

*Director's Protest Resolution Report*

**Dominguez-Escalante  
National Conservation Area  
(Colorado) Proposed  
Resource Management Plan  
and Final Environmental  
Impact Statement**

January 9, 2017



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## Reader's Guide

### *How do I read the Report?*

The Director's Protest Resolution Report is divided into sections, each with a topic heading, excerpts from individual protest letters, a summary statement (as necessary), and the Bureau of Land Management's (BLM) response to the summary statement.

### **Report Snapshot**

**Issue Topics and Responses**  
NEPA

Topic heading

Submission number

Issue Number: PP-CO-DOMINGUEZ-16-20-10

Protest issue number

Organization: The Forest Initiative

Protesting organization

Protester: John Smith

Protester's name

Issue Excerpt Text:

Direct quote taken from the submission

Rather than analyze these potential impacts, as required by NEPA, BLM postpones analysis of renewable energy development projects to a future case-by-case analysis.

**Summary**

General statement summarizing the issue excerpts (optional).

There is inadequate NEPA analysis in the PRMP/FEIS for renewable energy projects.

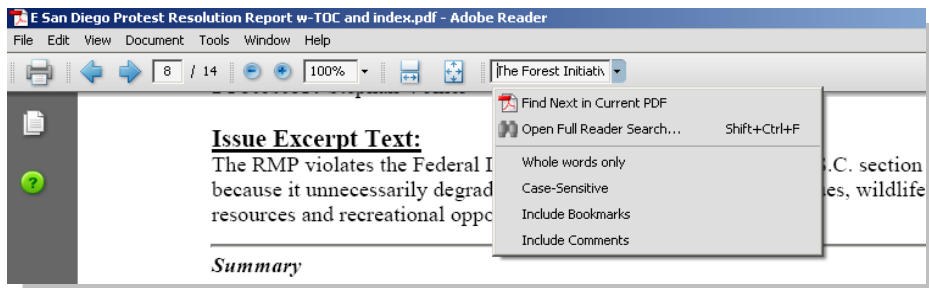
**Response**

BLM's response to the summary statement or issue excerpt if there is no summary.

Specific renewable energy projects are implementation-level decisions rather than RMP-level decisions. Upon receipt of an application for a renewable energy project, the BLM would require a site-specific NEPA analysis of the proposal before actions could be approved (FEIS Section 2.5.2, p. 2-137). Project specific impacts would be analyzed at that time (including impacts to surrounding properties), along with the identification of possible alternatives and mitigation measures.

### *How do I find my Protest Issues and Responses?*

1. Find your submission number on the protesting party index which is organized numerically by case number.
2. In Adobe Reader search the report for your name, organization or submission number (do not include the protest issue number). Key word or topic searches may also be useful.



## List of Commonly Used Acronyms

<b>ACEC</b>	Area of Critical Environmental Concern	<b>MLA</b>	Mineral Leasing Act
<b>BA</b>	Biological Assessment	<b>MLP</b>	Master Leasing Plan
<b>BLM</b>	Bureau of Land Management	<b>MOU</b>	Memorandum of Understanding
<b>BMP</b>	Best Management Practice	<b>NEPA</b>	National Environmental Policy Act of 1969
<b>BO</b>	Biological Opinion	<b>NHPA</b>	National Historic Preservation Act of 1966, as amended
<b>CAA</b>	Clean Air Act	<b>NOA</b>	Notice of Availability
<b>CEQ</b>	Council on Environmental Quality	<b>NOI</b>	Notice of Intent
<b>CFR</b>	Code of Federal Regulations	<b>NRHP</b>	National Register of Historic Places
<b>COA</b>	Condition of Approval	<b>NSO</b>	No Surface Occupancy
<b>CSP</b>	Concentrated Solar Power	<b>OHV</b>	Off-Highway Vehicle (has also been referred to as ORV, Off Road Vehicles)
<b>CSU</b>	Controlled Surface Use	<b>PA</b>	Preliminary Assessment
<b>CWA</b>	Clean Water Act	<b>PLA</b>	Potash Leasing Area
<b>DEIS</b>	Draft Environmental Impact Statement	<b>PPA</b>	Power Purchase Agreement
<b>DM</b>	Departmental Manual (Department of the Interior)	<b>POI</b>	Probability of Interaction
<b>DOI</b>	Department of the Interior	<b>PRMP</b>	Proposed Resource Management Plan
<b>EA</b>	Environmental Assessment	<b>RFD</b>	Reasonably Foreseeable Development
<b>EIR</b>	Environmental Impact Report	<b>RMP</b>	Resource Management Plan
<b>EIS</b>	Environmental Impact Statement	<b>ROC</b>	Risk of Contact
<b>EO</b>	Executive Order	<b>ROD</b>	Record of Decision
<b>EPA</b>	Environmental Protection Agency	<b>ROW</b>	Right-of-Way
<b>ERMA</b>	Extensive Recreation Management Area	<b>SO</b>	State Office (BLM)
<b>ESA</b>	Endangered Species Act	<b>SRMA</b>	Special Recreation Management Area
<b>FEIS</b>	Final Environmental Impact Statement	<b>T&amp;E</b>	Threatened and Endangered
<b>FLPMA</b>	Federal Land Policy and Management Act of 1976	<b>USC</b>	United States Code
<b>FO</b>	Field Office (BLM)	<b>USGS</b>	U.S. Geological Survey
<b>FWS</b>	U.S. Fish and Wildlife Service	<b>VRM</b>	Visual Resource Management
<b>GIS</b>	Geographic Information Systems	<b>WA</b>	Wilderness Area
<b>IB</b>	Information Bulletin	<b>WSA</b>	Wilderness Study Area
<b>IM</b>	Instruction Memorandum	<b>WSR</b>	Wild and Scenic River(s)
<b>KOP</b>	Key Observation Points		

*Protesting Party Index*

<b>Protester</b>	<b>Organization</b>	<b>Submission Number</b>	<b>Determination</b>
Rose Pugliese / John Justman / Scott McInnis	Mesa County Commission	PP-CO-Dominguez-16-01	Denied – Issues and Comments
Kent Davis	Mika Ag Corporation & Escalante Ranch	PP-CO-Dominguez-16-02	Denied – Issues and Comments
Terry Meyers	Rocky Mountain Bighorn Society	PP-CO-Dominguez-16-03	Denied – Issues and Comments
C. Bruce Hovde	Delta County Commission	PP-CO-Dominguez-16-04	Dismissed – Comments Only
Scott Winan	Colorado Plateau Mountain Bike Trail Association	PP-CO-Dominguez-16-05	Denied – Clarification Issues and Comments
Craig Grother	Colorado Backcountry Hunters & Anglers	PP-CO-Dominguez-16-06	Denied – Issues and Comments
Richard Miller	Mika Ag Corporation & Escalante (and Individual)	PP-CO-Dominguez-16-07	Denied – Issues and Comments

## Issue Topics and Responses

### NEPA – Public Comments

**Issue Number:** PP-CO-DOMINGUEZ-16-03-18

**Organization:** Rocky Mountain Bighorn Society

**Protestor:** Terry Meyers

#### **Issue Excerpt Text:**

The general public was not provided the opportunity to comment on the BMP during the comment period for the Draft RMP and EIS, because the original list of BMP was mistakenly published in the draft. This may have led the public to believe the BLM

would be imposing more stringent BMP, which is in fact not the case.

**Issue Number:** PP-CO-DOMINGUEZ-16-03-20

**Organization:** Rocky Mountain Bighorn Society

**Protestor:** Terry Meyers

#### **Issue Excerpt Text:**

The RMBS [Rocky Mountain Bighorn Society] and the public at large was not afforded the opportunity to provide input on the proposed BMP, which likely do not provide the greatest level of protection to bighorn sheep in the D-E NCA.

#### **Summary:**

The Dominguez-Escalante National Conservation Area Proposed Resource Management Plan and Final Environmental Impact Statement (D-E NCA PRMP/FEIS) violates the requirements of the National Environmental Policy Act (NEPA) regarding public comments because during the comment period for the Draft Resource Management Plan/Draft Environmental Impact Statement (DRMP/DEIS), the general public was not provided the opportunity to comment on the correct list of best management practices (BMPs) for the protection of bighorn sheep from domestic sheep disease transmission.

#### **Response:**

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

In compliance with NEPA, the BLM considered all public comments submitted on the Dominguez-Escalante National Conservation Area (D-E NCA) Draft Resource Management Plan/Draft Environmental Impact Statement (DRMP/DEIS). The BLM complied with 40 CFR 1503.1 and 40 CFR 1503.4 by soliciting comments from the public and by performing a detailed comment analysis that assessed and considered all substantive comments received. Section U of

the D-E NCA PRMP/FEIS presents the BLM's responses to all substantive comments.

The D-E NCA DRMP/DEIS mistakenly contained an older version of management prescriptions related to bighorn/domestic sheep interactions. However, partly in response to comments received, the D-E NCA PRMP/FEIS has been updated to reflect the final changes made in collaboration with permittees and Colorado Parks and Wildlife in March 2012 and discussed at the D-E NCA Advisory Council meeting in November 2014 at which the public had the opportunity to comment. After reviewing the updated information to determine if it was substantially different than the information considered and cited in the D-E NCA DRMP/DEIS, it was found that the updated management actions included in the D-E NCA PRMP/FEIS were within the range of alternatives in the D-E NCA DRMP/DEIS. For example, the actions in row 125 on page 83 of the D-E NCA PRMP/FEIS for the Proposed Plan alternative include "Remove sick, physically disabled or dead domestic sheep from the band on BLM-administered lands as soon as possible after discovery." This action was also included in the D-E NCA DRMP/DEIS alternative D, in the second row on page 65 of the D-E NCA DRMP/DEIS. As another example, the actions in row 126 on page 83 of the D-E NCA PRMP/FEIS for the Proposed Plan alternative include considering changing class of livestock in allotments with moderate probability/risk. This action was also included in the D-E NCA DRMP/DEIS alternative D, in the second row on page 68. The actions included in the Proposed Plan alternative for high risk allotments, in row 128 on page 85 of the D-E NCA PRMP/FEIS, differ from the DRMP Preferred Plan alternative as follows:

- The first and second actions concerning changing class of livestock are a combination of actions considered in the D-E NCA DRMP/DEIS alternatives A and C in the second row on page 68;
- The third action, which is less restrictive in limiting band size than the Draft Preferred alternative, is consistent with the D-E NCA DRMP/DEIS alternatives A and D in the second row on page 67, which do not limit band size at the Land Use Planning level; and
- Actions not carried forward from the Draft Preferred Alternative in the second row on page 67 and the first row of page 68 of the D-E NCA DRMP/DEIS were likewise not included in Draft RMP alternatives A or D.

Therefore, the D-E NCA PRMP/FEIS alternative does not provide additional information that would result in effects outside the range of effects already discussed in the D-E NCA DRMP/DEIS, and would therefore not require supplements to either the draft or final EIS.

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 D-E NCA PRMP/FEIS.

The BLM adequately solicited for and responded to public comments on the D-E NCA DRMP/DEIS.

NEPA – Best Available Science

**Issue Number:** PP-CO-DOMINGUEZ-16-03-10

**Organization:** Rocky Mountain Bighorn Society

**Protestor:** Terry Meyers

**Issue Excerpt Text:**

Page 869, item 3b, iii – We are not aware of any study that describes distances greater than two miles from bighorn sheep range, including extensive flat terrain and interconnected areas greater than 0.5 miles in diameter, would increase barriers outside typical bighorn sheep range. There are numerous examples (some published and many unpublished) of both Rocky Mountain and desert bighorn sheep foraging movements outside of typical habitats (steep, rugged terrain) used by bighorn sheep. For example, bighorn sheep have been documented crossing flat land in valleys to reach other mountain ranges, a distance that required traveling across more than 2 miles of flat valley-bottom land. Therefore, this is an inappropriate assumption for foraging bighorn sheep.

**Issue Number:** PP-CO-DOMINGUEZ-16-03-11

**Organization:** Rocky Mountain Bighorn Society

**Protestor:** Terry Meyers

**Issue Excerpt Text:**

Page 870, Probability of Interaction Model Methods, #1 – There is no rationale for identifying why >75% equals a high risk and less than or equal to 75% is an undetermined risk. If 50% of a domestic sheep grazing allotment contains bighorn sheep and that same 50% is also used by bighorn sheep then one would surmise that this would also have a high risk value. It appears that this

part of the model is arbitrary and has no basis in science. If any part of a domestic sheep allotment overlaps occupied bighorn range, there is certainly a high risk of contact. No science supports any other conclusion.

**Issue Number:** PP-CO-DOMINGUEZ-16-03-12

**Organization:** Rocky Mountain Bighorn Society

**Protestor:** Terry Meyers

**Issue Excerpt Text:**

Page 870, Probability of Interaction Model Methods, #2 – As stated in the previous comments, the undetermined areas for physiographic barriers to movement and the compounding temporal effects that allotment usage incurs appear to be arbitrary and have no basis in science.

**Issue Number:** PP-CO-DOMINGUEZ-16-03-14

**Organization:** Rocky Mountain Bighorn Society

**Protestor:** Terry Meyers

**Issue Excerpt Text:**

Page 875, second bullet – The description in this paragraph describes that “disease perturbations can effect lamb recruitment for several years following a severe population decline resulting from a disease outbreak that rapidly affects many animals in a specific area at the same time....” The statement in its current form severely underestimates the potential long-term impacts to bighorn sheep. Cassirer et al. (2013) described severe impacts to lamb recruitment for 14 years following bighorn sheep populations becoming infected with



pneumonia. Cassirer et al. (2013) also identified all-age, secondary-all age, and adult only mortality in the 16 interconnected populations during this same period. Their data and modelling indicate that pneumonia can have greater impacts on bighorn sheep populations than previously reported.

**Issue Number:** PP-CO-DOMINGUEZ-16-03-7

**Organization:** Rocky Mountain Bighorn Society

**Protestor:** Terry Meyers

**Issue Excerpt Text:**

Desert Bighorn Sheep Disease Transmission Discussion – Pg. 270-271

In these two pages, there is a significant discussion concerning the uncertainty of the organisms and process that cause pneumonia in bighorn sheep. The analysis fails to include a discussion concerning the finding of Besser et al. (2013) which describes a polymicrobial disease process that has multi-factorial elements that have eluded researchers and managers in the past concerning pneumonic populations of bighorn sheep. They reviewed the evidence for each of the candidate primary agents with regard to causal criteria, including strength of association, temporality, plausibility, experimental evidence, and analogy. In this study, they found *Mycoplasma ovipneumoniae* in 36 of 36 pneumonic bighorn sheep populations across the western U.S. and Canada from previously stored tissue samples via serology and/or culture/PCR. PCR testing was based on improved and recently published DNA testing methodologies.

**Issue Number:** PP-CO-DOMINGUEZ-16-03-8

**Organization:** Rocky Mountain Bighorn Society

**Protestor:** Terry Meyers

**Issue Excerpt Text:**

Page 869, item 3a - The authors cited publications by Holecheck, Pieper, and Herbel (1989) and McDaniel and Tiedeman (1981) that continuous cliffs (>70% slope) and continuous steep slopes (40-70%) were a barrier to movement or were a partial barrier to domestic sheep movement. Both of these publications were discussing the use of forage resources on the landscape by domestic sheep not their movements across the landscape. These publications identified that, as the slope of the landscape increased, domestic sheep use of available forage decreased. These publications did not identify steeper slopes as barriers. McDaniel and Tiedeman (1981) further stated on page 103 of their publication the following: “Sheep used all slopes regardless of steepness but when terrain was especially rough the animals mostly trailed through the area making little use of the available forage.” This statement alone negates two important assumptions for the model (3a, i and 3a, iii) and incorrectly describes domestic sheep use of a landscape.

**Issue Number:** PP-CO-DOMINGUEZ-16-03-9

**Organization:** Rocky Mountain Bighorn Society

**Protestor:** Terry Meyers

**Issue Excerpt Text:**

Page 869, item 3b, ii – We question the validity of the 9-mile buffer employed in the model, that the presence of a bighorn sheep is extremely low, and interaction is unlikely. The authors cited the WAFWA guidelines for the use of this distance; however, the WAFWA guidelines do not recommend the

use of this buffer distance, and certainly do not support the notion that the “the presence of a bighorn sheep is extremely low, and interaction is unlikely.” Based on the literature cited, it appears that the authors cited Johnson (1995) and Johnson and Swift (2000) for the use of this distance. This study was to develop a model for evaluating habitat suitable for Rocky Mountain bighorn sheep translocations. This distance was then used to formulate past BLM policy/guidelines that stated that domestic sheep allotments should not occur within 9 miles of desert bighorn sheep habitat. The 9-mile buffer is no longer included in BLM policy because it is not supported by science.

**Issue Number:** PP-CO-DOMINGUEZ-16-06-2

**Organization:** Backcountry Hunters and Anglers

**Protestor:** Craig Grother

**Issue Excerpt Text:**

During the Draft EIS, local BLM staff developed a computer model which attempts to quantify the Probability of Interaction (PoI) between wild and domestic sheep. This model is based on several assumptions that are neither tested nor accepted by the scientific community or the Colorado Parks and Wildlife. Following the Draft EIS, the BLM utilized the west-wide Risk of Contact (RoC) model which was jointly developed by the USFS and the BLM with data provided by state wildlife agencies. This peer-reviewed model has been accepted as

**Summary:**

The Dominguez-Escalante National Conservation Area Proposed Resource Management Plan and Final Environmental Impact Statement (D-E NCA PRMP/FEIS) violates the requirements of the National Environmental Policy Act (NEPA) regarding impacts analysis because it failed to consider the best available information for:

- the foraging range for bighorn sheep;

the standard for risk assessment by both federal agencies, and in combination with Best Management Practices developed by the WAFWA Wild Sheep Working Group, represents the best available science. This has been recently reaffirmed by the BLM through issuance of Manual Direction 1730 - Management of Domestic Sheep and Goats to Sustain Wild Sheep (Release 1-1771, 3/2/2016). However, the analysis contained in the FEIS and direction within the Proposed RMP are based upon the local BLM Pol model instead of the Nationally accepted Roe model, which is in violation of BLM manual policy and direction.

**Issue Number:** PP-CO-DOMINGUEZ-16-06-4

**Organization:** Backcountry Hunters and Anglers

**Protestor:** Craig Grother

*Other Section: Special Status Species*

**Issue Excerpt Text:**

[N]or does it [the analysis] comply with BLM manual policy Section 1.6 to “use the best available science and carefully assess the stressors on wild sheep and habitat, including but not limited to the potential for disease transmission from domestic sheep or goats”, nor Section 1.8, “Guide to Management Practices”, which requires the BLM to analyze “the potential risk of wild sheep contact or interaction with domestic sheep or goats - using the best available science and information, best available models, and updated habitat maps”.

- the models and modeling assumptions contained therein, used for forecasting interaction between domestic and bighorn sheep;
- the causes and long-term impacts of pneumonia on bighorn sheep populations; and
- the analysis of domestic sheep use of a landscape.

**Response:**

The Council on Environmental Quality’s (CEQ) regulations implementing NEPA require that agencies use “high quality information” (40 CFR 1500.1(b)). NEPA regulations require the BLM to “insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements” (40 CFR 1502.24). The BLM NEPA Handbook also directs the BLM to “use the best available science to support NEPA analyses, and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM Handbook H-1790-1, p. 55). Under the BLM’s guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012). Finally, specifically related to the management of domestic sheep and goats to sustain wild sheep, the BLM is directed to “use the best available science and information and carefully assess the stressors on wild sheep and habitat, including but not limited to the potential for disease transmission from domestic sheep or goats” (BLM Manual Section 1730).

The BLM used the best available science and information to assess the potential effects that intermingling with domestic sheep has on bighorn sheep populations in the D-E NCA PRMP/FEIS. The analysis of impacts to bighorn sheep from domestic sheep grazing in this document rely on a large body of peer-reviewed and published literature, including Besser et. Al. (2013), spanning several decades. The D-E NCA PRMP/FEIS explains that while there are gaps in the knowledge base regarding the causal factors and mechanisms of bighorn sheep die-offs and disease transmission between these species, the vast majority of literature supports the potential for inter-species disease transmission, documents bighorn sheep die-offs near domestic sheep, and supports the management option of keeping these species separate to prevent disease transmission (Wild Sheep Working Group 2012; Wehausen, Kelley, and Ramey 2011). Scientists with varying viewpoints recommend that the species be kept separate until disease transmission is better understood. (D-E NCA PRMP/FEIS, Chapter 3, p. 271)

With regard to the second bullet on page 875 of the D-E NCA PRMP/FEIS that discusses the effects of disease perturbation on lamb recruitment, the paragraph goes on to explain that when bighorn sheep disease die-offs occur, there is a substantial immediate mortality (population decline) and a delayed recovery due to poor lamb recruitment that can follow the disease outbreak for many years (Besser et al. 2013). Population recovery is unlikely where interspecies contact, potentially resulting in disease transmission and subsequent disease outbreak, occurs within a few decades of each other (BLM and CPW 2015). There is no specific guidance on the number of decades required to recover from a disease outbreak; observations of herds that have experienced pneumonic events indicate it likely requires several decades. (D-E NCA PRMP/FEIS, Appendix C, p. 875)

Appendix C of the D-E NCA PRMP/FEIS explains in detail the process used for modeling the probability of Bighorn and domestic sheep association. In determining the risk of association between domestic and bighorn sheep populations, two GIS modeling efforts were conducted at a landscape-scale – Probability of Interaction (PoI) and Risk of Contact (RoC) – with parameters based on the best available science and professional judgment at the time the models were used.

The RoC model was not available when drafting the D-E NCA Draft RMP and Draft EIS (DRMP/DEIS) but was used when preparing the D-E NCA PRMP/FEIS. This model and direction provided by BLM Manual Section 1730 were considered in the preparation of the D-E NCA PRMP/FEIS once the manual was issued in March 2016. The results of both models were found to be similar, as indicated in Table C.4 on page 879 of the D-E NCA PRMP/FEIS, and therefore did not substantially change the management actions as proposed in the D-E NCA DRMP/DEIS. Additionally, the previous PoI model was included in Appendix C as documentation of the processes used for the D-E NCA PRMP.

It is important to note that the RoC model was developed in an area that was rich in bighorn sheep movement and habitat data. For its analysis of the risk of contact, the BLM had to modify the use of the RoC model based on the best available data for the local bighorn population. Given that local bighorn herd information was limited, it was agreed by the BLM and Colorado Parks and Wildlife biologists to use the default Idaho (summer) values as the best available information in the absence of more local information. Furthermore, it was acknowledged that the RoC model would overestimate foray distances due to a lack of adequate telemetry data to generate local Core Herd Home Ranges and foray probabilities. (D-E NCA PRMP/FEIS, Appendix C, pp. 871-3)

The D-E NCA PRMP/FEIS includes a bibliography (D-E NCA PRMP/FEIS, Chapter 6, p. 785), which lists information considered by the BLM in preparation of the D-E NCA PRMP/FEIS planning effort.

The BLM relied on high quality information and the best available data, specifically in determining impacts, and generally in preparation of the D-E NCA PRMP/FEIS planning effort.

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NEPA – Impacts Analysis – Livestock Grazing

**Issue Number:** PP-CO-DOMINGUEZ-16-03-13

**Organization:** Rocky Mountain Bighorn Society

**Protestor:** Terry Meyers

**Issue Excerpt Text:**

The environmental consequences section does not address stray domestic sheep that may not be located by the permittee or BLM for a number of days, weeks, or months. Straying domestic sheep are a common occurrence when grazed in rangeland conditions.

Straying may result from a number of natural factors, including steep rugged terrain, weather events, and predators separating individuals from the band. Human error with poor husbandry practices can also result in straying. These straying domestic sheep can also have deleterious impacts through the potential for disease transmission to bighorn sheep.

**Issue Number:** PP-CO-DOMINGUEZ-16-03-15

**Organization:** Rocky Mountain Bighorn Society

**Protestor:** Terry Meyers

**Issue Excerpt Text:**

Page 878, last paragraph of Comparison of Model Results - This section makes the

**Summary:**

The NEPA analysis fails to adequately analyze the potential impacts that stray domestic sheep may have on bighorn sheep.

**Response:**

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR

assumption that there are no stray domestic sheep that could occur prior to or beyond the authorized use period, but the analysis and the environmental effects section do not address this issue. It is suggested that additional discussion be included to correct this deficiency to adequately disclose impacts to desert bighorn sheep.

**Issue Number:** PP-CO-DOMINGUEZ-16-03-6

**Organization:** Rocky Mountain Bighorn Society

**Protestor:** Terry Meyers

**Issue Excerpt Text:**

There is no discussion and analysis of stray domestic sheep grazing and their potential impact on bighorn sheep. This applies to direct, indirect and cumulative impacts discussions. The cumulative impacts section also does not discuss the potential cumulative impacts of transmission of pneumonia-causing organism from domestic sheep to desert bighorn sheep (inside and outside the planning area) and Rocky Mountain bighorn sheep (occurring outside of the planning area).

1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Dominguez-Escalante National Conservation Area Proposed Resource Management Plan/Final Environmental Impact Statement (D-E NCA PRMP/FEIS). The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

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

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 broader programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The D-E NCA PRMP/FEIS acknowledges that stray domestic sheep could have implications for bighorn sheep herds, and in many rangeland settings may pose a risk of disease transmission as large as or greater than from foraging bighorn sheep (D-E NCA PRMP/FEIS, Appendix C, p. 872).

Although the RoC model does not model the risk of stray domestic sheep and the subsequent potential for contact with bighorn sheep (D-E NCA PRMP/FEIS, Appendix C, p. 872), it does analyze the probability that a bighorn sheep on foray will come in contact with a domestic sheep allotment. For the D-E NCA PRMP/FEIS, the BLM ran the model to determine the probability for all allotments. The presence or absence of domestic sheep on the allotment does not affect the model.

For allotments with some/medium/high probability of interaction between domestic and bighorn sheep, the D-E NCA PRMP/FEIS would require sweeping of allotments within 24 hours of moving domestic sheep off the allotment, in order to capture any stray domestic sheep (D-E NCA PRMP/FEIS, Chapter 2, pp. 81-85). Furthermore, the D-E NCA PRMP/FEIS is not proposing stray domestic sheep as an action. Stray domestic sheep are prohibited by 43 CFR 4140.1(b)(1)(i) for Trespass and 43 CFR 4140.1(b)(1)(ii) an unauthorized use outside of permit.

The BLM complied with NEPA’s requirement to analyze the environmental consequences/impacts of livestock grazing in the D-E NCA PRMP/FEIS planning effort.

NEPA – Impacts Analysis – Wildlife

**Issue Number:** PP-CO-DOMINGUEZ-16-03-2

**Organization:** Rocky Mountain Bighorn Society

**Protestor:** Terry Meyers

**Issue Excerpt Text:**

MS 1730 – “Management of Domestic Sheep and Goats to Sustain Wild Sheep”. This policy manual was issued by Deputy Director Steven A. Ellis on March 2, 2016, and establishes policy for the coordination and management of domestic sheep and goats to sustain wild sheep on the BLM managed lands, yet is not referenced in the RMP and EIS. Specifically, we believe the BLM violated Management Practice 2 from the policy manual (Pg. 7):

2. Where domestic sheep or goats are authorized (including trailing and for vegetation management), or where recreational sheep or goats use (e.g., pack animals) may occur, and there is a potential for inter-species contact of wild sheep and domestic sheep or goats, land use plans and/or implementation-level plans will prescribe management practices to provide effective separation. Identify in the land use plan and/or implementation-level plan if opportunities exist for allotment or pasture management changes to help achieve effective separation.

The EIS relies solely on implementation level Best Management Practices (BMP) in the Terms and Conditions to achieve effective separation. The EIS fails to discuss in detail the effectiveness of BMP to create effective separation, nor the fact that the majority of experts do not support the use of BMP to protect bighorn sheep.

**Issue Number:** PP-CO-DOMINGUEZ-16-03-3

**Organization:** Rocky Mountain Bighorn Society

**Protestor:** Terry Meyers

**Issue Excerpt Text:**

By failing to discuss this new policy manual and whether the decisions here comply with the direction in that manual, the EIS omits important information that must be disclosed to the public for a full and adequate analysis of the effects of the action.

**Issue Number:** PP-CO-DOMINGUEZ-16-03-4

**Organization:** Rocky Mountain Bighorn Society

**Protestor:** Terry Meyers

**Issue Excerpt Text:**

The EIS relies solely on the use of BMP recommendations from the Western Association of Fish and Wildlife Agencies (WAFWA) to achieve effective separation. However, the use of BMP has not been scientifically evaluated and proven to reduce the risk of contact between domestic sheep and bighorn sheep where spatial separation does not occur. There is no way to quantify the reduction of risk, and therefore no way to evaluate the overall risk to bighorn sheep under this management alternative. In fact, the WAFWA guidelines explicitly note that, “[e]ffectiveness of management practices designed to reduce risk of association are not proven and therefore should not be solely relied upon to achieve effective separation” (Pg. 15).

**Issue Number:** PP-CO-DOMINGUEZ-16-03-5

**Organization:** Rocky Mountain Bighorn Society

**Protestor:** Terry Meyers

**Issue Excerpt Text:**

David A. Jessup, Senior Wildlife Veterinarian (ret.) with the California Department of Fish and Game, summarized the overwhelming evidence that contact between bighorn sheep and domestic sheep increases disease and death in bighorns, including historical die-offs of wild bighorns after contact with domestic sheep, as well as intentional and accidental penned experiments (Declaration of David A. Jessup, Case No. 1:12-cv-469 BLW, attached). He concludes that the preponderance of evidence supports the concept that spatial separation of the species is an appropriate tool to reduce the risk of disease transmission, and that more complicated approaches are not practical or effective at this time.

Dr. Thomas Besser, faculty at the Department of Veterinary Microbiology and Pathology, College of Veterinary Medicine, and the Washington Animal Disease Diagnostic Laboratory at Washington State University, also evaluated the evidence

presented in Idaho Wool Growers et al. vs. Vilsack et al. (Case No. 1:12-cv-00469-BLW) and provided his expert opinion that “physical separation of these species is the only known way to protect bighorn sheep from this disease transmission” (Declaration of Dr. Thomas Besser, attached).

The references above affirm that the Courts, the experts, and the BLM believe that BMP are not effective at mitigating the risk of contact between bighorn sheep and domestic sheep. Therefore, the BLM should not rely on BMP to reduce the risk of contact in the D-ENCA. The EIS does not disclose these contrary views about use of BMP or discuss whether and to what extent BMP have been proven effective at mitigating risk of contact.

By failing to analyze whether BMP have proven effective at keeping the species separate and to disclose the views of many agency and outside experts that they are not effective, the EIS has not adequately assessed and disclosed the effects of the action or responded to opposing scientific viewpoints.

**Summary:**

The Dominguez-Escalante National Conservation Area Proposed Resource Management Plan and Final Environmental Impact Statement (D-E NCA PRMP/FEIS) violates the requirements of the National Environmental Policy Act (NEPA) regarding impacts analysis for wildlife because:

- there is inadequate analysis of inter-species contact and its implications for protection of bighorn sheep; and
- it fails to discuss BLM policy manual MS-1730 (Management of Domestic Sheep and Goats to Sustain Wild Sheep) and whether the decisions comply with the direction in the manual.



**Response:**

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Dominguez-Escalante National Conservation Area (D-E NCA) Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS). The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed action.

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

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 broader programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The D-E NCA PRMP/FEIS acknowledges that while there are gaps in the knowledge base regarding the causal factors and mechanisms of bighorn sheep die-offs and disease transmission between these species, the vast majority of literature supports the potential for inter-species disease transmission, documents bighorn sheep die-offs near domestic sheep, and supports the management option of keeping these species separate to prevent disease transmission. Scientists with varying viewpoints recommend that the species be kept separate until disease transmission is better understood. (D-E NCA PRMP/FEIS, Chapter 3, p. 271)

The D-E NCA PRMP/FEIS provides an extensive analysis of the impacts of inter-species contact between domestic sheep and wild sheep populations, including in Section 4.3.2.2 and Appendix C, and discusses these impacts based on the alternatives analyzed. The impacts on livestock grazing from bighorn sheep management under the Proposed Plan Alternative, for example, would be based on the management actions chosen depending on level of risk, to minimize association of domestic and wild sheep informed by the risk of association modeling as described in Appendix C.

The impacts analysis in the D-E NCA PRMP/FEIS addresses the effectiveness of the management actions proposed, stating that the under the D-E NCA Proposed Plan, association between domestic and wild sheep and resulting risk of disease transmission to bighorn sheep would still be possible (D-E NCA PRMP/FEIS, Chapter 4, p. 468). In other words, the use of the management actions proposed for separating domestic and wild sheep would not eliminate

the risk of contact between domestic and wild sheep. However, the BLM would reduce the possibility of these impacts with the goal of providing effective separation by requiring more restrictions in domestic sheep allotments. Restrictions include a shorter period of use in “high risk” allotments. If domestic sheep mitigation measures were found to be ineffective at preventing effective separation between domestic and wild sheep, then additional measures, such as removing portions of allotments or converting to class of cattle, would be considered by the BLM to reduce or eliminate risk (D-E NCA PRMP/FEIS, Chapter 4, p. 468).

Although BLM MS-1730 was released in March 2016, just a few months before the PRMP was released in July 2016, the PRMP follows the requirements of the Manual (BLM Manual Section 1730) to prescribe management practices to provide effective separation. For example, as discussed above, the D-E NCA PRMP/FEIS includes management actions, based on the best available science, to create effective separation and provides opportunities to modify practices if effective separation is not occurring. Furthermore, implementation-level plans through permitting and other means will provide additional measures to help achieve effective separation.

The BLM complied with NEPA’s requirement to analyze the environmental consequences/impacts on wildlife in the D-E NCA PRMP/FEIS planning effort.

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## NEPA – Impacts Analysis – Socioeconomics

**Issue Number:** PP-CO-DOMINGUEZ-16-02-21

**Organization:** On behalf of: Mika Ag Corporation and Escalante Ranch

**Protestor:** Kent Davis

### **Issue Excerpt Text:**

PAGE 754 & 755 IMPACTS FROM MANAGEMENT OF LIVESTOCK GRAZING

Agriculture and livestock grazing is a huge part of the Delta County economy. It is also the first and last real industry left in Delta County. The more restrictions put on agricultural grazing will lead to more sell off and development on the private lands that add to the beauty of the scenery. Changes in the way the BLM decides to manage the range has huge impacts on the industry and not a small impact the way the RMP mentions. There has obviously been little research done on the part of the BLM in this segment of the RMP.

### **Summary:**

The Dominguez-Escalante National Conservation Area Proposed Resource Management Plan and Final Environmental Impact Statement (D-E NCA PRMP/FEIS) violates NEPA because the potential economic impacts of the proposed decisions on the livestock grazing industry are not analyzed adequately.

### **Response:**

NEPA directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at potential environmental impacts of adopting the Dominguez-Escalante National Conservation Area (D-E NCA) Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS). The level of detail of the NEPA analysis must be sufficient to support reasoned conclusions by comparing the amount and the degree of change (impact) caused by the proposed action and alternatives (BLM Handbook H-1790-1, Section 6.8.1.2). The BLM need not speculate about all conceivable impacts, but it must evaluate the reasonably foreseeable significant effects of the proposed

**Issue Number:** PP-CO-DOMINGUEZ-16-07-24

**Organization:** Mika Ag Corporation and Escalante Ranch

**Protestor:** Richard Miller

### **Issue Excerpt Text:**

PAGE 754 & 755 IMPACTS FROM MANAGEMENT OF LIVESTOCK GRAZING

Agriculture and livestock grazing is a huge part of the Delta County economy. It is also the first and last real industry left in Delta County. The more restrictions put on agricultural grazing will lead to more sell off and development on the private lands that add to the beauty of the scenery. Changes in the way the BLM decides to manage the range has huge impacts on the industry and not a small impact the way the RMP mentions. There has obviously been little research done on the part of the BLM in this segment of the RMP.

action.

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

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 broader programmatic level. The analysis focuses on the direct, indirect, and cumulative impacts that could potentially result from on-the-ground changes. This analysis identifies impacts that may result in some level of change to the resources, regardless of whether that change is beneficial or adverse.

The social and economic contributions of and impacts on the livestock industry in the D-E NCA PRMP/FEIS planning area are adequately analyzed in section 4.6.3, Social and Economic Conditions. In response to public comments on the Draft RMP/Draft EIS, Appendix S was added to the D-E NCA PRMP/FEIS to further explain the methodology used in the analysis.

The BLM complied with NEPA's requirement to analyze the potential social and economic impacts of the proposed decisions on the livestock grazing industry in the D-E NCA PRMP/FEIS planning effort.

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NEPA – Impacts Analysis – Recreation

**Issue Number:** PP-CO-DOMINGUEZ-16-02-14

**Organization:** On behalf of: Mika Ag Corporation and Escalante Ranch

**Protestor:** Kent Davis

**Issue Excerpt Text:**

PAGE 626 IMPACTS FROM  
MANAGEMENT OF LIVESTOCK  
GRAZING

Under recreation, the BLM does not realize how many users come to the NCA to see the livestock, view the permittees working in a historical fashion, and farming practices in operation. None of this is taken into consideration when placing restrictions on grazing.

**Issue Number:** PP-CO-DOMINGUEZ-16-07-10

**Organization:** Mika Ag Corporation and Escalante Ranch

**Protestor:** Richard Miller

**Issue Excerpt Text:**

Page 222 Lines 629-633 WILDLIFE  
WATCHABLE AREAS

**Summary:**

The Dominguez-Escalante National Conservation Area Proposed Resource Management Plan and Final Environmental Impact Statement (D-E NCA PRMP/FEIS) analysis of recreation-related impacts is inadequate because:

- it fails to analyze the impacts of proposed decisions on recreation associated with livestock operations; and
- it fails to analyze potential increases in public safety and liability issues related to a proposed watchable wildlife area.

**Response:**

The National Environmental Policy Act (NEPA) directs that data and analyses in an EIS must be commensurate with the importance of the impact (40 CFR 1502.15), and that NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail (40 CFR 1500.1(b)). The BLM is required to take a “hard look” at

I am opposed to this designation. It is not feasible since our private property lies on both sides of the public road in the designated area. The designation will cause increased public safety and liability issues, due to increased vehicle traffic while encouraging distracted driving. These issues have not been addressed.

**Issue Number:** PP-CO-DOMINGUEZ-16-07-17

**Organization:** Mika Ag Corporation and Escalante Ranch

**Protestor:** Richard Miller

**Issue Excerpt Text:**

PAGE 626 IMPACTS FROM  
MANAGEMENT OF LIVESTOCK  
GRAZING

Under recreation, the BLM does not realize how many users come to the NCA to see the livestock, view the permittees working in a historical fashion, and farming practices in operation. None of this is taken into consideration when placing restrictions on grazing.

potential environmental impacts of adopting the D-E NCA PRMP/FEIS.

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

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

Section 4.4.1 of the D-E NCA PRMP/FEIS adequately analyzes the impacts of livestock grazing on recreational use. The D-E NCA PRMP/FEIS states on page 626 that “Livestock grazing would complement recreation management in [Recreation Management Areas] where heritage tourism would focus on the importance of historic and present day ranching, and appreciation of the historic uses of the landscape.” The analysis goes on to explain, on page 627, that since at least 90 percent of the D-E NCA would be open to livestock grazing in all alternatives (98% in Alternative A, 90% in Alternative B, 97% in Alternative C, 100% in Alternative D, and 98% in the Proposed Plan Alternative) the impacts to recreation from livestock grazing would be similar across all alternatives.

Section 4.6.2 of the D-E NCA PRMP/FEIS adequately analyzes the potential impacts of recreation on public safety, including those from the proposed watchable wildlife area designation in the Escalante Canyon. The analysis states, on page 744, that under the Proposed Plan Amendment, “There is potential for safety risks to visitors from conflicts between recreational users and in accidents, likely to be concentrated within the five areas managed as SRMAs. Increased traffic in Escalante Canyon would have the same impacts as discussed under Alternative D.” And those impacts under Alternative D can be found on page 743 of the D-E NCA PRMP/FEIS, which states, “Under Alternative D, recreation is emphasized in the project area, increasing the risk for public health and safety as access and visitor use numbers are likely to increase, particularly within the nine areas managed as SRMAs. In particular, increased visitor traffic due to SRMA and watchable wildlife area designation is a concern in Escalante Canyon, due to the narrow county-maintained road accessing this area. The BLM would work with Delta County to address traffic and visitor safety issues, thereby decreasing the risk.”

The BLM complied with NEPA’s requirement to analyze the environmental consequences/impacts related to recreation in the D-E NCA PRMP/FEIS.

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*Omnibus Public Land Management Act*

**Issue Number:** PP-CO-DOMINGUEZ-16-02-1

**Organization:** On behalf of: Mika Ag Corporation and Escalante Ranch

**Protestor:** Kent Davis

**Issue Excerpt Text:**

PAGE 12, #12 LIVESTOCK GRAZING

As part of the Wilderness Act being passed, permission was granted to construct water facilities on the wilderness.

**Issue Number:** PP-CO-DOMINGUEZ-16-02-10

**Organization:** On behalf of: Mika Ag Corporation and Escalante Ranch

**Protestor:** Kent Davis

**Issue Excerpt Text:**

PAGE 357 WATER DEVELOPMENTS  
Water developments were wrote out in the wilderness bill, and the BLM needs to follow through with the commitment to allow the construction.

**Issue Number:** PP-CO-DOMINGUEZ-16-02-12

**Organization:** On behalf of: Mika Ag Corporation and Escalante Ranch

**Protestor:** Kent Davis

**Issue Excerpt Text:**

PAGE 559 ASSUMPTI ONS  
Grazing was to maintain and not change under the Ominous [sic] Bill.

**Issue Number:** PP-CO-DOMINGUEZ-16-02-13

**Organization:** On behalf of: Mika Ag Corporation and Escalante Ranch

**Protestor:** Kent Davis

**Issue Excerpt Text:**

PAGE 565 & 566 IMPACTS FROM  
MANAGEMENT OF LIVESTOCK  
GRAZING

No wilderness should have been created if grazing was considered a negative Impact. Grazing has been "grandfathered" in the Ominous [sic] Bill.

**Issue Number:** PP-CO-DOMINGUEZ-16-02-17

**Organization:** On behalf of: Mika Ag Corporation and Escalante Ranch

**Protestor:** Kent Davis

**Issue Excerpt Text:**

PAGE 654 & 655 IMPACTS FROM  
MANAGEMENT OF WILDERNESS  
The Ominous [sic] Bill allows the construction of water developments in the wilderness. Any devise to restrict or delete them is unacceptable.

**Issue Number:** PP-CO-DOMINGUEZ-16-02-22

**Organization:** On behalf of: Mika Ag Corporation and Escalante Ranch

**Protestor:** Kent Davis

**Issue Excerpt Text:**

The water catchments were promised as part of passing the bill.

**Issue Number:** PP-CO-DOMINGUEZ-16-02-3

**Organization:** On behalf of: Mika Ag Corporation and Escalante Ranch  
**Protestor:** Kent Davis

**Issue Excerpt Text:**

PAGE 37 NO-GRAZING ALTERNATIVE  
- 2N° PARAGRAPH

Any reduction in AUMs should not be considered as any alternative at all, as normal grazing was written into the bill and supported.

**Issue Number:** PP-CO-DOMINGUEZ-16-02-4

**Organization:** On behalf of: Mika Ag Corporation and Escalante Ranch  
**Protestor:** Kent Davis

**Issue Excerpt Text:**

PAGE 50 LIVESTOCK GRAZING

The 11 livestock water developments (which also benefit wildlife) were put into the bill to be built. The RMP should not hinder the ability to do so considering it was already granted.

**Issue Number:** PP-CO-DOMINGUEZ-16-02-8

**Organization:** On behalf of: Mika Ag Corporation and Escalante Ranch  
**Protestor:** Kent Davis

**Issue Excerpt Text:**

PAGE 195 #513

In Alt A as also stated in the Wilderness Bill states: "an estimated 17 earthen reservoirs would be constructed on the portion of the Wilderness Study Area recommended suitable in the Dominguez Allotment in the Montrose District". These catchments were part of the bill and must legally be allowed to be constructed.

**Issue Number:** PP-CO-DOMINGUEZ-16-07-12

**Organization:** Mika Ag Corporation and Escalante Ranch  
**Protestor:** Richard Miller

**Issue Excerpt Text:**

PAGE 357 WATER DEVELOPMENTS

Water developments were legally approved and provided for in the wilderness bill. The BLM needs to follow through with the commitment to allow the construction.

**Issue Number:** PP-CO-DOMINGUEZ-16-07-14

**Organization:** Mika Ag Corporation and Escalante Ranch  
**Protestor:** Richard Miller

**Issue Excerpt Text:**

PAGE 559 ASSUMPTIONS

Grazing was to maintain and not change under the Ominous [sic] Bill.

**Issue Number:** PP-CO-DOMINGUEZ-16-07-15

**Organization:** Mika Ag Corporation and Escalante Ranch  
**Protestor:** Richard Miller

**Issue Excerpt Text:**

Grazing has been "grandfathered" in the Omnibus Bill.

**Issue Number:** PP-CO-DOMINGUEZ-16-07-16

**Organization:** Mika Ag Corporation and Escalante Ranch  
**Protestor:** Richard Miller

**Issue Excerpt Text:**

The water catchments were promised as part of passing the bill.



**Issue Number:** PP-CO-DOMINGUEZ-16-07-20

**Organization:** Mika Ag Corporation and Escalante Ranch

**Protestor:** Richard Miller

**Issue Excerpt Text:**

PAGE 654 & 655 IMPACTS FROM MANAGEMENT OF WILDERNESS

The Omnibus Bill allows the construction of water developments in the wilderness. Any devise to restrict or delete them is not acceptable.

**Issue Number:** PP-CO-DOMINGUEZ-16-07-25

**Organization:** Mika Ag Corporation and Escalante Ranch

**Protestor:** Richard Miller

**Issue Excerpt Text:**

PAGE 37 NO-GRAZING ALTERNATIVE - 2"0 PARAGRAPH

Any reduction in AUMs should not be considered as any alternative at all, as normal grazing was written into the bill and supported.

**Issue Number:** PP-CO-DOMINGUEZ-16-07-3

**Organization:** Mika Ag Corporation and Escalante Ranch

**Protestor:** Richard Miller

**Issue Excerpt Text:**

Any restrictions on grazing violate the 2009 Public Lands Management Act.

**Issue Number:** PP-CO-DOMINGUEZ-16-07-4

**Organization:** Mika Ag Corporation and Escalante Ranch

**Protestor:** Richard Miller

**Issue Excerpt Text:**

PAGE 12, #12 LIVESTOCK GRAZING

As part of the Wilderness Act being passed, permission was granted to construct water facilities on the wilderness regardless of recreational conflict. Grazing of sheep is protected under the 2009 Public Lands Bill. Existing water facilities and other improvements must be maintained as they were prior to the designation of the NCA.

**Issue Number:** PP-CO-DOMINGUEZ-16-07-5

**Organization:** Mika Ag Corporation and Escalante Ranch

**Protestor:** Richard Miller

**Issue Excerpt Text:**

No lands should be managed as defacto wilderness as it harms and limits the rights of grazing permittees which is illegal per the 2009 Public Lands Bill.

**Issue Number:** PP-CO-DOMINGUEZ-16-07-6

**Organization:** Mika Ag Corporation and Escalante Ranch

**Protestor:** Richard Miller

**Issue Excerpt Text:**

PAGE 50 LIVESTOCK GRAZING

The livestock water developments (which also benefit wildlife) were promised to us by BLM and Congressional leaders to be built and therefore included in the 2009 Public Lands Bill. The RMP should not hinder the ability to do so considering it was already granted by law.

**Summary:**

The Dominguez-Escalante National Conservation Area Proposed Resource Management Plan and Final Environmental Impact Statement (D-E NCA PRMP/FEIS) violates the Omnibus Public Land Management Act of 2009 (OPLMA) requirements associated with livestock grazing because:

- the BLM proposes imposing restrictions on livestock water developments that OPLMA allows; and
- the proposed restrictions on livestock grazing violate OPLMA.

**Response:**

The Omnibus Public Land Management Act of 2009 (OPLMA) (P.L. 111-11) Section 2405(b)(1) states, “Except as provided in paragraph (2), the Secretary shall issue and administer any grazing leases or permits in the [Dominguez-Escalante National] Conservation Area in accordance with the laws (including regulations) applicable to the issuance and administration of such leases and permits on other land under the jurisdiction of the Bureau of Land Management.” These laws and regulations, including the Federal Land Policy Management Act and the Taylor Grazing Act, allow the BLM to modify grazing stipulations when conflicts occur with other resources or resource uses, or when areas are not meeting land health standards and grazing is determined to be a causal factor.

The Dominguez-Escalante National Conservation Area (D-E NCA) Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS) conforms to OPLMA Section 2405(b)(1). The D-E NCA PRMP would make 206,127 acres available for livestock grazing and provide 14,349 initial AUMs of livestock forage. Both acreage and AUM numbers may be adjusted based on the results of ongoing rangeland monitoring and site-specific analysis. (D-E NCA PRMP/FEIS, Chapter 2, p. 190)

OPLMA Section 2405(b)(2) states, “The grazing of livestock in the [Dominguez Canyon] Wilderness, if established as of the date of enactment of this Act, shall be permitted to continue— (A) subject to any reasonable regulations, policies, and practices that the Secretary determines to be necessary; and (B) in accordance with— (i) section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)); and (ii) the guidelines set forth in Appendix A of the report of the Committee on Interior and Insular Affairs of the House of Representatives accompanying H.R. 2570 of the 101st Congress (H. Rept. 101–405).”

The D-E NCA PRMP/FEIS conforms to this section of OPLMA. Under the D-E NCA PRMP, existing grazing would be permitted within the Dominguez Canyon Wilderness, but the ability of permittees to construct livestock developments, conduct vegetation treatments, and utilize motor vehicles to access livestock may be limited if wilderness values would be degraded, in accordance with Section 4(d)(4) of the Wilderness Act and the Congressional grazing guidelines (D-E NCA PRMP/FEIS, Chapter 4, p. 654).

OPLMA Section 2405(h)(3)(B) states, “...the Secretary may allow construction of new livestock

watering facilities within the [Dominguez Canyon] Wilderness in accordance with — (i) section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)); and (ii) the guidelines set forth in Appendix A of the report of the Committee on Interior and Insular Affairs of the House of Representatives accompanying H.R. 2570 of the 101st Congress (H. Rept. 101–405).”

As indicated above, OPLMA Section 2405(h)(3)(B) does not have a mandatory requirement for construction of new livestock watering facilities within the Dominguez Canyon Wilderness Area; rather, it states that the Department of the Interior Secretary may allow construction of such facilities. The D-E NCA PRMP/FEIS conforms to this section of OPLMA. The -DE NCA PRMP/FEIS explains that “BLM may authorize the construction of up to 11 water developments in the Wilderness portion of the Dominguez allotment in accordance with Section 4(d)(4) of the Wilderness Act and the congressional grazing guidelines” (D-E NCA PRMP/FEIS, Chapter 2, p. 195). It then explains that there are currently 13 water developments within the Wilderness (9 in the Wagon Park allotment, 4 in the Gibbler Common allotment and none in the Dominguez Allotment ) (D-E NCA PRMP/FEIS, Chapter 3, p. 316). The BLM proposed to construct seven earthen dams within what is now the Wilderness portion of the Dominguez Allotment when an EIS was completed for the creation of the Dominguez Canyon Wilderness Study Area in 1989; however, these dams were never constructed (D-E NCA PRMP/FEIS, Chapter 3, p. 357), and OPLMA does not require BLM to construct them in the future.

The D-E NCA PRMP/FEIS conforms to the OPLMA requirements associated with livestock grazing in the NCA and the Dominguez Canyon Wilderness.

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### Special Status Species

**Issue Number:** PP-CO-DOMINGUEZ-16-03-21

**Organization:** Rocky Mountain Bighorn Society

**Protestor:** Terry Meyers

**Issue Excerpt Text:**

The RMP and EIS violate FLPMA because they do not comply with rangeland health guidelines in 43 CFR 4180.2 that require the BLM to meet state standards and guidelines. The RMP and EIS do not comply with standard 4, which requires the BLM to maintain or enhance special status species by sustaining healthy native animal communities. As a BLM sensitive species, desert bighorn sheep are a special status species.

**Issue Number:** PP-CO-DOMINGUEZ-16-03-22

**Organization:** Rocky Mountain Bighorn Society

**Protestor:** Terry Meyers

**Issue Excerpt Text:**

The RMP and EIS violate FLPMA because they do not comply with BLM policy manual MS 1730 - Management of Domestic Sheep and Goats to Sustain Wild Sheep. MS 1730 requires BLM managers to maintain effective separation between domestic sheep and wild sheep. The manual does not suggest that high risk can be mitigated through implementation of unproven BMP.

**Issue Number:** PP-CO-DOMINGUEZ-16-06-3

**Organization:** Backcountry Hunters and Anglers

**Protestor:** Craig Grother

**Issue Excerpt Text:**

The FEIS and Proposed RMP does not meet the manual Objective of “providing bureau-wide consistency to reduce the potential of contact between wild sheep and domestic sheep or goats that could result in disease transmission between the species” (1730, 1.2 Objectives, item 3).

**Issue Number:** PP-CO-DOMINGUEZ-16-06-4

**Organization:** Backcountry Hunters and Anglers

**Protestor:** Craig Grother

*Other Section: NEPA – Best Available Science*

**Issue Excerpt Text:**

...nor does it comply with BLM manual policy section 1.6 to “use the best available science and carefully assess the stressors on wild sheep and habitat, including but not limited to the potential for disease transmission from domestic sheep or goats”, or Section 1.8 Guide to Management Practices which require the BLM to analyze “the potential risk of wild sheep contact or interaction with domestic sheep or goats - using the best available science and information, best available models, and updated habitat maps”.

**Summary:**

The Dominguez-Escalante National Conservation Area Proposed Resource Management Plan and Final Environmental Impact Statement (D-E NCA PRMP/FEIS) violates the requirements of the Federal Land Policy and Management Act (FLPMA) regarding special status species because:

- it does not comply with 43 CFR 4180.2 by not complying with Colorado rangeland health standard 4, which requires BLM to maintain or enhance the habitats of special status, threatened, and endangered species by sustaining healthy, native plant and animal communities; and
- it does not comply with BLM policy manual MS-1730 (Management of Domestic Sheep and Goats to Sustain Wild Sheep), which requires BLM to maintain effective separation between domestic sheep and wild sheep and does not suggest that high risk can be mitigated through implementation of unproven best management practices.

**Response:**

A primary objective of the BLM Special Status Species policy is to initiate proactive conservation measures that reduce or eliminate threats to Bureau sensitive species to minimize the likelihood of and need for listing of the species under the Endangered Species Act (BLM Manual Section 6840.02.B). Such measures are taken through the application of Standards and Guidelines for Grazing Administration (43 CFR 4180.2) and BLM's Manual on Management of Domestic Sheep and Goats to Sustain Wild Sheep (BLM Manual Section 1730), among other laws, regulations, and policies.

The Colorado Standards for Public Land Health, at Standard 4, require that "Special status, threatened and endangered species (Federal and State), and other plants and animals officially designated by the BLM, and their habitats are maintained or enhanced by sustaining healthy, native plant and animal communities" (D-E NCA PRMP/FEIS, Appendix D, p. 885). The Dominguez-Escalante National Conservation Area (D-E NCA) Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS) complies with Standard 4 of the Colorado Standards for Public Land Health. The D-E NCA PRMP/FEIS Proposed Plan includes a host of goals, objectives, and management actions designed to protect Desert bighorn sheep and their habitat. In addition the D-E NCA PRMP/FEIS would require the BLM to monitor effectiveness and if ineffective, to take additional action at the implementation phase. Based on the science considered and impacts analysis presented, the management proposed in the D-E NCA PRMP/FEIS would also satisfy the BLM's intent to manage the public lands in a manner that avoids the need for listing of sensitive species under the Endangered Species Act.

Furthermore, although BLM Manual Section 1730 was released in March 2016, just a few months before the PRMP was released in July 2016, the PRMP follows the requirements of the manual to, among other things, use the best available science and carefully assess the stressors on wild sheep and habitat, including but not limited to the potential for disease transmission from domestic sheep or goats. These stressors are analyzed in Section 4.3.2.2 of the D-E NCA PRMP/FEIS. In addition, using the best available science, the D-E NCA PRMP/FEIS includes an extensive analysis on the impacts of inter-species contact between domestic sheep and wild sheep populations (see D-E NCA PRMP/FEIS, Appendix C, p. 867) and discusses these impacts based on the alternatives analyzed.

The impacts from livestock grazing on bighorn sheep management under the Proposed Plan Alternative would be based on the management actions chosen depending on level of risk (D-E NCA PRMP/FEIS section 2.6 rows 122-129), to minimize association of domestic and wild sheep informed by the risk of association modeling as described in Appendix C. The impacts analysis in the D-E NCA PRMP/FEIS acknowledges that the under the D-E NCA Proposed Plan, association between domestic and wild sheep and resulting risk of disease transmission to bighorn sheep would still be possible (D-E NCA PRMP/FEIS, Chapter 4, p. 468). If domestic sheep mitigation measures were found to be ineffective at preventing association between domestic and wild sheep, then additional measures, such as removing portions of allotments or converting to class of cattle, would be considered by the BLM. This approach to using both land use plan level decisions as well as implementation level decisions to provide effective separation between domestic and wild sheep is in conformance with BLM Manual Section 1730. BLM Manual Section 1730 states, on page 7, that “[w]here domestic sheep or goats are authorized (including trailing and for vegetation management), or where recreational sheep or goats use (e.g., pack animals) may occur, and there is a potential for inter-species contact of wild sheep and domestic sheep or goats, land use plans and/or implementation-level plans will prescribe management practices to provide effective separation. Identify in the land use plan and/or implementation-level plan if opportunities exist for allotment or pasture management changes to help achieve effective separation.”

The management proposed in the D-E NCA PRMP/FEIS complies with BLM’s Special Status Species policy and Standard 4 of the Colorado Standards for Public Land Health

## Livestock Grazing

**Issue Number:** PP-CO-DOMINGUEZ-16-02-16

**Organization:** On behalf of Mika Ag Corporation and Escalante Ranch

**Protestor:** Kent Davis

### Issue Excerpt Text:

Designation of a corridor 3-4 miles wide along the east boundary of the Needles District of Canyonlands National Park as closed to leasing with an adjoining corridor 3 or more miles wide as NSO equates to “buffer zone” management. This effectively extends the boundary of the park.

PAGE 651 IMPACTS FROM  
MANAGEMENT OF SPECIAL SPECIES  
AND NATURAL COMMUNITIES AND  
NON SPECIAL STATUS FISH AND  
WILDLIFE

The BLM and RMP have no right to close any part of an allotment to grazing without monitoring to determine if anything is in decline.

**Issue Number:** PP-CO-DOMINGUEZ-16-07-19

**Organization:** Mika Ag Corporation and Escalante Ranch

### **Summary:**

The proposed grazing decisions in the Dominguez-Escalante National Conservation Area Proposed Resource Management Plan and Final Environmental Impact Statement (D-E NCA PRMP/FEIS) are illegal because:

- grazing in an allotment cannot be banned without monitoring to determine if anything is in decline; and
- private property owners can move cattle between their inholdings without government interference unless, as per Colorado laws, the BLM fences the public lands.

**Protestor:** Richard Miller

### Issue Excerpt Text:

PAGE 651 IMPACTS FROM  
MANAGEMENT OF SPECIAL SPECIES  
AND NATURAL COMMUNITIES AND  
NON SPECIAL STATUS FISH AND  
WILDLIFE

The BLM and RMP have no right to close any part of an allotment to grazing without monitoring to determine if anything is in decline.

**Issue Number:** PP-CO-DOMINGUEZ-16-07-8

**Organization:** Mika Ag Corporation and Escalante Ranch

**Protestor:** Richard Miller

### Issue Excerpt Text:

This management practice is not feasible. Private stakeholders with private property have a right to move cattle between their inn holdings without government interference. Colorado law says you must fence out if you don't want livestock on your property.

**Response:**

The Federal Land Policy Management Act (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, present and potential uses of the land, relative scarcity of values, and long-term and short-term benefits, among other resource values (43 USC 1712 ). 43 CFR § 4100.0-8 provides that the BLM shall manage livestock grazing on public lands in accordance with applicable land use plans. Further, the BLM may designate lands as “available” or “unavailable” for livestock grazing, through the land use planning process, during the life of a land use plan (BLM Handbook H-1601-1, Appendix C). Other actions taken under land use plans may include imposing grazing use restrictions, limitations or other grazing management-related actions intended to achieve resource condition goals and objectives under the principles of multiple use and sustained yield, as required by FLPMA and its implementing regulations. Specifically, such actions can take the form of restricting grazing in an allotment, even in the absence of prior monitoring.

The BLM is not subject to Colorado state law; however, the BLM works carefully to coordinate with the state of Colorado to the greatest extent practicable. It is the general policy of the BLM not to fence public lands from privately owned land. The BLM fences public lands only when land use planning determines that it is in the public interest to do so. In most instances, the BLM has determined that it is not in the public interest to construct fences largely because it would be virtually impossible to do so from a practical and economic standpoint. Specifically with regard to the proposed decision on page 91, row 147, the Dominguez-Escalante National Conservation Area (D-E NCA) Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS) would allow active movement between grazing areas within the Escalante Canyon.

The D-E NCA PRMP/FEIS complies with laws and regulations pertaining to livestock grazing.

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## Water Rights

**Issue Number:** PP-CO-DOMINGUEZ-16-02-6

**Organization:** On behalf of Mika Ag Corporation and Escalante Ranch

**Protestor:** Kent Davis

### Issue Excerpt Text:

There should be no new in stream flows added. The BLM as a federal entity cannot own water rights under Colorado water law.

**Issue Number:** PP-CO-DOMINGUEZ-16-07-7

**Organization:** Mika Ag Corporation and Escalante Ranch

**Protestor:** Richard Miller

### Issue Excerpt Text:

There should be no new in stream flows added. The BLM as a federal entity cannot own water rights under Colorado water law.

### **Summary:**

The BLM's proposal to add new in-stream flows would violate Colorado water law, which prohibits the BLM, as a federal entity, from owning water rights.

### **Response:**

The water policy of the BLM is to acquire and perfect Federal reserved water rights necessary to carry out public land management purposes. If a Federal reserved water right is not available, then the BLM will acquire and perfect water rights through state law (BLM Manual Section 7250.1.2.A). The BLM does not have authority to regulate water use.

The Dominguez-Escalante National Conservation Area (D-E NCA) was designated under the Omnibus Public Land Management Act of 2009 (OPLMA), Title II, Subtitle E. OPLMA Section 2405, Management of Conservation Area and Wilderness, Part h, water rights, provides a detailed description regarding the use, allocation, or interest in water within the NCA and within the Dominguez Canyon Wilderness Area.

The D-E NCA Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS) makes no decisions regarding water rights. Rather, the D-E NCA PRMP/FEIS states that the BLM would "Make recommendations to the Colorado Water Conservation Board for appropriation of new instream flow water rights or enlargement of existing instream flows on tributary streams to the Gunnison River within the D-E NCA in cases where data show that existing stream flow protection is insufficient to support water-dependent values" (D-E NCA PRMP/FEIS, Chapter 2, p. 77, row 108).

The Dominguez-Escalante NCA PRMP/FEIS does not violate existing water rights.

### Lands with Wilderness Characteristics

**Issue Number:** PP-CO-DOMINGUEZ-16-01-2

**Organization:** Mesa County Commission

**Protestor:** Rose Pugliese

**Issue Excerpt Text:**

Section 2403 of the Omnibus Act established the boundaries for the Dominguez Canyon Wilderness, and BLM does not have the authority to expand those boundaries. The PRMP incorrectly claims that its authority to inventory lands for wilderness quality still exists under Sections 201 and 202 of FLPMA.

**Issue Number:** PP-CO-DOMINGUEZ-16-02-18

**Organization:** On behalf of Mika Ag Corporation and Escalante Ranch

**Protestor:** Kent Davis

**Issue Excerpt Text:**

These lands have never been under a wilderness study area, and cannot be considered in the sense of restricting fences, ponds, etc.

**Issue Number:** PP-CO-DOMINGUEZ-16-02-2

**Organization:** On behalf of Mika Ag Corporation and Escalante Ranch

**Protestor:** Kent Davis

**Issue Excerpt Text:**

There should not be more wilderness added to lands with wilderness characteristics since there has not been Wilderness Studies on the lands to prove they qualify.

**Issue Number:** PP-CO-DOMINGUEZ-16-02-7

**Organization:** On behalf of Mika Ag Corporation and Escalante Ranch

**Protestor:** Kent Davis

**Issue Excerpt Text:**

Cottonwood or the Dry Fork should not be managed for wilderness characteristics since there have been no wilderness study areas performed on either.

**Issue Number:** PP-CO-DOMINGUEZ-16-07-21

**Organization:** Mika Ag Corporation and Escalante Ranch

**Protestor:** Richard Miller

**Issue Excerpt Text:**

PAGE 655 IMPACTS FROM  
MANAGEMENT OF LANDS WITH  
WILDERNESS CHARACTERISTICS

These lands have never been under a wilderness study area, and cannot be considered in the sense of restricting fences, ponds, etc.

**Issue Number:** PP-CO-DOMINGUEZ-16-07-9

**Organization:** Mika Ag Corporation and Escalante Ranch

**Protestor:** Richard Miller

**Issue Excerpt Text:**

Cottonwood or the Dry Fork should not be managed for wilderness characteristics since there have been no wilderness study areas performed on either to determine if they meet wilderness standards. Defacto wilderness is not legal

**Summary:**

The BLM is not authorized to manage lands outside the Dominguez Canyon Wilderness for wilderness characteristics in the Dominguez-Escalante National Conservation Area Proposed Resource Management Plan and Final Environmental Impact Statement (D-E NCA PRMP/FEIS) because:

- Section 2403 of the Omnibus Public Land Management Act (OPLMA) of 2009 established the boundaries for the Dominguez Canyon Wilderness, and the BLM does not have the authority to expand those boundaries; and
- certain lands being proposed for wilderness characteristics protection have never been designated as wilderness study areas (WSAs) nor had wilderness studies conducted to prove their quality.

**Response:**

The BLM's general authority for managing lands to protect or enhance wilderness characteristics is derived directly from Section 202 of FLPMA, which gives the Secretary of the Interior authority to manage public lands for multiple use and sustained yield.

BLM's authority also derives from Section 201 of FLPMA, which requires the BLM to maintain on a continuing basis an inventory of all public lands and their resources and other values. The statute provides some examples but should not be construed as an exhaustive list. This inventory requirement includes maintaining information regarding wilderness characteristics. During the planning process for the Dominguez Escalante National Conservation Area (D-E NCA), the BLM completed a review of lands within the conservation area to determine whether they contained wilderness characteristics. Through this updated inventory, the BLM meets its obligations for updating and maintaining an inventory of lands with wilderness resources under FLPMA 201.

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

The BLM does not have the authority to designate new Wilderness Study Areas (WSA) or Wilderness Areas under the land use planning process. The BLM acknowledges that Section 603 of FLPMA, which required a one-time wilderness review, has expired. However, the BLM retains authority to manage certain lands to protect wilderness characteristics.

With regards to wilderness characteristics in the D-E NCA, the Omnibus Public Land Management Act of 2009 (OPLMA) (P.L. 111-11) states, at Section 2402(b), that the purposes

of the NCA are “to conserve and protect for the benefit and enjoyment of present and future generations— (1) the unique and important resources and values of the land, including the...wilderness...resources of the public land...” When considering consistency between OPLMA and FLPMA, Section 302 of the 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 shall be managed in accordance with such law.” Therefore, if management of the BLM’s multiple use and sustained yield mission conflicts with OPLMA, the language provided within OPLMA applies, as explained in BLM Manual 6220 – National Monuments, National Conservation Areas, and Similar Designations.

The BLM therefore considered the protection of wilderness characteristics in the D-E NCA Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS). The D-E NCA PRMP/FEIS responds to specific important sources in determining the management actions necessary to abide by the planning area’s outstanding qualities, which protect, conserve, and provide for public enjoyment of the D-E NCA’s important resources over time. These include the portion of OPLMA Section 2402, which established the D-E NCA and provided guidelines for its management; and the portion of OPLMA Sections 2002 and 2405, which established the National Conservation Lands and provided a vision for how the specific components of the system should be managed for the “benefit of current and future generations”. It also responds to FLPMA, including the portions establishing the concept of multiple use, including a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, and 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.

The protester's’ statement that BLM may not manage certain lands for wilderness characteristics because they have never been designated as wilderness study areas and because BLM has not conducted wilderness studies to prove their quality belies a misunderstanding of the difference between lands with wilderness characteristics and wilderness study areas (WSA). WSAs were only able to be designated under a three-step, FLPMA-mandated process that ended in the 1990s. Lands managed for wilderness characteristics are not WSAs. Rather, they are lands that are inventoried in compliance with FLPMA Section 201, as discussed above. These inventories provide the most current data, enabling the BLM to make the most current and informed decisions. Like other resources addressed in resource management plans, the BLM may propose a range of management actions to protect, to different degrees, wilderness characteristics.

The BLM properly exercised its authority to manage for lands with wilderness characteristics in the D-E NCA PRMP/FEIS and has clarified to the protesters that the lands proposed for wilderness characteristics protection are not the same—nor can they now be designated—as WSAs.

## Wild and Scenic Rivers

**Issue Number:** PP-CO-DOMINGUEZ-16-02-19

**Organization:** On behalf of Mika Ag Corporation and Escalante Ranch

**Protestor:** Kent Davis

**Issue Excerpt Text:**

All segments were found to be non-eligible/suitable, with the exception of Cottonwood Creek.

**Issue Number:** PP-CO-DOMINGUEZ-16-02-20

**Organization:** On behalf of Mika Ag Corporation and Escalante Ranch

**Protestor:** Kent Davis

**Issue Excerpt Text:**

With the exception of Cottonwood Creek, all segments were found un-eligible/suitable and cannot restrict or interfere with grazing as they are not eligible or suitable.

**Issue Number:** PP-CO-DOMINGUEZ-16-02-5

**Organization:** On behalf of Mika Ag Corporation and Escalante Ranch

**Protestor:** Kent Davis

**Issue Excerpt Text:**

Cottonwood Creek should not be listed as a Wild and Scenic River, as it is far from having the capacity of being considered a river.

### **Summary:**

The Dominguez-Escalante National Conservation Area Proposed Resource Management Plan and Final Environmental Impact Statement (D-E NCA PRMP/FEIS) is inconsistent with the Wild and Scenic Rivers Act because:

**Issue Number:** PP-CO-DOMINGUEZ-16-07-22

**Organization:** Mika Ag Corporation and Escalante Ranch

**Protestor:** Richard Miller

**Issue Excerpt Text:**

All segments were found to be not eligible or suitable, with the exception of Cottonwood Creek.

**Issue Number:** PP-CO-DOMINGUEZ-16-07-23

**Organization:** Mika Ag Corporation and Escalante Ranch

**Protestor:** Richard Miller

**Issue Excerpt Text:**

With the exception of Cottonwood Creek, all segments were found not eligible or suitable for Wild and Scenic Designation and cannot restrict or interfere with grazing as they are not eligible or suitable.

**Issue Number:** PP-CO-DOMINGUEZ-16-07-26

**Organization:** Mika Ag Corporation and Escalante Ranch

**Protestor:** Richard Miller

**Issue Excerpt Text:**

Cottonwood Creek should not be listed as a Wild and Scenic River, because it does not meet the criteria needed to qualify it as suitable.

- Cottonwood Creek does not have the capacity of being considered a river, and therefore should not be listed as a wild and scenic river; and
- with the exception of Cottonwood Creek, all other river segments within the planning area were found ineligible and unsuitable for wild and scenic designation, and therefore they cannot restrict or interfere with grazing within the NCA.

**Response:**

The Wild and Scenic Rivers (WSR) Act, as amended, and BLM policy, require that the BLM assess all river segments and determine their eligibility, classification and suitability for inclusion in the National Wild and Scenic Rivers System (NWSRS). The WSR Act, at Section 16(a), defines a river as “a flowing body of water or estuary or a section, portion, or tributary thereof, including rivers, streams, creeks, runs, kills, rills, and small lakes.”

Under the WSR Act, eligibility and classification represent an inventory of existing conditions. Eligibility is an evaluation of whether a study river is free-flowing (as defined in the WSR Act) and possesses one or more outstandingly remarkable values (ORVs). If found eligible, a candidate river is evaluated as to its current level of development (water resources projects, shoreline development, and accessibility) and a recommendation is made that it be placed into one or more of three classes—wild, scenic or recreational. The third and final step in the study process is a suitability evaluation which provides the basis for determining which eligible rivers should be recommended for addition to the NWSRS.

In accordance with the WSR Act and BLM Manual 6400, Wild and Scenic Rivers – Policy and Program Direction for Identification, Evaluation, Planning, and Management, the BLM conducted a WSR study as part of the planning process for the Dominguez-Escalante National Conservation Area (D-E NCA) Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS). Evaluation of rivers and creeks for possible inclusion in the Wild and Scenic Rivers System followed the three-step study process conducted by the BLM as outlined in Appendix O of the D-E NCA PRMP/FEIS. Appendix O also describes the many opportunities afforded the public to comment on this evaluation process.

During the first step in the WSR study process for the D-E NCA RMP/EIS, BLM determined that 10 river/creek segments within the planning area were eligible for potential designation as wild and scenic rivers, which means they are all free-flowing and each contain at least one ORV. The D-E NCA PRMP/FEIS would propose that all eligible segments other than Cottonwood Creek be determined not suitable and released from further WSR studies in the future (section 2.6, Alternatives Matrix, row 620).

In the D-E NCA PRMP/FEIS, Cottonwood Creek would be determined suitable for inclusion in the NWSRS, and would be managed in accordance with the goals and objectives of the D-E NCA PRMP/FEIS to protect and enhance the free-flowing condition, water quality, and the vegetation ORV (section 2.6, Alternatives Matrix, row 620). As mentioned above, a creek qualifies as a river under the WSR Act, and if it is free-flowing (as defined by Section 16(b) of the WSR Act) and has one or more ORVs (as listed in Section 1(b) of the Act), it is eligible as a WSR.

In regards to the analysis of impacts from management of livestock grazing, page 711 of the D-E NCA PRMP/FEIS states, “Under the Proposed Plan Alternative, livestock use would be limited to active movement only in the riparian corridors along Big and Little Dominguez Creeks, and Escalante Creek.” These limitations on livestock grazing would not be imposed to directly protect WSR ORVs, as these three creeks would not be determined suitable for inclusion in the NWSRS under the D-E NCA PRMP/FEIS. Rather, these limitations on livestock grazing would be imposed in order to protect riparian values. The D-E NCA PRMP/FEIS explains on page 700 that if “WSR protection is not provided (i.e., if segments are found not suitable and released from further study under the WSR Act), provisions may still remain to protect the identified WSR values under a combination of existing plans and policies and actions proposed under the action alternatives of this RMP. These provisions include protection of streamside and riparian habitats, riparian and aquatic wildlife, water quality, recreation, cultural and visual resources...”.

The Omnibus Public Land Management Act of 2009 (OPLMA) (P.L. 111-11) states, at Section 2402(b), that the purposes of the NCA are “to conserve and protect for the benefit and enjoyment of present and future generations— (1) the unique and important resources and values of the land, including the...riparian...resources of the public land...” Therefore, D-E NCA PRMP/FEIS proposes protections for riparian resources, including limiting livestock use to active movement between grazing areas in riparian areas along certain rivers/creeks, including Big and Little Dominguez Creeks, Dry Fork of Escalante Creek, Escalante Creek below forks, Escalante Creek above forks (D-E NCA PRMP/FEIS, Chapter 2, p. 68, row 77). In sum, BLM can restrict grazing within the NCA along certain rivers/creeks, even if they are found not suitable and released from further study under the WSR Act.

The Dominguez-Escalante NCA PRMP/FEIS conforms to the WSR Act and BLM policy, and it adequately assessed river segments for eligibility and suitability for inclusion in the NWSRS.

## FACA

**Issue Number:** PP-CO-DOMINGUEZ-16-03-16

**Organization:** Rocky Mountain Bighorn Society

**Protestor:** Terry Meyers

### **Issue Excerpt Text:**

We believe the BLM violated the Federal Advisory Council Act (FACA) during development of the draft RMP, based on comments found in Appendix U – The BLM’s Responses to Public Comments. Section U.3.9.5 on page 1283 states:

“The list of management prescriptions for management of domestic sheep in areas associated with bighorn sheep and potential risk of disease transmission were developed by BLM wildlife biologists and rangeland management specialists with input from sheep permittees within the D-E NCA and the Uncompahgre Field Office, and in cooperation with wildlife biologists from CPW. In March 2012, draft management prescriptions were reviewed with permittees and discussed. Items that posed significant hardship were modified to make them more feasible, and permittees generally agreed that they could abide by the modified prescriptions for “high,” “moderate,” and “low” probability of interaction. The Draft RMP mistakenly contained an older version of management prescriptions related to bighorn/domestic sheep interactions. However, the Proposed RMP has been updated to reflect the final changes made in collaboration with permittees and CPW in March 2012 as well as changes made as a result of public comments heard at the D-E NCA Advisory Council meeting in November 2014.”

We have several concerns with the above statement. First, it appears that the BLM convened a de facto committee comprised of BLM staff, CPW staff, and domestic sheep permittees to develop management prescriptions (BMP), with no public notice or opportunity to participate, in violation of the FACA.

**Issue Number:** PP-CO-DOMINGUEZ-16-03-17

**Organization:** Rocky Mountain Bighorn Society

**Protestor:** Terry Meyers

### **Issue Excerpt Text:**

The BLM chose to propose BMP that did not provide the greatest protection to bighorn sheep, but rather those that did not pose “significant hardship” to permittees.

**Issue Number:** PP-CO-DOMINGUEZ-16-03-19

**Organization:** Rocky Mountain Bighorn Society

**Protestor:** Terry Meyers

### **Issue Excerpt Text:**

The BLM denied the RMBS and our members the opportunity to participate in committees, in violation of FACA.

**Issue Number:** PP-CO-DOMINGUEZ-16-03-23

**Organization:** Rocky Mountain Bighorn Society

**Protestor:** Terry Meyers



**Issue Excerpt Text:**

The RMP and EIS violate FACA because they relied on findings of a non-public committee for development of management prescriptions for grazing domestic sheep in

the D-E NCA, denying the RMBS and its members the opportunity to provide input on those prescriptions.

**Summary:**

The BLM violated the Federal Advisory Council Act (FACA) during development of the Dominguez-Escalante National Conservation Area Proposed Resource Management Plan and Final Environmental Impact Statement (D-E NCA PRMP/FEIS) because the BLM convened a de facto committee including Colorado Parks and Wildlife Division (CPW) staff and livestock grazing permittees to develop management prescriptions, with no opportunity for public participation.

**Response:**

Congress passed the FACA of 1972 (5 U.S.C. App.), to reduce narrow special-interest group influence on decision-makers, to foster equal access to the decision-making process for the general public, and to control costs by preventing the establishment of unnecessary advisory committees. FACA applies whenever a statute or an agency official establishes or utilizes a committee, board, commission or similar group for the purpose of obtaining advice or recommendations on issues or policies within the agency official's responsibility.

The BLM convened two meetings with sheep permittees and wildlife biologists from the CPW. FACA does not apply to either meeting. At the meetings, the BLM shared information about proposed management actions designed to achieve effective separation of wild and domestic sheep. The BLM sought the views of the individual permittees regarding whether the proposed management actions were feasible and/or implementable on their allotments, but the BLM did not seek collective group advice or specific group recommendations regarding the proposed management actions. As a result, FACA was not implicated by the BLM convening these meetings.

Moreover, it was not necessary for the BLM to invite the general public to discuss the feasibility of proposed management actions with grazing permittees and the CPW, because these items would be discussed at a following Advisory Council meeting open to the public and announced in the Federal Register. The BLM's response to public comments, Appendix U on page 1283 of the D-E NCA PRMP/FEIS starts off by stating that the BLM discussed potential management prescriptions for the management of domestic sheep with the CPW as well as grazing permittees; however, this response to comments goes on to explain that updates made to the management prescriptions were also based on "changes made as a result of public comments heard at the D-E NCA Advisory Council meeting in November 2014" (D-E NCA PRMP/FEIS, Appendix U, pp. 1283-4). It is also important to note that the Colorado Department of Natural Resources, including representatives from the CPW, served as a cooperating agency on the D-E NCA RMP effort (D-E NCA PRMP/FEIS, Chapter 5, p. 775), and is therefore not subject to FACA .

The D-E NCA Advisory Council was chartered pursuant to the requirements of FACA, and met over 30 times between its establishment in December 2010 and the publication of the D-E NCA

PRMP/FEIS (D-E NCA PRMP/FEIS, Chapter 5, p. 775). Each of these meetings was open to the general public, and provided an opportunity for the Council to make recommendations to the BLM regarding the D-E NCA RMP. At each meeting, the public had the opportunity to provide comments during two public comment periods, and used those comment periods to point Advisory Council members to topics of interest to them (D-E NCA PRMP/FEIS, Chapter 5, p. 775). The topic of domestic sheep management in areas with bighorn sheep was raised during multiple D-E NCA Advisory Council meetings, with opportunities for public comment, as indicated in meeting minutes posted on the D-E NCA Advisory Council webpage ([http://www.blm.gov/co/st/en/nca/denca/denca\\_rmp/DENCA\\_Resource\\_Advisory\\_Council/advisory\\_council\\_minutes.html](http://www.blm.gov/co/st/en/nca/denca/denca_rmp/DENCA_Resource_Advisory_Council/advisory_council_minutes.html)).

The D-E NCA DRMP/DEIS provided an adequate range of alternatives with regards to management prescriptions related to bighorn/domestic sheep interactions, even though some intended edits were mistakenly left out due to errors in the document's version control.

In developing the D-E NCA PRMP/FEIS, the BLM adequately conformed to FACA requirements and provided adequate opportunities for public input while developing management prescriptions related to bighorn/domestic sheep interactions.

## Clarification

**Issue Number:** PP-CO-DOMINGUEZ-16-02-15

**Organization:** On Behalf of Mika Ag and Escalante Ranch

**Protestor:** Kent Davis

### **Issue Excerpt Text:**

The idea of active movement was never discussed in any of the previous RMP drafts. “Trailing” is the term used and should not have been changed without public discussion. The term “trailing” and the term “active movement” do not mean the same thing.

**Issue Number:** PP-CO-DOMINGUEZ-16-02-9

**Organization:** On Behalf of Mika Ag and Escalante Ranch

**Protestor:** Kent Davis

### **Issue Excerpt Text:**

The Dominguez allotment, when conditions were right, has used all 4800 AUMs. When conditions are right 2400 AUMs are used. The table is incorrect in showing that only up to 1200 AUMs are used,

**Issue Number:** PP-CO-DOMINGUEZ-16-05-1

**Organization:** Colorado Plateau Mountain Bike Trail Association

**Protestor:** Scott Winans

### **Issue Excerpt Text:**

The Advisory Council, local mountain Chapter members of DAMB and

### **Summary:**

The following clarifications need to be made:

- The term “trailing” and “active movement” are not synonymous;

COPMOBA all recommended an SRMA for mountain bike use in the Escalante Rim area but due to the mislabeling of the comments an ERMA for general recreation was chosen.

**Issue Number:** PP-CO-DOMINGUEZ-16-07-11

**Organization:** Mika Ag Corporation and Escalante Ranch

**Protestor:** Richard Miller

### **Issue Excerpt Text:**

The Dominguez allotment, when conditions were right have historically used all 4800 AUMs. With the right herd size and weather conditions 2400 AUMs have been used within the wilderness area. The table is incorrect in showing that only up to 1200 AUMs are used.

**Issue Number:** PP-CO-DOMINGUEZ-16-07-18

**Organization:** Mika Ag Corporation and Escalante Ranch

**Protestor:** Richard Miller

### **Issue Excerpt Text:**

The idea of active movement was never discussed in any of the previous RMP drafts. “Trailing” is the term used and should not have been changed without public discussion. The term “trailing” and the term “active movement” do not mean the same thing.

- When conditions are right 2400 AUMs are used in the Dominguez Canyon Wilderness. The Table showing only up to 1200 AUMs is incorrect;
- The Advisory Council, local mountain Chapter members of DAMB and COPMOBA all recommended an SRMA for mountain bike use in the Escalante Rim area but due to the mislabeling of the comments, an ERMA for general recreation was chosen.

**Response:**

Definitions of both “trailing” and “active movement” were added in the Dominguez-Escalante National Conservation Area Proposed Resource Management Plan and Final Environmental Impact Statement (D-E NCA PRMP/FEIS). The AUM data have been checked and the D-E NCA PRMP/FEIS reflects these facts.

With regard to the proposed Extensive Recreation Management Area (ERMA), the D-E NCA PRMP/FEIS states, on page 18, that after the release of the Draft RMP for public comment, the D-E NCA Advisory Council submitted a formal recommendation to the BLM to consider, while developing the PRMP/FEIS, keeping Sawmill Mesa an ERMA, with the area north of the Escalante Rim Road set aside as a non-motorized Special Recreation Management Area (SRMA) for mountain biking. However, as the BLM explains on page 1334 of the D-E NCA PRMP/FEIS Appendix U, Responses to Public Comments, the D-E NCA PRMP/FEIS section 4.4.1 analysis of alternatives indicates that managing the Sawmill Mesa/Wagon Park area as an ERMA, as in the Proposed Plan Alternative, would best meet visitor and community desires for a multitude of activities.

Furthermore, as indicated on page 1335 of the D-E NCA PRMP/FEIS Appendix U, in response to public comments on the D-E NCA Draft RMP/Draft EIS, the BLM added guidance to the D-E NCA Proposed Plan Alternative for constructing, when feasible with support of the local community and partners, a non-motorized 'Loop' trail system north of the Escalante Rim Road in the Sawmill Mesa RMA and outside the River Rims ACEC, through a subsequent activity-level plan (D-E NCA PRMP/FEIS, Section 2.6, Alternatives Matrix, row 446).