Gunnison County
COLORADO

Gunnison County Board of County Commissioners
Phone: (970) 641–0248 • Fax: (970) 641–3061
Email: bocc@gunnisoncounty.org • www.GunnisonCounty.org

November 1, 2016

Project Manager, Uncompahgre RMP
Bureau of Land Management
Uncompahgre Field Office
2465 South Townsend Avenue
Montrose, Colorado 81401
uformp@blm.gov

Re: Draft Resource Management Plan and Draft Environmental Impact Statement for the Uncompahgre Field Office

Greetings:

The Board of County Commissioners of Gunnison County, Colorado ("Gunnison County") appreciates the opportunity to comment, and respectfully submits these comments, regarding the "Draft Resource Management Plan and Draft Environmental Impact Statement for the Uncompahgre Field Office" ("RMP EIS").

Gunnison County appreciates that the RMP EIS presents five distinctly different alternatives. Planning issues addressed included categories such as travel management, energy development, recreation management, lands and realty/community growth and expansion, wildlife and fish, and special designations. The draft alternatives also address designation of Areas of Critical Environmental Concern and Wild and Scenic River suitability and findings.

The five alternatives can be summarized as:

Alternative A

Alternative A meets the requirement that a no-action alternative be considered. This alternative continues current management and prevailing conditions derived from existing planning documents.

Alternative B

Alternative B emphasizes improving, rehabilitating, and restoring resources and sustaining the ecological integrity of habitats of all priority plant, wildlife and fish species, while allowing appropriate development scenarios for allowable uses. It particularly targets the habitats "needed for conservation and recovery of federally listed, proposed, or candidate threatened and endangered plant and animal species." RMP EIS, at ES-8.

Alternative B.1

Alternative B.1 is a partial alternative specific to oil and gas leasing and development in the North Fork and Smith Fork drainages of the Gunnison River. This alternative would close certain areas to oil and gas leasing and would also impose development setbacks with strict surface use restrictions, including "no surface occupancy", "controlled surface use", and timing limitations in places where leasing may be allowed. RMP EIS 8.

Alternative C

Alternative C provides for a mix of users on BLM administered lands and mineral estates that would be based on "making the most of resources that target social and economic outcomes, while protecting land health." RMP EIS, at ES-8.

Alternative D

"Alternative D is the agency preferred alternative, which emphasizes balancing resources and resource use among competing human interests, land uses, and the conservation of natural and cultural resource values, while sustaining and enhancing ecological integrity across the landscape, including plant, wildlife and fish habitat. This alternative incorporates a balanced level of protection, restoration, enhancement and use of resources and services to meet ongoing programs and land uses. Goal and objectives focus on environmental, economic, and social outcomes achieved by strategically addressing demands across the landscape." RMP EIS, at ES 8-9

Gunnison County prefers the balanced approach that informs Alternative D, with the intent that the foundation, information, analysis and site specific conditions identified in Alternative B.1 will be brought forward to supplement and advise future oil and gas lease sale nominations.

Regarding livestock grazing, Gunnison County notes that Alternative D reduces allocated acres open for all classes of livestock grazing, reduces available animal units months, and closes certain acreage to livestock, as follows:

Livestock Grazing (acres)

	Alternative A	Alternative B	Alternative C	Alternative D
Allocated acres open for all	658,540	510,076	647,900	611,560

classes of livestock grazing				
Closed to all classes of livestock grazing (acres)	17,260	165,730	27,900	64,240
Available animal unit months (AUM)	38,364	29,862	37,926	36,424

RMP EIS, Table ES-3, at ES 11

Regarding fluid mineral leasing, Gunnison County notes that Alternative D maintains to a great degree the acreage open to fluid mineral leasing, but would subject a much higher portion of those areas than currently subjected to both no surface occupancy constraints and timing limitations, as follows:

Fluid Mineral Leasing (acres)

	Alternative A	Alternative B	Alternative C	Alternative D
Closed to fluid mineral leasing	44,220	219,580	44,220	50,000
Open to fluid mineral leasing	871,810	696,450	871,810	865,970
Open to leasing subject only to standard terms	229,830	5,460	141,300	119,910

and conditions (that is, not subject to NSO or controlled surface use)				
Open to leasing subject to No Surface Occupancy	720	97,960	7,620	50,580
Open to leasing subject to Timing Limitations	77,200	201,870	107,170	238,680

RMP EIS, Table ES-3, at ES 11-12

Regarding planning criteria and legislative constraints, Gunnison County notes:

This section includes as two of a number of planning criteria:

" • The planning team will work cooperatively with the State of Colorado, tribal governments, county and municipal governments..."RMP EIS, at 1-11.

" • Decisions in the RMP will strive to be compatible with existing plans and policies of adjacent local, state and federal agencies, as long as the decisions are consistent with the purposes, policies and programs of federal law, and regulations applicable to public lands." RMP EIS, at 1-11.

Gunnison County is concerned that the use of the word "adjacent"—when used to describe local government—suggests that BLM land somehow is separate from—and only neighboring to—private land in Colorado counties, and that local government regulation of uses on BLM lands is impliedly preempted. Neither statute nor case law supports this implication.

As Gunnison County noted in its correspondence dated May 16, 2016, to Mr. Neil Kornze, Director, BLM, regarding Resource Management Planning, Proposed Rules, Notice Federal Register, February 25, 2016, 81 FR 9674: "The proposal ignores that local governments have relevant police-power authority significantly more expansive than 'land use.' These authorities include protection of public health, safety and welfare, and environmental and wildlife protection considerations..." The RMP EIS terminology of "plans and polices...of local agencies" fails to take notice of the legal authorities of local governments.

As the Court of Appeals noted in Board of County Commissioners of Gunnison County v. BDS International, LLC, 159 P.3d 773,783 (Colo. App. 2006):

" Relying on the Property Clause of the United States Constitution, a panoply of federal laws concerning the use and disposition of federal lands, and case law from other jurisdictions, (Cross-Appellant) argues that the County may not implement any regulations concerning oil and gas operations on federal lands. We are not persuaded...(W)e conclude that neither the federal statutory scheme nor the case law relied upon by (Cross-Appellant) supports the conclusion that Congress intended to preempt all local regulation in the area of oil and gas operations (on federal lands)."

Thank you.

Paula Swenson, Chairperson	Phil Chamberland, Vice Chairperson	Jonathan Houck, Commissioner