

COMMENTS IN RESPONSE TO THE DOMINGUEZ-ESCALANTE NATIONAL
CONSERVATION AREA DRAFT RESOURCE MANAGEMENT PLAN OF APRIL
2013

TODAY'S DATE SEPTEMBER 12, 2013

Range of alternatives

dencarp@blm.gov

RMP Comments

Dominguez-Escalante National Conservation Area

Bureau of Land Management

2815 H Road

Grand Junction, CO 81506

Subject: Comment on the Dominguez-Escalante National Conservation Area Draft RMP

Date: July 31, 2013

Dear Sirs and Madams:

We have observed a flaw in the heart of the analysis. BLM has not analyzed a full spectrum of alternatives.

In examining the alternatives in Chapter 2, we note that the centerpiece and underpinnings of BLM's management strategy is to separate visitors by activity for every action alternative. At page 111, BLM says for Alternative B,

"Reduce visitor conflicts using strategies that separate conflicting recreation uses."

For Alternative C and D BLM proposes the same thing using different words:

"Reduce visitor conflicts by managing for targeted participants, activities, and outcomes."

And for Alternative E, the preferred, BLM proposes the same thing as Alternative B, separating conflicting uses.

However, at 40CFR 1502.14(a), CEQ instructs BLM to:

"Rigorously explore and objectively evaluate all reasonable alternatives,"

And, in the CEQ's 40 Questions, the answer to question number 1a further clarifies:

"The phrase "range of alternatives" refers to the alternatives discussed in environmental documents. It includes all reasonable alternatives, which must be rigorously explored and objectively evaluated..." (emphasis added)

In its recreation and travel management proposals, BLM has failed to analyze all "reasonable" ¹ alternatives. BLM has ignored 1502.14(b) and BLM's Congressional mandates by failing to analyze a recreation and travel management multiple use alternative. This would be a very reasonable alternative. Actually it is more reasonable than any of the proposed alternatives because it will require far less pro-active management activities and long-term maintenance for BLM. It would save hundreds of thousands of dollars.

By multiple use alternative, we mean that BLM failed to analyze the impacts of having all visitors share all facilities outside the wilderness, within the terms of the Omnibus Act. There would be no separate facilities for any particular activity. Everyone would have access to all the facilities, including the routes. We do not see anything in the Omnibus Act that mandates or even implies BLM's proposed management strategies.

In the CEQ 40 Questions, the answer to question # 1b(A) clarifies what a "full range" is:

"only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS." (emphasis added)

CEQ further clarifies the "reasonable range of alternatives," elsewhere in its answer to Question # 1b(A):

"What constitutes a reasonable range of alternatives depends on the nature of the proposal and the facts in each case."

The nature and facts of this case necessitate that BLM observe its statutory authorizations in developing and achieving a "full spectrum" of alternatives.

BLM must consider the intent and policy of Congress, as set forth in NEPA, Section 101(b)(5)

"achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities;" (emphasis added)

And the intent and policy of Congress as set forth in FLPMA, at Section 102 (a)(7):

"...goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law;" (emphasis added)

In citing the CEQ regulations and the intent of Congress in NEPA and FLPMA, it appears that in this case, such an action alternative would be mandatory. BLM must develop an action

¹ In the CEQ 40 Questions, the answer to #2a(A) defines "reasonable: "Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense..."

alternative that manages the NCA for multiple use -- using pro-active and professional management strategies to protect the resources while complying with the laws.

To summarize, this is a critical alternative for BLM to analyze given that FLPMA mandates managing the public lands for multiple use and NEPA mandates sharing, but with the Omnibus Act putting some specific limitations on allowable activities. It is astonishing that BLM has not even considered such an action alternative given these mandates. We contend that BLM has not analyzed the full range of alternatives at all, but rather, proposed various degrees of limiting access and varying intensities of management participation in the separation strategies, but BLM never even considered multiple use in an action alternative, such that the multiple use is in compliance with the Omnibus Act.

Considering that the area is multiple use now, and BLM has presented no facts, science or evidence that it is presenting any unworkable or even minor conflicts,² it stands to reason that BLM should be examining an action alternative that analyzes a true multiple use alternative for recreation and travel. Having the designated wilderness area already provides as much separation as can legally be implemented; however, throughout the rest of the NCA a multiple use proposal is not outside BLM's authority. On the contrary, BLM is remiss in not analyzing such an alternative.

BLM is not obliged to make big changes to the existing situation simply because of the Omnibus Act. That Act set forth certain very specific limitations of certain activities, but it left FLPMA as the primary statutory authorization. Thus, multiple use is still mandated. FLPMA instructs BLM to manage for outdoor recreation (Section 102(a)(8)) and in so doing puts no conditions upon that instruction. FLPMA did not say only certain kinds of recreation, and FLPMA says nothing about separating people according to activity or philosophical differences. People are sharing that land at the present time. It is critical that BLM analyze an action alternative that provides for multiple use to demonstrate its seriousness about implementing such an alternative within the terms of the Omnibus Act. BLM cannot put so many conditions on NCA visitor access without running the risk of violating FLPMA and NEPA.

To resolve this comment, BLM will have to issue a supplementary EIS and Plan that develops and analyzes such an alternative. Simply using numerous components from Alternative A-no-action in the ROD will probably not be workable.

Thank you for your attention to this matter.

² Please see our comment on that matter, "Who decides who conflicts."

Predecision

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RMP Comments

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2815 H Road

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Subject: Comment on the Dominguez-Escalante National Conservation Area Draft RMP

Date: July 31, 2013

Dear Sirs and Madams:

In Appendix N, Table N.4, we find that the BLM has committed to reducing the number of routes in the NCA across-the-board. As discussed in a separate comment, BLM does not analyze the effects of adding any new routes. That is why we take Table N.4 at its face value; as noted in the previous comment, without any analysis, any "proposal" to add routes is not serious. Even with the modest proposals that BLM has made, we don't know how many miles of routes would be added (so obviously there's no analysis). Our point here is, the draft RMP as presented, is predecisional.

Predecision occurs when BLM commits to a course of action prior to any analysis. In this case, BLM has committed to reducing the route mileage by more than 50% in every action alternative. On the face of it, this is predecision. BLM has not even analyzed an alternative that only closes perhaps only 25%, nor has BLM analyzed an alternative that adds routes to improve general access.

However the point is, the construction of the alternatives such that they all close more than half the existing mileage, "rigs" the Decision, because there are no options to do anything else. CEQ requires that the Decision come from the analyzed alternatives (40CFR 1505.1(e)). The deciding officer will have to choose only from reduced mileage in all areas of the NCA, and not make a reasoned decision based upon a full range of analyzed alternatives (40CFR1502.14 and CEQ 40 Questions # 1).

BLM may claim, in its defense, that this is what their "Advisory Council" recommended. However, there is only one person on that Council that was intended to represent motorized

recreation interests. In consideration of the fact that it is likely that 69%³ of the visitors arrive and recreate using a motor vehicle, this representation is severely unbalanced.

This is a flaw in the very foundation of the alternative development. BLM has rigged the decision by constructing the alternatives in this fashion. BLM must withdraw this draft document and conduct an analysis of a true variety of alternatives, including adding mileage to improve general access. This mileage would be intended to improve general access to all parts of the NCA, not simply a small system of recreational trails in one area, such as Cactus Park. The creation of a small loop system appears to be an attempt to "give the OHV people a place to ride," separate from the rest of the NCA, as opposed to giving the OHV people access to the NCA. In truth, all visitors need vehicle access to explore the entire area outside the wilderness, and not only short loops that go nowhere, and do not provide any general access.

This could mean a supplementary EIS is needed.

Another way to resolve this is to utilize more of Alternative A in the ROD, and retain the present access.

Thank you for your attention to this matter.

³ BLM 2012, GJFO RMP data. The largest portion of the NCA lies in the GJFO (Mesa County). This percentage does not conflict with the descriptions in Chapter 3.3.1 in the D-E NCA draft RMP.

NCA Unknown information

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Dear Sirs and Madams:

There is an unfortunate but fundamental flaw in the Draft RMP which renders all the action alternatives meaningless. At page 330 BLM lists the incomplete or unavailable information. This is required by the CEQ regulations. And here we find that this list covers several vital disciplines, such that it is clearly impossible to deliver a properly developed analysis. That helps to explain why this Draft RMP is not really an analysis but rather simply a list of what is on the land and a list of BLM responsibilities--basically all background material. This type of document is expressly prohibited by the regulations at 40CFR 1500.4 (b)

"Preparing analytic rather than encyclopedic environmental impact statements..."

and (f).

"Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public and reducing emphasis on background material."

CEQ requires that the best available information⁴ be used to develop these documents, but it appears that BLM has little to no information, in several critical disciplines.

With such significant gaps in the basic data, no analysis can occur. And, with no analysis, it is impossible to evaluate the effects of the proposals. BLM doesn't even know the cause and effect relationship of the activities and resources on its land right now (BLM doesn't have an inventory of wildlife and special status species occurrence and condition⁵). Because of this, BLM can't

⁴ 40CFR 1500.1(b) "...The information must be of high quality..."

⁵ BLM has been in violation of FLPMA all these years because FLPMA, way back in 1976, instructed BLM at Title I, Section 102 (a)(2) that: "the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried..."

possibly evaluate the future cause and effect relationship of any proposal, or evaluate future impacts.

BLM is also required by CEQ to discuss the relevance of these knowledge gaps. However, BLM fails to do this. BLM simply explains how it made up the analysis to get around the regulation requiring it to tell us how important it is that BLM doesn't know. At page 330 BLM works around this requirement with some very adept verbiage:

"For these resources, estimates were made concerning the number, type, and significance of these resources on the basis of previous surveys and existing knowledge. In addition, some impacts cannot be quantified given the proposed management actions. Where this gap occurs, impacts are projected in qualitative terms or, in some instances, are described as unknown. Subsequent project-level analysis would provide the opportunity to collect and examine site-specific inventory data required to determine appropriate application of RMP-level guidance. In addition, ongoing inventory efforts by the BLM and other agencies in the planning area continue to update and refine information used to implement this plan."

The reader can notice that BLM never discusses why it's important or relevant to admit to these information gaps. BLM just tells the reader how BLM worked around the problem. But that's not the CEQ instruction. BLM has to tell us why it's relevant. CEQ instructs BLM, at 40CFR 1502.22 (b)(2)

"[the agency must include] a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;"

In this respect, BLM is in clear violation of 40CFR1502.22.

Here is how these gaps in the information are relevant: Without this critical information, it is clearly impossible to deliver an adequately and professionally developed analysis and then rationally evaluate reasonably foreseeable significant adverse impacts. If BLM doesn't know about the wildlife, and BLM doesn't know how many people come to visit the area now called the NCA, BLM cannot possibly evaluate the impacts of its proposals. This by itself will cause the cumulative impacts analysis to be incomplete and inadequate.

But it is exacerbated by the fact that BLM won't admit the relevance of the missing information. Why? Because BLM goes right ahead and tries to do an "analysis" anyway, and the resulting evaluation is by its nature, based on nothing more than speculation, constructed upon the notions and personal values of the BLM staff, and not science. This is arbitrary. Arbitrary means, there

is no rational connection between the evidence and the conclusion. Yet really, this is more critical than simply arbitrary. BLM has no evidence. BLM has no evidence that any of the human activities it wants to so drastically curtail (particularly motor vehicle travel), actually need to be curtailed. This conflicts with the most basic intentions of the NEPA.

For just one example: In the NEPA, at Title I, Section 101, the intent of Congress is spelled out. At 101(5) BLM is instructed to:

"achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities;"

Yet (using for an example) the section in Chapter 3 (3.5.3) on socio-economic conditions, BLM goes into great detail about the economic makeup of the planning area. Ethnicity is covered in detail. But no mention of the social involvement of the people with the land is mentioned.⁶ No mention is made of the people's connection to the land or how important that connection is to the customs and culture of Mesa County. Further into this example, the Recreation section has no visitor use numbers to work with. BLM does not even know how many people visit the NCA (let alone what they are doing or how they want to access the NCA). Without knowing any of this, BLM cannot evaluate even the simplest reasonably foreseeable impacts, adverse or otherwise.

Thus, it is not possible that BLM can make rational decisions which achieve a "wide sharing of life's amenities" (in this case access to NCA lands), and it is quite impossible to expect BLM to find "a balance between population and resource use" given the fact that BLM does not know how many people are using the NCA lands.

That is why CEQ wants BLM to explain the relevance of the unknown information. It pulls the document together, and places the BLM evaluations of the outcomes in perspective. In this case, it appears that the incomplete and unknown information will pull it apart. There is no perspective on the predicted outcomes. With these important gaps in the information, any evaluation of the impacts can only be speculation. It is likely that there will be adverse impacts to the human environment,⁷ given the activities that BLM wants to constrain and/or remove from the land (mainly travel and livestock grazing).

Any kind of unintentional negative outcome can occur if BLM tries to make so many changes. This disclaimer should lead off every chapter.

⁶ Notably, BLM won't even admit that it doesn't know this; it is completely overlooked in this document.

⁷ Based on the proposals in the DRMP, there will be adverse impacts to the customs and culture of Mesa County.

Yet BLM, under the mandate from the Omnibus Act, must produce a planning document. BLM must create an analysis and plan out of this very thin information. BLM needs to admit that this document is nothing more than background material. BLM will have to admit that it does not have enough information to propose drastic changes, because BLM can't rationally evaluate the outcomes.

And, this critical unknown information is the primary and foremost reason there should be no drastic changes at all. Instead, the preferred alternative in the Final RMP and the Final Decision itself must be comprised of mostly components from alternative A: No action. There is no way to factually or scientifically support so many major changes to the present situation.

Thank you for your attention to this matter.

NCA User conflict

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Dear Sirs and Madams:

At DRMP Appendix N, section N.1, BLM says:

"This appendix is written with both the Omnibus Act and the D-E NCA Draft Resource Management Plan (DRMP) in mind. The DRMP proposes a mix of recreational opportunities that attempt to meet a wide variety of recreational demands while reducing conflict among users."

And, at D-E DRMP page 30, BLM says it will:

"Seek to achieve a minimum level of conflict between recreation participants in order to 1) allow other resources/programs to achieve their objectives 2) curb illegal trespass and property damage; and 3) maintain a diversity of recreation activity participation. "

We address the matter of illegal trespass and property damage in two other comments. However, reducing conflict among users or between recreation participants was never identified as an issue. In the planning issues under travel management, user conflict is not mentioned. In the recreation section describing the experiences and outcomes that visitors want, no problems of this nature are mentioned as causing any visitor to not attain the desired outcome. No reports of any conflict are provided in the DRMP.

Furthermore, this is not even within BLM's authority. The words generally used in the dictionary definition of "conflict" are words like disagreement, divergence, difference, argument, quarrel, dispute, clash, strike against, be in opposition, be contrary.

A search of the FLPMA does not reveal these words or phrases or anything even remotely similar. Yet BLM aims to reduce them. But the FLPMA at Section 102(7) states, the intent of Congress is that

"goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law;"

If this "user conflict" causes property damage or personal injury, such as vehicle collisions, theft, and fights, those incidents are already covered by state law. BLM should be coordinating with the county on resolution of these disputes⁸.

There would be records of such incidents, and BLM describes no such records. That type of conflict is outside BLM jurisdiction. On BLM lands, the appropriate county sheriff responds. BLM has no authority. It is easy to see that BLM would want to minimize these problems, but BLM fails to report the extent of the problem. It fails to report that there is any problem at all.

We cannot be sure about this however, because BLM never tells us what "conflicts among users" are.

Thus, we are beginning to think that this "conflict" is something more ephemeral. Why do we say that? Because a "use" conflict would likely leave a mark, or a measurable change that can be reported and recorded.

Conflicts between recreation participants which are ephemeral, cause no property damage and no personal injury, would occur only in the mind of the recreation participant. This leads us to a search for "user conflict" literature, of which there is a great deal.

To list a few:

Shultis, J. 2001. "Consuming nature: The uneasy relationship between technology, outdoor recreation and protected areas." *The George Wright Forum* 18(1): 56-66.

Watson, A. E. 2001. "Goal interference and social value differences: understanding wilderness conflicts and implications for managing social density." *USDA Forest Service Proceedings RMRS-P* 20: 62-67.

Hammit, W. E. and I. E. Schneider. 2000. "Recreation conflict management". In *Trends in Outdoor Recreation, Leisure and Tourism*, edited by W. C. Gartner and D. W. Lime, 347-356. New York: CABI Publishing.

⁸ 40CFR 1501.2(d)(2) The federal agency consults early with appropriate state and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable. (emphasis added)

Schneider, I. 2000. "Revisiting and revising recreation conflict research." *Journal of Leisure Research* 32(1): 129-132.

Manning, R. E. 1999. "Recreation conflict: Goal interference." In *Studies in Outdoor Recreation: Search and Research for Satisfaction*, Second Edition, 194-206. Corvallis: Oregon State University Press.

Watson, A. 1995. "An analysis of recent progress in recreation conflict research and perceptions of future challenges and opportunities." *Leisure Sciences* 17(3): 235-238.

Moore, R. L. 1994. *Conflict on multiple-use trails: synthesis of the literature and state of practice*. Report No. FHWA-PD-94-031. Federal Highway Administration.

Crawford, D. W., E. L. Jackson and G. Godbey. 1991. "A hierarchical model of leisure constraints." *Leisure Sciences* 13(4): 309-320.

Owens, P. L. 1985. "Conflict as a social interaction process in environment and behavior research: The example of leisure and recreational research." *Journal of Environmental Psychology* 5: 243-259.

Jacob, G. R. and R. Schreyer. 1980. "Conflict in outdoor recreation: A theoretical perspective." *Journal of Leisure Research* 12: 368-380.

We found the last article by Jacob and Shreyer to be the most frequently cited. Here is the abstract:

"This paper develops a definition of conflict in outdoor recreation and hypothesizes four broad factors that lead to conflict. It has become the mostly used definition of conflict and the theory of conflict it proposes is labeled as either the goal interference or interpersonal model. Conflict is defined as "For an individual, conflict is defined as goal interference attributed to another's behavior". Conflict is seen as a special class of user dissatisfaction and the cause of the dissatisfaction in another's behavior. The paper uses past work on conflict to speculate that the principal factors behind outdoor recreation conflict include: activity style, resource specificity, mode of experience and lifestyle tolerance. They explore the issues related to these four factors to propose ten propositions about outdoor recreation conflict. They define activity style as "personal meanings attached to the set of behaviors constituting a recreation activity." Resource specificity is defined as "the importance and individual attaches to the use of a particular recreation resources." Mode of experience is defined as ways of experiencing the environment ranging from "unfocused to focused." While, tolerance for lifestyle diversity is defined as "unwillingness to share resources with members of other lifestyle groups."

If we are correct, it appears that in Appendix N, BLM is attempting to manage for personal philosophical differences.

This is a task that Congress never intended for BLM to undertake. According to the research, certain people simply do not want to share the resources, and they can easily create the thing called "user conflict." They simply say it happened.⁹ Yet there is no evidence that it happened, and it is simple hearsay that there is any problem at all. That is exactly why Congress provided no statutory authorization to manage public land visitors according to their philosophical and personal values differences ("user conflict" in BLM terms).

But most alarming, there is no legal standard to guide any management action. Any BLM management action based on "user conflict" is by its nature arbitrary, precisely because of the absence of any legal standard. There is nothing that triggers a BLM duty to act just because one person claims they don't like another person's activity, or one person says that their trip was ruined by a 15-second encounter with someone different than themselves.

Before BLM can base any management actions on user conflict there must be a legal standard. That means there must be a statutory authorization with specific regulations guiding all actions that are applied uniformly to everyone. There is no authorization to do this, not for BLM or for any other federal agency. The government is not authorized to meddle in the personal philosophical differences between individuals unless those differences cross the line into criminal activity.

Also because of this lack of a legal standard, public land users have no way of adjusting their behavior so that BLM perceives less (or more) user conflict; all one has to do to create conflict is to say there was conflict, and BLM (not Congress) has decided that it must drive a BLM management action. Usually this action involves removing one type of recreationist from the resource, denying that group of people the amenities of outdoor recreation.

Yet the NEPA tells us to share it. The NEPA states at Title I Section 102 (5) that the intent of Congress is to:

"achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities;"

That does not sound like, "eliminate one group because some people say they don't like them."

⁹ This "conflict" could be anything a person doesn't like: cow manure or grazing cattle. Seeing an ATV. Seeing hunting. Seeing anything an individual disagrees with, including different types of wilderness activities, such as hikers encountering horse manure in the wilderness. Bright clothing in wilderness has been construed as a conflict. Different styles of wilderness behavior inspires many "user conflicts."

Hence, encouraging or mandating the elimination of any type of user from any part of the planning area because of philosophical or personal values differences between public land users, is plainly unlawful.

Because of the absence of any legal standards, and the apparent direction in NEPA that we share the resources, BLM has made a basic mistake by placing the minimization or resolution of user conflicts in the very start of Appendix N. By doing so, BLM must address it, but because there is no statutory authorization, any management action BLM takes is obviously arbitrary. Any action BLM proposes can only be based on the prevailing personal philosophies of whoever happens to be writing the Plan and EIS, because there is no legal standard. With no legal standard, any action taken would be unlawful.

This renders a number of potential actions unlawful. For example, the closure of any route to "reduce conflicts among users" would be unlawful. Banning horseback travel in the wilderness to reduce conflicts among users would be unlawful.

The solution is to change the RMP's proposed task from segregating people by activity, to the proper and proven method of managing the differences between different types of users through education. It is BLM's job to make it clear that this NCA is still multiple-use land¹⁰ and that visitors should expect to see people different than themselves.¹¹ This is called "adjusting the visitor's expectations," and it always works. When people know what to expect they have far fewer issues with different types of activities. When people's expectations are not met, it means that BLM failed to accurately communicate the multiple-use nature of the lands, or the allowable uses in the wilderness such that wilderness users can accept seeing different styles of behavior in the wilderness (for example, equestrian uses).

BLM must remove "reducing conflicts among users" from the alternatives (page 30) and from Appendix N, and then, adjust the plan accordingly.¹²

Thank you for your attention to this matter.

¹⁰ Please see our comment to that effect, "No law mandates elevating natural values above all others."

¹¹ Moore, R. L. 1994. *Conflict on multiple-use trails: synthesis of the literature and state of practice*. Report No. FHWA-PD-94-031. Federal Highway Administration.

¹² CEQ 40 Questions # 25a: " The final statement must also contain the agency's responses to comments on the draft EIS. These responses will be primarily in the form of changes in the document itself, but specific answers to each significant comment should also be included." (emphasis added) and Question #29a: " Normally the responses should result in changes in the text of the EIS, not simply a separate answer at the back of the document." (emphasis added)

No law mandates elevating natural values above all others

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Dear Sirs and Madams:

We have detected an error in your interpretation of your mission as stewards of the Dominguez-Escalante NCA (D-E NCA). In both the Executive Summary and Section 1.1 of the draft Plan, BLM states,

"In considering consistency between the Omnibus Act and FLPMA, Section 302 of the FLPMA states that public lands are to be managed under the principles of multiple use and sustained yield "except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law." Therefore, if management of the BLM's multiple use and sustained yield mission conflicts with the Omnibus Act, the language provided within the Omnibus Act applies (BLM 2012a)."

While this could be construed as the correct interpretation, in reading the Plan, we note that BLM acknowledges but minimizes the fact that the Omnibus Act also states at Section 2002(d)(1) that:

"Nothing in this subtitle enhances, diminishes, or modifies any law or proclamation (including regulations relating to the law or proclamation) under which the components of the system described in subsection (b) were established or are managed, including--

(E) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)."

Thus, the correct interpretation should be that only the limitations specifically called out in the Omnibus Act would prevail, and all other areas of concern not raised in the Omnibus Act remain in the jurisdiction of the Federal Land Policy and Management Act (FLPMA).

The Omnibus Act calls for specific changes in certain management areas, but it does not call for wholesale departure from the principles set forth in FLTMA. The D-E NCA lands have been

managed for decades under the principles of FLPMA, and the draft Plan states in the Introduction's "Affected Environment" that,

"The Omnibus Act, which designated the D-E NCA, recognized the area's unique and important resources. As would be expected given this recognition, the resources within the D-E NCA are often in a healthier condition than those in adjacent areas of public land." (emphasis added)

This calls into question the apparently overarching philosophy demonstrated by all of the action alternatives. It appears that the BLM has left the humans out of the picture by proposing to close down approximately 53% of the roads and trails outside the wilderness. The reason we say that there is a legal issue with omitting the human element is that the National Environmental Policy Act (NEPA) calls for the serious consideration of the human environment and that the human activities receive great deference.¹³

Instead, in this draft Plan, it appears that the BLM has elevated natural values above all others. The Omnibus Act does not call for this outcome. As noted above, the Omnibus Act calls for specific changes in management that do differ from FLPMA, but that FLPMA prevails elsewhere. One of the mandates in FLPMA that the BLM is ignoring is at FLPMA Title I, Section 102(a)(7)

"[That] goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law"

The Omnibus Act did not call out for the end of multiple use on the D-E NCA lands.

The other mandate in FLPMA that the BLM is ignoring is at Section 102(a)(8):

"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" (emphasis added).

The Omnibus Act did not call out for the end of outdoor recreation or human use and occupancy.

¹³ NEPA, Title I, Section 101, (b) (5), "achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities" (emphasis added) and NEPA Title I Section 102 (2) (A) "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment" (emphasis added).

In sum, it appears that BLM is ignoring the fact that the Omnibus Act does not call for very many departures from the NEPA or FLPMA and particularly not departures from the NEPA mandate to achieve a balance between population and resource use and to provide for a wide sharing of life's amenities, in this case the amenity being access to and the enjoyment of the D-E NCA lands outside the Wilderness. Neither does the Omnibus Act call for any major departures from FLPMA, in fact, the Omnibus Act mandates that excepting specific proclamations in the Act limiting certain activities, FLPMA does prevail, and the part of FLPMA that BLM has chosen to minimize, or make difficult, is the part which includes providing for recreation and human occupancy and use. None of these laws (NEPA, FLPMA, and the Omnibus Act) call for elevating natural values above all others. The Omnibus Act only limits specific activities. We cannot find any proclamation that declares that natural values be elevated above all others.

The NCA is to be managed as a component of the National Landscape Conservation System (NLCS). However, in studying statutory authorization for this statute we discover that it does not mandate elevating natural values above all others, in fact, at subtitle "Statute" (c)(d) Effect (1)

"In general,

Nothing in this chapter enhances, diminishes, or modifies any law or proclamation (including regulations relating to the law or proclamation) under which the components of the system described in subsection (b) were established or are managed, including -

(E) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)."

The NLCS was established to

"conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations"

In consideration of the fact that BLM itself states in the draft D-E NCA Plan that

"As would be expected given this recognition, the resources within the D-E NCA are often in a healthier condition than those in adjacent areas of public land."

--The emphasis would logically be placed on conservation and protection, because restoration is not needed. It is a violation of the Wilderness Act and a violation of FLPMA to "restore" lands that are designated for multiple use to wilderness quality standards; yet that appears to be what closing so many routes is designed to accomplish. Even with all the routes, the area is already in very good condition, hence the NCA designation. So the existing management principles under FLPMA have been more than adequate to keep this acreage in its natural and mostly

(87%) healthy functional condition. The emphasis need not be to elevate natural values above all others any more than has happened to date, meaning that radical changes are not needed and was never called for in the Omnibus Act.

Why do we say this? Because:

BLM says that the area is in good condition (Introduction and Purpose and Need);

At D-E NCA Plan 3.2.2.1 "Priority Vegetation and Habitats," in Table 10 we learn that 74% of the 210,000 acres is meeting land health standards, and 13% meets standards with problems. That's 87% of the land in a generally healthy condition. Only 5% does not meet the standards (acknowledging the 7% not studied).

At D-E NCA Plan 3.2.2.2, Table 20 we learn that the population and recruitment of the desert bighorn sheep herd in the D-E NCA is good, and the population size is good. The only human activity that may have a negative effect on the bighorn sheep is the domestic sheep with which the desert sheep may come into contact with under the terms of the grazing permits issued by BLM. That is only because the grazing allotments overlap the desert sheep range; not because of any recorded die-offs of the D-E NCA herd. This is one human activity that can simply be adjusted to "conserve and protect," but since the population size is "good," no "restoration" is necessary. But the point is, the road and trail-based human recreation activities have nothing to do with this situation.

At D-E NCA Plan 3.2.2.2 Table 21 we learn that another priority species, the Colorado Hookless Cactus, has good habitat quality and good population structure and recruitment. Population size is only "fair," due to a twenty year downward trend in the number of individuals. However, no cause is cited, so it's impossible to find a human activity to adjust. In the Best Management Practices, one of the action items for hookless cactus habitat is to close and rehabilitate roads once they are no longer needed, and close selected routes to protect significant plant communities.

But if we continue to examine the known information about the cactus' habitat, we learn, at DEIS 4.4.1,

"sagebrush habitats invaded by pinyon-juniper resulted from fire suppression."

Human recreation activities and access have little to do with that problem; the vast majority of unplanned wildfires are naturally-occurring. Nonetheless, BLM states that the cactus habitat quality is "good" and the cause of its decline is not stated. This leaves the door open for any arbitrary decision to "protect" the cactus.

To be clear about the effects of closing roads, let us emphasize a salient fact which has been omitted from this analysis. Of the approximately 144,000 acres of the NCA outside the

wilderness, the presently existing roads (747 miles¹⁴) comprise only six tenths of one percent of the land base. The scale of effects of the roads is tiny. 99.4% is untouched by roads and trails, and in the proclamation creating the NCA all motor vehicles are restricted to the designated roads and trails. The point is, even if BLM closed all the routes, only 6/10ths of one percent of the land would be affected. 99.4% would be unaffected. It is simply not credible to claim that this tiny footprint from the roads and trails are causing a decline in hookless cactus (or any vegetation community) except where route density is extremely high.

The occurrence of Grand Junction milkvetch is excellent and good.

The *Naturita milkvetch* appears to be more abundant than originally thought.

The majority of the occurrences of *the Eastwood monkey-flower* are ranked A-ranked by CNHP.

The sensitive fish are considered threatened by non-native fish, predation, pollutants and pesticides. No human recreation activity is implicated.

The white-tailed prairie dog receives some speculative treatment, with BLM assuming that the species should be more abundant but presenting no evidence of why BLM thinks this.

A variety of bats reside in the D-E NCA habitats.

Four exemplary natural communities are currently documented in the most recent CNHP report. The DEIS does not state why some are either imperiled or vulnerable; this leaves the door open for any arbitrary decision to "protect" the species.

The antelope herd is below target¹⁵ due to poor habitat conditions--but BLM doesn't say what's wrong with the habitat. Although this leaves the door open for any arbitrary decision to "protect" the species, the direction in the Omnibus Act to restrict all vehicles to designated routes will likely have a positive effect.

The elk herd is above CPW's target population numbers.

Black bears, mountain lions, deer, and coyotes are also listed as residing in the D-E NCA.

At D-E NCA Plan 3.2.2.6 we learn that all waterbodies within the planning area meet water quality standards except the main stem of the Gunnison; and, from 3.2.2.6 the Plan states that,

¹⁴ D-E NCA Plan Table 135

¹⁵ There is no information in the DEIS reporting how the target population is determined. For all we know it may be optimum at the present numbers.

"The BLM portions of the Gunnison River within the D-E NCA are not likely sources of the selenium impairment."

At 3.2.2.2 Figure 1 we find that the Pinyon Mesa sage-grouse populations on male lek count has declined significantly. Here is a situation where the elevation of natural values could be warranted. Except that this population does not occur within the D-E NCA, it occurs north of the NCA. The Cactus Park area (within the NCA) has been mapped as historic range, but there are no sage grouse there. Wintering sage grouse have been recorded in Cactus Park, but in the winter months the human activities in the area are at their lowest. Thus, there is no human activity to be adjusted.

These are just a few examples of why the elevation of natural values above all other values is not only unlawful, it is not warranted. The fact that this Plan does elevate natural values above all others is a flaw in the Plan's foundation. As NLCS lands, it can obviously be construed that the D-E NCA may not be further developed such that the natural values are significantly degraded, but by the same token, traditional uses such as hunting and driving on the many existing roads and trails in the NCA are to be conserved. The recreational trail system could even be improved in a sustainable way, to enhance the benefits to the humans who wish to enjoy the unique and outstanding natural features of the NCA.

In sum, radical management changes to remove the present road and trail-based human recreational activities are not mandated by any of the statutory authorizations for the NCA. Under the terms of any of the legislation guiding the management of the NCA, the existing road and trail-based human recreational activities can continue. BLM has misconstrued the significance of the NCA designation. BLM apparently believes the NCA lands outside the wilderness must be turned into a sort of junior-varsity wilderness, but that is not the case at all.

BLM must develop another alternative which retains much more of the present road and trail-based human recreational activity than is presented in the existing draft Plan. That indicates that a supplementary EIS must be prepared. A slight variation on Alternative A could be developed without a supplemental EIS, in which the travel management component is made more sustainable with judicious additions and improvements. Another course of action would be to design far more elements from Alternative A into the Final Plan, and leave the existing roads and trails intact.

Thank you for your attention to this matter.

Wilderness Act Violation

RMP Comments

Dominguez-Escalante National Conservation Area

Bureau of Land Management

2815 H Road

Grand Junction, CO 81506

Subject: Comment on the Dominguez-Escalante National Conservation Area Draft RMP

Date: July 31, 2013

Dear Sirs and Madams:

In the Wilderness Act of 1964, at Section 4 (a) (1):

"Nothing in this Act shall be deemed to be in interference with the purpose for which national forests are established as set forth in the Act of June 4, 1897 (30 Stat. 11), and the Multiple-Use Sustained-Yield Act of June 12, 1960 (74 Stat. 215)."

Where the Secretary of Agriculture is cited in that law we can assume the Secretary of the Interior and the Department of the Interior (and that Department's statutory authorization FLPMA) is appropriately substituted, as noted in the Omnibus Act at Sec. 2403(b)(2):

"any reference in the Wilderness Act to the Secretary of Agriculture shall be considered to be a reference to the Secretary of the Interior."

The proposed 53% closure of motorized access in the NCA lands surrounding the designated wilderness is turning the NCA lands surrounding the wilderness into a giant buffer zone, which is plainly unlawful. As the Wilderness Act states, it is not intended to interfere with the purposes of the surrounding lands. The Omnibus Act has instructed us that the Department of the Interior and the guiding principles of that department are to comply with the Wilderness Act just as the Secretary of Agriculture and Department of Agriculture are to comply. This means that the primary statutory authority for managing the NCA is FLPMA and the NLCS statutes.

That means multiple-use, human recreation, and human occupancy, use and access must not be interfered with simply because of the presence of the wilderness or simply because the lands are surrounding the wilderness. Access outside the wilderness must be preserved, according to the National Trail System Act. That Act is one of the guiding statutes for NLCS lands, and the Omnibus Act proclaims that the D-E NCA be managed as a component of the NLCS.

In sum, the drastic loss of motorized access in the NCA lands surrounding the wilderness is creating a "buffer zone" around the wilderness, which has been declared unlawful by the courts.

The resolution to this comment is to develop a Final Plan which retains the existing access. If some of the existing access needs improvement, BLM must include improving it in the Final Plan, in order to preserve the access. This will eliminate the clear and obvious proposal that BLM intends for the NCA to be a buffer zone around the wilderness. This change will bring BLM into compliance with the Wilderness Act.

Thank you for your attention to this matter.

No duty to prevent trespass

RMP Comments

Dominguez-Escalante National Conservation Area

Bureau of Land Management

2815 H Road

Grand Junction, CO 81506

Subject: Comment on the Dominguez-Escalante National Conservation Area Draft RMP

Date: July 31, 2013

Dear Sirs and Madams:

In the Draft RMP, one of the issues the BLM claims must be resolved by this RMP is,

"How might the BLM reduce trespass onto private lands?" (Item 13, page 10)

and item 16, page 10,

"What measures could the BLM take to protect private property from trespass and/or vandalism? "

This issue has already been decided by law. The Alaska National Interest Lands Conservation Act is the only legislation affecting federal land management agencies in the matter of private property. That Act requires federal agencies to provide "adequate and feasible" access to private lands surrounded by federal lands. No other provisions are in that Act to protect private landowners, and there is no other statutory authorization for BLM to protect private landowners from trespass. In Colorado it is up to the landowner to "fence out" trespass, and/or post the private property as appropriate. BLM is not authorized to close routes simply because they end at private land.

In other words, there is no duty for BLM to act in this matter. There is no trigger for BLM action. BLM is acting completely outside of its authority. Thus, the proposal on page 900, items 1 and 2, are not mandated by any law or regulation and needlessly cut off public access to significant areas

Furthermore, there is no record or analysis showing that this is an issue. No sheriff's office reports are cited indicating that trespass and vandalism are a problem in the area, and even if these problems are present, the county sheriff's office responds, not the BLM, because trespass onto private property is not a federal crime.

Thus, the Travel Management Plan for the D-E NCA must be revised; all closures due to private land ownership must be left open. If the landowner does not want the public to continue, the landowner must act on his/her own behalf. The landowners are not entitled to a private backyard where no one is allowed to go, created by BLM by closing all routes that end at a private boundary. There is no harm in travelling to the boundary of the public land to hunt, camp, sightsee, or explore. There is no law or rationale supporting locking the public out of public lands bordering private lands.

Landowners cannot expect BLM to "prevent trespass." If BLM chooses to protect landowners in this way, there is no end to the things landowners will demand from BLM. It is unwise and unlawful for BLM to unilaterally add trespass prevention to its list of tasks, and especially not in this manner (closing routes that end at a boundary). The public must not be locked out of any public lands due to the mere proximity to private lands.

Thank you for your attention to this matter.

Real cumulative effects

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RMP Comments

Dominguez-Escalante National Conservation Area

Bureau of Land Management

2815 H Road

Grand Junction, CO 81506

Subject: Comment on the Dominguez-Escalante National Conservation Area Draft RMP

Date: July 31, 2013

Dear Sirs and Madams:

BLM has failed to disclose the cumulative effects of its proposed actions, and violates the NEPA Section 101(a).

A review of the alternatives by resource indicates that each resource specialist has chosen as the preferred alternative an action, or series of actions , that protects that resource and always limits human occupancy and use. The needs of the human environment are ignored. Instead we see a utopian solution to each perceived resource issue without regard to the benefits to humans of access to the NCA lands outside the wilderness.

According to NEPA Sec 101(a)

"The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." (emphasis added)

This indicates that Congress did not intend to cut humans out of the picture; on the contrary, Congress intended for man and nature to exist in productive harmony.

But the DRMP does not seem to see it that way.

For example, at Appendix N.4.1, Identification of use needs and Concerns for Each Route, we have the following criteria for keeping a route:

"Use of the Route

Recreation

1. The route or trail helps meet trail-based objectives for recreation.
2. The route or trail provides access to recreational opportunities.
3. The route provides access to a dispersed camping site or scenic overlook."

This section is followed by forty-one (41) reasons to close routes. The analysis fails to seriously consider the human environment. It only assumes everything that humans do has a negative effect, and in this utopian BLM world, there is no possibility of man existing in harmony with nature. According to the underlying assumptions of this DRMP, man should be separated from nature to the greatest extent possible. There can be no other explanation for the fact that the DRMP travel plan closes approximately 53% of the existing access, with each closure having its specific controlling impact derived from each ID Team participant having an issue with something humans do when visiting the NCA. In fact, the humans don't even have to be doing anything; this analysis assumes that just the mere presence of humans is apparently destructive.

However, there are many facts which do not support this assumption. For example, the statement at N.4.1 is claiming an unnecessary urgency:

"Some of the criteria for identifying environmental concerns and other factors for consideration were treated with more urgency than others when route-by-route designations were being determined. For example, routes that were in big game calving or production areas were considered a far more pressing concern than routes that fell within a big game summer range."

However, since the 1990s the game Management units #61 and # 62 have been overpopulated to the extent that additional tags have been issued to reduce the herd size. As of 2011 the herd size is still too large, according to Colorado Parks and Wildlife biologists.¹⁶

Thus, the existing situation is not having any negative effect on the herds in units 61 and 62. 61 and 62 contain the herds that summer in the adjacent Uncompahgre National Forest and winter in the D-E NCA areas Gibbler Gulch, Sowbelly, Upper Sawmill Mesa, and Dry Mesa (as listed in the preferred alternative).

¹⁶ Colorado Parks and Wildlife website

This makes the excessively long seasonal closures to protect the herd irrational, that is, not connected to the facts before the agency. The herd is doing fine with no seasonal closures at all at this time.

BLM is not using facts to inform its alternative development. The long and inflexible closures to exclude the humans are not needed. It could happen that sometime in the future a closure may be warranted but that's not the case at this time, and it has not been the case for the last ten years.

We contend this underlying assumption for the analysis is in conflict with NEPA Section 101(a). BLM is not considering the human element in this analysis. BLM is only considering the maximum number of ways it can separate the humans from nature instead of finding and supporting ways humans can live "in productive harmony" with nature.

All the action alternatives are all the same: take the most protectionist and extreme position with regard to wildlife and vegetation. At page 44:

"Reduce route density, where practicable, through travel management decisions"

No reasoning is given or science cited to justify this belief that route density has a negative effect on wildlife and vegetation. No scale of reduction is mentioned. Just a general comment made from one BLM point of view. No attempt is hinted at that would accommodate any other activity or value that supports living "in productive harmony" with nature.

Another example can be found in the Chapter 2 Alternatives Matrix. All of the actions in the preferred alternative are taken from Alternative D, the environmental protection alternative. This alternative represents the most extreme protective measures, and not warranted by the present conditions (see Affected Environment).

If we look at the matrix, we find many individual examples of this extreme view:
Page 48:

<p>Objective: Reduce fragmentation in the D-E NCA's sagebrush shrublands to achieve public land health standards, benefit Gunnison sage-grouse and other sagebrush obligate species and move toward the following management target:</p> <ul style="list-style-type: none"> • 60 acres (or more) is the average size of unfragmented sagebrush shrublands
--

And Page 51:

Alternative D	Alternative E: Preferred Alternative
<p>Allow for the construction of new routes in existing, unfragmented sagebrush shrublands, as long as one of the following conditions is met:</p> <ul style="list-style-type: none"> • Any additional fragmentation of sagebrush shrublands is offset by projects that reduce fragmentation of sage parks elsewhere. • New routes are placed on the edge of existing sagebrush shrublands to reduce fragmentation 	
Prevent expansion of	On sites where the

This is a Catch-22 situation for the humans. To protect the sage grouse (a species not documented to occupy Cactus Park according to the Affected Environment in this DRMP), BLM must close routes, and BLM can't build new ones, without meeting the conditions of closing more routes elsewhere.

The humans are once again cut out of the picture. In the USF&W draft Final Rule for sage grouse, trails have not even been studied. It is simple speculation on the part of any biologist that motorized trails are a threat. Yet we know that hikers are a threat to ground-nesting birds,

perhaps more so than a vehicle because the hikers are more likely to leave the trail and be found in unpredictable places¹⁷.

The same is true for Bighorn Sheep:

Reduce (close and rehab) miles of motorized and mechanized routes through desert bighorn crucial breeding habitat (production and summer concentration areas, as defined by CPW).	S
Close and rehab BLM routes within desert bighorn sheep winter concentration areas to motorized and mechanized travel (does not apply to administrative access and county roads).	N

This is regardless that motorized recreational routes are not threats *per se*, but rather, it is disease and drought that threaten the sheep.

¹⁷ Boyle, Samson, "Effects of Nonconsumptive recreation on wildlife: a review," in Wildlife Society Bulletin Volume 13, No. 2. This included off-highway vehicles; the wildlife revealed a more profound negative response to hiking and camping and birdwatching by a significant amount, i.e. categorization of reports of original studies concerning impacts of nonconsumptive outdoor recreation found that for birds, 17 studies showed negative for hiking and camping vs. only 6 negative for off-road wheeled vehicles and 19 negative responses for birdwatching vs. 7 for off-road vehicles.

Papouchis, Singer, Sloan, "Responses of Desert Bighorn Sheep to Increased Human Recreation 2001." Journal of Wildlife Management. Hikers cause the most severe responses in desert bighorn sheep. (animals fled in 61% of encounters vs. only 17% in encounters from vehicles)

Swarthout, Steidl "Flush responses of Mexican spotted owl to recreationists" (hikers) Journal of Wildlife Management 2001 Vol 65 #2. The authors recommend 55meter buffer zone around roosting and nesting sites due to flush responses of owls to hikers any closer than that.

BLM places SSR restrictions around the sensitive plants as well. p.73

<p>Apply SSR restrictions within 100 meters (328 feet) of known occurrences of BLM sensitive plant species. See ACEC section for additional restrictions for protection of BLM sensitive species (See Appendix B and Map 2-2e).</p> <p>Prohibit actions that pose adverse impacts to BLM sensitive species subpopulations or connectivity between subpopulations to a degree that is expected to decrease the viability of the subpopulation or population.</p>

BLM fails to define what an "adverse action " is. Added to the protection of "connectivity" and the additional restrictions in ACEC's, and all together the restrictions will ultimately blanket all of the NCA lands outside wilderness. Yet BLM refuses to disclose this in the cumulative effects section.

Next at page 77 BLM protects the prairie dogs:

<p>Prohibit surface-disturbing or disruptive activities from March 1 to June 15 within 50 meters (164 feet) of the edge of active (occupied within the last 10 years) white-tailed prairie dog towns (see Appendix B, Map 2-3e).</p>
--

This despite the fact that the prairie dogs are not threatened or listed. Further, BLM does not say what a disruptive activity is. This is too vague. It is a dangerous restriction, given the fact that prairie dogs are so numerous throughout the region and throughout the suitable parts of the NCA.

And, we find nothing in the Affected Environment that states that recreation or road and trail-based recreation has any statistically reliable causal relationship with any T & E species or special status species or sensitive plant species being listed or categorized as special status. In

fact, in the unknown information statement BLM admits it has no inventory of special status species. With no inventory, there is no possible way for BLM to identify what is or is not a threat, or whether any of these populations are trending upward, stable, or declining. Everything that is claimed is pure speculation.

If we take all these extremist restrictions and add them together, the cumulative effect will leave nothing for the humans. BLM doesn't even add up the acreage that all of these restrictions will absorb, at the expense of human occupancy and use and motorized outdoor recreation. We don't know how much acreage is taken up.

The real cumulative effect will be to make the NCA lands outside the wilderness a virtual wilderness, even though it is supposed to be managed for multiple use. It will make all of BLM's recreation management plans moot.

Yet in the cumulative effects chapter, BLM fails to disclose this result.

In sum, BLM is claiming to plan for present and future recreation activities, yet BLM is putting so many restrictions on access and human activity that we will have a gridlock when it comes time to plan these SRMAs. For example, Cactus Park is proposed to be an SRMA, yet no trails can be built. The prime directive is to close routes, and reduce the access. There can be no SRMA that could ever satisfy the "outcomes" that BLM "targets" for the motorized visitor coming to Cactus Park for a recreation experience in the high-desert setting under these extensive prohibitions.

The resolution to this comment will involve a complete re-examination of BLM's attitude toward the way humans interact with nature and the very real values that the humans derive from spending time in the NCA. It will entail a complete re-examination of BLM's attitude toward the types of recreationists who want access, particularly motorized and mechanized access. BLM then must seriously weigh the values it discovers against the costs. It is acceptable to have impacts when the return value to society is so great. At this time, BLM has failed to show that the impacts from the present recreation/access situation present any significant threats, so the human values do not have to be so heavily compromised.

It does not appear that so many changes and restrictions are needed; the Omnibus Act mandated no major changes except a few very specific prohibitions. BLM is free to seriously consider and use in its alternative development the intent of Congress in the Proposed Final RMP.

In the Proposed Final RMP, please reconsider the human element in a more serious light, and please properly attend to the intent of Congress. BLM need not place the such intense restrictions on all motorized access when it is not warranted by the present situation.

If BLM does not wish to do this, then BLM must disclose in the Cumulative Effects chapter the real cumulative effect of placing all of the most extreme protectionist restrictions in the preferred

alternative. In the unknown information statement, BLM must admit that most of its restrictive actions are based on speculation (state the relevance of the unknown information).

Thank you for your attention to this matter.

Who decides who conflicts

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RMP Comments

Dominguez-Escalante National Conservation Area

Bureau of Land Management

2815 H Road

Grand Junction, CO 81506

Subject: Comment on the Dominguez-Escalante National Conservation Area Draft RMP

Date: July 31, 2013

Dear Sirs and Madams:

At page 111 (Chapter 2) in the Alternatives matrix, we find the following chart:

No similar action in existing RMPs.	Reduce visitor conflicts using strategies that separate conflicting recreation uses.	Reduce visitor conflicts by managing for targeted participants, activities and outcomes.	Same as Alternative B for the following RMAs: <ul style="list-style-type: none">• Hunting Ground ERMA• Ninemile Hill ERMA• Escalante/Wagon Park Dispersed ERMA• East Creek ERMA Same as C for the following RMAs <ul style="list-style-type: none">• Gunnison River SRMA• Cactus Park SRMA• Escalante Canyon SRMA
-------------------------------------	--	--	--

This clearly shows that segregation of activities is the preferred management method.

In fact, the phrase "conflicts among recreation participants," and conflicts between users" or some variation thereof, appears frequently throughout the document.

However, the intention to "Reduce visitor conflicts using strategies that separate conflicting recreation uses" (as cited above) assumes that the BLM knows which "uses" conflict with one another.

Unfortunately, we have found no analysis or methodology in this document or any other cited BLM document that describes how BLM decides who conflicts with who. It is predecisional to simply say, this group is in conflict with that group, and proceed straight to alternative development. Predecision occurs when BLM commits to a course of action before the analysis.

There is no analysis supporting these claims of conflicts. BLM just decided it was so, and proceeded straight to alternative development. There is no supporting evidence that this is a widespread or even isolated problem. There is no analysis of the social connections associated with different activities, nor is there any analysis of the proclivity of any particular group to "be in conflict" (or not) with another group. There is no examination of why it is important to evaluate the legitimacy of such claims in alternative formulation.¹⁸

Thus, the persistent efforts by BLM to segregate people according to activity has no scientific basis. An RMP is built around an analysis, and in an analysis we must have facts and a scientific approach. In the BLM proposals which attempt to choose who should mix with who, there is no such effort. The matter of "conflicts" is just an assumption with no basis in fact.

According to 40CFR 1500.1(b)

"Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." (emphasis added).

It is also a violation of 40CFR1502.2(g)

"Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made."
(predecision)

Therefore, basing so many management proposals on assumptions and beliefs about who conflicts with who, with no supporting analysis, is in direct violation of 1500.1(b) and 1502.2(g).

It is also set forth in FLPMA that the management of public lands be planned using a "systematic approach to achieve integrated consideration of physical, biological, economic and other sciences" (Section 202(c)(2) (emphasis added)

The NEPA also emphasizes science right in the Act itself, Section 102(2)(A):

"utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences..." (emphasis added)

Since BLM's method is such a direct violation of both the laws and the implementing regulations, , BLM must revise its proposals to bring itself into compliance. We suggest that BLM abandon its unscientific assumptions and notions, and base its proposals on real science

¹⁸ Constantly directing people around to each of these developments costs money and takes maintenance, year in and year out. It expands BLM responsibilities into the "unreasonable;" meaning unreasonable in the CEQ context as described in the CEQ 40 Questions, answer to question 2a(A) in which "reasonable" is defined as "practical or feasible from the technical and economic standpoint..."

and analysis. If BLM has no science, then BLM must declare this in its unknown information statement, and explain the relevance of the unknown information to evaluating the cumulative impacts. This would place the assumptions and notions in perspective, so reviewers know that BLM is not using science, and thus will not be accurately evaluating the cumulative impacts of any of its proposals.

In sum, we respectfully request that BLM follow the law, and not its own beliefs and assumptions. This will entail revising the DRMP proposals dramatically.

Thank you for your attention to this matter.

Diversity of activities

RMP Comments

Dominguez-Escalante National Conservation Area

Bureau of Land Management

2815 H Road

Grand Junction, CO 81506

Subject: Comment on the Dominguez-Escalante National Conservation Area Draft RMP

Date: July 31, 2013

Dear Sirs and Madams:

At D-E DRMP page 30, BLM says it will:

"Seek to achieve a minimum level of conflict between recreation participants in order to
1) allow other resources/programs to achieve their objectives 2) curb illegal trespass and
property damage; and 3) maintain a diversity of recreation activity participation. "

We address the matter of illegal trespass and property damage in two other comments. What we are concerned about here is the implied claim that reducing conflicts among users will maintain a diversity of activities, and will allow other resources/programs to achieve their objectives. The use of the word "maintain" certainly implies that we already have a diversity of activities.

Yet BLM has no analysis or evidence to support any claims about the diversity of activities that occur in what is now the NCA. BLM does not know very much about some key resources, such as special status species (see Unknown Information section). BLM admits in the "Unknown or Unavailable Information" section that it does not know the number or type of visitors come to the area that is now the NCA.

This sounds as though BLM wants to "engineer" certain kinds of activities into the area which may not occur now, but which BLM would prefer to see. There is no other explanation for speaking in such obtuse terms.

Or perhaps there is an activity which BLM perceives inhibits a diversity of activities or prevents certain objectives from being achieved. BLM is silent.

The FLPMA at section 102 (a) (8) says the land must be managed for outdoor recreation, with no conditions. That means all kinds of recreation. BLM may not be ready to accept the fact that perhaps the area that is now the NCA simply doesn't support a diversity of activities or the

success of some programs; after all, it is a semi-arid environment except around the river corridor and that is inside the Wilderness (which itself inhibits a diversity of activities).

Yet how "reducing conflict between recreation participants" will maintain a diversity of activities and allow certain resources/programs to achieve their goals is unknown; it sounds like BLM really means to say something else but will not.

At 40CFR 1502.8, CEQ says that to comply with NEPA Environmental Impact Statements must be

"Environmental impact statements shall be written in plain language..."

The connection between reducing conflicts and maintaining a diversity of activities is not clearly written out. BLM must speak clearly to the subject of what the conflicts are and why they impede a diversity of activities or the achievement of certain goals, and what the different activities and programs which BLM wants to encourage may be, and what the conflicts are that cause the problem. Recall please, that the Omnibus Act left standing as the primary guiding rule for the NCA the FLPMA, and placed only a few new restrictions on the lands. So BLM is bound by FLPMA to manage for multiple uses. Yet BLM is vaguely implying that there are conflicts which inhibit multiple uses, but BLM will not say what that is.

It should be clear to the reader of this comment what the problem with the writing is.

BLM sounds like it really means something else by using that type of language.

The solution to this comment is to revise the writing such that reviewers know what the BLM is talking about and what the connections are. Reviewers need the supporting analysis or evidence to make a reasoned judgment about this goal and the role this goal plays in formulating the alternatives. As it stands now, there is no clear, rational explanation for the way the alternatives are set up. Having vague, almost secretive goal statements in the alternatives does not support transparency in the alternatives development, and it is unlawful.

Thank you for your attention to this matter.¹⁹

¹⁹ CEQ 40 Questions # 25a: " The final statement must also contain the agency's responses to comments on the draft EIS. These responses will be primarily in the form of changes in the document itself, but specific answers to each significant comment should also be included." (emphasis added) and Question #29a: " Normally the responses should result in changes in the text of the EIS, not simply a separate answer at the back of the document." (emphasis added)

Conflict-trespass-property damage

RMP Comments

Dominguez-Escalante National Conservation Area

Bureau of Land Management

2815 H Road

Grand Junction, CO 81506

Dear Sirs and Madams:

And, at D-E NCA Draft RMP page 30, BLM says it will:

"Seek to achieve a minimum level of conflict between recreation participants in order to 1) allow other resources/programs to achieve their objectives 2) curb illegal trespass and property damage; and 3) maintain a diversity of recreation activity participation. "

We address the matter of conflict and private property trespass in two other comments, but we would add here that BLM has produced no evidence that illegal trespass and property damage is a problem (sheriff's office reports, BLM law enforcement reports, etc). Thus, the need to address this issue has not been established in this draft plan and should not drive any action to "reduce conflict among users" by closing off any opportunities to recreate on public lands for any user group. How reducing conflicts between recreation participants is the solution to curb illegal trespass and property damage is not clear at all. Are the recreationists fighting with each other? Are they stealing from each other? What kind of property damage is occurring? BLM is silent. BLM produces no evidence that this statement has any foundation in factual information. Without any factual information, no well-reasoned proposal can be made, therefore, any decision arising from this "need" cannot be anything but arbitrary and irrational (without reason or with no connection to the facts before the BLM).

Here we have the government making strong accusations yet never stating who is causing the problem. BLM appears to be concealing another agenda by using this vague and unsupported accusation. Before the government makes accusations like this, the government must have evidence. BLM has produced none.

The resolution to this comment is to either produce the incident reports in sufficient quantity and quality to show a causal connection, or remove it as a goal. Making "reducing user conflict" the solution to illegal trespass and property damage implies very negative outcomes, which BLM has not supported with factual information. Keeping it in the document demands factual support.

Thank you for your attention to this matter.

County partnership

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RMP Comments

Dominguez-Escalante National Conservation Area

Bureau of Land Management

2815 H Road

Grand Junction, CO 81506

Subject: Comment on the Dominguez-Escalante National Conservation Area Draft RMP

Date: July 31, 2013

Dear Sirs and Madams:

In the Alternatives matrix, Mesa County supports a combination of different proposals.

For Cactus Park, the County, in its role as a cooperating agency, supports the Preferred Alternative (E) as described on page 126. The County would like to actively partner with BLM to implement this proposal. However, we are surprised that this ambitious plan is not mentioned elsewhere in the DRMP. The travel plan makes no mention of future trail development. Thus, Mesa County has identified a number of Vested Interest routes in this RMA to preserve its multiple-use character.

For the Nine Mile Hill area, the County strongly supports Alternative D proposal but not exactly as described on page 122. Mesa County would prefer to see this a shared-use system, allowing any mode of transportation, for example, ATV's, UTV's, and 4WD . There is no reason to "target" the area for motorcycles only, because most of the existing routes are primitive roads. The shared-use concept provides for the broadest appeal for the most people. Mesa County would partner with BLM to implement a proposal like that. Mesa County has also identified a number of vested interest routes in the Nine Mile Hill area to preserve its multiple use character.

This combination provides the maximum level of public access and does not exclude any special interest group or individuals.

The only objection we have is to using a bicycle guide to construct motorized trails; bicycle trails tend to have excessively tight turns and too many obstacles for an enjoyable ATV or motorcycle ride. Since these would all be shared-use trails (the need to "target" a specific group is not necessary), larger turn radii and fewer obstacles would be in the best interest for the most people.

In both of these areas we do not see the need to limit competitive speed events (SRP's) to non-motorized only. The primary impacts from any special event is the staging site for the event (parking, start/finish, etc). Vending permits would be a logical necessity at any kind of event.

It is important to note that if the County invests in a recreation site or area, to justify the cost, the area must have the broadest appeal possible.

To summarize, Mesa County would like to see the multiple-use mandate of FLPMA fully realized throughout the NCA outside the wilderness. The very close proximity of the wilderness to both of these areas makes any exclusive-use trails for non-motorized visitors redundant.

Thank you for your attention to this matter.

Exclusive use trails

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RMP Comments

Dominguez-Escalante National Conservation Area

Bureau of Land Management

2815 H Road

Grand Junction, CO 81506

Subject: Comment on the Dominguez-Escalante National Conservation Area Draft RMP

Date: July 31, 2013

Dear Sirs and Madams:

In the Omnibus Act, it was stipulated that all motor vehicles be restricted to designated routes. However, the Act did not stipulate that many miles of designated routes be closed to motor vehicles, yet designated for some other use (bicycle, hiking, equestrian). As it is described on page 891 and 892 (Appendix N), it is called out as "limited to a specific class or type of use."

Neither does FLPMA makes such distinctions. FLPMA says manage for outdoor recreation, with no conditions.

For example, referring to the route-by-route designations, in the area known as the Hunting Ground we have a set exclusive designations for horse use only and bicycle use only (separate routes). However, we find no explanation or rationale for creating these exclusive use trails. BLM fails to describe the reason it wants only horses or only bicycles to use these trails, and no motorcycles or ATV's are allowed.

We do not know whether or not BLM can articulate a rational explanation for this segregation. Since that is a judicial standard this document will be held to, we expect to find that explanation in the document.

We find one hint at page 899, which apparently explains why all the trails off of Nine Mile Hill Road are designated for horses and hikers only---in spite of the fact that the trails have historically, and still are, used by motorcycles.

BLM states that,

"This was done in response to public comment from quiet-user groups that requested designated trails for horse and foot travel. This would ensure that the BLM maintains such trails as system routes."

The trouble here is that BLM won't say what the exclusive designation has to do with ensuring that BLM maintains the route as a system route. There is no reason BLM would not maintain that route²⁰ if BLM designated it as open.

Even stranger, BLM has created a new user-group that apparently has rights and entitlements greater than and beyond all other users, and especially greater than the motorcyclists and ATV riders that use the trails now. There is no legal standing for this "quiet-user" group. There is no regulation or law that gives those people the exclusive access to any area besides the Wilderness Act. And, there is right now, a recently created 66,000 acre wilderness for their exclusive use presently available. The need for an exclusive use trail system of this nature is redundant. There are 89 miles of trail in the wilderness where a "quiet user" can go for his/her experience. Access to this wilderness is less than ten miles down the road. BLM fails to justify a "close-to-home experience for these users, with such a marvelous opportunity already available already "close to home."

We don't know whether or not BLM can articulate a rational explanation for unilaterally creating a newly entitled group of people and giving them their own private access.

BLM is silent on the reasons behind segregating activities in this way. Ensuring that BLM maintains the trails as system trails is not the reason, because any open trail that is designated will be maintained in the system. BLM did not construct these trails and BLM does not maintain them--the users do. Thus when BLM talks about maintaining, it must of necessity be a way to express that BLM will simply keep it in the system inventory.

And, back to our first concern, the exclusive use bicycle trails, we have the same issues. BLM has not articulated a rational explanation for segregating users in this way, anywhere in this document.

Furthermore, we contend that any such rational explanation must also be lawful. BLM must be acting within the authority delegated to it by Congress, and not creating its own laws independent of Congress. With no statutory authorization, there is no legal standard that can be applied uniformly to every person. BLM is creating these exclusive use areas without any statutory authorization. The best example of statutory authorization to create an exclusive use area or trail system is the Wilderness Act. There is no other law authorizing BLM to segregate people according to activity or philosophy ("quiet-use").

All of these visitors have access to all of the trails, yet the motorized people do not. These designations are not reciprocal, yet the activities are obviously not inherently incompatible. If

²⁰ BLM does not maintain any of the routes off of Nine Mile Hill.

they were, BLM would ban the horses and bicycles from all the motorized trails. BLM does not, and the bicyclists and the horsemen do use the other trails.

What concerns us is the lack of statutory authorization for these proposals. With one administrative action, BLM throws the historic user groups off of a set of trails they have used for decades. BLM seems to want to expand its authority over every little thing that people do. Controlling who goes where, and how, was never written or implied in the FLPMA. BLM has made this up all on its own. This leads us to believe that BLM will make more arbitrary restrictions and controls up in other implementation plans, or in future RMPs, or any time BLM feels like it. It is time to call BLM to account for this unlawful mission-creep.

The resolution to this comment is for BLM to articulate a rational explanation that lies within its statutory authorization, in this document. The Omnibus Act did not stipulate that activities be segregated. The Omnibus Act left FLPMA as the overarching statutory authorization for the NCA. BLM must review the FLPMA and make its plans accordingly. There must be a legal standard that is applied uniformly to all people. If BLM chooses to avoid this explanation, or cannot find one that is within its statutory authority, BLM must abandon segregation of activities as a management option.

Thank you for your attention to this matter.

Lands with wilderness characteristics

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RMP Comments

Dominguez-Escalante National Conservation Area

Bureau of Land Management

2815 H Road

Grand Junction, CO 81506

Subject: Comment on the Dominguez-Escalante National Conservation Area Draft RMP

Date: July 31, 2013

Dear Sirs and Madams:

We contend that the Planning Issue cited on page 9, item 7,

Lands with Wilderness Characteristics: What lands, if any, should be managed to prioritize protection of wilderness values outside of existing Wilderness and Wilderness Study Areas? How might the BLM otherwise manage lands with wilderness characteristics (outside of existing Wilderness and WSA) to preserve inventoried wilderness characteristics?

and the proposal on page 36, for Alternative E,

The BLM would make a commitment to protecting wilderness characteristics in two of four units (Dry Fork of Escalante and Cottonwood Canyon) outside of the designated Wilderness and WSA.

-are unlawful. Section 2403 of the Omnibus Act established the boundaries for the Dominguez Canyon Wilderness, and BLM does not have the authority to expand those boundaries, or add to them, which is what the above proposal does. This is a blatant flaunting of Congressional direction and lawless to the point of criminal.

We are also extremely concerned that BLM has created unlawful direction for itself in BLM Manual 6320 (cited on page 17), specifically aimed at inventorying and planning for lands with wilderness characteristics.

BLM claims on page 28 that its authority to inventory lands for wilderness quality still exists under Section 201 and 202 of FLPMA. This is plainly incorrect. Those sections specifically addresses only areas of critical environmental concern. Section 603, which was deleted by Congress in the amended FLPMA, specifically identified lands with wilderness character and

authorized the inventory of them. Congress did not make this deletion or this distinction by accident. Congress was plainly telling BLM that BLM's authority to inventory and plan for lands with wilderness characteristics was revoked.

Thus, claiming that Sections 201 and 202 somehow extended BLM's authority to inventory lands with perceived wilderness characteristics, and take any management action to preserve such perceived characteristics, is unlawful. Sections 201 and 202 never mention wilderness. The reason this is a critical distinction is that, in terms of FLPMA and in matters of BLM management, the word "wilderness" has its own legal baggage, and Congress has not placed that word in Section 201 or Section 202. BLM cannot by any stretch of the imagination claim that these passages retain BLM authority to inventory public lands for wilderness characteristics and to consider such information during land use planning. Yet BLM invokes this usurped authority 204 times throughout this document.

In fact, BLM is under legislative direction from Congress to cease and desist from that policy. Congress revoked BLM's authority to seek out and preserve lands with alleged wilderness qualities when Congress amended the FLPMA. Congress further instructed BLM to stop doing this again in 2011:

In H.R. 1473, the Department of Defense and Full-Year Continuing Appropriations Act. This legislation included a provision cutting off all funding through September 2011 for the controversial Secretarial Order #3310, which outlined plans for the creation of new de-facto wilderness areas or "Wild Lands." The CR specifically states that no federal funds

"may be used to implement, administer, or enforce Secretarial Order No. 3310 issued by the Secretary of the Interior on Dec. 22, 2010."

In addition to the Congressional action, Senator Hatch reprimanded the Secretary of the Interior:

"As you know, Congress prohibited the use of federal funds to implement the rejected Wildlands policy. We were pleased when you abided by the Congressional order and reaffirmed your commitment to the American people that this policy would not be implemented. However, we are deeply troubled with the issuance of the new BLM manuals, which appear to be the latest rendition of the controversial Wildlands proposal. We are equally troubled that our offices and the public were not afforded the courtesy to provide input and that we were not notified of their existence-some of which appear to have been in place since March. The Wildlands policy was an unpopular policy then, and it remains an unpopular policy now. The mere fact these new handbooks were developed and released without public notice only affirms our deep skepticism for the motives behind the underlying directives."

Signed into law on April 15, 2011.

It is clear that Congress did not intend for this prohibition end in 2012, as the reprimand indicates Congressional skepticism of BLM's intentions. Congress was correct: BLM still intends to inventory lands with perceived wilderness characteristic regardless of Congressional intention. And, furthermore, through the instrument of this RMP BLM plans to act on this usurped authority.

Resolution: We join Congress in insisting that BLM cease and desist from seeking out and identifying lands with perceived wilderness characteristics, and especially cease and desist from making plans to protect the areas. It is clearly unlawful.

Please remove this Planning Issue and all corresponding proposals, maps, narratives and tables from all of the alternatives in the Final RMP and ROD. This will entail 204 deletions.

Thank you for your attention to this matter.

Narrow range of alternatives

RMP Comments

Dominguez-Escalante National Conservation Area

Bureau of Land Management

2815 H Road

Grand Junction, CO 81506

Subject: Comment on the Dominguez-Escalante National Conservation Area Draft RMP

Date: July 31, 2013

Dear Sirs and Madams:

In the Travel and Transportation Management Plan, Appendix N, we have noted that according to Table N4, BLM has not developed a full range of alternatives. In fact, the alternatives are all very similar in that all action alternatives call for drastic reductions in travel and access, and no alternative calls for more. The most we could hope for is the same as what is existing, based on this table.

The discussion of the alternatives confirms this: for Alternative E, there is no discussion of any expansion or even improvement of the existing system. However, CEQ, at 40CFR 1502.14

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

This is clarified by the CEQ 40 questions, # 1b (A) ,

"When there are potentially a very large number of alternatives, only a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS." (emphasis added)

IN the D-E NCA, there is not a "full range." A full range would include the existing situation in the middle, less mileage on one end of the spectrum, and at least one alternative that proposes more mileage. Instead, what we have is the existing situation at one end, and all action alternative at the extreme opposite end, all proposing a range of 55% closure to a 64% closure (counting the County Roads as open) (and counting routes restricted to nonmotorized outside the wilderness as open even though they are not open to everyone).

In Appendix N, only Alternative D calls for more routes; yet this is not reflected in Table 4, nor is it reflected in any of the effects discussions in the other chapters. For alternative D BLM

claims to propose "a large number" of new routes, yet how large is left unstated. Whether these new routes would be open to everyone (outside the wilderness) is left unstated. There is not even an estimate or guide as to route density. In this void, there cannot possibly be an analysis.

Because of this, for comparative purposes all the alternatives are too similar. And, we repeat, there is no reflection of the discussion of Alternative D for any added routes proposed in Table N. There is no analysis of the added routes proposed for Alternative E in Chapter 2. The fact that BLM has no interest in even a theoretical number of possible new miles, the range of alternatives as presented does not satisfy CEQ regulation for a "full range" of analyzed alternatives. With no commitment to even an estimate of new miles or route densities, BLM's proposals in Alternative D and in Chapter 2 are too weak to be considered seriously. These proposals will likely be "scotched" at the implementation level, because there is no analysis in the RMP that would render them genuinely feasible, and clearly not enough commitment to implement them (there isn't even enough commitment to analyze them).

Considering that the Omnibus Act did not call for any restrictions on travel, this set of alternatives is clearly in violation of NEPA as set forth in the CEQ regulations. BLM must develop an alternative that actually analyzes adding routes. This means BLM must commit to a proposal that actually examines (approximately) how many miles may be added, what the effects may be, and arrives at a reasoned number based on that analysis. This is not done anywhere in the document.

In the Reasonably Foreseeable Actions, there is no mention of any new routes. In the geological and paleontological impacts, no new routes are mentioned, rather, the "concentration" of recreation activities is mentioned. The area under discussion already has a high route density, and there no estimate of the effects of adding a managed, sustainable trail system even in that area. Priority Habitats and Vegetation mentions new route construction, yet no prospective mileage or route densities are brought up, thus, no actual analysis can take place. For example, where would these routes be? How many? What kind? None of those questions are answered, so the discussion is too weak to be an analysis. Special Status Species does not mention the additional routes, so obviously it has not been analyzed. Non-Special Status Fish & Wildlife does not analyze anything about adding routes anywhere. Noxious Weeds does not analyze the potential effects of adding routes. Fire & Fuels does not analyze the effects of adding routes. Soils & Water does not analyze the effects of adding routes. It mentions "surface-disturbing" activities, but there is no information upon which any analysis could be based (what surface disturbing activities? Where? How much? etc. Not answered.). Cultural resources analyzes no new routes. No mention of new routes is made in Wilderness, Non-wilderness, or Scenic Values. In the impacts to recreation, we find nothing about the impacts to the human environment, i.e. the added value of improving and expanding the trail system which would provide the balance in an analysis (if there was an analysis). This is a conspicuous void, because

without an analysis of the added value, there is definitely no analysis whatsoever. We have no scale to measure the balance of effects. Even more alarming, Management of Travel and Transportation does not even mention any new routes.

An analysis of adding routes under Alternative D and E does not exist because there is not specific enough information about what a "large number of new routes" might be. We have no idea of how much added value these new routes would offer. We realize that in several respects a specific number of miles cannot be determined at this level of planning, but there must be some kind of "vision" for alternative D ²¹, a "roughed-in" travel system, upon which the specialists could base an opinion in order to "rigorously analyze" the effects. There is nothing.

In sum, we have no analysis of the single sentence proposal in Alternative D to "add a large number of new routes" nor is there any analysis for the Alternatives Matrix in Chapter 2 calling for new routes in Alternative E. We have nothing proposing any prospective miles or whether it would be open to everyone. With so little information, there can be no analysis.

In Chapter 2 an SRMA is proposed, emphasizing motorized recreation in Cactus Park/Nine Mile Hill. "New routes would be constructed." Approximately how many? Not answered. Even a general description of what the route density may be is absent. There is no "vision," presenting even the vaguest of information. This tiny proposal in the alternatives matrix suffers from the same flaw as the discussion of Alternative D: there is no analysis of it. With no analysis, the range of analyzed alternatives remains too narrow.

Just a vague mention in one alternative, with no analysis, does not constitute the "full range." Just a completely undeveloped proposal in Chapter 2 with no analysis, does not constitute the "full range" of rigorously analyzed alternatives. The proposal in Chapter 2 is in the preferred alternative, which in this case is the proposed action, which receives specific direction requiring a rigorous analysis in 1502.14(b). This document fails to comply with that regulation.

This is a flaw in the very basis of the alternatives development. To resolve this flaw, BLM must develop a supplementary EIS which does develop and rigorously analyze such an alternative, to give the decisionmaker a complete palette from which to craft the ROD. And we don't mean just a small trail system limited to just 18% of the NCA lands outside the wilderness. We mean real access, so that visitors can travel around and within the NCA in a manner that is even better than it is now, with sustainable routes open to everyone, because we want to add value to the human environment. As presented now, the decisionmaker cannot commit to any new routes because there is no analysis of any such expansion. This renders the range of analyzed alternatives too narrow.

²¹ And for the proposals in Chapter 2, for the proposed SRMA's with new routes added.

Thank for your attention to this matter.
National Trails Act Violation

RMP Comments
Dominguez-Escalante National Conservation Area
Bureau of Land Management
2815 H Road
Grand Junction, CO 81506

Subject: Comment on the Dominguez-Escalante National Conservation Area Draft RMP
Date: July 31, 2013

Dear Sirs and Madams:

In the establishment of the National Landscape Conservation System (NLCS) the statute itself cites the following at "Statute, (c) (D) (1):"

"In general
Nothing in this chapter enhances, diminishes, or modifies any law or proclamation (including regulations relating to the law or proclamation) under which the components of the system described in subsection (b) were established or are managed, including - (D) the National Trails System Act (16 U.S.C. 1241 et seq.);"

The Omnibus Act proclaims that the D-E NCA is to be managed as a component of the NLCS, so obviously the draft Plan for the NCA cites (and must implement) the National Trails Act as a guiding principle in its overall vision for the NCA. At DEIS Section 1.3, it is stated that:

"the National Trails System Act was established in order to provide for the ever-increasing outdoor recreation needs of an expanding population and in order to promote the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas and historic resources of the Nation..."

In reviewing the National Trails System Act, we find this is correct. In fact, it is stated in the Act that, at Sec.7(a)

j) Potential trail uses allowed on designated components of the national trails system may include, but are not limited to, the following: bicycling, cross-country skiing, day hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long-distance backpacking, snowmobiling, and surface water and underwater activities.
Vehicles which may be permitted on certain trails may include, but need not be limited to, motorcycles, bicycles, four-wheel drive or all-terrain off-road vehicles.(emphasis added)

It is obvious that the closure of approximately 53% of the existing routes in the NCA outside the Wilderness is in direct conflict with National Trails System Act. The National Trails System Act is intended to ensure that all Americans have access to and can travel around within NLCS lands. The D-E NCA plan violates this law by proposing such a massive closure. BLM is not preserving access in any sense expressed by the Act. In BLM's real "vision" for the NCA (as demonstrated by the action alternatives) we have little access, reduced opportunity for dispersed recreation, in a sparsely roaded, semi-wilderness area surrounding a designated wilderness.

Furthermore, the Omnibus Act does not call for the closure of any routes. It calls out specific limitations on activities in the NCA, but travel and access is not called out as an activity to be cut back. In fact, the NLCS mandate to "restore" is not aimed specifically at roads; that is only the interpretation of BLM. The D-E NCA is a unique, and uniquely accessible, place. It is this unique access which makes it so valuable to the visitors. The National Trail System Act is intended to preserve and promote access, to be sure Americans can travel around within these lands, and it is called out in the enabling legislation for NLCS lands as one of the guiding principles. Thus, BLM needs to keep the access, and seriously consider judiciously adding sustainable routes to promote and preserve this unique access, to be in compliance. There are many things to be restored, if BLM wishes to do so. Closing roads is not, per se, one of the primary actions the agency must take to "restore" anything. The roads have co-existed with the natural resource for decades. They are an integral part of the landscape.

In deference to that 69% of the visitors²² who want to access this area via motor vehicle, these roads must be kept open.

In sum, the National Trail System Act, as it is cited in the enabling legislation creating the NLCS lands, which is cited by the Omnibus Act as one of the guiding principles for NLCS lands including the D-E NCA, cause the proposed 53% closure of roads outside the wilderness to be unlawful.

The resolution to this issue is to either develop another alternative which does provide full motorized access outside the wilderness, or to include most elements of Alternative A in the Final Plan to retain the existing access. In fact, to be in full compliance with the National Trail System Act, BLM should actually improve the trail system in the D-E NCA, to enhance the access.

²² BLM 2012, GJFO Draft RMP, for the part of the NCA that is in the GJFO (Mesa County) which comprises the largest portion of the NCA. This percentage does not conflict with the descriptions in Chapter 3.3.1 in the D-E NCA draft RMP.

Thank you for your attention to this matter.
No commitment to loop trail system

RMP Comments
Dominguez-Escalante National Conservation Area
Bureau of Land Management
2815 H Road
Grand Junction, CO 81506

Subject: Comment on the Dominguez-Escalante National Conservation Area Draft RMP
Date: July 31, 2013

Dear Sirs and Madams:

We have detected what appears to be an inconsistency in the draft RMP. In Chapter 2, Alternatives, at page 128 (pdf p. 164) in the alternatives matrix for recreation, BLM states for Alternative E that it will develop a motorized "loop" trail system in the Cactus Park area (a proposed Special Recreation Management Area or SRMA), building new trails targeting the ATV visitors with new trails built to the proper standards according to user-group handbooks and best management practices for new trail construction. This would produce excellent and sustainable trails. The proposal as stated in the matrix leaves the existing routes open until new routes are completed.

However, Appendix N (Travel) states that routes will be closed until any specific concern over that route is mitigated, or a reroute is constructed. In Appendix N there is only one vague reference to even creating loops, at page 899 (pdf p. 935). This is in reference to connecting dead end routes, and only those that may be connected "easily." Nothing is mentioned about creating a loop system anywhere in the D-E NCA, including any SRMA's that may be created. There is no commitment to a recreational travel and access system anywhere in Appendix N that matches the recreation matrix. The impacts summary in Appendix N is written as though the assumption is that there will be no new routes.

Appendix J17 does not discuss BMP's for a recreational trail system in which new trail construction is proposed.

In Appendix L Special Recreation Management Areas, page 831 (pdf p.867) for Alternative E, BLM says it will develop the necessary trails to meet RMA objectives, but the objective of a loop trail system is not discussed, only the setting, as in all the other SRMA's described in this matrix.

In the maps, there is no indication that there will be any new routes added, only routes removed from the system.

Thus, there is only one place in the draft Plan where BLM commits to a real trail system, and that is on a limited, 27,000 acre portion of the 144,000 available acres. While this is not genuine access, we would still like to see a somewhat stronger commitment to completing such a recreational loop system.

The resolution to this comment is threefold: 1) Add to Table 135 (website version) which is the same as Table N.4 (pdf p.903) a column calling out the approximate proposed new mileage. 2) Add to Appendix J17 what the BMP's for the new trail construction would be. 3) Add to Appendix N a specific discussion of the new trails that will be constructed (both motorized and nonmotorized). In Appendix N we should find some discussion of the purpose for the new trails, and what the objectives are, confirming what the alternative matrix very briefly raises. We need to know what the relative value to the human environment will be, in order to make a balanced decision regarding the resource effects. As it stands, this proposal is too underdeveloped to be considered serious.

Thank you for your attention to this matter.

NTSA preserves access

RMP Comments

Dominguez-Escalante National Conservation Area
Bureau of Land Management
2815 H Road
Grand Junction, CO 81506

Subject: Comment on the Dominguez-Escalante National Conservation Area Draft RMP
Date: July 31, 2013

Dear Sirs and Madams:

The DRMP Section 1.3 "Vision" says,

"the National Trails System Act was established in order to provide for the ever-increasing outdoor recreation needs of an expanding population and in order to promote the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas and historic resources of the Nation..."

Thus, closing 53% of the access routes, road or trail, is actually thwarting the intent of Congress. All these routes provide the opportunity to promote the preservation of public access to public land. Large-scale route closures such as this RMP proposes is NOT mandated; rather, preservation of access is the intent of Congress. BLM is cutting off access to open-air outdoor areas and historic resources, contrary to the intent of Congress.

The solution to this comment is to craft a Travel Plan comprised mainly of the components of Alternative A, and preserve the existing access.

Thank you for your attention to this matter.

Too dry and hot for M-P activities

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RMP Comments

Dominguez-Escalante National Conservation Area

Bureau of Land Management

2815 H Road

Grand Junction, CO 81506

Subject: Comment on the Dominguez-Escalante National Conservation Area Draft RMP

Date: July 31, 2013

Dear Sirs and Madams:

At DRMP page 899 BLM states that,

"The BLM chose to designate routes for horse and foot travel throughout the D-E NCA despite the fact that the D-E NCA would be available for cross-country travel on horse and foot (exception: Wilderness Zone 1 under Alternatives C and E). This was done in response to public comment from quiet-user groups that requested designated trails for horse and foot travel. This would ensure that the BLM maintains such trails as system routes."

And, if we study the travel map describing alternative E, we discover that an entire network of routes off of Nine Mile Hill Road are so designated. The routes are actually roads that any 4WD vehicle could access. They are not "trails," in the sense that BLM classifies trails on page 899. They are primitive roads. These roads look like a good, contiguous system when viewed as lines on a map, but the reality is quite different.

In choosing this proposal, BLM is overlooking an important aspect of the problem. This area is a semi-arid high desert environment. There is no shade and no water, so in the summer months it is not useful as a recreational trail system for any muscle-powered activities. In the winter, it is too cold to be practical as a recreational route system for muscle-powered activities for any length of time. Because of this, the area is useful to muscle-powered activities only a few months out of the year.

Yet BLM is proposing to close the entire network off to general public year-round so a small minority of people can have it all to themselves for a few months out of the year (perhaps four months at the most--in spring and fall). This is a lopsided allocation, and not the best use of the resource for the most people. The roads are wide; there is no reason a horse and a 4WD or an

ATV cannot pass. 4WD and ATV's do not make very much noise. An encounter may last 15 seconds or so; the fact that some people cannot tolerate even that much time nearby to a motor vehicle indicates that those are the people who need to be in the wilderness, which is only a couple of miles further down the road. BLM is not serving the public well by catering to this tiny minority with the wilderness so close by.

It is BLM policy in travel management to be aware of new technologies in the field. It so happens that this network of routes is particularly well-suited to UTV's, or "side-by-side" vehicles. BLM is disregarding what may be the largest emerging activity on public land today-- the growth in popularity of these vehicles for driving for pleasure.

Furthermore, BLM does not even know how many people use the area nor does BLM know what they do (DRMP page 330, Unknown or Unavailable Information). BLM has no idea how likely it is that a vehicle driving on the road and an equestrian riding on the road would even encounter one another.

Because BLM doesn't know how many people access the area, BLM cannot possibly evaluate the impacts of this designation. Do any equestrians or hikers use the area now? BLM doesn't know. What is the group size and the rate of encounters between groups? BLM doesn't know.

Furthermore, in overlooking the most salient (and obvious) issue--that it is a dry, high-desert environment not well suited for muscle-powered activities, we of course wonder what other equally obvious issues BLM has overlooked.

BLM has clearly overlooked the fact that these routes will remain out of use for most of the year when the general public is shut out; in both winter and summer a motor vehicle occupant can find a drive around this network enjoyable, but during most months of the year, an equestrian or hiker would find the area far too hot and dry or much too cold for an enjoyable trip.

BLM has failed to fully evaluate its proposal to shut this network down to the general public. Simply because a certain group asked for exclusive use trails (a group with no legal standing), does not entitle BLM to close the area completely off to the general public. BLM is silent on why this particular network was selected for this designation.²³ Perhaps it looked good on the map--a nice network of loops near to Highway 141, ready to go. BLM wouldn't have to build anything. BLM wouldn't have to fix anything. All well and good until we realize BLM has completely overlooked at least one important aspect of the problem.

This is a perfectly useful set of routes for multiple-use. We suggest that BLM change this proposal in light of the issues we have pointed out, which BLM has obviously overlooked.

Thank you for your attention to this matter.

²³ BLM is silent on how this group came to be so privileged.

Travel issue already decided by law

RMP Comments

Dominguez-Escalante National Conservation Area

Bureau of Land Management

2815 H Road

Grand Junction, CO 81506

Subject: Comment on the Dominguez-Escalante National Conservation Area Draft RMP

Date: July 31, 2013

Dear Sirs and Madams:

In Chapter 1, page 10, one of the Planning Issues is for Transportation and Travel Management.

What are the principle travel priorities for this area for the public, as well as for administrative uses (e.g., such as research and monitoring, grazing management, or emergency access)? What routes should be designated as open, closed, or limited for all travel modes (from motorized to nonmotorized), based on opportunities to be provided and/or the need to protect resources? What travel system is needed to support recreation demand in the D-E NCA? How might the BLM reduce trespass onto private lands?

While this is a rather mixed-up potpourri of issues, the primary issue, what are the priorities, has already been decided by law. That is, the D-E NCA is part of the NLCS. One of the primary statutory authorizations for the NLCS lands is the National Trail System Act. BLM seems to want to leave this out of the process but it cannot be denied that in that Act it is stated that, at Sec. 7 (a)

j) Potential trail uses allowed on designated components of the national trails system may include, but are not limited to, the following: bicycling, cross-country skiing, day hiking, equestrian activities, jogging or similar fitness activities, trail biking, overnight and long-distance backpacking, snowmobiling, and surface water and underwater activities. Vehicles which may be permitted on certain trails may include, but need not be limited to, motorcycles, bicycles, four-wheel drive or all-terrain off-road vehicles.(emphasis added)

The "trails" in question are all used for access to the dry, semi-arid areas of the parts of the D-E NCA by motor vehicles, as muscle-powered activities are not practical due to the absence of permanent water in most of the area outside the Wilderness. Thus, the use of motorized vehicles is the default activity on the trails outside the wilderness.

This makes the question of what the priority for the trails should be, moot. The D-E NCA RMP itself states that,

"the National Trails System Act was established in order to provide for the ever-increasing outdoor recreation needs of an expanding population and in order to promote the preservation of, public access to, travel within, and enjoyment and appreciation of the open-air, outdoor areas and historic resources of the Nation..."

So, on NLCS lands, access is encouraged by Congress. Congress wants the American public to access its scenic treasures. The mere fact that the D-E NCA was designated an NCA is not justification for wholesale motorized trail closure.²⁴ That concept is far off the mark intended by Congress. While these trails may not qualify as historic under the strict sense of the expression in the Act, they access historic sites such as mines and cattle ranching, which form a rich part of the history of the area. Some of them can be side trails connecting people to the Old Spanish Trail.

To summarize, to preserve our enjoyment of the D-E NCA, we must keep at the very least, all of the existing routes in place, and keep it open to motorized travel. Site-specific remedies may be needed in some areas, but wholesale closure (50 to 60% as proposed in all action alternatives) is not warranted nor is it lawful.

This comment can only be resolved by developing and analyzing an alternative that preserves access, instead only developing alternatives that destroy access. The issue has been decided by law already; it is incumbent upon BLM to prepare an appropriate RMP. Whether that can be done without a supplementary EIS remains in question. We would encourage a supplementary, which would include proposals to judiciously expand the trail system to improve access and add value to the area.

Thank you for your attention to this matter.

²⁴ By using the word trail, we intend, and the Act notes, that 4-wheel drive vehicles may access the designated trails, thus the "trail" can and often is an undeveloped road.