The BLM provides an overview of the current state of public lands in the affected environment sections for each resource in Chapter 3. Specifically, the affected environment related to livestock grazing can be found in Section 3.15.2 (OMDP PRMP/FEIS pp. 3-134–3-135). In this section the BLM provides an overview of the existing conditions related to livestock grazing in the OMDP NM, including the acreages of land available or unavailable to livestock grazing, the number of permits issued by Monument staff, and the number of authorized animal unit months (AUM) within the planning area and which of those are active or suspended (OMDP PRMP/FEIS p. 3-134).

The BLM’s proposed management for livestock grazing under all alternatives is provided in Chapter 2, Management Actions 183 through 193 (OMDP PRMP/FEIS pp. 2-34–2-35). The BLM does not propose to make any acres unavailable to livestock grazing that are available currently (Management Action 190 p. 2-35). Under all alternatives, acres available for grazing and AUMs would not change from the current management (OMDP PRMP/FEIS p. 2-74). Rather, the BLM provides a range of goals and objectives under Alternatives B through E to manage livestock grazing on the allotments that are currently available. Under Alternatives B, C, and D, Animal Management Plans and other activity plans would give priority management to special designations, riparian areas, areas identified to contain fragile soils, and springs and seeps due to possible resource conflicts. Alternative E would give priority management to these same areas with the addition of also giving priority management to areas within grazing allotments that contain Monument objects (OMDP PRMP/FEIS p. 3-136).

Analysis of the existing conditions and potential impacts on livestock grazing within the Monument from implementation of proposed management under each alternative is found within Section 3.15, *Livestock Grazing* (OMDP PRMP/FEIS pp. 3-134–3-137). Analysis of impacts from proposed management for livestock grazing under each alternative to other resources, including Monument objects and values, is woven throughout the sections for each resource in Chapter 3, *Environmental Consequences*, of the OMDP PRMP/FEIS. This includes an analysis of potential impacts from livestock grazing on social and economic conditions in OMDP PRMP/FEIS Section 3.21.3 (pp. 3-224–3-232). Table 3-83 in this section provides information specifically about livestock grazing’s regional economic contribution separately from recreation’s contribution (OMDP PRMP/FEIS p. 3-226). An analysis of potential impacts from livestock grazing on cultural resources is provided in Section 3.13.3 (OMDP PRMP/FEIS pp. 3-121–3-126). In this section the OMDP PRMP/FEIS states “Under all action alternatives, the BLM would not only consult with the New Mexico State Historic Preservation Officer and Tribes for any new ground-disturbing activities associated with livestock grazing, as under Alternative A, but would consult with them when livestock grazing may affect cultural resources and Tribal interests. This more inclusive management would further reduce the potential impacts on any known or unrecorded cultural resources in these areas by reducing other sources of impact on cultural resources related to grazing, such as large visual changes, compared to Alternative A” (p. 3-124). 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. An analysis of potential impacts from livestock grazing on air quality is provided in Section 3.11.3 (OMDP PRMP/FEIS pp. 3-108–3-111). In this section the OMDP PRMP/FEIS states that under all alternatives, “Movement of livestock across the planning area would create short-term, localized dust as livestock cross unvegetated surfaces and dirt trails. Grazing can also affect vegetation cover and soil conditions. This could indirectly affect air quality from wind-borne dust generation of disturbed surfaces. However, grazing would not be considered a surface-disturbing activity under proper livestock management that would minimize any disturbance and its associated impacts on air quality” (p. 3-109) The data used to inform the Chapter 3 analysis is cited throughout the chapter and full citations for these sources are provided in the *References* chapter of the OMDP PRMP/FEIS (pp.

References-1–References-18). The OMDP PRMP/FEIS’s overall goal is the protection of OMDP NM resources, objects, and values.

The standards used to evaluate land health, Section 1.7.1, *Standards for Public Land Health and Guidelines for Livestock Grazing Management*, of the OMDP PRMP/FEIS outlines the background approved land health standards that LHEs follow (pp. 1-12–1-16). The OMDP PRMP/FEIS will continue to manage objects, resources, and resource values within the Monument’s geographic boundaries in accordance with Proclamation 9131 and the Dingell Act land use allocations and management goals, objectives, and direction. Further insight into how the grazing analysis was constructed for the OMDP PRMP/FEIS and how grazing will be managed so objects of scientific and historic interest can be protected on the Monument is included in Section 2.3.14, *Livestock Grazing* (OMDP PRMP/FEIS pp. 2-74–2-75).

The BLM further identifies that the evaluation of changes to livestock grazing in the OMDP NM will be conducted in a separate process following the completion of this land use plan (OMDP PRMP/FEIS p. 2-74–2-75). Both in Section 2.3.14 and in the response to comments on the Draft RMP/DEIS, the BLM states that, “to determine livestock grazing compatibility and the impacts grazing could exact on objects of scientific and historic interest protected in the Monument... the BLM Las Cruces District Office will perform thorough [LHEs] and grazing compatibility assessment(s) to develop appropriate grazing management guidance and decisions consistent with Proclamation 9131’s direction to ‘preserve the objects of scientific and historic interest on the Organ Mountains-Desert Peaks lands’” (OMDP PRMP/FEIS pp. 2-74–2-75 and Appendix F, p. F-21).

In compliance with NEPA, the BLM considered all public comments submitted on the OMDP Draft RMP/DEIS. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix F of the OMDP PRMP/FEIS presents the BLM’s responses to all substantive comments, including those related to livestock grazing, where the BLM summarized the issues raised by each comment letter and provided a meaningful response. The BLM’s response identifies any modifications to the alternatives, improvements to the impacts analysis, or factual corrections made as a result of public comment. The BLM’s response also explains why certain public comments did not warrant further agency response.

The BLM has adequately analyzed impacts of livestock grazing as it relates to the alternatives considered as part of the OMDP NM land management planning process and used the best available science to conduct the analysis. The BLM clearly states that further data collection and analyses will be conducted by the BLM Las Cruces District Office during future implementation planning to incorporate more granular considerations of livestock grazing impacts on Monument objects and resources. This information will be made available to the public during the separate livestock grazing planning process and associated NEPA analyses. The BLM also complied with all applicable mandates and responsibilities under FLPMA to protect and preserve the natural resources of the Monument and did not act arbitrarily or capriciously in its livestock grazing management decisions. The BLM also adequately responded to public comments on the OMDP Draft RMP/DEIS in full compliance with NEPA. Accordingly, this protest issue is denied.

## ***NEPA: Impacts Analysis – Wildlife***

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

#### ***Cyndi Tuell***

**Issue Excerpt Text:** The Mexican gray wolf is listed as an experimental, non-essential population under the ESA. Whether a wildlife population is designated “essential” or “nonessential” affects whether federal agencies have a duty to consult with the Service on certain federal actions under ESA Section 7(a)(2). Where a population is designated “non-essential,” federal agencies are not

required to formally consult with the Service on actions likely to jeopardize the continued existence of the species. 16 U.S.C. § 1536(a)(2). Instead, federal agencies must engage in a conferral process that results in conservation recommendations that are not binding upon the agency. 16 U.S.C. § 1536(a)(4). This is in addition to the requirement that for a species proposed for protection under the ESA that ““may be present”” in a project area, land managers should prepare a Biological Assessment under § 1536(c)(1) of the ESA. Land managers have a duty to request information on whether proposed species may be present under § 1536(c)(1), and they have a duty to confer with the Service under 1536(a)(4) if jeopardy or adverse modification is likely. The Mexican gray wolf has been documented within the OMDPNM. The U.S. Fish and Wildlife Service has recognized nearby areas as part of the Mexican gray wolf’s “occupied range.” WWP provided information that the Mexican gray wolf had been present in the project area. The Bureau incorrectly assumed that because Mexican gray wolves have not established a pack or permanent presence, there was no need to confer with the Fish and Wildlife Service. However, the Monument is well within the foray range of the wolf, wolves are known to have occupied the area, yet the BLM made no attempt to confer with the Service to verify their assumptions or comply with the ESA. The failure to recognize the potential presence of listed species within the allotment and the subsequent failure to confer with the Service is a violation of the Endangered Species Act, based on a demonstrable error of fact, and precluded a Finding of No Significant Impact.

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

#### ***Cyndi Tuell***

**Issue Excerpt Text:** In our prior comments, we noted there had recently been a Mexican gray wolf in the OMDPNM. This wolf spent several weeks living in and around the Monument northwest of Las Cruces and we noted that this area should be considered occupied habitat for the Mexican gray wolf. However, the DEIS did not include any mention of the wolf, nor any analysis of impacts of the RMP on the wolf. We asked that the analysis be updated prior to issuing a decision.

Unfortunately, the BLM has failed to adequately respond to our concerns. The additional discussion added to the “SSS and habitats” (Special Status Species) includes the addition of the words “the Mexican gray wolf (*Canus lupus baileyi*) (nonessential experimental population)” to a paragraph at section 3.3.2, page 3-16, and adding the Mexican gray wolf to the table of SSS mammals on page 3-18. This is an inadequate response and an utter failure to account for this important, wide-ranging species that resides within the Mexican gray wolf recover area. The BLM’s failure to properly respond to this new information and our concerns is likely a violation of both the NEPA and the ESA.

#### **Summary:**

Protestors stated that the BLM violated the Endangered Species Act (ESA) by failing to recognize the potential presence of Mexican gray wolf (*Canus lupus baileyi*) within the project area and not conferring with the U.S. Fish and Wildlife Service (USFWS). Protestors note that this oversight is a violation of ESA, because the BLM assumed there was no need for consultation due to the lack of an established pack, despite the area being within the foray range for Mexican gray wolf.

Protestors also stated that the BLM violated NEPA by failing to adequately respond to comments regarding Mexican gray wolf and potential occupied habitat surrounding the OMDP NM.

#### **Response:**

50 CFR 402.14(b) provides that an agency need not initiate formal ESA Section 7 consultation if, as a result of the preparation of the Biological Assessment or as a result of informal consultation with USFWS, the agency determines, with the written concurrence of USFWS, that the proposed action is not likely to adversely affect any listed species or critical habitat.

As indicated in OMDP PRMP/FEIS Section 4.2.4, *Consultation and Coordination*, under *U.S. Fish and Wildlife Service Consultation*, consultation with USFWS for this planning effort has been ongoing, and USFWS has provided input throughout the planning process on planning issues, data collection and review, and in the development of alternatives (p. 4-4). The BLM has drafted a Biological Assessment analyzing likely effects from management proposed in the OMDP PRMP/FEIS on ESA-listed species within the planning area and submitted it to USFWS to initiate consultation. The Biological Assessment is under review by USFWS and it is in the process of preparing a Biological Opinion (OMDP PRMP/FEIS p. 4-4).

Based on public comments on the OMDP Draft RMP/DEIS, the BLM added Mexican gray wolf to Section 3.3.2, *Affected Environment*, because this species has potential to occur within the planning area along with the other BLM sensitive and State-listed species. Periodically there are areas of the Monument that are used by Mexican gray wolves, but the Monument lacks the prey population to sustain permanent residence. Therefore, these wolves pass through but do not remain in the planning area for substantial amounts of time (OMDP PRMP/FEIS pp. 3-16–3-17). As previously stated, the BLM is currently undergoing consultation with USFWS about impacts on federally listed species (OMDP PRMP/FEIS p. 4-4). The BLM responded directly to commenters by adding Mexican gray wolf to Section 3.3, *Special Status Species*, as this species has potential to occur within the planning area. This species was also added to Table 3-6, *Special Status Species and Habitats that Have the Potential to Occur in the Planning Area*, with status and habitat details (OMDP PRMP/FEIS pp. 3-16–3-17).

The BLM has developed OMDP PRMP/FEIS in full compliance with ESA. The BLM adequately responded to public comments on the OMDP Draft RMP/DEIS. Accordingly, this protest issue is denied.

## ***NEPA: Range of Alternatives***

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

#### ***Cyndi Tuell***

**Issue Excerpt Text:** As we noted in our prior comments (at pages 8-9), there is an insufficient range of alternatives, specifically as it relates to livestock grazing: The BLM should have considered an alternative that would reduce the number of authorized AUMs on all or some allotments, or monument-wide. The BLM should have also considered an alternative that would authorize the permanent retirement of grazing allotments that are voluntarily waived by the permittee back to the BLM. The Management Plan should include a provision that specifically allows permits to be waived back to the agency for permanent resource protection. The option of permanent voluntary retirement of permits and associated grazing privileges represents an equitable solution to wildlife or other natural resource conflicts with agricultural operations on public lands. It provides security to livestock producers facing declining economic returns, increasing price instability, a shrinking available workforce, drought, fire, and climate impacts or other challenges, and allows the BLM to redesignate lands to other uses, including wildlife habitat, recreation, and hunting. The permit waiver system represents the increasing public interest in maintaining natural systems and restoring native species and allows land managers to facilitate the win-win resolution of grazing conflicts which impact not only native species, but also water quality and the recreational experience of users. Allotments already vacated for resource protection, either through land management actions or through the voluntary relinquishment of grazing preference, would then be closed. In our prior comments we noted the assumption in the DEIS that: Grazing allotments will remain open, if there continues to be demand. If a permittee is willing to relinquish their grazing preference for an allotment, the allotment could move to vacant status, and the permit could be terminated. The decision to change the existing status of an allotment and terminate a permit may

be based on the demand for permitted use and utilization of forage or the dedication of the land to another purpose. 2024 DEIS at 3-130, emphasis added. This assumption, along with the well-known and admitted significant negative impacts of livestock grazing to Monument objects and the benefits of voluntary grazing permit retirement noted above, should have resulted in an RMP provision that clearly requires the termination of grazing if existing permittees are willing to relinquish their permit. Without a provision in the RMP requiring, or at least allowing for, permit retirement, the assumption is invalid. BLM did not respond to our concern on this point and instead appears to have simply removed the language about vacant allotments from the final version of the EIS. Unfortunately, removing the words does not remove the issue and there is nothing in the EIS or associated documents on the project webpage to clearly indicate that the Bureau considered voluntary grazing permit retirement, despite having ample rationale to do so. This failure to consider a reasonable alternative is a violation of the National Environmental Policy Act. We ask that the grazing retirement assumption be codified in the RMP. If this is not done, the assumption and analysis must be revisited.

### **Summary:**

Protestors stated the BLM violated NEPA by failing to provide a sufficient range of alternatives, specifically as it relates to livestock grazing, and should have considered an alternative that would reduce the number of authorized AUMs on all or some allotments, and an alternative that would authorize voluntary grazing permit retirement.

### **Response:**

The BLM must analyze a reasonable range of alternatives, but not every possible alternative to a proposed action. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense (BLM NEPA Handbook, H-1790-1, at 50 citing Question 2a, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981; see also 40 CFR 1502.14).

The BLM developed a reasonable range of alternatives that meet the purpose and need of the OMDP PRMP/FEIS and that address resource issues identified during the scoping period. The OMDP PRMP/FEIS analyzes five alternatives, which are described in Section 2.1 (OMDP PRMP/FEIS pp. 2-1–2-5). The alternatives analyzed in the OMDP PRMP/FEIS cover the full spectrum by varying in (1) degrees of protection for each resource and use; (2) approaches to management for each resource and use; (3) mixes of allowable, conditional, and prohibited uses in various geographic areas; and (4) levels and methods for restoration.

While the BLM did not consider alternatives with varying allocations for livestock grazing, the goals, objectives, management direction does vary across alternatives (OMDP PRMP/FEIS pp. 2-34–2-39). A comparison of anticipated impacts on livestock grazing for each alternative can be found in Section 2.3.14 (OMDP PRMP/FEIS pp. 2-74–2-75). As the protestor states, under all alternatives, acres available for grazing and AUMs would not change from the existing conditions. However, the BLM is following Proclamation 9131 and the Dingell Act guidelines and is consistent with NEPA for decisions at the RMP planning level and will consider a no-grazing or reduced-grazing alternative at the implementation level in individual Environmental Assessments for decision-making for new leases/permits and lease/permit renewals, each of which requires its own NEPA process (OMDP PRMP/FEIS p. 2-75).

In addition to NEPA, the BLM must meet the policy directives of Proclamation 9131, which states the following regarding grazing permits and leases on Monument lands: “Laws, regulations, and policies followed by the BLM in issuing and administering grazing permits or leases on lands under



its jurisdiction shall continue to apply with regard to the lands in the monument, consistent with the protection of the objects identified above” (Proclamation 9131 p. 5). The BLM is additionally obligated to align with the Dingell Act, which allows for the continued use of livestock grazing within the Monument and within wilderness (OMDP PRMP/FEIS p. 1-12).

The BLM will adhere to and institute the management direction provided in Proclamation 9131 and the Dingell Act. Considerations regarding future land use management associated with livestock grazing compatibility and holding capacity would be proposed, considered, and analyzed during follow-on implementation-level planning efforts identified in Appendix B, in accordance with appropriate laws, regulations, and agency policy (OMDP PRMP/FEIS pp. B-1–B-4).

The BLM considered a reasonable range of alternatives in the OMDP PRMP/FEIS in full compliance with NEPA and will issue and administer grazing permits and leases in accordance with appropriate laws, regulations, agency policy, and land use allocations and resource management goals, objectives, and management direction found in the OMDP PRMP/FEIS. Accordingly, this protest issue is denied.

## ***NEPA: Response to Comments***

### ***Dona Ana County Associated Sportsmen***

***John Cornell***

**Issue Excerpt Text:** Row # 217 r.e. Legal Public Access to Picacho Peak SRMA. We provided comments on this item in Draft RMP (Row #220 in the Draft RMP). We explained that BLM already had legal public access, which was not indicated in the No-Action Alternative (the No-Action Alternatives should portray the current situation). BLM’s response to our comment completely ignores the fact that BLM already has legal public access and furthermore does not respond in meaningful way to our comment. BLM has not resolved this issue adequately to complete a proper RMP.

### ***Dona Ana County Associated Sportsmen***

***John Cornell***

**Issue Excerpt Text:** Regarding Designated Campgrounds (different than Dispersed Camping), we provided comment that the RMP should identify areas within the monument where developed campgrounds are needed and can be accommodated. BLM’s response to our comment (Page F-137) did not acknowledge the subject raised and did not address the need for developed campgrounds. BLM has not resolved this issue adequately to complete a proper RMP.

### ***Dona Ana County Associated Sportsmen***

***John Cornell***

**Issue Excerpt Text:** Row #160 (Row # 162 in Draft) – r.e. protection of archaeological sites, via designation of 2 ACECs. Our comment to the Draft RMP was that we did not find any justification for an overlapping ACEC designation. The Monument’s proclamation provided all needed authority and justification for management and protection of cultural resources. In the Proposed RMP, we do not find that BLM has either answered our comment, nor provided any clarification as to why and ACEC designation within the monument is necessary. BLM has not resolved this issue adequately to complete a proper RMP.

### ***Dona Ana County Associated Sportsmen***

***John Cornell***

**Issue Excerpt Text:** The response to our Comment regarding ACECs (found on Page F-192), references an unrelated appendix as justification for maintaining/designating ACECs. Appendix C is related to Special Recreation Management Areas, not Special Designations. BLM has not resolved this issue adequately to complete a proper RMP.

**Summary:**

Protestors claimed that the BLM violated NEPA by failing to adequately respond to public comments received on the OMDP Draft RMP/DEIS. Protestors specifically noted inadequate responses regarding legal public access to Picacho Peak SRMA, to identifying areas where developed campgrounds can be accommodated, and a lack of justification for proposed ACEC designations.

**Response:**

The BLM is required to 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 NEPA Handbook H-1790-1, pp. 65–66).

In compliance with NEPA, the BLM considered all public comments submitted on the OMDP Draft RMP/DEIS. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. Appendix F of the OMDP PRMP/FEIS presents the BLM's responses to all substantive comments where the BLM summarized the issues raised by each comment letter and provided a meaningful response. The BLM's response identifies any modifications to the alternatives, improvements to the impacts analysis, or factual corrections made as a result of public comment. The BLM's response also explains why certain public comments did not warrant further agency response.

It is important for the public to understand that the BLM's comment response process does not treat public comments as if they were a vote for a particular action. The comment response process ensures that every comment is considered at some point when preparing the OMDP PRMP/FEIS. Additional information about Picacho Peak SRMA can be found in Appendix C, Section C.5 (OMDP PRMP/FEIS pp. C-23–C-24), although it should be noted that further analysis, including route inventory, potential impacts, and route designations, will be completed during the route inventory and TTMP process. At that time, all routes will be designated or not, and uses will be allocated (i.e., motorized, mechanized, non-motorized, open, closed, limited). Legal access to the Picacho Peak SRMA is not within the scope of the OMDP PRMP/FEIS because it is not associated with a land use allocation or a resource management goal or objective.

Regarding identifying areas that can accommodate developed campgrounds, these areas will also require additional NEPA compliance, including opportunities for public input, in future implementation-level recreation actions, although most of the remainder of public lands outside of developed campgrounds are open to dispersed camping as long as it does not conflict with other authorized uses or in areas posted "closed to camping," or in some way adversely affects objects of scientific and historic interest, natural or cultural resources, wildlife species, or critical habitat. More information can be found in OMDP PRMP/FEIS Appendix C, as under all alternatives, recreation use in the OMDP NM would be managed under SRMA designations.

Regarding protests about ACECs, the BLM responded to a number of public comments regarding designation of ACECs on the OMDP Draft RMP/DEIS in Appendix F of the OMDP PRMP/FEIS pp. F-13, F-116, F-192, and F-193. The BLM proposed ACEC management under a range of alternatives within Table 2-2, Management Actions 280 through 293 (OMDP PRMP/FEIS pp. 2-55–2-59). 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.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." *Id.* Section 1702(a). The BLM's planning regulations address the identification, evaluation, and designation of ACECs during the development and revision of RMPs and during amendments to

RMPs when evaluation and designation of ACECs are within the scope of the amendment. As reflected in the regulations and existing policy, the BLM shall review nominated ACECs to determine whether they have relevant and important values and need special management (43 CFR 1610.7-2(a); BLM IM 2023-013; and BLM Manual 1613, *Areas of Critical Environmental Concern*).

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). BLM Manual Section 1613.11 provides four relevance criteria and five importance criteria. The BLM determined that all ACECs proposed and analyzed in the OMDP PRMP/FEIS met at least one relevance criterion and one importance criterion, which are detailed in Table 3-56 (OMDP PRMP/FEIS p. 3-169), and therefore had to be analyzed for designation in at least one RMP alternative (43 CFR 1610.7-2(a)). An analysis of the existing conditions and potential impacts on ACECs from implementation of proposed management under each alternative is found in Section 3.19, *Special Designations* (OMDP PRMP/FEIS pp. 3-167–3-179). Analysis of impacts from proposed management for ACECs under each alternative to other resources, including Monument objects and values, is woven throughout the sections for each resource in Chapter 3, *Environmental Consequences*, of the OMDP PRMP/FEIS.

The BLM adequately responded to public comments on the OMDP Draft RMP/DEIS in full compliance with NEPA. Accordingly, this protest issue is denied.

## ***Unmanned Aerial Vehicles***

### ***Dona Ana County Associated Sportsmen***

#### ***John Cornell***

**Issue Excerpt Text:** Row # 270 (Row #272 in Draft RMP) r.e. UAVs. First, as we pointed out in our comment letter, the Draft RMP indicated that UAVs are already prohibited (as described in Alternative A – No-Action Alternative). This is a NEPA error, as we pointed out, and has not been further corrected in the Proposed RMP. The BLM provided no justification for why it determined that UAVs are prohibited currently, nor does it provide an answer as to why UAVs would be prohibited in subsequent implementation-level planning. And finally, the Proposed management is further confusing as it does not make it clear that UAVs ARE authorized UNTIL implementation-level planning is completed. BLM has not resolved this issue adequately to complete a proper RMP.

#### **Summary:**

Protestors claimed that the BLM violated NEPA by failing to adequately respond to comments on the No-Action Alternative regarding unmanned aerial vehicles (UAV) currently being prohibited and by not providing justification for its determination of UAVs being prohibited.

#### **Response:**

The BLM is required to 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 NEPA Handbook 1790-1, pp. 65–66).

In compliance with NEPA, the BLM considered all public comments submitted on the OMDP Draft RMP/DEIS. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. OMDP PRMP/FEIS Appendix F presents the BLM's responses to all substantive comments related to UAV use within OMDP NM received on the OMDP Draft RMP/DEIS.

The BLM summarized the issues raised by each comment letter and provided a meaningful response. The BLM's responses identified any modifications to the alternatives, improvements to the impacts analysis, or factual corrections made as a result of public comment. The BLM's responses also explained why certain public comments did not warrant further agency response.

In its response to comments, the BLM noted that specific management of drones and UAVs is an implementation-level action and does not fall within the scope of this planning effort. A land use planning-level decision is broad in scope. For this reason, analysis of land use plan alternatives is typically broad and qualitative rather than quantitative or focused on site-specific actions. The baseline data provide the necessary basis to make informed land use plan-level decisions. As the decisions under consideration by the BLM are programmatic in nature and would not result in on-the-ground planning decision or actions, the scope of the analysis was conducted at a regional, programmatic level. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse. As described in OMDP PRMP/FEIS Appendix F, the use of drones and UAVs will be analyzed at the implementation level as a part of the TTMP process for OMDP NM, which is an external planning action from the OMDP PRMP/FEIS (pp. F-55, F-134, F-142, F-176, F-202).

Furthermore, OMDP PRMP/FEIS Alternative E (the Proposed Plan) contains specific language regarding the use and limitations of drones/UAVs within OMDP NM. In Management Action 219, under the Proposed Plan, UAVs and drones would only be prohibited in Aguirre Spring Recreation Area and Dripping Springs Natural Area in order to protect Monument objects and values (OMDP PRMP/FEIS p. 2-41). Furthermore, Management Action 270 under the Proposed Plan states that the use of UAVs is an allowable use, but limited to designated areas in the Monument As previously discussed, further planning will occur at the implementation level to determine the designated areas where drone and UAV use will be authorized within the OMDP NM (OMDP PRMP/FEIS p. 2-53).

The BLM complied with NEPA and adequately responded to public comments on the OMDP Draft RMP/DEIS and adequately addressed the use of drones and UAVs within the OMDP PRMP/FEIS. Accordingly, this protest issue is denied.

## *Wilderness Act*

### *New Mexico Wild et al.*

#### *Sally Paez et al.*

**Issue Excerpt Text:** As set forth in the Purpose and Need section, this planning effort responds in part to the direction in Presidential Proclamation 9131 and the Dingell Act to develop an RMP “to protect the wilderness character of the area in accordance with the Wilderness Act of 1964 as a component of the National Wilderness Preservation System.” The Final RMP/EIS includes some goals, objectives, management direction, and allowable uses for Wilderness, set forth in an Alternatives Matrix, Table 2-3. As reflected in Appendix B, the BLM intends to further address Wilderness management through implementation level planning, which “will be completed commensurate with available funding, resources, and staffing.” Specifically, the BLM proposes to complete the following: Wilderness Management Plan(s) to ensure the preservation of each of the ten (10) congressionally designated Wilderness Areas within the OMDPNM boundaries through consistent monitoring of wilderness character and appropriate management and administration of each designated Wilderness Area for the six public purposes identified in the Section 4(b) of the Wilderness Act. Given that Wilderness management is a critical aspect of the Purpose and Need for this planning effort, we are concerned that the Final RMP/EIS contains minimal management direction for Wilderness, especially as it pertains to the application of certain exceptions in the Dingell Act, which allow uses that would otherwise be prohibited under Section 4(c) of the

Wilderness Act. We are also concerned that some of the provisions in the Wilderness Matrix appear to be either inconsistent with the Wilderness Act or irrelevant to Wilderness management, as described below.

***New Mexico Wild et al.***

***Sally Paez et al.***

**Issue Excerpt Text:** In the Wilderness Matrix set forth in the final RMP/EIS, BLM has included a “Goal” to “[i]mprove and enhance roads and trails designated for nonmotorized mechanized vehicle use. No additional roads or trails shall be established for nonmotorized mechanized vehicle use unless necessary for public safety or protection of Monument objects and values.” This Goal is inconsistent with the “Allowable Use” section of the table, which provides that Wilderness areas would be “closed to motorized and mechanized travel” and “closed to motorized or mechanized transport for livestock grazing practices except for emergency situations.” Moreover, the Goal is inconsistent with the Wilderness Act, which provides as follows: except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area. If the Goal related to mechanized use is intended to address the limited exceptions in the Dingell Act, the BLM should clarify the language in the matrix and address our requests to incorporate provisions that will harmonize the Dingell Act with the Wilderness Act by ensuring the Dingell Act exceptions are implemented in a manner that maximizes the protection of wilderness character.

***New Mexico Wild et al.***

***Sally Paez et al.***

**Issue Excerpt Text:** The Wilderness Matrix set forth in the final RMP/EIS includes a “Management Direction” as follows: The addition, renewal or upgrading of facilities within the physical scope of Utility Rights-of-Way that existed on or before May 21, 2014, may be authorized when deemed to be within the rule of reason and in the public interest or benefit, consistent with the protection of inventoried and identified objects of scientific and historic interest on Monument lands. Other rights-of-way (e.g., roads or utility line rights-of-way) shall be authorized only if they are necessary for the care and management of inventoried and identified objects of scientific and historic interest on Monument lands.” As asserted in our previous comments, this Management Direction is inconsistent with the Wilderness Act, which prohibits temporary roads; use of motor vehicles, motorized equipment or motorboats; landing of aircraft; other forms of mechanical transport; and structures or installations. The BLM should clarify this Management Direction to ensure compliance with Wilderness Act and any applicable the Dingell Act exceptions, which must be implemented in a manner that maximizes the protection of wilderness character.

**Summary:**

Protestors stated that the BLM’s stated goals relating to nonmotorized mechanized vehicle use are inconsistent with the Wilderness Act and the Dingell Act. They asked that the BLM clarify language in the Wilderness Matrix to ensure consistency with the Dingell Act and Section 4(c) of the Wilderness Act, ensuring Dingell Act exceptions are implemented in a manner that maximizes the protection of wilderness characteristics.

**Response:**

As stated in Chapter 2 of the OMDP PRMP/FEIS, the BLM's objective regarding the management of wilderness areas is to "Effectively manage prohibitions of certain uses under Section 4(c) and Special Provisions under 4(d) of the Wilderness Act of 1964 while preserving wilderness character" (OMDP PRMP/FEIS p. 2-66). This management includes the closure of wilderness areas to both mechanized and mechanical use (see Table 2-3, row 9, OMDP PRMP/FEIS p. 2-67) and managing wilderness areas as right-of-way exclusion areas (see Table 2-2, row 240, OMDP PRMP/FEIS p. 2-47).

Section 4(c) of the Wilderness Act outlines prohibited uses of wilderness areas as follows.

*Except as specifically provided for in this Act, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this Act and except as necessary to meet minimum requirements for the administration of the area for the purpose of this Act (including measures required in emergencies involving the health and safety of persons within the area), there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area. (16 U.S.C. 1133 4(c)).*

As a result of the 2019 Dingell Act, eight WSAs in the OMDP NM were converted to seven designated wilderness areas, and three additional areas identified as LWCs meeting Wilderness Act designation requirements were designated as wilderness. This is also outlined in Table 3-57 of Section 3.19, *Special Designations* (OMDP PRMP/FEIS p. 3-170). The previously designed WSAs are managed under Section 603(c) of FLPMA "in a manner so as not to impair the suitability of such areas for preservation as wilderness." Under this non-impairment standard, the WSAs were managed as they were when they were inventoried, including allowing for mechanized and motorized routes that existed previously. With the change of these areas from WSAs to designated wilderness, these areas are now managed under appropriate legal guidance found in Proclamation 9131, the Dingell Act, the Wilderness Act, and other appropriate laws. The BLM has adjusted the language in the Record of Decision to clarify this issue, consistent with its original intent. The clarifications explain that for these areas, wilderness goals related to nonmotorized mechanized vehicle use (OMDP PRMP/FEIS p. 2-66) are not applicable so that it does not conflict with the Wilderness Act. No additional roads or trails shall be established for nonmotorized mechanized vehicle use unless necessary for public safety or protection of Monument objects and values (OMDP PRMP/FEIS p. 2-66).

The 2019 Dingell Act directs the BLM to allow hunting, fishing, and recreational shooting on Federal lands unless the Secretary concerned closes an area in accordance with Section 4103. Section 4(d) of the Wilderness Act provides special provisions for uses within wilderness areas. These provisions include the continued allowed use of aircraft or motorboats, where the uses have already been established "subject to such restrictions as the Secretary of Agriculture deems desirable. In addition, such measure may be taken as may be necessary in the control of fire, insects, and diseases, subject to such conditions as the Secretary deems desirable" (16 U.S.C. 1133 4(d)). As stated in Chapter 2 of the OMDP PRMP/FEIS, wilderness areas are classified as right-of-way exclusion areas, including for renewable energy (p. 2-67). Management direction in Table 2-2 row 243 and Table 2-3 row 13 for Alternatives B through E states: "The addition, renewal or upgrading of facilities within the physical scope of Utility Rights-of-Way that existed on or before May 21, 2014, may be authorized when deemed to be within the rule of reason and in the public interest or benefit, consistent with the protection of inventoried and identified objects of scientific and historic interest on Monument lands. Other rights-of-way (e.g., roads or utility line rights-of-way) shall be authorized only if they are necessary for the care and management of inventoried and identified objects of scientific and historic interest on Monument lands. Watershed restoration projects and small-scale flood prevention projects

may be authorized when deemed to be within the rule of reason and in the public interest and benefit, consistent with the care and management of inventoried and identified objects of scientific and historic interest on Monument lands. (Proclamation No. 9131 [2014], 1 CFR Part 19)” (OMDP PRMP/FEIS pp. 2-48 and 2-68). This language is compliant with the Dingell Act, the Wilderness Act, and Proclamation 9131.

Therefore, the management of travel and transportation and rights-of-way within wilderness areas aligns with the Wilderness Act, the Dingell Act, and Proclamation 9131. Accordingly, this protest issue is denied.

## ***Wilderness Study Areas***

### ***New Mexico Wild et al.***

#### ***Sally Paez et al.***

**Issue Excerpt Text:** The Dingell Act did not address Section 202 WSAs or affect the BLM’s obligations, discretion, and authority under Section 201 and 202 of FLMPA. In both our Scoping Comments and our Comments on Draft RMP/EIS, we urged the BLM to consider exercising its direction and authority under Section 202 to designate new WSAs and manage them under a non-impairment standard. Under NEPA, an agency is required to respond to public comments received. The Final RMP/EIS does not, however, respond to our comments related to Section 202 WSAs, except to state that the “Dingell Act designated the 10 Wilderness areas and removed all non-designated areas previously identified as Wilderness Study Areas.” The glossary set forth in the Final RMP/EIS provides a limited definition of WSA as follows: “An area inventoried, found to have wilderness characteristics, and managed to preserve those characteristics under authority of the review of public lands required by Section 603 of FLPMA.” This definition fails to acknowledge the BLM’s authority and discretion to consider WSAs under Section 202. The management of WSAs under a non-impairment standard provides many of the same benefits as designated Wilderness or LWCs managed to protect and maintain wilderness characteristics. All three management approaches mitigate the effects of climate change and biodiversity loss. WSAs provide wildlife habitat, ensure clean water and air, and provide opportunities for science and education. Other BLM offices have issued planning documents that accurately reflect the authority and discretion to consider the designation of WSAs under Section 202 of FLPMA. The BLM should address public comments requesting the designation of Wilderness Study Areas WSAs under Section 202 as part of this planning process and, at a minimum, should ensure that the final planning documents reflect BLM’s authority to do so.

### ***BlueRibbon Coalition***

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

**Issue Excerpt Text:** The RMP seeks to impose management strategies that resemble “de facto wilderness,” which limits motorized and other forms of recreation. In *Utah v. Haaland*, the court emphasized that only Congress has the authority to designate wilderness; agencies lack legal authority for wilderness-like”“ restrictions that effectively create wilderness areas without Congressional approval. Additionally, any restrictions based on executive orders without proper statutory grounding would be an overreach, as noted in recent litigation challenging similar agency reliance on executive orders. It is abundantly clear that the same considerations given for the environment were not given to recreation. Lands with Wilderness characteristics should not be managed as Wilderness. Wilderness Study Areas should also be released as a result of this plan. We encourage the BLM to address these concerns and truly comply with FLPMA. The primitive area designations area also another tool the BLM is using to manage this monument as a Wilderness area.

**Summary:**

Protestors claim that the BLM violated NEPA by failing to adequately respond to comments on Section 202 WSAs. The protestor notes that the BLM has authority and discretion to consider WSAs under Section 202 and it has failed to do so. Additionally, protestors claim that the BLM violated FLPMA by imposing management strategies that resemble “de facto wilderness,” limiting motorized and other forms of recreation without Congressional approval.

**Response:**

In compliance with NEPA, the BLM considered all public comments submitted on the OMDP Draft RMP/DEIS. The BLM complied with 40 CFR 1503.4 by performing a detailed comment analysis that assessed and considered all substantive comments received. The BLM responded to substantive comments regarding the designation of WSAs in Appendix F, *Public Comments and BLM Response*, (OMDP PRMP/FEIS Appendix F, pp. F-25–F-26). The BLM summarized the issues raised by each comment letter and provided a meaningful response. The BLM’s response identifies any modifications to the alternatives, improvements to the impacts analysis, or factual corrections made as a result of public comment. The BLM’s response also explains why certain public comments did not warrant further agency response.

The BLM does not have the authority under Section 603 of FLPMA to designate new WSAs. Congress established a deadline for the BLM’s authority to designate WSAs, which are then managed under the non-impairment provisions of Section 603 of FLPMA.

Under Sections 201 and 202 of FLPMA, the BLM has authority and discretion to identify and manage wilderness resources consistent with its multiple-use mandate. Wilderness resources are considered to be part of 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 resources. Such discretion in analyzing potential management options for wilderness resources 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. Utilizing FLPMA’s authority under Section 202, as opposed to the expired authority under Section 603 of FLPMA, the BLM has discretion to manage those areas identified as having wilderness resources for the protection of those resources, including to a non-impairment standard. In choosing such management prescription, nothing in FLPMA prevents the BLM from referring to such areas in the management plan as a WSA. Additionally, and unlike Section 603 of FLPMA, a land use planning decision to manage for the preservation of an area with wilderness resources as a WSA (or Section 202 WSA) may be modified or changed through a future land use planning decision.

As outlined in Table 3-57 of Section 3.19, *Special Designations* (OMDP PRMP/FEIS p. 3-170), as a result of the 2019 Dingell Act, eight WSAs in the OMDP NM were converted to seven designated wilderness areas, and three additional wildernesses were designated as wilderness. Through the planning process, the BLM used its discretion to identify and determine which areas of BLM-administered LWCs should receive protection through special management. A 400-acre section of the Organ Needles WSA was released from wilderness consideration because it failed to meet the size criterion on its own. The area is cut off from the Organ Mountains Wilderness by a road. Because the area is distinct from the wilderness area and does not meet the size criterion, it does not have wilderness characteristics. Additional information regarding LWCs can be found under the *FLPMA: Lands with Wilderness Characteristics Inventories and Designation* section of this Protest Report.



Accordingly, the OMDP PRMP/FEIS complied with requirements set forth in both NEPA and FLPMA, and therefore this protest is denied.

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