AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: BLM UFO RMP Report from CAO

Action Requested: Discussion

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Federal District Court Decision regarding Acting BLM Director Pendley: BLM UFO RMP; Report from County Attorney

Fiscal Impact:

Submitted by: Lauren Hibbard **Submitter's Email Address:** lhibbard@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ○ Required ◉ Not Required

Comments:

Reveiwed by: Discharge Date: Certificate of Insurance Required

Yes ○ No ○

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 10/2/2020

○ Consent Agenda ◉ Regular Agenda ○ Worksession Time Allotted: 10 minutes

Agenda Date: 10/6/2020

Revised April 2015

Gunnison County
COLORADO

OFFICE OF THE GUNNISON COUNTY ATTORNEY
David Baumgarten – County Attorney
Matthew R. Hoyt – Deputy County Attorney

July 26, 2019

Director (210)
Attn: Protest Coordinator
P.O. Box 71383
Washington, D.C. 20224-1383

and

Director (210)
Attn: Protest Coordinator
20 M. Street SE, Room 2134 LM
Washington, D.C. 20003

U.S. Mail and Electronically Submitted
via Instructions Received:
https://www.blm.gov/programs/planning-and-nepa/public-participation/filing-a-plan-protest

Re: Gunnison County Protest to Proposed RMP/Final EIS

Dear Protest Coordinator,

I. INTRODUCTION:

The Board of County Commissioners of Gunnison County, Colorado ("Gunnison County") respectfully submits this protest ("Protest") regarding the "Proposed Resource Management Plan and Final Environmental Impact Statement for the Uncompahgre Field Office" ("Proposed RMP/Final EIS"). Pursuant to 43 § C.F.R. 1610.5-2, by this correspondence Gunnison County formally protests approval of the Proposed RMP/Final EIS.

The Proposed RMP/Final EIS contains a primary document numbering more than 800 pages, and 20 appendices numbering more than 2,600 pages, created at a cost

identified by the Bureau of Land Management ("BLM") to be $3,592,000. The Proposed RMP/Final EIS describes and analyzes five alternatives and one partial alternative for managing a planning area of approximately 3.1 million acres including 2,234,670 acres of federal mineral estate in southwestern Colorado throughout six counties, of which Gunnison County is one. The Proposed RMP/Final EIS does not intend to make any decisions for the BLM Gunnison Gorge in the Dominguez-Escalante Conservation Area, which is managed under separate RMPs. The Curecanti National Recreation Area is withdrawn to the U.S. Department of the Interior ("DOI"), Bureau of Reclamation ("BOR"), and managed by the National Park Service ("NPS") under a Memorandum of Understanding between NPS and BOR. However, while BOR's withdrawn lands within the boundary are withdrawn from appropriation under U.S. mining laws, the area is not closed to fluid minerals leasing or mineral materials disposal. (Proposed RMP/Final EIS, Vol. 1, 1-2.)

Gunnison County is exercising its opportunity to file this Protest within the required thirty (30) days of the date of the formal publication of the Proposed RMP/Final EIS.

Gunnison County identifies below its authority to bring this Protest, the analytical framework that the National Environmental Policy Act ("NEPA") and the Federal Land Policy and Management Act of 1976 ("FLPMA") require of the Proposed RMP/Final EIS, and a critical review of the Proposed RMP/Final EIS.

Gunnison County formally protests regarding the following issues and requests the BLM to consider these issues both individually and collectively:

A. Alternative E is a substantially new agency alternative that differs so dramatically from the alternatives canvassed in the Draft RMP/EIS – and which was drafted in disregard of the requirements of NEPA, FLPMA and the MOU between the BLM

and Gunnison County – as to preclude meaningful consideration by Gunnison County and the public. (See: Section V.A. below)

B. Alternative E was presented in the Proposed RMP/Final EIS without all supporting data and files being made publicly and timely available. (See: Section V.B. below)

C. The Proposed RMP/Final EIS was drafted without consideration of Gunnison County's formal planning and land use regulatory regimes. (See: Section V.C. below)

D. The Proposed RMP/Final EIS does not adequately consider the Gunnison Sage-grouse population, habitat and designation as a "threatened species." (See: Section V.D. below.)

E. The Proposed RMP/Final EIS does not adequately consider oil and gas development, its related impacts and, in particular, the newly adopted Colorado Senate Bill 19-181. (See Section V.E. below.)

F. The Proposed RMP/Final EIS does not adequately consider or provide protections for sensitive, threatened and endangered fish, including half mile riparian "no surface occupancy" ("NSO") setbacks and other important wildlife habitat mapped by Colorado Parks and Wildlife ("CPW"). (See Section V.F. below.)

G. The Proposed RMP/Final EIS does not adequately consider the consequences of climate change. (See Section V.G. below.)

H. The Proposed RMP/Final EIS does not adequately consider protection and enhancement of agriculture. (See: Section V.H. below.)

I. The Proposed RMP/Final EIS does not adequately consider management, protection and enhancement of outdoor recreation. (See Section V.I. below.)

J. The Proposed RMP/Final EIS does not adequately consider the negative consequences of allowing fluid mineral leasing in the Curecanti Unit. (See: Section V.J. below.)

K. The Proposed RMP/Final EIS does not adequately consider issues regarding coal mine methane, including capture and other mechanisms for mitigation of waste methane from existing and abandoned mines. (See: Section V.K. below.)

L. The Proposed RMP/Final EIS is based on inadequate NEPA analysis and protections for waterbodies, aquatic, wetland and hydrologic resources, source water protection areas, domestic water supplies, and cultural resources for fluid mineral leasing and surface disturbing activities. (See: Section V.L. below.)

M. Alternative E inappropriately contains lands identified for "disposal" that are within 4 miles of a Gunnison Sage-grouse lek, are adjacent to or intersecting Gunnison Sage-grouse critical habitat, or are adjacent to private land conserved for Gunnison Sage-grouse habitat, or the disposal of which would conflict with existing user access to public or private lands, or water rights and irrigation. Gunnison County further protests the fact that the BLM did not timely or publicly make identification of these lands available for the Protest period – or for the 2016 Draft RMP/Draft EIS. (See: Section V.M. below.)

N. Gunnison County protests that, regarding certain species, the BLM failed to make available the BLM Biological Assessment ("BA") and the Fish and Wildlife Service ("USFWS") Biological Opinion ("BO"); it is not clear what Alternative the BA and BO analyzed. (See: Section V.N. below.)

O. There is inadequate analysis and protections for waterbodies, aquatic, wetland and hydrologic resources, source water protection areas, domestic water supplies, and

cultural resources from the impacts of fluid mineral leasing and other surface disturbing activities. (See: Section V.O. below.)

II. GUNNISON COUNTY'S AUTHORITY TO PROTEST

Gunnison County formally participated as a "cooperating agency" during the development of the Proposed RMP/Final EIS, and has authority to protest both procedural and substantive errors in the Proposed RMP/Final EIS.

Gunnison County has additional authority to file this Protest because, in June 2009, the BLM Uncompahgre Field Office and Gunnison County executed a written "Memorandum of Understanding Between Gunnison County, Colorado and the Bureau of Land Management Uncompahgre Field Office" ("MOU") in which the BLM recognized the "compelling need to ensure that the interests of Gunnison County are accounted for and that [Gunnison County will be] meaningfully engaged in the resource management planning effort and associated EIS." The MOU also recognized that Gunnison County "has special expertise" as it relates to the development of the Proposed RMP/Final EIS. Among the areas which the MOU expressly granted Gunnison County the opportunity to participate "to the fullest extent possible" were:

- Identification of issues and concerns to be addressed throughout the planning process;
- Identification of Gunnison County programs, plans and policies potentially affected by the Proposed RMP/Final EIS;
- Identification of socio-economic data such as demographics, activities and values; and
- Review of:
    - The preliminary range of alternatives to be considered in detail;
    - Relevant portions of the "Affected Environment" section;

- Relevant portions of the "Environmental Consequences" section; and
- Relevant portions of the "Consultation and Coordination" section – including information on consistency review.

Among other obligations, the MOU required the BLM to provide to Gunnison County the opportunity to review and comment on "draft sections of the EIS for which Gunnison County provided its input due to its special expertise." A copy of the MOU is attached as "Exhibit 1."

The formal cooperating agency relationship is intended to provide a framework for intergovernmental efforts by:

- Gaining early and consistent involvement;
- Incorporating local knowledge of economic, social, and environmental conditions and land use requirements;
- Addressing intergovernmental issues and avoiding duplication of effort;
- Enhancing credibility and support for EIS's;
- Building a relationship of trust and cooperation that results in better decisions.

As the government of general jurisdiction in Gunnison County, Colorado, which jurisdiction includes land use planning and activities, and protection of the health, safety and welfare of person in Gunnison County, and the protection of the environment and wildlife in Gunnison County, the Board of County Commissioners of Gunnison County has an interest which is or may be adversely affected by the approval of the Proposed RMP/Final EIS. Relevant statutes include Colo. Rev. Stat. § 18-9-117, 29-20-101, 30-28-101 et seq., 30-11-107 et seq., 38-1-202, 42-1-102, 42-4-106, 43-1-217, 43-2-101, 43-2-201.1.

III. RELATIONSHIP AMONG THE NATIONAL ENVIRONMENTAL POLICY ACT ("NEPA"), THE FEDERAL LAND POLICY AND

MANAGEMENT ACT OF 1976 ("FLPMA"), AND THE PROPOSED RMP/FINAL EIS

The National Environmental Policy Act ("NEPA") is our "basic national charter for the protection of the environment," achieving its purpose through "action forcing procedures... requir[ing] that agencies take a hard look at environmental consequences." 40 C.F.R. § 1500.1; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (citations omitted) (emphasis added). This includes the consideration of the best available information and data, as well as disclosure of any inconsistencies with federal policies and plans. NEPA requires federal agencies to pause before committing resources to a project and consider the likely environmental impacts of the preferred course of action, as well as reasonable alternatives. *See* 42 U.S.C. § 4331(b) (congressional declaration of national environmental policy); *DOT. v. Pub. Citizen*, 541 U.S. 752, 756-57 (2004). The BLM must "rigorously explore and objectively evaluate all reasonable alternatives" to the proposed action in comparative form, so as to provide a "clear basis for choice among the options" open to the agency. 40 C.F.R. § 1502.14. At a minimum, the agency must identify and analyze its preferred alternative, as well as a null or "no action" alternative that would occur if the agency elected to maintain the current state of affairs unchanged. In addition, the agency should address all other reasonable alternatives to the proposed action. *See Colorado Envtl. Coal v. Salazar*, 875 F. Supp. 2d 1233, 1249. (D. Colo. 2012).

Through the RMP planning process, the BLM Uncompahgre Field Office is required to "estimate and display the physical, biological, economic, and social effects of implementing each alternative considered in detail. The estimation of effects shall be guided by the planning criteria and procedures implementing [NEPA]." 43 C.F.R. § 1610.4-6. Essential to any NEPA process is a robust analysis of alternatives to the proposed action. Consideration of reasonable alternatives is necessary to ensure that the

agency has before it, and takes into account, all possible approaches to, and potential environmental impacts of, a particular project. NEPA's alternatives requirement, therefore, ensures that the "most intelligent, optimally beneficial decision will ultimately be made." *Calvert Cliffs' Coordinating Comm., Inc. v. U.S. Atomic Energy Com. 146 U.S. App. D.C. 33,* 449 F.2d 1109, 1114 (1971).

"[T]he heart" of an environmental analysis under NEPA is the analysis of alternatives to the proposed project, and agencies must evaluate all reasonable alternatives to a proposed action." *Colo. Envtl. Coal.*, 185 F.3d 1162 at 1174 (10th Cir. 1999)(quoting 40 C.F.R. § 1502.14). An agency must gather "information sufficient to permit a reasoned choice of alternatives as far as environmental aspects are concerned." *Greater Yellowstone*, 359 F.3d at 1277 (citing *Colo. Envtl. Coal.*, 185 F.3d 1162 at 1174); *see also Holy Cross Wilderness Fund v. Madigan*, 960 F.2d 1515, 1528 (10th Cir. 1992). Thus, agencies must "ensure that the statement contains sufficient discussion of the relevant issues and opposing viewpoints to enable the decisionmaker to take a 'hard look' at environmental factors, and to make a reasoned decision." *Izaak Walton League of America v. Marsh,* 655 F.2d 346, 371 (D.C. Cir. 1981) (citing *Kleppe v. Sierra Club,* 427 U.S. 390, 410 n. 21 (1976)).

When determining whether an EIS analyzed sufficient alternatives to allow the BLM to take a hard look at the available options, courts apply the "rule of reason." *N.M. ex rel. Richardson v. the BLM.*, 565 F.3d 683, 709 (10th Cir. 2009) (citing *Westlands Water Dist. v. U.S. Dep't of the Interior*, 376 F.3d 853, 868 (9th Cir. 2004)).

"The reasonableness of the alternatives considered is measured against two guideposts. First, when considering agency actions taken pursuant to a statute, an alternative is reasonable only if it falls within the agency's statutory mandate." *Westlands,* 376 F.3d at 866. Second, reasonableness is judged with reference to an

agency's objectives for a particular project.[1] *See Dombeck,* 185 F.3d at 1174–75; *Simmons v. U.S. Army Corps of Eng'rs,* 120 F.3d 664, 668–69 (7th Cir. 1997); *Idaho Conservation League v. Mumma,* 956 F.2d 1508, 1520 (9th Cir. 1992).

FLPMA is the BLM's organic act and delegates authority to the agency to create and amend land use plans. FLPMA's congressional declaration states:

> "[I]t is the policy of the United States that … the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use…" 43 U.S.C. § 1701(a)(8).

The BLM is duty bound to develop and revise land use plans according to this congressional mandate, so as to "observe the principles of multiple use." 43 U.S.C. § 1712(c)(1). "Multiple use" means "a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values." 43 U.S.C. § 1702(c).

The RMP revision process, subject to NEPA and undertaken pursuant to FLPMA, requires the BLM to engage in the type of foundational land use planning that is intended to give context to the agency's multiple use mandate. Accordingly, FLPMA provides

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[1] While an agency may restrict its analysis to alternatives that suit the "basic policy objectives" of a planning action, *Seattle Audubon Soc'y v. Moseley,* 80 F.3d 1401, 1404 (9th Cir. 1996), it may do so only as long as "the statements of purpose and need drafted to guide the environmental review process ... are not unreasonably narrow," *Dombeck*, 185 F.3d at 1175.

specific criteria for land use plan revisions, requiring consideration of things such as: observation of the principles of multiple use and sustained yield; integrated consideration of physical, biological, economic, and other sciences; reliance on public lands resources and other values; consideration of present and future uses of the public lands; consideration of the relative scarcity of resource values; and weighing the long-term benefits to the public against the short-term benefits. *See* 43 U.S.C. § 1712(c)(1)-(9). Critically, FLPMA does not mandate that every use be accommodated on every piece of land; rather, delicate balancing is required. *See Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 58 (2004). "'Multiple use' requires management of the public lands and their numerous natural resources so that they can be used for economic, recreational, and scientific purposes without the infliction of permanent damage." *Public Lands Council v. Babbitt*, 167 F.3d 1287, 1290 (10th Cir. 1999) (citing 43 U.S.C. § 1702 (c)). As provided by the Tenth Circuit:

> "It is past doubt that the principle of multiple use does not require BLM to prioritize development over other uses… BLM's obligation to manage for multiple use does not mean that development *must* be allowed on [a particular piece of public land]. Development is a *possible* use, which BLM must weigh against other possible uses—including conservation to protect environmental values, which are best assessed through the NEPA process. Thus, an alternative that closes the [proposed public lands] to development does not necessarily violate the principle of multiple use, and the multiple use provision of FLPMA is not a sufficient reason to exclude more protective alternatives from consideration." *N.M. ex rel. Richardson*, 565 F.3d at 710.

Accordingly, the Proposed RMP/Final EIS revision must consider, on equal footing, the value of permanent protection and preservation of public lands in the planning area, along

with the potential value of development of those public lands. It is incumbent on the BLM Uncompahgre Field Office to evaluate these competing resources and give suitable weight to FLPMA's mandate to preserve and protect public lands in their natural condition. *See* 43 U.S.C. § 1701(a)(8). This is, after all, the agency's statutory mandate. *See N.M. ex rel. Richardson,* 565 F.3d at 709.

As stated by the BLM:

> "The purpose of the Uncompahgre RMP is to provide broad-scale direction for the management of public lands and resources administered by the BLM Uncompahgre Field Office that are within the planning area. The RMP presents desired outcomes, which are expressed in terms of goals and objectives for resource conditions and uses…BLM regulations require that existing land use plans be revised when necessary to address current resource conditions, changes in circumstances (e.g., evolving demands on resources), and new or revised national-level policy." Proposed RMP/Final EIS at 1-2.

This purpose does not take development in the planning area as a foregone conclusion. Rather, the central purpose is to "provide broad-scale direction" in light of "current resource conditions, changes in circumstances… and new or revised national-level policy." *See N.M. ex rel. Richardson,* 565 F.3d at 710-11.

FLPMA also recognizes the importance of Gunnison County's role in the planning process providing that the BLM shall:

> "…to the extent consistent with the laws governing the administration of the public, lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the State and local governments within which the lands are located…assure that consideration is

given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands…" 43 U.S.C. § 1702(c)(9).

IV. ALTERNATIVES

To facilitate review of this Protest, Gunnison County is informed of the following "alternatives" identified in the Proposed RMP/Final EIS:

Alternative A

Alternative A meets the requirement that a "no action" alternative be considered. Alternative A continues current management direction 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 for all priority plant, wildlife, and fish species, while allowing appropriate development scenarios for allowable uses (such as mineral leasing, locatable mineral development, recreation, rights-of-way (ROW), and livestock grazing). It particularly targets the habitats needed for the conservation and recovery of federally listed, proposed, or candidate threatened and endangered plant and animal species. Goals and objectives focus on environmental and social outcomes achieved by sustaining relatively unmodified physical landscapes and natural and cultural

resource values for current and future generations. This alternative would establish the greatest number of special designation areas such as areas of critical environmental concern ("ACEC")[2] and special recreation management areas, with specific measures designed to protect or enhance resource values. Appropriate and allowable uses and restrictions would be contingent on minimizing impacts on natural and cultural resources.

Alternative B.I

Alternative B.I is a partial alternative specific to oil and gas leasing and development in the North Fork and Smith Fork drainages of the Gunnison River (referred to as the North Fork), primarily in portions of Delta and Gunnison counties. Alternative B.I is a resource-based set of recommendations provided by a community group. This partial alternative is treated as a subset of Alternative B and applies only to the North Fork Alternative Plan area, referred to as the "North Fork area." The North Fork area has 63,390 acres of the BLM-administered surface estate and 159,820 acres of federal mineral estate (underlying the BLM surface and split-estate), 139,540 acres of which are federal fluid minerals. The North Fork Alternative Plan would close certain areas to oil and gas leasing and impose development setbacks with strict surface use restrictions, including no surface occupancy ("NSO"), controlled surface use ("CSU"), and timing limitations ("TLs"), in places where leasing may be allowed. Management actions and allowable uses under Alternative B not superseded by those in Alternative B.I would also apply to the North Fork area.

Alternative C

Alternative C would emphasize maximizing utilization of resources, while mitigating impacts on land health. Management direction would recognize and expand

[2] ACEC's are areas identified by the BLM in accord with the 1976 Federal Lands Policy and Management Act ("FLPMA") which established the first conservation ecology mandate for the BLM, where special management attention is needed to protect important historical, cultural, and scenic values, or fish and wildlife or other natural resources.

existing uses and accommodate new uses to the greatest extent possible. The appropriate development scenarios for allowable uses (such as mineral leasing, locatable mineral development, ROWs, renewable energy, and livestock grazing) would emphasize maximizing resource production in an environmentally responsible manner, while maintaining the basic protection needed to sustain resources.

Alternative D

Alternative D was the Agency-Preferred Alternative from the Draft RMP/EIS, dated 6/3/2016 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. Goals and objectives focus on environmental, economic, and social outcomes achieved by strategically addressing demands across the landscape.

Alternative E: Agency-Proposed RMP

Alternative E, a wholly new proposed alternative not previously available for review or comment, is the BLM's Proposed RMP. The BLM proposes that Alternative E is a reasonable combination of objectives and actions from the five alternatives (A, B, B.1., C, and D) presented in the Draft RMP/EIS. The BLM states that, among other reasons for presentation of a wholly new alternative for the first time in the Proposed RMP/Final EIS, there are certain "changes in policy and guidance ..." (Proposed RMP/Final EIS Vol. 1, 1-9.) 43 U.S.C. § 1702(1). Presumably this relates to this Department of Interior's policies to prioritize oil and gas development above other uses, despite the clear direction of FLPMA's multiple use mandate. For example, both a

March 28, 2017 Executive Order on "Promoting Energy Independence and Economic Growth" and the related March 29, 2017 Interior Secretarial Order 3349 issued to implement it seek to eliminate regulations and policies that "burden" energy development, but actually eliminate actions that would achieve the required balance that is essential to multiple use management. These policies have led to changes in agency policies, especially in managing oil and gas leasing and development, and also infuse the creation of Alternative E.

V. ISSUES PROTESTED BY GUNNISON COUNTY

A. ISSUE 1: ALTERNATIVE E IS A SUBSTANTIALLY NEW AGENCY ALTERNATIVE THAT DIFFERS SO DRAMATICALLY FROM THE ALTERNATIVES CANVASSED IN THE DRAFT RMP/EIS – AND WHICH WAS DRAFTED IN DISREGARD OF THE REQUIREMENTS OF NEPA, FLPMA AND THE MOU BETWEEN THE BLM AND GUNNISON COUNTY – AS TO PRECLUDE MEANINGFUL CONSIDERATION BY GUNNISON COUNTY AND THE PUBLIC.

The overarching – and procedurally fatal – flaw in the Proposed RMP/Final EIS is the development of a wholly new Alternative E in disregard of the requirements of NEPA and FLPMA. FLPMA requires the BLM to ensure that the views of the general public and third-party participation are adequately incorporated into the land planning process. 43 U.S.C. 1701(a)(5); 43 C.F.R. 1610.2. The disregard of NEPA and FPLMA has denied to Gunnison County the "meaningful opportunities" guaranteed by those laws to participate in the iterative BLM process that resulted in the Proposed RMP/Final EIS. "The agency (now) has an obligation to re-circulate if a proposed action ultimately differs so dramatically from the alternatives canvassed in the draft EIS as to preclude meaningful consideration by the public." *W. Org. of Res. Councils v. the BLM*, 591 F. Supp. 2d

1206, 1218 n.2 (D. Who. 2008), citing *California v. Block*, 690 f. 2d 753, 770 (9th Cir. 1982).

In addition, the creation of a wholly new Alternative E – with neither notice to Gunnison County nor an opportunity for Gunnison County to comment – is in direct contradiction to the BLM's formal recognition, in the MOU, of the "compelling need to ensure that the interests of Gunnison County are accounted for and that [Gunnison County will be] meaningfully engaged in the…resource management planning effort and associated 'EIS'" and the BLM's obligation to create the opportunity for Gunnison County to participate "to the fullest extent possible" in the development of the Proposed RMP/Final EIS. This obligation is also set out in FLPMA, in the BLM's obligation to provide for "meaningful" input and "early" notice to local governments with affected lands and regulations, like Gunnison County.

While the BLM states that "(t)he policy of the BLM is to provide opportunities for the public, various groups, other federal agencies, Native American Tribal Governments, and state and local governments to participate meaningfully and substantively by providing input and comments during the preparation of the RMP/EIS," (Proposed RMP/Final EIS, Vol. 1, ES-1), the BLM has created – in the Proposed RMP/Final EIS – a wholly new Alternative E that thwarts the opportunity for such participation.

REQUESTED REMEDY: Gunnison County asserts that the only solution to this overarching and procedurally fatal flaw in the Proposed RMP/Final EIS is to provide a full "comment" opportunity. This is also required by NEPA, based on the new alternative that has been created through the BLM's creation of Alternative E without sufficient explanation other than an oblique reference to its new policies but fundamentally changed the overall approach to management throughout the planning

area. 40 C.F.R. § 1502.9(c)(1)(i)(supplemental NEPA analysis, including an opportunity for comment, is required if an "agency makes substantial changes in the proposed action that are relevant to environmental concerns"); see also *N.M. ex rel. Richardson*, 565 F.3d at 705.

B. ISSUE 2: ALTERNATIVE E WAS PRESENTED IN THE PROPOSED RMP/FINAL EIS WITHOUT ALL SUPPORTING DATA AND FILES BEING MADE PUBLICLY AND TIMELY AVAILABLE.

The 30-day Protest period was initiated by the publication of the official Notice of Availability in the Federal Register on Friday, June 28, 2019. On that date, on the federal e-planning website[3] there were no GIS files newer than June 23, 2016. Although the Proposed RMP/Final EIS states on page ES-1 "(t)his website contains background information about the project, a public involvement and project timeline, maps and relevant GIS data of the Planning Area, and copies of public information documents released throughout the RMP/EIS process." There were no GIS data files for the new Alternative E. Further the Proposed RMP/Final EIS maps in Volume II, Appendix A are at a scale that shows the entire Uncompahgre Field Office decision area across six counties. This scale does not permit effective review of proposed disposal parcels in context. Nor does this scale allow for examination of proposed actions and the proposed Alternative E in an informed manner.

REQUESTED REMEDY: Gunnison County asserts that the only solution to this fundamental and fatal flaw is to provide a full "comment period" that is fully informed by timely provision to the public of all supporting data and files.

[3] https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&CurrentPageId=86604

C. ISSUE 3: THE PROPOSED RMP/FINAL EIS WAS DRAFTED WITHOUT CONSIDERATION OF GUNNISON COUNTY'S FORMAL PLANNING AND LAND USE REGIMES

The BLM stated that decisions on the Proposed RMP/Final EIS will strive to be compatible with existing plans and policies of local "agencies within the Planning Area" as long as the decisions are consistent with the purposes, policies, and programs of federal law, and regulations applicable to public lands. As noted above, this is also required by FLPMA, 43 U.S.C. § 1702(c)(9). The Proposed RMP/Final EIS is fatally flawed because it does not consider – much less align with – fundamental Gunnison County regulatory regimes.

The Proposed RMP/Final EIS, at Vol. 1, 1-7 through 1-8, identifies as a "related plan and authority," the Gunnison County Land Use Resolution (the "Gunnison County LUR"). But while the Gunnison County LUR is one of the County's significant land use planning and regulatory permitting mechanisms, the Proposed RMP/Final EIS neglects to mention, much less consider:

1. The Gunnison County Regulations for Special Development Projects ("1041 Regulations"). The 1041 Regulations are an exercise of Gunnison County's authority – expressly delegated by the State of Colorado – over subjects that include:

   - Development within mineral resource areas;
   - Development within natural hazard areas;
   - Development within areas around major facilities of a public utility;
   - Development within an area containing or having a significant impact upon historical, natural or archeological resources of statewide importance;
   - Efficient utilization of municipal and industrial water projects; and

- Development of recreation opportunities.

The 1041 Regulations are particularly significant because Colorado S.B. 19-181 – which was adopted earlier in 2019 – grants local governments additional authorities regarding siting and development of oil and gas resources.

2. The Gunnison County Regulations for Oil and Gas Operations.

Pursuant to these regulations, Gunnison County considers potential impacts both on and off federal lands. The U.S. Forest Service has explicitly recognized the efficacy of the regulations on federal lands. Subjects considered by these regulations include:

- Ownership of surface;
- Ownership of minerals;
- Characteristics of and current condition of the operation location;
- Topographic features;
- Roads;
- Easements;
- Boundaries of districts, municipalities, or subdivisions;
- Operation plans;
- Water bodies and water structures;
- Access and transportation routes;
- Potential impacts on wildlife and wildlife habitat;
- Potential impacts on vegetation;
- Emergency response;
- Potential impacts on drinking water supplies;
- Municipal watersheds;
- Potential impacts on water quality;

- Waste management;
- Hydraulic fracturing fluids disposal and reporting; and
- Wildfire hazards.

3. The Gunnison County Coal Resource Special Area Coal Mining Regulations. These regulations have direct import for the North Fork Valley of the Gunnison River.

REQUESTED REMEDY: Gunnison County asserts that the only solution to the BLM's lack of consideration of the formal Gunnison County planning and land use regulations is to provide a full "comment period." As discussed above, a new opportunity for input is also required by NEPA, based on the new alternative that has been created through the BLM's creation of Alternative E without sufficient explanation other than an oblique reference to its new policies but fundamentally changes the management approach throughout the planning area in a manner that is inconsistent with Gunnison County's regulations and policies. 40 C.F.R. § 1502.9(c)(1)(i)(supplemental NEPA analysis, including an opportunity for comment, is required if an "agency makes substantial changes in the proposed action that are relevant to environmental concerns"); see also *N.M. ex rel Richardson*, 565 F.3d at 705.

D. ISSUE 4: THE PROPOSED RMP/FINAL EIS DOES NOT ADEQUATELY CONSIDER THE GUNNISON SAGE-GROUSE POPULATION, HABITAT AND DESIGNATION AS A "THREATENED SPECIES"

The Proposed RMP/Final EIS is fatally deficient in its consideration of Gunnison Sage-grouse ("GuSG"). The following are significant data not fully considered in the Proposed RMP/ Final EIS:

- The BLM Uncompahgre Field Office Proposed RMP/Final EIS was published in the Federal Register on 6/28/19, over 6 months after the Biological Opinion

("BO") was signed. The Proposed RMP/Final EIS does not address whether – or how - the BO is still applicable, particularly in the context of Alternative E, which appears to be a very new construct in the Proposed RMP/Final EIS.

- The U.S. Fish and Wildlife Service ("USFWS") received the request for a BO from the BLM on July 31, 2018, which included a BA, which Gunnison County has not seen, prepared by the BLM.
- The BLM determined in their BA that the Proposed RMP/Final EIS may affect, and is likely to adversely affect, the GuSG. The USFWS agreed with this determination.
- NSO's are limited to oil and gas and do not cover all rare earth or uranium deposits.
- The "action area" was determined to have the following occupied and unoccupied critical habitat areas:

- **Table 1. GuSG Habitat on the Uncompahgre**[4]

Field Office Occupied Critical Habitat

Population	BLM Surface	Split Estate	Total
CSCSM	4,526	8,332	12,858
Crawford	0	0	0
Gunnison	0	0	0
San Miguel	821	6,790	7,610
Total	**5,347**	**15,122**	**20,469**

Unoccupied Critical Habitat

Population	BLM Surface	Split Estate	Total
CSCSM	3,888	4,375	8,262
Crawford	2,727	4,159	6,887
Gunnison	326	21	347

[4] The source for this table was the USFWS's BO. This information is not available in the Proposed RMP/Final EIS. Because no GIS information has been provided, Gunnison County cannot verify the accuracy of this table.

San Miguel	0	1,228	1,228
Total	**6,941**	**9,784**	**16,725**

- There is an apparent discrepancy between Table 1 and mapped occupied habitat in the Crawford population. There are at least 5 known leks, all located on the BLM administered lands in the Crawford population. The BO states that "most of this population falls within the Gunnison Gorge National Conservation Area RMP," but GIS mapping indicates that not all does, and Gunnison County is aware that the BLM wildlife biologist from the BLM Uncompahgre Field Office has long been engaged in GuSG conservation activities. Therefore, the accuracy of this table is questionable, and it likely originated from the BLM's BA for the other populations.
- The BLM evaluated GuSG habitat in the Cerro Summit-Cimarron and Sims Mesa satellite populations in 2015 and 2016 using their Habitat Assessment Framework ("HAF") methodology. The data collection protocols for the HAF differ significantly from the data collection protocols used to develop the GuSG Rangewide Conservation Plan ("RCP") Habitat Guidelines. Gunnison County is unaware of any methodology that crosswalks the two protocols, and therefore assert that any "habitat suitability" assessments made by the BLM are, at minimum, questionable, and certainly not comparable with the RCP GuSG Habitat Guidelines.
- In their BA, the BLM assumed, among a number of other things, that permitted activities would be mitigated to ensure that threatened or endangered species would not be jeopardized, as that term is defined in the ESA, on a project specific basis or at a cumulative level. Mitigation, defined as alleviation or lessening of possible adverse effects on a resource by applying appropriate protective

measures or adequate scientific study. Mitigation may be achieved by avoidance, minimization, rectification, reduction, and compensation. (Proposed RMP/Final EIS, Volume II, glossary 23). Though defined, there is no GuSG mitigation plan in the Proposed RMP/Final EIS, meaning that by definition, each and every project requiring mitigation would have a unique, one-off mitigation plan. Of particular note is that during the now-aborted development of the BLM Rangewide GuSG RMP/EIS, a mitigation plan was found to be virtually impossible to develop and adequately address lost habitat, direct impacts to the species and importantly, longevity of the mitigation (how long would it be required to "last", who would monitor it, and if the mitigation failed, what would be the outcome, as the impacts to the species likely had already occurred.[5])

- The BLM stipulations under the Proposed RMP/Final EIS could be excepted, modified or waived by the BLM authorized officer, as described and defined in Appendix B of the Final EIS. Though exceptions are apparently rare in the BLM Uncompahgre Field Office, the USFWS determined they could not rely on this assumption for their BO analysis.
- The USFWS addressed the following impacts to GuSG in their BO:
    - Roads
        - Habitat fragmentation
        - Avoidance
        - Increased human access
        - Exotic plant invasions
    - Powerlines

[5] In their BO, the USFWS appears to believe the solution to the uncertainties of mitigation is "adaptive management" without further definition. Gunnison County asserts that this is not a sufficient solution.

        - Habitat fragmentation
        - Collision and electrocution risk
        - Reduced lek recruitment
        - Predator perches
        - Reduced habitat use
    - Livestock grazing
        - Decreased vegetation available for concealment
        - Soil compaction (causing vegetation changes)
        - Increased erosion
        - Exotic plant species increases
        - Trampling of nests/nest abandonment
        - Negative aspects of certain types of water developments (primarily WNV)
        - Positive aspects of livestock grazing/benefits to the habitat
    - Fences
        - Collisions
        - Raptor and corvid perches
        - Predator corridors
        - Incursion of exotic species
        - Habitat decline
        - Positive aspects of fences, as related to grazing management
    - Vegetation management
        - Short term negative impacts post-treatment
        - Long term positive impacts
    - Recreation and travel management

- Roads and trails
    - Habitat loss
    - Degradation
    - Fragmentation
    - Human activity
    - Proposed RMP "eliminates cross-country use in most of the planning area…"
    - Beneficial aspects to travel restrictions
    - Difficulty of enforcement of travel management restrictions
    - Reduction of open, cross-country motorized use would be allowed on 3,950 acres within the action area
    - Areas closed to motorized travel would be reduced compared to current management (Alternative A) (880 acres, 93 percent fewer acres than under current management). Note: Gunnison County is certain that USFWS was reviewing Alternative E and, therefore, this conclusion may not be applicable.
    - Areas closed to motorized and mechanized travel would increase by 30 percent more than current management.
    - Areas limited to travel on designated routes would increase 4 times from Alternative A.
    - USFWS determined that overall, the Proposed RMP/Final EIS would reduce the potential for effects on GuSG associated with motorized and mechanized travel to a greater extent than current management (Alternative A).

- Lands and Realty
  - ROW facilities may result in habitat loss, fragmentation and degradation
    - Pipelines
    - Roads
    - Transmission lines
  - USFWS determined that they "…believe that the revised RMP directs the BLM to reduce the negative impacts of such request and is unlikely to result in significant losses of GuSG habitat within the planning area." Because the term "significant" remains undefined in this context, this conclusion is valid.
- Energy and Mineral Development
  - NSO stipulation within occupied GuSG habitat will limit effects to approximately 20,470 acres of occupied critical habitat and 2,800 acres of unoccupied critical habitat.
  - CSU stipulation on approximately 13,930 acres of unoccupied critical habitat, which could avoid or eliminate effects.
  - The use of exceptions, modifications and waivers within GuSG critical habitat MAY require re-initiation of Section 7 consultation. *Note: There are no criteria defined to determine who makes this decision nor how it is made.*
  - The following is a table of additional, specific concerns:

Page #	Issue/Analysis
2-38	General – designated occupied habitat of known populations of federally threatened and endangered species as ROW avoidance

	Analysis: Further restriction specific to GuSG lek habitat (1,330 acres, determined by the known lek area, plus a 0.6 mile radius) as ROW exclusion and critical habitat as ROW avoidance (same as above).
2-38	General - close all federally threatened, endangered and proposed plant species' occupied habitat to mineral materials disposal and non-energy solid mineral leasing.
	Analysis: Affects the skiff milkvetch in Gunnison County
T-113	Stipulation TL-16. GuSG winter habitat. Prohibits surface use and surface disturbing and disruptive activities in mapped important GuSG winter habitat, including but not limited to, all USFWS designated critical habitat and areas also defined by the BLM, USFWS and CPW, from Dec. 1 to March 15 (Appendix B; Figure 2-92, Appendix A)
	Analysis: It is not clear whether this stipulation applies to only "important" (unclear who and how this is defined) winter habitat, or all designated critical habitat and/or areas defined by the BLM, USFWS and CPW as winter habitat or "all" habitat.
T-114	Stipulation TL -18: Addresses GuSG breeding habitat (lek and nesting) and GuSG critical habitat. Prohibits surface use AND surface disturbing AND disruptive activities in USFWS designated OCCUPIED critical habitat, nesting habitat mapped and defined by the BLM, USFWS and CPW and within 4.0 miles of ACTIVE GuSG leks (if nesting habitat is not mapped) from March 1 to July 15 (Appendix B: Figure 2-92, Appendix A.)
	Analysis: Extends surface use, surface disturbing, surface disruptive activities to USFWS designated occupied critical habitat, mapped nesting habitat and within 4.0 miles of active GuSG leks if nesting habitat is not mapped from March 1 to July 15. It is not clear if the prohibitions are identified singly, or if they all have to occur to be prohibited. It is also not clear if the nesting habitat mapping has to be accomplished by all three agencies separately, or if the other two agencies can agree with determinations made by the third. There is not a definition of an "active" GuSG lek. There appears to be a discrepancy between the written description of this stipulation and the mapped area impacted as depicted in Figure 2-92.
T-114	Stipulation NSO-31/SSR-32: GuSG breeding habitat. Prohibits surface occupancy and use and applies SSR restrictions in USFWS GuSG OCCUPIED critical habitat and non-designated occupied breeding habitat as mapped and defined by the BLM, USFWS, and CPW (including federal minerals). Appendix B; Figures 2-91 and 2-93, Appendix A.
	Analysis: Appears to place a no-surface occupancy stipulation, with no timing limitation, on all USFWS designated critical habitat that is also mapped as occupied habitat. Further, it appears to extend that restriction to "non-designated" (outside of designated critical habitat) occupied breeding habitat (leks, nesting, early brood rearing. The written stipulation does not appear to agree with the mapped areas in Figures 2-91 and 2-93. The applicable figure indicates it is for "fluid minerals", so it likely does not apply to other minerals (hard rock, gravel, etc.)
T-116	Stipulation CSU-29/SSR-34: Gunnison sage-grouse potential habitat. Surface occupancy or use may be restricted and SSR restrictions applied in USFWS GuSG UNOCCUPIED critical habitat or to protect GuSG potentials habitats as mapped and defined by the BLM, USFWS and CPW (including ALL federal minerals). Identifies conservation measures that may be imposed as necessary. (Appendix B; Figures 2-91 and 2-93, Appendix A)
	Analysis: Allows but does not require (may be restricted) restriction of surface occupancy and use in unoccupied critical habitat and potential habitats identified by the BLM, USFWS and CPW outside of designated, unoccupied critical habitat. It then describes "conservation measures" that appear to be more appropriate in occupied

	habitat (relocation of operations from identified habitat features critical to brood rearing (only occurs in occupied habitat)
T-117	Action: manage GuSG lek habitat (lek area plus 0.6-mile radius (1,330 acres) as ROW avoidance.
	Analysis: Appears to exclude ROW's from lek areas and a buffer of 0.6 miles. As lek areas are not circular, indicating a radius does not make sense. It should read "lek area plus a 0.6-mile buffer). If it does not the entirety of the lek use area will not be adequately protected in most cases.
T-99; 4-148	NSO-22/SSR-21: PLANT ESA listed species. Prohibits surface occupancy and use applies SSR restrictions with a 200-meter buffer of the edge of habitat of federally listed, proposed or candidate plant species.
	This stipulation only applies to plant species. It would seem to be appropriate for GuSG.
T-424	Line #517, Table T-1. Action: Consider other lands suitable for disposal by any method...
	The criteria specific to special status species is: "Are not parcels containing or integral to *significant* habitat for species status species; these parcels may be disposed of only if the habitat for the species of concern can be maintained and if USFWS and CPW concur." The Proposed RMP fails to define or quantify "significant."

- USFWS' "biological opinion" is that implementation of the Proposed RMP/Final EIS, as proposed, is not likely to jeopardize the continued existence of the GuSG. The USFWS' rationale:
    - "Implementation of the RMP, including the conservation measures and use stipulations, will reduce multiple threats to the GuSG and could restore the species to formerly occupied range. We anticipate some low level of adverse effects to the GuSG, but the majority of these effects would be widely distributed across GuSG habitat in the UFO and likely be of low intensity and severity. Any subsequent actions implemented under the revised plan that may affect the GuSG or critical habitat must go through separate Section 7 consultation. *Note: Gunnison County is now certain that the USFWS did not base this upon the now published Proposed RMP/Final EIS, which includes Alternative E.*
    - USFWS provided a list of "additional recommendations"

- Any activity that results in the permanent loss of proposed critical habitat should include mitigation of (to) offset such losses.
    - It is unclear whether this recommendation was followed by the BLM
- Recreation – Only allow special recreation permits that have neutral or beneficial affects to occupied habitat areas.
    - It is unclear whether this recommendation was followed by the BLM.
- Lands/Realty – Retain public ownership of proposed critical habitat. Subject to valid existing rights, co-locate new rights-of-way within existing ROW's.
    - USFWS only addresses proposed critical habitat. The BLM appears to have addressed designated occupied critical and actual habitat in Alternative E.
    - It does not appear that co-locating is addressed in the Proposed RMP/Final EIS.
- Range Management – Within proposed critical habitat, incorporate GuSG habitat objectives and management considerations in all the BLM grazing allotments through allotment management plans or permits renewals. Work cooperatively on integrated ranch planning within GuSG habitat so operations with deeded/BLM allotments can be planned as single units. Design any new structural range improvements and location of supplements (i.e. salt or protein

blocks) to conserve, enhance, or restore GuSG habitat through an improved grazing management system relative to GuSG objectives. When establishing or modifying water developments, use best management practices to mitigate potential impacts from WNV.

    - Incorporation of the Proposed RMP/Final EIS GuSG habitat objectives (guidelines) and management considerations into the BLM allotments has a positive impact in the Gunnison Basin for a number of years. The BLM Proposed RMP/Final EIS seems to support the incorporation but only in proposed critical habitats.
    - Historically, the Gunnison Basin GuSG CCA has successfully integrated ranch planning into the Gunnison Basin.
  - Fluid Minerals – There is a useful criterion developed for the Northwest Colorado Greater Sage-grouse RMPA for consideration of waivers, exceptions and modifications within NSO designated areas.
    - Gunnison County can find no indication that the BLM incorporated any of these criteria in the Proposed RMP/Final EIS
  - Alternative E appears to allow the BLM to privatize – that is, dispose of – GSG critical habitat

- P. 21 Objective FW-OBJ-IVSP-02:

Treatment of cheatgrass in Gunnison Sage-grouse designated critical habitat is listed as a priority. Gunnison County suggests that prioritization of cheatgrass treatment across ownership/land manager boundaries (private, BLM, State of Colorado, etc.) be noted as the highest priority to achieve order of magnitude effectiveness and minimize/avoid re-infestation.

- P. 29 Desired Conditions FW-DC-SPEC-29

  Gunnison County cautions the USFS that the accurate use of the GuSG structural habitat guidelines in the GuSG Rangewide Conservation Plan relies on utilization of sampling protocol that established the guidelines. Using a different sampling protocol then trying to "cross-walk" the data will result in erroneous conclusions regarding meeting/not meeting the habitat guidelines.

- P. 30 Objectives FW-OBJ-SPEC-31

  Because of the known impacts that off-leash pets have on Gunnison Sage-grouse, Gunnison County recommends a stronger approach to this issue. We recommend that it be a requirement, not a request, that all pets within Gunnison Sage-grouse habitat be leashed or under immediate command of the owner/public.

- P. 30 Objectives FW-OBJ-SPEC-32

  Fence marking near leks needs to be approached with caution; with consideration given to potential auditory or visual distractions which could impact lek attendance, breeding success, etc.

- P. 30 Objectives FW-OBJ-SPEC-33

  Winter travel is changing in the Gunnison Basin. Mechanical means, such as tracked ATVs, make areas normally not accessible to snowmobiles accessible for both individual users and outfitters. Gunnison County requests, at minimum, a

provision for future regulation of over-the-snow travel within Gunnison Sage-grouse critical habitat.

- P. 30 Objectives FW-GDL-SPEC-34

  Gunnison County recommends that this guideline be amended to read "…surface disturbing activities should not be permitted within Tier 1 habitat as defined by the Gunnison Basin Gunnison Sage-grouse Habitat Prioritization Tool (HPT) unless no feasible alternative is available AND that NO surface disturbing activities should be permitted within 0.6 miles of a lek."

- P. 80 Monitoring Question/Indicators

  Gunnison County asks that the USFS clearly identify and define Gunnison Sage-grouse "Core Habitat," to prevent mis-interpretation as the Proposed RMP/Final EIS is implemented.

- FW-DC-SPEC-29

  Forb and grass production and ground cover provide not only "residual" vegetation suitable for nesting cover, but provide hiding cover for all life stages. New vegetation provides food, directly and as a substrate of insects. FW-DC-SPEC-29 focuses only on residual cover. Gunnison County recommends that the SPEC focus not only on residual cover, but on new vegetative cover to address the life stage needs of the Gunnison Sage-grouse.

- Even though the Gunnison Sage-grouse was listed as threatened under the ESA between the Draft RMP/Draft EIS and the Proposed RMP/Final EIS, the BLM has not addressed this listing, and its consequences, sufficiently in the Proposed RMP/Final EIS. Alternative E has reduced the protection for Gunnison Sage-grouse critical habitat from a right-of-way exclusion to right-of-way avoidance, reducing the certainty of protection. Proposed RMP/Final EIS, pp.2-38 - 2-39.

Alternative E also reduced protection from wind, solar and hydropower developments in Gunnison Sage-grouse breeding, nesting and critical habitat from exclusion to avoidance, removing the certainty that habitat will be safeguarded. Proposed RMP, p. 2-113. In addition, the NSO stipulations that apply to Gunnison Sage-grouse habitat are subject to "standard" waiver, exception and modification, meaning they can be changed at the discretion of the BLM authorized officer without additional specific criteria being applied. Proposed RMP/Final EIS, p. B-32. This approach is significantly less protective than the management being applied to the Greater Sage-grouse, even after amendments completed in 2019 that were focused on increasing energy development and even though that species is not listed as threatened or endangered under the ESA. Under the 2019 Northwest Colorado Greater Sage-grouse Amendment, waivers, exceptions, or modifications of NSO stipulations may only be applied if specific criteria are met and then the State of Colorado must be consulted and agree. (Northwest Colorado Greater Sage-grouse Amendment, pp. G-4 – G-7.) This management is insufficiently protective of the Gunnison Sage-grouse, is inconsistent with Gunnison County's approach and will risk the current threatened status of the species being upgraded to endangered, which will impact Gunnison County. Alternative E cannot be supported. The BLM should return to more protective management, as well as adopting an approach that requires the input of the State of Colorado, for waivers, exception or modification of lease stipulations, similar to that used for the Greater Sage-grouse.

REQUESTED REMEDY: The numerous, significant and fundamental errors and omissions regarding Gunnison Sage-grouse require correction through a full "comment" opportunity.

E. ISSUE 5: THE PROPOSED RMP/DRAFT EIS DOES NOT ADEQUATELY CONSIDER OIL AND GAS DEVELOPMENT, ITS RELATED IMPACTS AND IN PARTICULAR, NEWLY ADOPTED COLORADO SENATE BILL 19-181.

- The BLM states it will "recognize the State's responsibility for permitting related to oil and gas activities and in regulating air quality impacts." (Proposed RMP/Final EIS, Vol. 1, 1-5).
- However, Alternative E does not address Colorado S.B. 19-181, which was made law between the time of the Draft RMP/EIS and the Proposed RMP/Final EIS. S.B. 19-181 prioritizes public health, welfare and safety, the environment, and wildlife.[6] In certain circumstances, this may constrain or even preclude oil and gas exploration and development. In addition, S.B. 19-181 provides local government jurisdictions the ability to develop oil and gas land use regulations that could be more restrictive than the State's permitting requirements. As the BLM is likely aware, Gunnison County has the authority to protect and promote the public health, welfare and safety of the people of Gunnison County, and the authority to regulate land use planning and quality and protection of the environment in the County. To this end, Gunnison County has adopted regulations to exercise such authorities including the review, approval or denial of proposed activities and uses of land and natural resources including oil and gas. It is critical for the BLM to include compliance with all Gunnison County

[6] Appendix IV, R-329 contains the following: "Further, the Colorado Oil and Gas Conservation Commission is the primary agency charged with fostering the responsible development of Colorado's oil and gas natural resources in a manner consistent with the protection of public health, safety, and welfare, including the environment and wildlife resources. Although the BLM does have standards and regulations for mineral extraction and development, the BLM requires that all operators be in full compliance with standards and measures set by the Colorado Oil and Gas Conservation Commission when conducting operations on public lands." The mission of the Commission, as identified above, is consistent with the pre-SB-19-181 role but not the current commission mandate.

regulations regarding oil and gas exploration, development, operation and upstream activities as a mandatory element of the Proposed RMP/Final EIS. In addition, the BLM should include a requirement that any lessee comply with any other land use or environmental regulation imposed by Gunnison County in any way relates to operations on an oil and gas leasehold, including but not limited to water quality, public roads, emergency response, wildlife concerns, agricultural uses and recreation uses.

- Additionally, Alternative E does not provide for adequate "no leasing" and "no surface occupancy" set-backs from residences, steep slopes, geologic hazards, roads and other public use areas.
- Alternative E also does not provide adequate protections for waterbodies and water supply systems. At a minimum, the Proposed RMP/Final EIS must include:

  NSO stipulations as described in Alternative B/B.I requiring minimum setbacks from water bodies and water supply systems, and in areas with highly erodible and saline soils. The Gunnison County Regulations for Oil and Gas Operations require certain mandatory setbacks for such operations in Gunnison County which ought to be adopted in the Proposed RMP/Final EIS at least for Gunnison County, and which can be a model for the Proposed RMP/Final EIS.

- In particular, the Proposed RMP/Final EIS must recognize Gunnison County's authority to regulate mineral development both on private and BLM lands within the County, particularly with regard to oil and gas development and operations. Both the federal courts, and courts here in Colorado, have made clear that "neither the federal statutory scheme nor the case law relied upon by (oil and gas producers) supports the conclusion that Congress intended to

preempt all local regulations in the area of oil and gas operations." See: Bd. of Cty. Comm'rs v. B.D.S. Int'l, LLC, 159 P.3d 773, 785 (Colo. App. 2006), citing Texas Oil and Gas Corp. v. Phillips Petroleum Co., 406 f. 2d 1303 (10th Cir. 1964), and Kirkpatrick Oil and Gas Co. v. United States, 675 f. 2d 1122, 1124 (10th Cir. 1982) ("Congress has prescribed limited, but not exclusive, controls over the leasing of federal lands for oil and gas production.")

- Proposed RMP/Final EIS included Mesa County in the socio-economic impact analysis – even though it is outside of the planning area. This inclusion skews the economic impact data to enable development of an inaccurate picture of the true economic benefits of the oil and gas industry within the Uncompahgre Field Office managed areas. We acknowledge the beneficial economic impacts of the industry within Gunnison County but feel that accurate and relevant data points of areas within the Uncompahgre Field Office managed areas ought be used in this analysis.

REQUESTED REMEDY: The numerous, significant and fundamental errors and omissions regarding oil and gas activities require correction through a full "comment" opportunity.

F. ISSUE 6: THE PROPOSED RMP/FINAL EIS DOES NOT ADEQUATELY CONSIDER OR PROVIDE PROTECTIONS FOR SENSITIVE, THREATENED AND ENDANGERED FISH, INCLUDING HALF MILE RIPARIAN "NO SURFACE OCCUPANCY" ("NSO") SETBACKS AND OTHER IMPORTANT WILDLIFE HABITAT MAPPED BY COLORADO PARKS AND WILDLIFE ("CPW").

- Alternatives B and B.I, and to a lesser degree Alternative D, provide necessary protections for sensitive, threatened and endangered fish, including

half mile riparian NSO set-backs and for other important wildlife habitat mapped by Colorado Parks and Wildlife ("CPW"). Alternative E does not provide those necessary protections. NSO stipulations must be adopted for riparian areas, and to achieve surface disturbance limits necessary for protecting wildlife corridors, critical habitats and concentration areas; these must include limits on surface occupancy and also seasonal restrictions.

REQUESTED REMEDY: The failure of the BLM to include these necessary protections for wildlife requires a full "comment" opportunity.

G. ISSUE 7: THE PROPOSED RMP/FINAL EIS DOES NOT ADEQUATELY CONSIDER THE CONSEQUENCES OF CLIMATE CHANGE

- Alternative E does not acknowledge climate change, make climate change a priority, nor in any substantial way include an analysis of climate impacts of any of the alternatives.

  REQUESTED REMEDY: An adequate RMP/EIS must, at a minimum, include a carbon emission reduction plan that is demonstrably consistent with those efforts of the State to meet the State's climate and carbon emission reduction goals.

H. ISSUE 8: AGRICULTURAL VALUES: THE PROPOSED RMP/FINAL EIS DOES NOT ADEQUATELY CONSIDER PROTECTION AND ENHANCEMENT OF AGRICULTURE.

- The upper reaches of the North Fork of the Gunnison River in Gunnison County are among the headwaters that provide the water supply to organic agriculture, wineries and farms and ranches in the North Fork of the Gunnison basin. However, the Proposed RMP/Final EIS provides neither adequate nor

specific protections to ensure that there are no negative impacts to the quality or quantity of these waters, operations or livelihoods.

REQUESTED REMEDY: The failure of the BLM to include adequate and specific protections for agriculture requires a full "comment" opportunity.

I. ISSUE 9: THE PROPOSED RMP/FINAL EIS DOES NOT ADEQUATELY CONSIDER MANAGEMENT AND ENHANCEMENT OF OUTDOOR RECREATION

- In addition to hunting and fishing, which have been integral to local economies, outdoor recreation is a huge and growing driver to the area's economy. Alternative B/B.I includes NL and NSO stipulations for parks, wildlife refuges, and for federal recreation lands such as Special Recreation Management Areas, including Jumbo Mountain, as well as for public lands recognized for their unique wilderness character. At a minimum, NSO would ensure that the important, and increasing, recreational uses of these lands are given the attention they warrant. In addition, the economic analysis of the economic impacts of recreation within the UFO uses flawed and insufficient data to determine the comparative economic impacts of the multiple uses on the BLM land within the region. There is clear and accurate information on recreation economic benefits within the 2019 Colorado Statewide Comprehensive Outdoor Recreation Plan (SCORP) and within the federal governments own 2019 US Bureau of Economic Analysis which has Outdoor Recreation as a stand-alone designation. The BLM should redo its analysis utilizing these significant resources for its comparisons.

REQUESTED REMEDY: A full "comment" opportunity is necessary to address these concerns.

J. ISSUE 10: THE PROPOSED RMP/FINAL EIS DOES NOT ADEQUATELY CONSIDER THE NEGATIVE CONSEQUENCES OF ALLOWING FLUID MINERAL LEASING IN THE CURECANTI UNIT.

- Section 1-2 states: "The Curecanti National Recreation Area is withdrawn to the US DOI, BOR and managed by the NPS under a Memorandum of Understanding between NPS and BOR. Curecanti National Recreation Area is within the planning boundary until legislation supersedes. BOR's withdrawn lands with the boundary are withdrawn from appropriation under the US mining laws, and the area is not closed to fluid mineral leasing or mineral materials disposal."
- The Curecanti Unit which includes both the Black Canyon of the Gunnison National Park and the Curecanti National Recreation area are contemplated in the Proposed RMP/Final EIS under Alternative E to be open for fluid mineral leasing which would be a drastic and wholesale change from previous drafts and the BLM policies and would lead to certain precedence across the nation as to the ability for the DOI to allow for extractive industry to lease land within national parks, monuments and other federal recreation areas. This change is certainly against the desire of the citizens of the United States who overwhelmingly support preservation of these national treasures. It is almost unfathomable that fluid mineral leasing and mineral materials disposal would be considered available in one of the headwater water supply reservoirs that serve the downstream states of the Colorado River.

REQUESTED REMEDY: A full "comment" opportunity is necessary to address these concerns.

K. ISSUE 11: THE PROPOSED RMP/FINAL EIS DOES NOT ADEQUATELY CONSIDER ISSUES REGARDING COAL MINE METHANE FROM EXISTING AND ABANDONED MINES.

- Alternative E has no provisions nor does it mention the capture, mitigation and/or economic utilization of Coal Mine Methane ("CMM"), a significant greenhouse gas emission. As the BLM is likely aware Gunnison County has consistently supported the exploration of methods to safely, economically and effectively recover methane from active and inactive coal mines, particularly in the North Fork Coal Mining Area. In conjunction with Delta County, Gunnison County has convened a North Fork Coal Mine Methane Working Group ("NFCMMWG") which is comprised of stakeholders from industry, conservation, land management agencies and local, state and federal government with the mission to support coal mines and the surrounding communities in the North Fork Valley through the development of a comprehensive strategy for education, capture, exploration of mitigation, and economic utilization of coal mine methane. That group has been meeting for over a year and has developed a robust discussion on various issues, barrier and technologies available for capture, mitigation and utilization of coal mine methane in both active and inactive mines.
- To the extent that CMM can be safely processed into less damaging constituents, or combusted for energy, there is potential to create local and

federal economic benefits and to enhance environmental protection, both of which are benefits to the citizens of the United States.

- Through the collaborative work that has been accomplished within the NFCMMWG we have identified some potential CMM projects overlying general coal in the North Fork Region. While many challenges are still present in bringing these potential projects in reality, including technical and economic feasibility, an additional challenge is the legal authority for the mine operator/owners to manage CMM generated from the prior mining of federal coal.

REQUESTED REMEDY: Gunnison County requests a full "comment" opportunity to ensure that the BLM includes in the Proposed RMP/Final EIS a lawful mechanism that would enable operators in the North Fork region to manage CMM other than by venting; so that operators can develop project(s) that are safe and environmentally sound.

L. ISSUE 13: THE PROPOSED RMP/FINAL HAS INADEQUATE NEPA ANALYSIS AND PROTECTIONS FOR WATERBODIES, AQUATIC, WETLAND AND HYDROLOGIC RESOURCES, SOURCE WATER PROTECTION AREAS, DOMESTIC WATER SUPPLIES, AND CULTURAL RESOURCES FOR FLUID MINERAL LEASING AND SURFACE DISTURBING ACTIVITIES.

- The Fluid mineral leasing acreage in the newly proposed Alternative E, retains the same open and closed acreage as Alternative A, the current condition. The current RMP predates the concerns for lynx, Gunnison Sage-grouse and many new conditions that have developed, including new science and data regarding climate change. There is no explanation for the changes in the newly

proposed Alternative E. The acreage identified for NSO is severely cut in the new alternative. Omission of stipulations NL-8 (Page B-9), NSO-6/SSR-8 (Page B-17), NSO-9/SSR-11 (Page B-18), NSO-11/SSR-13 (Page B-19), NSO-19/SSR-16 (Page B-23), NSO-31/SSR-32 (Page B-128), NSO-69 (Page B-52), CSU-16 (Page B-63), and CSU-23/SSR-26 (B-67) are inadequate for protection of special resources.

REQUESTED REMEDY: Chapter 2, Pages 2-8 and 2-11, under the headers of Fluid Mineral Leasing, Restrictions for Surface-disturbing Activities, and Locatable Minerals, Mineral Materials, and Nonenergy Solid Leasable Minerals with the contents of Appendix B: Restrictions Applicable to Fluid Minerals Leasing and Other Surface-disturbing Activities constitute an entirely new Alternative. BLM needs to allow public comment and reconsider Cooperating Agency input for this new Alternative E which severely degrades protections for hydrologic, aquatic, riparian, water supply resources, as well as cultural and wildlife resources. Colorado Parks and Wildlife guidelines and standards need to be followed.

M. ISSUE 14: ALTERNATIVE E INAPPROPRIATELY CONTAINS LANDS IDENTIFIED "FOR DISPOSAL" THAT ARE WITHIN 4 MILES OF A GUNNISON SAGE-GROUSE LEK, ARE ADJACENT TO OR INTERSECTING GUNNISON SAGE-GROUSE CRITICAL HABITAT, OR ARE ADJACENT TO PRIVATE LAND CONSERVED FOR GUNNISON SAGE-GROUSE HABITAT, OR THE DISPOSAL OF WHICH WOULD CONFLICT WITH EXISTING USER ACCESS TO PUBLIC OR PRIVATE LANDS, OR WATER RIGHTS AND IRRIGATION. GUNNISON COUNTY FURTHER PROTESTS THE FACT THAT THE BLM DID NOT

TIMELY OR PUBLICLY MAKE IDENTIFICATION OF THESE LANDS AVAILABLE FOR THE PROTEST PERIOD OR FOR THE 2016 DRMP/DEIS.

- Alternative E inappropriately contains lands identified "for disposal" that are within 4 miles of a Gunnison Sage-grouse lek, are adjacent to or intersecting Gunnison Sage-grouse critical habitat, or are adjacent to private land conserved for Gunnison Sage-grouse habitat, or the disposal of which would conflict with existing user access to public or private lands, or water rights and irrigation. Gunnison County further protests the fact that the BLM did not timely or publicly make identification of these lands available for the protest period or for the 2016 DRMP/DEIS.

REQUESTED REMEDY: A full "comment" opportunity is necessary to address these concerns.

N. ISSUE 15: REGARDING CERTAIN SPECIES, AVAILABLE THE BIOLOGICAL ASSESSMENT ("BA") AND BIOLOGICAL OPINION ("BO"); LACK OF CLARITY ON WHAT ALTERNATIVE THE BA AND BO ANALYZED.

Gunnison County protests lands identified for disposal that are within 4 miles of a Gunnison Sage-grouse lek, adjacent to or intersecting Gunnison Sage-grouse critical habitat, or are adjacent to private land conserved for Gunnison Sage-grouse habitat, or the disposal of which would conflict with existing user access to public or private lands, or water rights and irrigation.

Reference Citations include but are not limited to:

a. Chapter 2, Pages 2-8 to 2-11, under the headers of Fluid Mineral Leasing, Restrictions for Surface – disturbing activities, and Locatable Minerals, Mineral Materials, and Nonenergy Solid Leasing Minerals.

b. Appendix B: Restrictions Applicable to Fluid Minerals Leasing and Other Surface-disturbing Activities constitute an entirely new Alternative.

The fluid mineral leasing acreage in the newly proposed Alternative E appears to retain the same open and closed acreage as Alternative A, the current condition. However, the current RMP predates the concerns for lynx, the listing of the Gunnison Sage-grouse as a "threatened species," and many new conditions that have developed, including new science and data regarding climate change. And, the acreage identified for NSO is severely reduced in Alternative E. Omission of certain stipulations are inadequate for protection of special resources.

Gunnison County, as a Cooperating Agency, has been denied the opportunity to comment on the new Proposed Alternative E in the Proposed RMP/Final EIS. It is unclear how the proposed actions in the Proposed RMP/Final EIS were contemplated by the BLM's referenced BA, which has not been made available, or contemplated by the USFWS's BO, referenced in the Proposed RMP/Final EIS as having been signed on December 17, 2018, but also not provided for review.[7] The Proposed RMP/Final EIS was published in the Federal Register on June 28, 2019. A Biological Opinion is a document prepared by USFWS stating their opinion as to whether or not a federal action will likely jeopardize the continued existence or adversely modify the habitat of a listed threatened

[7] Biological Opinion – Revision of the Resource Management Plan for the Uncompahgre Field Office. Western Slope Supervisor, US Department of the Interior, Fish and Wildlife Service, Ecological Services, Grand Junction, CO. December 17, 2018.

or endangered species. Note: Gunnison County is not certain that the USFWS made a determination or adverse modification of GuSG habitat for the Proposed RMP/Final EIS.

According to the Proposed RMP/Final EIS (page 5-2), the Biological Opinion was issued "concurring with the determinations that the Proposed RMP: 1) may affect, but is not likely to adversely affect, the greenback cutthroat trout, Mexican spotted owl, western yellow-billed cuckoo, Colorado pikeminnow, razorback sucker, bonytail, and humpback chub; and 2) may affect, and is likely to adversely affect, Colorado hookless cactus, clay-loving wild buckwheat (including designated critical habitat), and Gunnison sage-grouse (including designated critical habitat) (USFWS 2018d)."

In 2016, there was a robust Gunnison Sage-Grouse Rangewide RMP Amendment process underway that was considering making all GuSG critical habitat an Area of Critical Environmental Concern, and was considering protective stipulations for not just BLM lands designated as habitat and/or within 4-miles of GuSG leks, but also split estate.

The Gunnison Sage-Grouse (GuSG) was listed as a threatened species under the Endangered Species Act (ESA) by the U.S. Fish and Wildlife Service on November 20, 2014 (79 Fed. Reg. 69192).

At the time of release of this Proposed RMP/Final EIS, the Gunnison Sage-Grouse Rangewide RMP Amendment has been canceled and the process terminated. This new situation changes the context and significance of Gunnison County's comments and input into the need for necessary land protection, resource allocation, and stipulations to protect and enhance GuSG populations and habitat within the Uncompahgre Field Office managed areas.

Gunnison County desired the GuSG Rangewide RMP Amendment[8] to modify and strengthen the Proposed RMP/Final EIS measures after completion of this Uncompahgre Field Office Proposed RMP/Final EIS. That is not going to happen. The Proposed RMP/Final EIS allows for discretion to waive the protective stipulations that are present in the new proposed Alternative E.

REQUESTED REMEDY:

(A) Provide the BLM's Biological Assessment and the USFWS BO for review and clarify whether the BO was based on the June 28, 2019 Proposed RMP/Final EIS or a different alternative. The BLM should incorporate any recommendations of the BO into any Proposed RMP/Final EIS. Cooperating Agencies and public should be allowed to comment on the new Proposed Alternative E within the current situational context, which is that there will not be a forthcoming GuSG Rangewide RMP Amendment and this Proposed RMP/Final EIS fails to adequately protect GuSG or address split estate.

(B) The BLM should fully follow and incorporate the recommendations of the BOp for GuSG[9] and the 2005 Rangewide Conservation Plan[10] which include:

1) Protect occupied habitats from permanent loss. If permanent habitat loss from development (primarily) or conversion is not addressed, successful implementation of all the other conservation strategies is not likely to be successful in conserving GUSG. An equally important strategy is preventing significant degradation, whatever the cause, of existing habitat that is seasonally important to GUSG.

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[8] https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=39681

[9] Biological Opinion – Revision of the Resource Management Plan for the Uncompahgre Field Office. Western Slope Supervisor, US Department of the Interior, Fish and Wildlife Service, Ecological Services, Grand Junction, CO. December 17, 2018; Pages 27-28

[10] https://cpw.state.co.us/learn/Pages/GunnisonSagegrouseConservationPlan.aspx

2) Coordinate with CPW in their effort to stabilize existing populations demographically and genetically through augmentation, and establish new populations in suitable historically occupied habitats (i.e. unoccupied critical habitat).

3) Improve habitat within currently occupied and adjacent potential habitats.

4) Protect suitable unoccupied habitat areas from permanent loss.

5) Improve habitat conditions within unoccupied habitat, which will accommodate item 2 above.

(C) It is unacceptable to allow stipulations intended to protect GuSG be available for administrative waivers, exceptions and modifications without clear criteria and process. The alternative within the Proposed RMP/Final EIS should follow the guidance of the BO[11]:

Fluid Minerals - When considering waivers, exceptions, and modifications within NSO designated areas, we recommend implementing the criteria developed for the Northwest Colorado Greater Sage-Grouse RMPA as follows:

**Exceptions or modifications may be considered if, in consultation with the State of Colorado, it can be demonstrated that there is no impact on Gunnison sage-grouse based on one of the following:

1. Topography/areas of non-habitat create an effective barrier to impacts
2. No additional impacts would be realized above those created by existing major infrastructure (for example, State Highway 50).

[11] Biological Opinion – Revision of the Resource Management Plan for the Uncompahgre Field Office. Western Slope Supervisor, US Department of the Interior, Fish and Wildlife Service, Ecological Services, Grand Junction, CO. December 17, 2018; Page 28

3. The exception or modification precludes or offsets greater potential impacts if the action were proposed on adjacent parcels (for example, due to landownership patterns).

**In order to approve exceptions or modifications to this lease stipulation, the Authorized Officer must obtain: agreement, including written justification, between the BLM District Managers and CPW that the proposed action satisfies at least one of the criteria listed above.

Waivers - No waivers are authorized unless the area or resource mapped as possessing the attributes protected by the stipulation is determined during collaboration with the State of Colorado to lack those attributes or potential attributes. A 30-day public notice and comment period is required before waiver of a stipulation. Waivers would require BLM State Director approval.

Incorporate "Available Conservation Measures" and "Overarching Conservation Objectives" found in the GUSG final listing rule (79 FR 69192, p. 69305-69309).

(D) Incorporate the management prescriptions and protective ACECs developed for the Gunnison Sage-Grouse Rangewide RMP Amendment into the Proposed RMP/Final EIS, since the Gunnison Sage-Grouse Rangewide RMP process is no longer active. BLM and Cooperating Agencies invested many years into researching and developing that RMP. Please see Attachment 3.

(E) Un-designate or relocate the portion of the Section 368 West Wide Energy Corridor that goes through San Miguel County. There is no ROW on non-federal land that will not significantly impact GuSG habitat.

O. <u>ISSUE 16: THERE IS INADEQUATE ANALYSIS AND PROTECTIONS FOR WATERBODIES, AQUATIC, WETLAND AND HYDROLOGIC RESOURCES, SOURCE WATER PROTECTION AREAS, DOMESTIC</u>

WATER SUPPLIES, AND CULTURAL RESOURCES FROM THE IMPACTS OF FLUID MINERAL LEASING AND SURFACE DISTURBING ACTIVITIES.

Among the citations that inform this section of the Protest are:

- Chapter 2, Pages 2-8 to 2-11, under the headers of Fluid Mineral Leasing, Restrictions for Surface-disturbing Activities, and Locatable Minerals, Mineral Materials, and Nonenergy Solid Leasable Minerals
- Appendix B: Restrictions Applicable to Fluid Minerals Leasing and Other Surface-disturbing Activities constitute an entirely new Alternative

The fluid mineral leasing acreage in the new Proposed Alternative E, retains the same open and closed acreage as Alternative A, the current condition. The current RMP predates the concerns for lynx, Gunnison Sage-Grouse and many new conditions that have developed, including new science and data regarding climate change. There is no explanation for the changes in the new proposed Alternative E. The acreage identified for NSO is severely cut in the new alternative. Omission of stipulations NL-8 (Page B-9), NSO-6/SSR-8 (Page B-17), NSO-9/SSR-11 (Page B-18), NSO-11/SSR-13 (Page B-19), NSO-19/SSR-16 (Page B-23), NSO-31/SSR-32 (Page B-128), NSO-69 (Page B-52), CSU-16 (Page B-63), ad CSU-23/SSR-26 (B-67) are inadequate for protection of special resources.

REQUESTED REMEDY: Chapter 2, Pages 2-8 to 2-11, under the headers of Fluid Mineral Leasing, Restrictions for Surface-disturbing Activities, and Locatable Minerals, Mineral Materials, and Nonenergy Solid Leasable Minerals with the contents of Appendix B: Restrictions Applicable to Fluid Minerals Leasing and Other

Surface-disturbing Activities constitute an entirely new Alternative. BLM needs to allow public and Cooperating Agency input for this new Alternative which severely degrades protections for hydrologic, aquatic, riparian, water supply resources, as well as cultural and wildlife resources. Colorado Parks and Wildlife guidelines and standards need to be followed.

VI. RESERVATION

Given the time constraints of filing this Protest, Gunnison County may not have addressed all issues. Therefore, Gunnison County reserves its right to further process regarding any and all issues identified by other protestors or commenters.

VII. CONTACT INFORMATION:

Pursuant to 43 C.F.R. 1610. 5-2, please send all notices and correspondence regarding this Protest to:

David Baumgarten
County Attorney for Gunnison County
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Gunnison, Colorado 81230
(p): 970.641.5300
(email): dbaumgarten@gunnisoncounty.org

and

Matthew Hoyt
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and

Laura Stanley
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(p): 970.641.5300
(email): lstanley@gunnisoncounty.org

Signed on this 26th Day of July, 2019.

David Baumgarten
County Attorney for Gunnison County
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GUNNISON COUNTY
LR 09-117

MEMORANDUM OF UNDERSTANDING
BETWEEN
GUNNISON COUNTY, COLORADO
AND THE
BUREAU OF LAND MANAGEMENT
UNCOMPAHGRE FIELD OFFICE

I. INTRODUCTION

The Bureau of Land Management (BLM), Uncompahgre Field Office, is undertaking a major revision of their Resource Management Plan (RMP) beginning in the spring of 2009. The BLM anticipates that the RMP revision and associated environmental impact statement (EIS) will take approximately four years to complete.

Gunnison County is eligible to become a Cooperating Agency for the duration of the RMP/EIS process. Cooperating Agency status provides an opportunity for the BLM, Gunnison County and other Cooperating Agencies to work together to enhance the BLM's planning efforts.

This Memorandum of Understanding (MOU) sets forth roles and responsibilities for the Cooperating Agencies as agreed upon between Gunnison County and the Uncompahgre Field Office (UFO) for the purposes of collaborative planning and production of the RMP and EIS.

II. PURPOSE

In carrying forth its responsibilities and mandates under the National Environmental Policy Act and Council of Environmental Quality regulations at 40 Code of Federal Regulations (CFR), Part 1500 and the Federal Land Policy and Management Act (as amended) CFR Part 1600, the BLM recognizes a compelling need to ensure that the interests of Gunnison County are accounted for, and that they are meaningfully engaged in the above stated resource management planning effort and associated EIS.

As such, Gunnison County has requested, and the BLM has agreed to grant, Cooperating Agency Status pursuant to 40CFR 1501.6, 1501.2, and 1501.8. Under the regulations, the BLM recognizes that Gunnison County has special expertise as it relates to various aspects of the planning effort described above.

III. AGENCY DESIGNATIONS

Appendix A specifies Agency Representatives. Each participating entity will designate one primary representative to attend meetings and to act as a point of contact to ensure coordination and exchange information between Gunnison County and the BLM during the planning process. An entity may change its representative at any time by providing written notice to the other party. Cooperating Agencies may also involve "in-house" specialists in discussions, when a specific topic warrants such expertise.

IV. AUTHORITIES FOR AGREEMENT

Authority for the BLM and Gunnison County to participate in this agreement is provided by the National Environmental Policy Act, 42 USC 4321 et seq. and 40 CFR 1501.6 – Cooperating Agencies, 1506.2 – Elimination of Duplication with State and Local Procedures, and 1508.5 – Cooperating Agency (CA).

Additional authority comes from the Federal Land Policy Management Act, 43 USC 1712 et seq., which mandates coordination of BLM planning and management efforts with the programs of state and local governments which may be affected by those planning actions.

V. ROLES AND RESPONSIBILITIES

A. RESPONSIBILITIES OF THE BUREAU OF LAND MANAGEMENT, UFO

The BLM UFO is responsible for the following:

i. To prepare and ensure the content and quality of the Draft RMP/Draft EIS, the Proposed RMP/Final EIS, and the Record of Decision/Approved RMP.

ii. To provide Gunnison County with meaningful opportunities for participation, including involvement in:

- identifying issues and concerns of relevance to the planning effort,
- identifying or providing data that is suitable, available and relevant to the planning effort,
- reviewing and commenting on draft sections of the EIS for which Gunnison County provided input due to its special expertise.

iii. To consider and incorporate information and comments provided by Gunnison County into EIS documents to the extent possible and where appropriate.

iv. To make all final determinations regarding the content of the EIS document.

B. RESPONSIBILITIES OF GUNNISON COUNTY

Gunnison County has special expertise in a number of areas related to planning, and as such, is responsible for the following:

i. Along with other involved Cooperating Agencies, to participate in the planning process to the fullest extent possible.

ii. To assist the BLM with the identification of issues and concerns to be addressed through the planning effort.

iii. To provide data of potential relevance and value to the RMP revision/EIS effort. This data may include but is not limited to the following:

- approved Gunnison County programs, plans and policies potentially affected by the RMP,
- information regarding planning area resources and current and proposed uses and management actions,
- environmental analyses on issues for which Gunnison County has special expertise,
- socio-economic data such as demographics, activities and values.

iv. To review and provide comments during specified review periods on preliminary baseline and other technical reports for which Gunnison County has contributed data or other pertinent information.

v. To review and provide comments during specified review periods concerning the following sections of the preliminary Draft EIS:

- preliminary range of alternatives to be considered in detail,
- relevant portions of the "Affected Environment" section (including the socio-economic portion),
- relevant portions of the "Environmental Consequences" section,
- relevant portions of the "Consultation and Coordination" section, including information on consistency reviews.

vi. During public review periods for the Draft EIS, to provide the BLM with a consolidated comprehensive review of the Draft EIS.

vii. To assist the BLM with analyzing and reviewing public comments and data, and with the development of the Proposed RMP/Final EIS.

VI. FUNDING

Each entity agrees to fund its own expenses associated with this planning process.

VII. JOINT RESPONSIBILITIES

The parties agree to use their best efforts to meet the timeframes established in the agreement, to work cooperatively, and to resolve differences as quickly as possible.

VIII. IMPLEMENTATION, AMENDMENT AND TERMINATION

This agreement becomes effective upon signature by all parties, and may be subsequently amended through written agreement of all signatories. The parties agree to jointly develop a framework for information exchange and feedback within 60 days of the signing of this agreement.

Gunnison County or the BLM may terminate this agreement by providing written notice of termination to the other party. If not terminated sooner, this agreement will end when the Notice of Availability for the Final EIS is published in the Federal Register.

Nothing in this agreement will abridge or amend the authorities and responsibilities of Gunnison County or the BLM or any other party on any matter under their respective jurisdictions.

Nothing in this agreement may be construed to require either Gunnison County or the BLM to obligate or pay funds or in any other way take action in violation of the Anti-Deficiency Act (31 USC 1341) or any State or County law or ordinance.

IX. SOVEREIGN IMMUNITY

Neither signatory waives their sovereign immunity by entering into this Memorandum of Understanding. Each fully retains all immunities and defenses provided by law with respect to any actions based on or occurring as a result of this agreement.

X. SIGNATURES

The parties hereto have executed this Memorandum of Understanding as of the dates shown below.

BUREAU OF LAND MANAGEMENT

Barbara L. Sharrow

Barbara L. Sharrow, Field Manager
Uncompahgre Field Office, BLM

6-8-09
Date

GUNNISON COUNTY, COLORADO

Matthew Birnie, County Manager
Gunnison County

6-01-09
Date

APPENDIX A – AGENCY REPRESENTATIVE

REPRESENTING: **GUNNISON COUNTY, COLORADO**

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Long Range Planner
Gunnison County
200 E. Virginia
Gunnison, CO 81230
Phone: (970) 641-0248
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REPRESENTING: **BUREAU OF LAND MANAGEMENT**
UNCOMPAHGRE FIELD OFFICE

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