

August 26, 2019

Submitted via e-planning and USPS

BLM Director (210)
Attention: Protest Coordinator, WO-210
P.O. Box 71383
Washington, D.C. 20024-1383

Re: Protest of Bears Ears National Monument Proposed Monument Management Plan / Final Environmental Impact Statement

Please accept this timely protest of the Bureau of Land Management (BLM) and United States Forest Service's (USFS) Proposed Monument Management Plan and Final Environmental Impact Statement (FEIS) for the Indian Creek and Shash Jaa' units of Bears Ears National Monument, submitted by The Wilderness Society, Southern Utah Wilderness Alliance, Western Resource Advocates, Grand Canyon Trust, Center for Biological Diversity, Western Watersheds Project, Defenders of Wildlife, Natural Resources Defense Council, National Wildlife Federation, Sierra Club, WildEarth Guardians, National Parks Conservation Association, Great Old Broads for Wilderness, Coalition to Protect America's National Parks, Wildlands Network, and Grand Canyon Wildlands Council (Protesting Parties).

INTERESTS OF THE PARTIES

The Wilderness Society (TWS) is a non-profit national organization founded in 1935, with members who reside throughout the nation. TWS works to protect America's wilderness lands through public education, scientific analysis, and advocacy. TWS's mission is to protect wilderness and inspire Americans to care about our wild places, so that future generations will enjoy the clean air, water, wildlife, beauty, and opportunities for recreation and renewal that pristine deserts, mountains, forests, and rivers provide. Protecting wilderness quality and other sensitive lands managed by BLM is vital to achieving The Wilderness Society's mission.

The Southern Utah Wilderness Alliance (SUWA) is a non-profit environmental membership organization with members in all fifty states and offices in Washington, D.C. and Utah. It is dedicated to the sensible management of all federal public lands within the State of Utah, the preservation and protection of plant and animal species, the protection of clean air and water found on federal public lands, the preservation and protection of cultural and archaeological resources, and the permanent preservation of Utah's remaining wild lands. SUWA staff and members actively supported President Obama's exercise of his authority under the Antiquities Act to designate the Bears Ears National Monument and preserve the objects identified in the proclamation for current and future generations of Americans. SUWA staff and members have worked for decades to obtain permanent, heightened protection for the Bears Ears area.

Western Resource Advocates (WRA) is a regional non-profit conservation organization headquartered in Boulder, Colorado with programs and staff spanning the intermountain west. Our mission is to protect the land, air and water of our region, using law, science, economics,

advocacy, education, and action. To this end, we work to curb climate change and achieve environmentally sustainable management of energy, land, and water resources.

The Grand Canyon Trust (Trust) is a 501(c)(3) non-profit public lands advocacy organization founded in 1985 whose mission is to protect and restore the Colorado Plateau – its spectacular landscapes, flowing rivers, clean air, diversity of plants and animals, and areas of beauty and solitude. The permanent protection of the outstanding cultural, natural, and historic resources of the entirety of the Monticello Field Office (including the Indian Creek and Shash Jaa’ units of the Bears Ears National Monument) is directly aligned with our mission as a conservation organization. The Trust advocates for Native American sovereignty and self-determination, environmentally responsible management of public lands and their associated resources, access to these lands, and permanent administrative and legislative protections to maintain their cultural and ecological integrity. We submit these comments in the interest of the furtherance of the goals of our organization and our membership. The Trust is headquartered in Flagstaff, Arizona and has more than 4,000 active members and supporters. In addition to our Flagstaff headquarters, we operate satellite offices in Moab, Utah, and Denver and Durango, Colorado.

The Center for Biological Diversity (Center) is a non-profit public interest organization with offices located across the country, representing more than 1.6 million members and online activists nationwide dedicated to the conservation and recovery of species at-risk of extinction and their habitats. The Center has long-standing interest in protecting and preserving ecosystems across the Bears Ears landscape. The Center has and continues to actively advocate for increased protections for species and habitats on lands managed by the BLM and USFS within the Planning Area including the Mexican spotted owl, Colorado River endangered fishes, Southwestern willow flycatcher, yellow-billed cuckoo, and rare plants, which will be affected by the Proposed MMP. The Center’s board, staff, and members use the lands and waters within the planning area, including the lands and waters that would be affected by the Proposed MMP for quiet recreation (including hiking and camping), scientific research, aesthetic pursuits, and spiritual renewal. The Center’s interests also include interests in science-based conservation planning on BLM and USFS lands.

Western Watersheds Project (WWP) is a west-wide non-profit 501(c)(3) membership organization dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. WWP has over 9,500 members and supporters. WWP is active in seeking to protect and improve the riparian areas, water quality, fisheries, wildlife, and other natural resources and ecological values of western watersheds. To do so, WWP actively participates in agency decision-making concerning Forest Service and BLM lands throughout the West, and the Forest Service and BLM’s management of livestock grazing in Idaho, Nevada, Utah, Colorado, Arizona, Montana, California, Oregon, and Wyoming.

Founded in 1947, **Defenders of Wildlife (Defenders)** is a national non-profit conservation organization focused on conserving and restoring native species and the habitat upon which they depend. Based in Washington, DC, the organization also maintains six regional field offices, including in the Southwest. Defenders is deeply involved in public lands management and wildlife conservation, including the protection and recovery of flora and fauna on the mesas and

canyonlands of southern Utah. We submit these comments on behalf of more than 1.8 million members and supporters nationwide, including 13,725 members in Utah.

The **Natural Resources Defense Council (NRDC)** is a non-profit environmental membership organization with hundreds of thousands of members nationwide. Part of NRDC's core mission is to preserve the earth's wild places and wildlife, to safeguard the integrity of undeveloped lands, and to prevent the destructive impacts of extractive industry exploration and development on public lands. NRDC has a longstanding commitment to the protection of federal public lands in Utah, and it was actively involved in advocating for the designation of Bears Ears National Monument.

The National Wildlife Federation (NWF), one of America's largest conservation organizations, has worked across the country to unite Americans from all walks of life in giving wildlife a voice for over eighty years. NWF has 51 state and territorial affiliates and more than 6 million members and supporters, including hunters, anglers, gardeners, birders, hikers, campers, paddlers, and other outdoor enthusiasts. NWF programs work to protect the 600 million acres of public lands owned by all Americans and has a longstanding interest in ensuring these lands are managed properly for fish, wildlife, and communities.

Sierra Club was founded in 1892 and is the nation's oldest grass-roots environmental organization. It is a national nonprofit organization of over 784,000 members. Sierra Club's Utah Chapter has groups in Moab, Ogden, Cedar City, and Salt Lake City. Sierra Club's purpose is to explore, enjoy and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and use all lawful means to carry out these objectives. Sierra Club members live, work, and recreate in and near the Bears Ears area; and their concerns encompass the exploration, enjoyment, and protection of the monument for themselves and future generations.

WildEarth Guardians (Guardians) is a non-profit organization dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West. Guardians has more than 200,000 members residing across the United States. The organization maintains offices in Santa Fe, New Mexico; Denver, Colorado; Missoula, Montana; Portland, Oregon; Seattle, Washington; and Tucson, Arizona. Guardians has a long-standing interest in the preservation of public lands across the West, including Bears Ears National Monument. Over the last decade, Guardians has advocated for prohibitions on oil and gas leases and other development that would harm the natural and cultural values of the Bears Ears region.

The mission of the **National Parks Conservation Association (NPCA)** is to "protect and enhance America's National Park System for present and future generations." Founded in 1919, NPCA is the leading citizen voice for the national parks. We are a national non-profit with headquarters in Washington, DC, and 29 regional and field offices across the country. NPCA represents over 1.3 million members and supporters who care about America's shared natural and cultural heritage preserved by the National Park System. NPCA has a longstanding commitment to the Bears Ears landscape as it connects with multiple national park units

including Canyonlands National Park, Natural Bridges National Monument and Glen Canyon National Recreation Area.

Great Old Broads for Wilderness (Great Old Broads) is a national grassroots organization, led by women, that engages and inspires activism to preserve and protect wilderness and wild lands. Great Old Broads has over 8,500 members and supporters. It was formed, in part, to protect the interests of senior populations who value roadless areas, enjoy them without mechanized means of transportation, and want to see these areas protected in their natural state for future generations. Protection of federal public lands in southern Utah has been an important focus of Great Old Broads since it began in 1989. Great Old Broads has conducted educational, stewardship, documentation, and advocacy activities related to the lands within the original Bears Ears National Monument. The organization has submitted public comments on numerous draft plans for areas within the original National Monument boundaries and has also requested its members to submit comments. Great Old Broads has also advocated for wilderness designations in areas within the Monument. Great Old Broads has organized multi-day camping events in or adjacent to the Monument, including a five-day education, advocacy, and stewardship event in 2016.

The **Coalition to Protect America's National Parks (Coalition)** is a non-profit organization composed of nearly 1,700 retired, former, or current employees of the National Park Service (NPS). The Coalition studies, educates, speaks, and acts for the preservation of America's National Park System. As a group we collectively represent nearly 40,000 years of experience managing and protecting America's most precious and important natural and historic resources. Among our members are former directors, regional directors, superintendents, environmental and resource specialists, rangers, maintenance and administrative staff, and a full array of other former employees, volunteers, and supporters.

Wildlands Network is non-profit conservation organization headquartered in Seattle with programs and staff based nationwide. Our mission is to reconnect, restore and rewild North America so that the diversity of life can thrive. We envision a world where nature is unbroken, and where humans co-exist in harmony with the land and its wild inhabitants.

Grand Canyon Wildlands Council (now a division of **Wild Arizona**) works to protect and restore wild nature in the Grand Canyon Ecoregion, from the headwaters of the Little Colorado River in western New Mexico, across Grand Canyon and up into the canyon country of southern Utah.

A list of the names, mailing addresses, and telephone numbers of the above-listed groups are included below, as required in 43 C.F.R. § 1610.5-2. These groups submitted comments that covered all issues raised herein that were germane at the time, as required by 43 C.F.R. § 1610.5-2(2)(iv). Issues raised herein for the first time are limited to those that resulted from changes to the Proposed Action and accompanying documents, and other new information.

The Protesting Parties have and will continue to participate in this planning process, including through scoping comments on the Bears Ears Monument Management Plan (MMP) and Environmental Impact Statement (EIS) submitted on April 11, 2018; Areas of Critical

Environmental Concern nominations submitted April 2018; attendance at BLM’s public meeting in Bluff, Utah, in October 2018; comments on the Draft MMP and EIS submitted November 15, 2018; and supplemental information submitted by TWS March 2019, all of which are incorporated herein by reference, along with their respective exhibits and attachments, and which are attached as Exhibits A through F hereto, and listed in Appendix I. The Protesting Parties care deeply about the proper management and conservation of federal lands, wildlife, and other resources covered by the Bears Ears Proposed MMP/FEIS and have been integrally involved in the multi-year efforts that resulted in the Proposed MMP.

As a preliminary matter, the undersigned groups are not acquiescing to Proclamation 9681, 82 Fed. Reg. 58081 (Dec. 4, 2017), which we maintain is illegal and will be overturned in ongoing legal proceedings, including those brought by many of the undersigned organizations. A president has the authority to create a national monument under the Antiquities Act but only Congress has the authority to revoke or reduce a national monument. We make no admissions with regard to Proclamation 9681, waive no litigation rights, nor otherwise waive any rights or privileges. We are simply exercising our right to participate in this public planning process. Nonetheless, this protest must be fully considered and applicable as part of the administrative record to the current planning process and environmental analysis.

This protest is filed in accordance with 43 C.F.R. § 1610.5-2 and addresses the following issues:

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I. BLM and USFS Violate the Antiquities Act of 1906 and the Bears Ears National Monument Proclamation.

Pursuant to the legal authority granted by Congress in the Antiquities Act of 1906 (54 U.S.C. § § 320301), President Obama designated Bears Ears National Monument (“monument”) for the explicit purpose of protecting and preserving the monument’s resources and values. Specifically, the agencies must manage the monument for the protection and preservation of its natural, cultural, historic and scientific values, and only allow uses other than those needed for protection of monument objects when those uses do not conflict with the directives of the proclamation. Accordingly, the standard approach of multiple-use management does not apply to this monument, and any effort to adopt such a management approach to the detriment of the monument’s natural and cultural values violates the proclamation.

The Antiquities Act mandates prioritizing the protection of monument objects and values over discretionary uses, such as rights-of-way development and vegetation management. Monument proclamations have the force of law and the relevant agencies must manage these lands for the protection of monument objects. In regard to the Upper Missouri River Breaks National Monument in Montana, the Ninth Circuit found “[t]he national monument designation changed the status quo for the Upper Missouri River Breaks area, elevating protection of the “biological geological, and historical objects of interest.” *Montana Wilderness Association v. Connell*, 725 F.3d 988, 1011 (9th Cir. 2013). In another case involving the Upper Missouri River Breaks National Monument, the Ninth Circuit Court of Appeals held that “[t]he Proclamation changed the legal landscape [for the Monument] and BLM must consider this change in determining the reasonable range of alternatives that should be carefully analyzed . . . BLM must consider both the terms of the Proclamation and the objects of the Proclamation to be preserved before taking actions that can affect Monument objects.” *Western Watersheds Project v. Abbey*, 719 F.3d 1035, 1053 (9th Cir. 2013).

A federal agency's actions that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" will not withstand judicial review. 5 U.S.C. § 706(2)(A). "An agency action is arbitrary and capricious if the agency ... entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or [if the decision] is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Utah Envtl. Cong. v. Richmond*, 483 F.3d 1127, 1134 (10th Cir. 2007 (internal citations omitted)).

Here, the agencies failed to meet their obligations under the Antiquities Act and the monument proclamation, Proclamation 9558 (regardless of modification by Proclamation 9681, which we maintain to be illegal), as described in further detail in Section II below. The Proposed MMP fails to recognize that the monument has special status and to analyze the impacts of authorized activities under the standard of prioritizing the protection of monument objects. As such, the agencies' actions are arbitrary and capricious and must be revisited.

A. BLM and USFS Fail to Comply with Proclamation 9558.

The monument was established by Presidential Proclamation 9558, signed by President Obama on December 28, 2016 pursuant to the Antiquities Act of 1906 (54 U.S.C. § 320301 et seq.). Proclamation 9558, 82 Fed. Reg. 1139 (Dec. 28, 2016). Pursuant to Proclamation 9558, BLM and USFS must jointly prepare a management plan for the monument – the *whole* monument, comprising all 1.35 million acres – meeting all consultation requirements with federally recognized tribes, states, and local governments. The proclamation also identified a wide, but specific, variety of monument objects and designated the monument "for the purpose of protecting the objects." The proclamation includes language providing the Ute Mountain Ute Tribe, Navajo Nation, Ute Indian Tribe of the Uintah Ouray, Hopi Nation, and Zuni Tribe with co-management authority through a Bears Ears Commission. To protect monument objects, the proclamation also withdrew the 1.35 million-acre monument landscape from mining and mineral leasing. By moving forward with planning to implement not Proclamation 9558, but rather Proclamation 9681 – BLM and USFS are violating Proclamation 9558. Proclamation 9558 requires one holistic management plan for the *entire* 1.35 million-acre monument, and by implementing a plan that protects only two slivers of that area, BLM and USFS have failed to comply with Proclamation 9558's directive.

Moreover, even within the unlawfully shrunk monument boundaries, BLM and USFS's plan confers weaker protections than Proclamation 9558 and the Antiquities Act require, as further described in Section II, below.

B. BLM and USFS Fail to Comply with Proclamation 9681.

The Proposed MMP also violates Proclamation 9681, which, if found valid, is also subject to the Antiquities Act and requires protection and proper care and management of monument objects within the reduced boundaries of the monument. Proclamation 9681 makes clear that "[n]othing in this proclamation shall change the management of the areas designated and reserved by Proclamation 9558 that remain part of the monument," aside from four noted exceptions. Therefore, the objects identified in Proclamation 9558 are still considered to be monument

objects “as modified by” Proclamation 9681, and the agencies are still required to jointly prepare a management plan, meeting all consultation requirements, to protect the monument resources within the monument. Following this direction, any objects identified in Proclamation 9558, which are not specifically identified as removed from protected status by Proclamation 9681, must still be prioritized for protection.

Proclamation 9681 provides that all management prescriptions are to be “consistent with the care and management of the objects identified.” However, the Proposed MMP allows for increased development and associated harm to monument objects from rights-of-way, grazing, off-road vehicle use, and other management provisions outlined below. Consequently, the Proposed MMP’s preferred alternative violates the Antiquities Act as well as Proclamation 9558 “as modified by” Proclamation 9681.

Summary of protest and requested remedy: The BLM and USFS failed to meet their obligations under the Antiquities Act and the establishing proclamation (whether considering Proclamation 9558 or Proclamation 9681) by developing a Proposed MMP that does not prioritize protection of monument objects. The agencies must revise their Proposed MMP and move forward with a management alternative that prioritizes the protection of monument resources.

II. The Proposed MMP Improperly Prioritizes Multiple Uses over Conservation in Violation of Proclamation 9558, Proclamation 9681, and The Federal Land Policy and Management Act.

The Federal Land Policy and Management Act (FLPMA) requires BLM to manage public lands under multiple-use principles unless an area has been designated by law for specific uses, in which case BLM must manage the land for those specific uses. 43 U.S.C. § 1732(a). In other words, BLM manages national monuments not under the FLPMA multiple use mandate, but rather under the language of the proclamation establishing the monument. This is expressly provided for in FLPMA itself:

The Secretary shall manage the public lands under the principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 1712 of this title when they are available, *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.*” FLPMA, 43 U.S.C. § 1732(a) (emphasis added).

As mentioned above, the monument was designated with the explicit purpose of protecting and preserving the cultural and natural resources throughout the landscape. Accordingly, the standard approach to multiple-use management does not apply to the monument, and any effort to adopt such a management approach to the detriment of its cultural and natural values would be in violation of the proclamation and the mandates of FLPMA and the Omnibus Public Lands Management Act of 2009 (described in further detail in Section III below).

The Proposed MMP violates this standard in several ways, three of which are noted below.

1) Cultural resources

In many instances the Proposed MMP prioritizes multiple uses within the monument at the expense of protecting cultural resources, in violation of the statutory, regulatory, and policy mandates to prioritize protection of the cultural resources for which the monument in part was created. For example:

- Despite acknowledging that prohibiting off-highway vehicles (OHV) provides the greatest protection for cultural resources – given that sites located nearer to a road are more likely to be looted, vandalized, or otherwise harmed – the Proposed MMP closes to OHVs the “least number of acres of high archaeological sensitivity” and provides OHV access to the “greatest number of acres of high archaeological sensitivity.” Proposed MMP at 3-15. We are particularly concerned about impacts on the 0.5 mile stretch of trail of the Arch Canyon RMZ to non-commercial OHV use between March 1 – August 31, as this section was previously closed under the 2008 Monticello RMP.
- The Proposed MMP would “manage the least amount of land as right-of-way exclusion areas compared to other alternatives,” even though closing areas to rights-of-way “provide[s] greater protections for cultural resources.” *Id.* at 3-11.
- The Proposed MMP designates 14 sites as “public use” sites, Proposed MMP at 2-6, which directs visitation to those sites – many of which, such as the Arch Canyon Great House complex or Shay Canyon, are inappropriate for increased visitation – without a plan to ensure increased visitation will not cause adverse impacts.
- The Proposed MMP allows target shooting within the Monument, Proposed MMP at 2-14, notwithstanding the long history of damage to cultural sites by gunfire in the Bears Ears area. While the agencies attempt to ameliorate cultural resource impacts by prohibiting target shooting around petroglyph sites and structural cultural resource sites, enforcing this prohibition will be all but impossible given the agencies’ refusal to conduct a Class III inventory prior to implementing the Proposed MMP, their lack of knowledge of the Monument’s cultural resource sites, and the dangers from publicizing cultural resource site locations.

Furthermore, the agencies would not develop an activity-level cultural resource management plan to manage visitation at cultural sites for two years. Proposed MMP at 2-5. Yet the agencies neglected to develop an interim management plan to protect cultural resources from ever-increasing visitor impacts, leaving cultural resources vulnerable to damage and degradation.

In fact, in several instances the Proposed MMP would not be any more protective, and in some cases would be *less* protective, of cultural resources within the Monument than the 2008 Monticello Resource Management Plan and 1986 USFS Manti-La Sal National Forest Land and Resource Management Plan currently governing the lands within the Monument. For example, even though, as noted above, the agencies acknowledge the increased risk to cultural sites from increased OHV routes, Proposed MMP at 3-15, the Proposed MMP directs the agencies in subsequent implementation-level travel planning for most of the Monument to integrate the entire San Juan County OHV route system, something even the existing plans don’t do. *See id.* at 2-25. As further discussed in Section IV(D) below, the Proposed MMP generally forgoes

imposing group size limits, which fails to add any protection from unrestricted group visitation to most sensitive cultural resource sites.

Summary of protest and requested remedy: The agencies prioritized multiple uses over the protection of the cultural resources that motivated the designation of the monument. This violates Proclamation 9558 (regardless of modification by Proclamation 9681), FLPMA, and is arbitrary and capricious. As such, the agencies must revise their analysis and move forward with a management alternative that prioritizes the protection of cultural resources over multiple use. The agencies should prioritize conducting Class III inventories throughout the monument to ensure these resources are protected. Additionally, the agencies should close more acreage to OHV use in high archaeological sensitivity areas and should not adopt the San Juan County OHV route system, which is contrary to Proclamation 9558. The agencies should close more areas to rights-of-way development, prohibit target shooting in the monument, and properly manage recreation around cultural sites by imposing group size limitations and not manage Arch Canyon Great House complex or Shay Canyon as public use sites.

2) Rights-of-way

As noted in our previous comments, the Proposed MMP is far too permissive of rights-of-way (ROWs) and other land use authorizations, only closing what the agencies are legally mandated to. *See* TWS et al. BENM Draft MMP comments, submitted November 15, 2018, Section XIV. Continuing the status quo of widespread authorization for ROW development provides no protective benefit to monument objects, and instead creates substantial risk to monument resources, objects, and values.

Under the preferred alternative, 238 known cultural localities are “open” to rights of way development. *See* Proposed MMP at 3-12. Additionally, over 2,000 known localities are in “avoidance” areas for ROWs. *Id.* Furthermore, 5,914 acres that are ranked as “high” archeological sensitivity areas are open to ROWs, and 30,943 acres ranked as “medium” archeological sensitivity areas would be open to ROWs. *Id.* at 3-12.

The Proposed MMP provides very little, if any, explanation as to how these sensitive areas would be protected from the impacts of ROWs. *See* Proposed MMP at 3-11. The Proposed MMP also notes there is low demand for most forms of ROWs within the Monticello Field Office. *Id.* at 3-20. Regardless of the low potential, the majority of the monument remains available for ROW development.

Summary of protest and requested remedy: Allowing widespread availability for development of ROWs demonstrates the flawed and illegal approach to thoughtlessly consider multiple uses throughout the monument, leaving the monument resources, objects, and values at risk. This violates Proclamation 9558 (regardless of modification by Proclamation 9681), FLPMA, and is arbitrary and capricious. As such, the agencies must revise their analysis and move forward with a management alternative that prioritizes the protection of monument resources over development, closing all cultural localities, medium and high archaeological sensitivity areas, and low potential areas for ROWs to development.

3) Wildlife and Sensitive Species

The monument proclamation identifies numerous flora and fauna as Monument objects. *See* Proposed MMP at A-1-7. Moreover, “most areas of BENM are potentially suitable for high numbers of ecological objects,” leaving no excuse for the agencies to fail to protect and restore the many plant and animal species identified as Monument objects. *See* McClure, M.L. and B.G. Dickson. 2017. *Identifying hotspots of ecological objects identified in the Bears Ears National Monument proclamation*. Conservation Science Partners. Report submitted to The Wilderness Society.¹

The agencies’ selection of Alternative E fails to achieve the proclamation’s intent with respect to monument objects. The Proposed MMP acknowledges that Alternative E would allow greater ecological degradation and would have more adverse direct and indirect effects on wildlife compared to other alternatives. *See e.g.*, Proposed MMP at Appendix J (showing exceptions, or deferment to the implementation level, for Alternative E as to many of the proposed Stipulations). The agencies admit that Alternative E “would be less prescriptive regarding how uses and activities are managed at the site-specific implementation level and would rely on environmental reviews completed for individual management actions to establish appropriate uses and restrictions needed to provide for the proper care and management of Monument objects and values.” *See* Proposed MMP at 2-2. But nowhere does the Proposed MMP explain how the allowed harmful activities can occur without inhibiting the protection and restoration of the monument’s objects. This is inadequate and illegal because the Proposed MMP itself must ensure the protection and restoration of objects and cannot defer to project level decisions.

The Proposed MMP asserts “[m]ost habitats in the Planning Area are anticipated to remain undisturbed” and that “[t]he existing distribution and population levels for special status passerine species would be anticipated to continue through the life of the plan.” *See* Proposed MMP at 3-70 (emphasis added). Not only is this assertion contradicted by what is allowed under the Proposed MMP, for species such as the southwestern willow flycatcher – a special status passerine species and an identified Monument object – maintenance of current populations and distributions does not provide for the protection and restoration of the species, and, therefore, is unacceptable.

In its discussion of USFS sensitive species, the Proposed MMP repeatedly uses the phrase “[t]he action alternatives would create a framework that *could* provide the necessary habitat conditions for these species to persist within the Planning Area.” *See e.g.*, Proposed MMP Vol. 2 at P-15 (emphasis added). Not only is that inadequate under the National Forest Management Act (NFMA) (see Section VIII below), it is also illegal for sensitive species that are monument objects as such language plainly fails to provide for their protection and restoration.

In those instances where Stipulations (Appendix J) exist in the Proposed MMP to ostensibly protect plants or animals identified as objects, they are woefully inadequate, and say nothing about restoration. For example, to protect goshawks, the following Stipulation exists (Proposed MMP at J-5): “Prohibit forest vegetation manipulation within active nest areas during the active nesting period (March 1 to September 30).” Such a measure not only fails to protect goshawk habitat generally, such as foraging habitat, it doesn’t even fully protect nesting habitat as it

¹ Available at: <http://www.csp-inc.org/public/CSP%20Bears%20Ears%20NM%20Hotspots%20Report%20TWS.pdf>.

allows vegetation manipulation during the non-active nesting period. *See also* Proposed MMP at J-10-11 (showing Stipulations for raptors to be narrowly focused and failing to protect or restore habitat outside of active nesting areas/nesting season); Proposed MMP at 3-69 (bird impacts analysis speaking only to nesting season requirements). The Stipulation for kit foxes is similarly misguided, protecting a mere 200 meters around fox dens, and then allowing exceptions even for that tiny area. *See* Proposed MMP at J-5. Even Stipulations for ESA-listed species, such as the Mexican spotted owl and Southwestern willow flycatcher, are narrowly focused on nesting habitat, offer nothing for restoration, and allow exceptions. *See* Proposed MMP at J-5-6.

Summary of protest and requested remedy: The Proposed MMP allows for serious harm to occur to plants and animals identified in the monument proclamation, yet nowhere do the agencies justify how they will comply with their duties to protect and restore monument objects. This violates Proclamation 9558 (regardless of modification by Proclamation 9681), FLPMA, and is arbitrary and capricious. As such, the agencies must revise their analysis and move forward with a management alternative that prioritizes the protection and restoration of wildlife and sensitive species identified by the proclamation for protection.

4) Motorized vehicle use

The Proposed MMP contemplates “enhanced” motorized use to further recreation goals. Proclamation 9558 specifically lists “rock climbing, hunting, hiking, backpacking, canyoneering, whitewater rafting, mountain biking, and horseback riding” as “world-class recreation opportunities” within the monument. *See* Presidential Proclamation 9558 and Proposed MMP, Appendix A-16. Notably absent from the list of “world class recreation opportunities” within the monument is motorized recreation. Conversely, natural quiet is a value protected by the proclamation and is threatened by OHV use. *See Meister v. U.S. Dep't of Agric.*, 623 F.3d 363, 377 (6th Cir. 2010) (finding it was arbitrary and capricious for the USFS to not consider prohibiting hunting and snowmobile use to in primitive and semi-primitive areas which are meant to promote quiet recreation); *see also* Proclamation 9558 (“The star-filled nights and natural quiet of the Bears Ears area transport visitors to an earlier con.”).

Summary of protest and requested remedy: Allowing new or increased motorized use within the monument threatened the area’s natural quiet and is inconsistent with the proper care and management of monument objects and values. This violates Proclamation 9558 (regardless of modification by Proclamation 9681) and FLPMA. As such, the agencies must revise their analysis and move forward with a management alternative that prioritizes the protection of quiet recreation and natural sounds. The agencies should not allow new or increased motorized use within the monument pursuant to Proclamation 9558.

5) Soil resources

Under all of the alternatives, the agencies acknowledge the possibility of long-term resource degradation on sensitive soils from improper livestock grazing in areas of concentrated livestock. They improperly describe these impacts as moderate (Draft MMP at 3-61) when impacts from removal of vegetation, compaction of soils, and the increased weeds associated with waters, vegetation treatments, and other locations where livestock congregate are extreme and severe.

81% of the sensitive (highly erosive) soils in the project area are open to livestock grazing under the preferred alternative.

The agencies should protect soils from accelerated or unnatural erosion from any ground disturbing activity. It is not enough for the agencies to compare the preferred alternative to the no action alternative and say that since all the other alternatives are better than the current situation that resources are being protected. *See* Section IV(D) of this protest for more information.

Summary of protest and requested remedy: The Proposed MMP fails protect biological soil crust and soil health by failing to adequately analyze the negative effects of activities such as grazing, range improvements, mineral exploration or development, route maintenance and restoration, recreation, and other uses. This violates Proclamation 9558 (regardless of modification by Proclamation 9681), FLPMA, and is arbitrary and capricious. As such, the agencies must revise their analysis and move forward with a management alternative that prioritizes protection of biological soil crust and soil health within the monument.

6) Vegetation management

The vegetation communities within the monument are specifically mentioned in the monument proclamation. We listed several recommendations for vegetation management in our comments. *See* TWS et al. BENM Draft MMP comments, submitted November 15, 2018, Section XI. Most of them were dismissed as implementation-level issues that would be addressed with other NEPA at the time of project initiation. *See* Appendix O at Comment 75-41, 91, 92, 93, 94, 95. However, there is precedent for codifying very specific management techniques and principles in MMPs. Appendix J contains very detailed stipulations for surface disturbance. The same could be done for vegetation management incorporating the management practices we listed.

The Proposed MMP acknowledges the importance of using native seed in revegetation projects in the Best Management Practices. Appendix I at I-5. However, we are concerned that there are too many caveats allowing use of non-natives that might, in practice, make non-natives the preferred choice in most cases. "...when restoring or rehabilitating disturbed or degraded rangelands, non-intrusive, non-native plant species are appropriate for use where native species (a) are not available, (b) are not economically feasible, (c) cannot achieve ecological objectives as well as native species...". The management plan should restrict the use of non-natives to a higher degree or be more explicit about the decision-making process allowing the use of non-natives.

The Proposed MMP discloses impacts from ROW, OHV, and grazing use by adopting its preferred alternative. *See* Proposed MMP at 3-54 ("...disturbances may occur in areas that are improperly grazed, in areas developed for permanent recreation infrastructure, where roads and trails are established, and in new ROW corridors, if approved"). It dismisses these impacts by claiming that because they would be less than the current management plan in some categories, those levels of impact are acceptable. We challenge this assessment in Section IV(D) below. We also challenge the statement that "[d]irect impacts would be the same across Alternatives". Proposed MMP at 3-54. Alternative B would result in fewer impacts because it makes fewer acres available to impactful uses (Proposed MMP Table RIP-1). In contrast, the preferred

alternative will make it harder to attain the Goals and Objectives outlined for riparian/wetlands in the Proposed MMP at 2-21.

Summary of protest and requested remedy: The Proposed MMP fails protect riparian vegetation within the monument by failing to adequately analyze the negative effects of activities such as grazing, range improvements, mineral exploration or development, route maintenance and restoration, recreation, and other uses. This violates Proclamation 9558 (regardless of modification by Proclamation 9681), FLPMA, and is arbitrary and capricious. As such, the agencies should use the flexibility provided in current grazing law and elevate the protection of monument objects, including riparian vegetation, from these impacts. The management plan should restrict the use of non-natives to a higher degree or be more explicit about the decision-making process allowing the use of non-natives.

7) Riparian, Wetland and Water Resources

The Proposed MMP also prioritizes multiple uses within the Monument at the expense of safeguarding water resources. This violates the statutory, regulatory, and policy mandates to prioritize protection of the water resources for which the Monument in part was created.

The agencies acknowledge that authorized surface disturbances such as “clearing for land development, including roads, other ROWs, and other infrastructure, the construction of livestock facilities, vegetation treatments, off-road vehicle travel, and excessive dispersed camping” will result in direct and indirect adverse impacts to riparian, wetland and water resources. Proposed MMP at ES-9; *see also* 3-54 (“Direct surface disturbances are most likely to cause the highest intensity of impacts to riparian areas in the Planning Area.”); (“Riparian, wetland, and water resources are also susceptible to indirect impacts from surface-disturbing activities on adjacent lands, particularly within floodplains, on steep slopes, and/or in sensitive soils.”). Yet, the agencies fail to adopt the alternative that does the most to protect water related monument values from harm.

The agencies further acknowledge that Alternative E would fail to adequately protect water resources, noting that it would be less protective of monument values and that Alternative B does the most to safeguard and properly care for water resources:

Alternatives that would limit the location of roads and trails, such as avoiding sensitive soils, seeps and springs, floodplains, and closing redundant trails, would reduce negative impacts to riparian, wetland, and stream resources to the degree they are implemented under each alternative. Alternative B would be most protective of riparian areas from direct surface-disturbance impacts and would provide a larger buffer to surface disturbance than would Alternatives A, D, and E.

Proposed MMP at 3-54; *see also* 3-55 (“Alternative B would be the most protective of riparian areas with respect to impacts from grazing; it would have less area available (BLM)/suitable (USFS) to grazing than Alternatives A, C, D, and E[.]”); (“Wider buffers with more restrictive uses within the buffer would generally be more protective of riparian, wetland, and water resources.”). This analysis directly contradicts and therefore invalidates the agencies’ contention

that “[t]he nature of impacts on riparian, wetland, and water resources would be similar under all alternatives[.]” Proposed MMP at ES-10.

Summary of protest and requested remedy: The agencies improperly prioritized multiples uses over the protection of the water resources identified by the proclamation as monument values. Compared to the more protective alternative the agencies considered, the Proposed MMP opens more riparian areas to surface disturbing activities and therefore fails to ensure that water resources will be properly maintained and safeguarded from damage. This violates Proclamation 9558 (regardless of modification by Proclamation 9681), FLPMA, and is arbitrary and capricious. The agencies should instead adopt Alternative B as it relates to riparian, wetland, and watershed resources, as this alternative provides the most protective measures for these monument objects.

8) Air Quality

Proclamation 9558 identifies at least three core monument objects sensitive to air quality impacts: visibility, plant communities and, as recited above, water resources, including water quality. Good air quality is also necessary to protect the health of monument visitors and animals. Therefore, the agencies must ensure that air quality in the monument is maintained or improved in order to safeguard visibility, plant communities and water resources, as well as public health and wildlife species.

BLM and USFS identify vehicle travel on unpaved roads as a significant source of visibility-reducing fugitive emission. *E.g.*, Proposed MMP at 3-4 (“particulate emissions (fugitive dust) from travel on unpaved roads [is] a greater source of air quality impacts in the Planning Area.”); *id.* 3-4 (“Particulate matter is directly emitted as a result of ground-disturbing activities and vehicular traffic on unpaved roads and surfaces.”); AMS at 2-12 (“With increased vehicular recreation in the region and demand for utility scale ROW, fugitive dust will likely increase across the Planning Area.”); Proposed MMP at 3-84 (“Areas closed to OHV and mechanized travel would reduce risk of fugitive dust and crushing or trampling vegetation on the closed roads and trails, thereby encouraging revegetation. Areas designated as OHV limited would have the potential to increase unauthorized OHV use off designated routes with subsequent impacts to vegetation.”).

Fugitive emissions, including dust and ozone precursors, also adversely impact public health, the environment and plants. *E.g.*, 62 Fed. Reg. 38652 (July 18, 1997); 80 Fed. Reg. 65292 (Oct. 26, 2015). The Proposed MMP further confirms that “on-road mobile sources are the largest emitters of nitrogen oxides (AMS at Section 2.1.2, Table 2-8).” Proposed MMP at 3-3. The Proposed MMP also confirms that cumulatively, activities inside and nearby the Monuments have the potential to violate the National Ambient Air Quality Standard for ozone:

[The Monticello RMP and the Manti-La Sal LRMP] [b]oth... allow for oil and gas development and OHV use, which are main sources of pollutants in the airshed. Cumulatively, these actions would continue to impact air quality with trends forecasted as described under Section 2.1.2 of the AMS (BLM 2018a). These trends, based on past monitoring, indicate that cumulative air quality impacts have the

possibility to cause NAAQS exceedances of ozone that could impact the Planning Area (BLM 2018a).

Proposed MMP at 3-108. At a minimum, the fact that activities outside the planning area are already compromising air quality underscores the need to take the required actions inside the area to protect monument values.

These agency conclusions underscore that at a minimum, the agencies are obligated to adopt Alternative B in order to protect monument objects and values, including visibility. This is because of the alternatives presented, Alternative B will minimize visibility degradation and nitrogen deposition associated with vehicle travel, including off-road activity. For example,

OHVs generate criteria pollutant emissions through the combustion of fuels, although particulate emissions (fugitive dust) from travel on unpaved roads are a greater source of air quality impacts in the Planning Area. Fugitive dust from travel on unpaved roads and trails would continue to have localized impacts on air quality; these impacts may increase over time with expected increases in visitor use levels. Alternatives A, C, D, and E would make similar amounts of area available to OHV use, and, consequently, measurable impacts from particulate matter (dust) and vehicle emissions would be similar. Alternative B would close certain areas to OHV use compared with Alternative A.

Proposed MMP at 3-4. Although the Proposed MMP claims that the imposition of BMPs and adaptive management will minimize the adverse impacts of surface disturbing activities on air quality, this does not change the agencies' conclusions that Alternative B best meets the obligation to protect monument values from air pollution. *See* Proposed MMP 3-4; *id.* ES-6; ES-11 ("Alternatives that would allow more unrestricted surface disturbances would allow greater impacts on vegetation. Because of allowed surface disturbances, Alternative A would have the greatest impacts on vegetation, followed by Alternative B, C, and D/E respectively.").

Summary of protest and requested remedy: BLM and USFS have failed to prioritize protection of monument values, instead choosing a management alternative that does not adequately protect resources from air pollutants and authorizes more expansive surface disturbing activities and the consequent exacerbated adverse air quality impacts. This violates Proclamation 9558 (regardless of modification by Proclamation 9681), FLPMA, and is arbitrary and capricious. Instead, the agencies are duty bound to adopt Alternative B or a more restrictive alternative that minimizes emissions of ozone precursors, fugitive dust and pollutants damaging to sensitive plants and ecosystem values in and around the monuments.

9) Ecological Intactness

Proclamation 9558 designates a wide variety of wildlife species as monument objects to be properly cared for and protected from any injury or harm. *See* TWS et al. BENM Draft MMP comments, submitted November 15, 2018, Section VIII. The proclamation further emphasizes the monuments' remoteness, the species diversity the monuments harbor and the intactness of and connectivity among wildlife habitats that the monuments provide. Indeed, Proclamation

9558 characterized the entirety of the monument “[a]s one of the most intact and least roaded areas in the contiguous United States[.]” This means that the monument, as defined by Proclamation 9558, including the lands within the current planning area, is an area of extremely high conservation value, offering significant ecological connectivity, intactness, remoteness and biodiversity and must be protected as such under the Antiquities Act.

As the agencies acknowledge, large intact landscapes are necessary to support biodiversity, watershed protection, and healthy ecosystems, and provide connectivity that facilitates wildlife migration, seasonal movement and dispersal of young – the exact values designated by the proclamation and necessary to protect the monuments’ wildlife objects. For example, the agencies state: “The Planning Area is largely undeveloped; therefore, habitats that support wildlife and fish are relatively undisturbed. The Planning Area’s undeveloped qualities play an important role in maintaining landscape intactness and connectivity for wildlife.” Proposed MMP at 3-93.

Similarly, the agencies confirm that surface disturbing activities pose the most significant threat to ecological intactness and the ecosystem values that depend on the undeveloped character of the *E.g.*, Proposed MMP at 3-93 (“Past and current impacts to fish and wildlife populations within the Planning Area include regular climactic variation and extreme weather events; recreation, including camping and hiking; development of roads and OHV use; livestock grazing management; vegetation management; and impacts related to noise from anthropogenic sources.”); ES-10 (“Allowed surface disturbances could impact special status species [and wildlife generally] and their habitats, including loss and fragmentation of habitat and displacement of individuals. These disturbances include clearing for land development (e.g., roads, other ROWs, and other infrastructure).”); *see also* ES-11.

Yet, the Proposed MMP threatens the monument’s “undeveloped” character and “landscape intactness” and therefore fails to protect these monument values and the other named monument objects that rely on them. Rather than adopting Alternative B as the management scheme that most limits surface disturbing activities, ES-10 (“Alternative B would allow the least surface-disturbing activities and the least impacts on special status species”), and therefore safeguards ecological intactness, the agencies adopt a management alternative that they know is contrary to the proclamation and will harm monument values.

Summary of protest and requested remedy: The agencies improperly prioritized multiples uses over the protection of the ecological intactness and remoteness identified by the proclamation as monument values. This violates Proclamation 9558 (regardless of modification by Proclamation 9681), FLPMA, and is arbitrary and capricious. The agencies are duty bound to adopt Alternative B or create a similar alternative that limits surface disturbing activities and prioritizes ecological intactness and remoteness.

III. The Agencies Violate the Omnibus Public Land Management Act of 2009.

Established by Congress in the Omnibus Public Land Management Act of 2009 (Pub. L. 111-11), the National Landscape Conservation System (NLCS) – or National Conservation Lands – is a permanent system of public lands conservation with the stated purpose to “conserve, protect,

and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations.” 16 U.S.C. § 7202(a). As a national monument, Bears Ears is part of the NLCS.

Secretarial Order 3308 speaks to the management of National Conservation Lands. The Order states in pertinent part that “the BLM shall ensure that the components of the NLCS are managed to protect the values for which they were designated, including, where appropriate, prohibiting uses that are in conflict with those values.” Secretarial Order 3308. The Order also requires the incorporation of science into the decision-making process for National Conservation Lands, stating, “[s]cience shall be integrated into management decisions concerning NLCS components in order to enhance land and resource stewardship and promote greater understanding of lands and resources through research and education.” *Id.* § 4(d); *see also* BLM Manual 6100, § 1.6(A)(9) & (F) (BLM must “use the best available science in managing NLCS units”); BLM Manual 6200, § 1.6(A)(7) & (M) (same). BLM’s 15-Year Strategy for the National Conservation Lands discusses utilizing large-scale assessments, such as BLM’s Rapid Ecoregional Assessments (REA), to identify how to connect and protect resources at the landscape-level.

As the agencies acknowledge, large intact landscapes are necessary to support biodiversity, watershed protection, and healthy ecosystems, and provide connectivity that facilitates wildlife migration, seasonal movement and dispersal of young – the exact values designated by the proclamation and necessary to protect the monuments’ wildlife objects. For example, the agencies state: “The Planning Area is largely undeveloped; therefore, habitats that support wildlife and fish are relatively undisturbed. The Planning Area’s undeveloped qualities play an important role in maintaining landscape intactness and connectivity for wildlife.” Proposed MMP at 3-93.

The agencies cite as goals common to all management alternatives: 1) “[e]ngag[ing] local, State, and Federal partners in program and project design to address management issues and minimize or avoid impacts to wildlife species and their habitats across jurisdictional boundaries;” 2) “[p]rotect[ing] and maintain[ing] wildlife connectivity;” and, 3) “[p]rotect[ing] large undisturbed blocks of wildlife habitat, and, where possible, consolidate[ing] and creat[ing] larger protected blocks of habitat through land acquisition.” Proposed MMP at 2-28.

Yet, as explained elsewhere in detail, by authorizing or failing to prohibit development, road building and other surface disturbing activities on the lands in and surrounding the Monuments, the agencies are increasing the threat of harm to cultural, ecological, and scientific objects inside the monument. The agencies are allowing or failing to prevent destructive and damaging development closer to these vulnerable objects and fragmenting and isolating important objects. Because this approach fails to properly care for the monuments’ objects and cultural, ecological, and scientific values and fails to fulfill BLM’s obligation to administer National Conservation Lands as part of an integral landscape, it is not a valid management scheme.

Consideration of the cumulative adverse impacts on wildlife and ecosystem values coming from adjacent federal lands is not enough. Rather, the agencies must take these impacts head on by developing and adopting an alternative that directs the management of the intact and contiguous federal lands surrounding the Monuments and entails collaboration with the neighboring land

owners and surrounding communities to maintain biodiversity, and promote ecological connectivity and resilience.

In addition, the BLM and USFS fail to incorporate the best available science into management decisions (discussed further in Section IV(D) and VIII(A) below), therefore violating the NLCS.

Summary of protest and requested remedy: BLM has not compiled or developed enough information or scientific evidence to assure there is no harm to monument objects, and we do not believe the BLM has identified a plan to ensure against it. The Proposed MMP is too vague and relies overmuch on future actions to solve problems without any evidence of the efficacy of those actions. The Proposed MMP fails to meet the requirements of NLCS and various NEPA requirements (explained further in Section IV below). As such, the BLM must revise its analysis and management decisions to incorporate relevant scientific evidence, prioritize protection of monument objects and values, and implement science-based strategies immediately to conserve, protect, and restore the monument as part of the National Conservation Lands.

IV. The Agencies Fail to Comply with Various Relevant Obligations under the National Environmental Policy Act (NEPA).

A. The agencies do not appropriately document the rationale for decisions in their Proposed MMP.

The fundamental purpose of NEPA is to ensure that federal agencies analyze potential environmental impacts in decision-making, and to disclose those impacts to the public. As part of this process, NEPA and the Administrative Procedure Act requires that federal agencies articulate “a rational connection between the facts found and the choice made.” *Baltimore Gas and Elec. Co. v. Natural Res. Def. Council*, 462 U.S. 87, 105 (1983). NEPA also requires that an MMP “provide full and fair discussion of significant environment impacts of the proposed actions.” *See* 40 C.F.R. § 1502.1.

As highlighted throughout this protest, the Proposed MMP fails to adequately articulate the agency’s rationale in selecting the least protective measures possible. For example, as previously highlighted in our draft MMP comments, the Proposed MMP fails to adequately articulate the agencies’ rationale in determining that no identified wilderness-quality lands should be managed for protection in the preferred alternative. *See* TWS et al. BENM Draft MMP comments, submitted 11/15/18, Section VII(B). The agencies also provided no rationale for refusing to change the current travel management designations and add in the San Juan County travel plan, despite the area’s designation as a national monument and Proclamation 9558’s mandate for no additional routes. *Id.* at Section XA.

As previously noted in this protest, resource conditions on the allotments in the planning area are not ideal and the Proposed MMP fails to provide quantitative, hard data to justify the BLM’s position that all of the alternatives, including the most impactful one, meet the planning criteria. Our draft comments provided the BLM with extensive evidence that its preferred alternative will not protect the values and objects for which the monument was designated and would allow too much degradation by livestock grazing. *See* TWS et al. BENM Draft MMP comments, submitted

November 15, 2018, Section XVIII and XI. Yet, the Proposed MMP continues to fail to support the agencies' decisions with objective analysis.

By contrast, we provided objective forage capacity data in our draft comments that showed a great deal of departure from Ecological Site Descriptions. *Id.* We recommended that the planning effort include a forage capacity analysis in each allotment to determine the accurate number of animal unit months (AUM). The Proposed MMP's response to this comment was "Grazing decisions, including, if necessary, a reassessment of forage capacity, are determined every 10 years during permit renewal. Additionally, grazing practices may be adjusted at any time if rangeland monitoring demonstrates that livestock grazing is contributing to the area not meeting standards or if it is determined that grazing is preventing the proper care and management of BENM objects and values." See Proposed MMP Appendix O at O-74. This is a disingenuous response. Grazing decisions are regularly renewed under FLPMA § 402(c)(2). No NEPA is conducted so there is no opportunity for public comment or input. Further, as a practical matter the agency does not conduct forage capacity analyses anymore, so to imply that they evaluate whether to do so every ten years is a falsehood. Likewise, they promise action in the future if degraded conditions are found and allotments are not meeting standards. But current conditions are already showing a level of resource degradation and there are no plans to change management.

Additionally, we asked the BLM to be more explicit about their drought response plan, as we have seen in other National Conservation Lands planning documents. The BLM demurred, saying that "Existing regulations and BLM and USFS policies allow the agencies to address drought conditions on a permit-specific case-by-case basis. A land use plan decision is not necessary to implement drought provisions." Proposed MMP Appendix O at O-187. This response ignores the point that drought needs to be proactively anticipated, not reacted to on a case-by-case basis when is too late. The agencies need to have a procedure in place to plan for drought (e.g., follow the Palmer Drought Index and institute a protocol that has already been developed) so the public and the ranchers know what to expect and can follow the BLM's actions when a drought is imminent. Disclosing a general procedure in an MMP is appropriate.

The BLM addresses our many concerns over impacts by assuring us that monitoring will alert them to declining resource conditions and then management changes will be made to prevent damage ("Should monitoring indicate that changes in livestock stocking levels or allotment-specific management actions are warranted, these changes would be made to individual livestock grazing permits or through implementation-level allotment management plans".) Appendix O at O-83. However, they cite rangeland health assessments as one of their monitoring indicators (Appendix M at M-8). This is inappropriate. As the Technical Reference itself cautions, these assessments are intended to be a rapid snapshot of conditions at that moment in time. They are not to be used as a substitute for more quantitative monitoring, which would provide a more objective, credible source of information on resource condition. In addition, the agencies admit that the monitoring they will rely on to prevent more resource degradation is contingent on time and funding. See Appendix M at M-9.

Summary of protest and requested remedy: The Proposed MMP fails to document the rationale for selecting the least protective measures possible and fails to provide a full and fair discussion

of the environmental impacts from their proposed action. This violates NEPA and is arbitrary and capricious. The agencies should revise their analysis and management decisions to establish clear, rationale explanations as to how management prescriptions will protect and enhance monument objects and values.

B. The Proposed MMP is inconsistent with its stated purpose and need, in violation of NEPA.

The purpose of the MMPs is to “provide for the proper care and management of Monument objects and values including the ‘object[s] of antiquity’ and ‘objects of historic or scientific interest’ identified in Presidential Proclamation 9558, as modified by Presidential Proclamation 9681.” See Proposed MMP at 1-1.

However, as highlighted in Sections I and II above, the Proposed MMP fails to meet this standard. The agencies continually acknowledge the preferred alternative would have increased adverse impact on monument resources yet choose to prioritize those decisions.

The agencies’ preferred alternative allows for degradation of monument resources and values and fails to safeguard these resources from harm. The agencies acknowledge throughout the Proposed MMP that the preferred alternative will cause a variety of adverse impacts on monument resources, and, therefore, fails to measure up to the standard of protection required by the Antiquities Act and the purpose and need of the MMP.

Summary of protest and requested remedy: Throughout the Proposed MMP, the preferred alternative does not prohibit degradation of monument resources and values and fails to safeguard these resources from harm and injury. The Proposed MMP thus fails to satisfy its stated purpose and need to provide “the proper care and management of Monument objects and values.” This violates the monument proclamation, NEPA, and is arbitrary and capricious. The agencies must revise their analysis and management decisions and manage under an alternative that truly prioritize the proper care and management of monument objects and values.

C. The Agencies Fail to Consider a Reasonable Range of Alternatives.

NEPA requires BLM to “rigorously explore and objectively evaluate” a range of alternatives to proposed federal actions. See 40 C.F.R. §§ 1502.14(a), 1508.25(c). “An agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action.” *Nw. Env’tl. Defense Center v. Bonneville Power Admin.*, 117 F.3d 1520, 1538 (9th Cir. 1997). NEPA requires that an actual “range” of alternatives is considered, such that the Act will “preclude agencies from defining the objectives of their actions in terms so unreasonably narrow that they can be accomplished by only one alternative (*i.e.*, the applicant’s proposed project).” *Col. Env’tl. Coal. v. Dombeck*, 185 F.3d 1162, 1174 (10th Cir. 1999), *citing Simmons v. U.S. Corps of Engineers*, 120 F.3d 664, 669 (7th Cir. 1997).

Additionally, in considering what constitutes a reasonable range of alternatives for a national monument, all alternatives must prioritize the protection of monument objects. See also Section I(A) above. As the Ninth Circuit held, “BLM cannot ignore the Proclamation’s goal of

protecting Monument objects when it determines the reasonable range of alternatives for NEPA review of site-specific actions . . . the agency's procedural efforts to explore alternatives in the EA did not satisfy NEPA.” *Western Watersheds Project v. Abbey*, 719 F.3d 1035, 1053 (9th Cir. 2013).

Here, BLM and USFS failed to consider a range of alternatives, in violation of NEPA, in at least three respects. First, throughout the Proposed MMP, the agencies attempt to minimize adverse impacts by drawing comparisons to the no action alternative (Alternative A). This is a thematic issue throughout the Proposed MMP, as the no action alternative considers management pursuant to the outdated 2008 Monticello Resource Management Plan, as amended, and the 1986 Manti-La Sal LRMP, as amended, “to the extent the agencies have determine that those decisions are compatible with Presidential Proclamation 9558, as modified by Presidential Proclamation 9681.” *See* Proposed MMP ES-4. The existing land management prescriptions did not and could not foresee the degree to which circumstances in the planning area have changed, including designation of the national monument, and contain less specific management strategies than those considered in any of the other alternatives in the proposed MMP. As a result, the no action alternative does not provide a meaningful comparison to the preferred alternative, and merely serves to allow the agencies to understate the potential adverse impacts from the preferred alternative.

Examples include:

- “[A]ll action alternatives would result in less potential for authorized activities negatively affecting . . . [the existing ACECs] than Alternative A.” Proposed MMP at 3-64
- [A]ll action alternatives would include more management actions addressing potential impacts to special status bird species and the proper care and management of relevant Monument objects and values than Alternative A.” Proposed MMP at 3-69
- “[T]here would be fewer riparian areas open to new ROWs [under all action alternatives] than under Alternative A” and “Actions common to all action alternatives would also reduce impacts . . . compared to Alternative A by implementing new management actions to monitor or limit livestock grazing, recreation, OHV use, riparian plan collection, and other resource uses.” Proposed MMP at 3-54.
- [A]ll action alternatives would result in less potential for surface disturbance affecting vegetation than Alternative A and reduce impacts on vegetation by including more management actions addressing potential impacts to vegetation and the proper care and management of relevant Monument objects and values than Alternative A.” Proposed MMP at 3-84.

Second, as previously stated in our Draft MMP comments (*see* TWS et al. BENM Draft MMP comments) the differences between the various alternatives are, and continue to be, negligible. The Draft MMP acknowledges this for recreation stating “[q]ualitatively, impacts from management decisions under Alternative B would be similar to those for Alternatives D and C.” Draft MMP at 3-45. Additionally, certain management prescriptions, such as travel management, the language and implications in each alternative is practically identical. *See* Draft MMP at 2-24, Table 2.12. This is certainly not the “reasonable range of alternatives” that is required under NEPA.

Third, the federal agencies ignore the proclamation's goal of prioritizing protection of monument objects. The only alternative considered that prioritizes the protection of monument objects is Alternative B. Considering one alternative that seeks to truly manage the monument as a monument fails to meet NEPA's reasonable range of alternatives requirement.

Additionally, Alternative B itself is not adequate as an alternative. The agencies failed to derive, analyze and implement management alternatives designed to protect ecological intactness as a Monument value and as an irreplaceable condition on which other designated Monument objects depend. There are at least two significant legal mandates that require the agencies to derive and implement a management alternative that conserves ecological connectivity and intactness, remoteness and biodiversity across the region surrounding the Monuments, particularly across adjacent areas under the agencies' jurisdiction.

Initially, this landscape approach, deemed by BLM as necessary to protect biodiversity, connectivity and resilience to climate change is a central element of the agency's obligation to manage National Conservation Lands such as the monument. In order to properly care for and protect the monuments' wildlife and ecosystem values, the agencies must manage the Monuments "as an integral part of the larger landscape" and ensure that OHV use, energy development, mining, timber harvesting, road building and other surface disturbing activities inside and outside the monuments do not harm the monuments' significant conservation values, including intactness, connectivity and diversity.

The Proposed MMP acknowledges that water quality in the Monuments is impaired:

Water quality concerns within the Planning Area include high stream temperatures, low dissolved oxygen, high sediment loads and nutrient concentrations, high salinity, and high coliform bacteria concentrations. Many of these concerns are associated with riparian health and cover, water quantity, and natural conditions.

Proposed MMP at 3-53. Plainly, management alternatives that would adequately protect water quality necessarily respond to existing water quality, for example by providing more robust buffers and more restrictive management requirements on areas impacting waters where quality has been degraded and that are failing to meet Utah Water Quality Standards. However, the agencies did not derive any management alternatives that would address or maintain existing water quality, including in impaired streams, and would prevent degradation of Utah's highest quality waters. Referencing compliance with total maximum daily loads (TMDLs) is not sufficient, as in most instances, no such analysis or allocation has taken place and the agencies may not simply postpone their obligation to protect monument and ecosystem values. Further, the agencies may not assume without analysis, that the provisions of a TMDL are adequate to properly care for and protect the monument's water resource values.

Summary of protest and requested remedies: The Proposed MMP fails to consider a reasonable range of alternatives by assessing impacts based on comparisons from the no action alternative rather than the preferred alternative. Additionally, the differences between the various

alternatives are negligible. Finally, the Proposed MMP only considers one conservation-based alternative that seeks to manage the monument as a monument, yet this alternative does not derive or analyze management alternatives that safeguard the core monument value of ecological intactness nor enhance water quality based on a thorough assessment of existing water quality in and upstream from the planning area. The agencies must revise their analysis and management decisions to reflect a true range of alternatives by assessing impacts of management decisions based on the preferred alternative, proposing additional alternatives that truly prioritize the protection of monument objects and values and represent a true range with notable differences, and develop an alternative that safeguards ecological intactness and provides a clear assessment of water quality.

D. The Agencies Fail to Take the Requisite Hard Look at Potential Environmental Impacts.

Under NEPA, the agencies must take a “hard look” at the environmental consequences of a proposed action, and the requisite environmental analysis “must be appropriate to the action in question.” *Metcalf v. Daley*, 214 F.3d 1135, 1151 (9th Cir. 2000); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 348 (1989). In doing so, BLM and USFS must consider the direct, indirect, and cumulative impacts of a proposed action. *See New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 703 (10th Cir. 2009), *citing* 42 U.S.C. § 4332(2)(C); 40 C.F.R. pt. 1502 and §§ 1508.11, 1508.25(c). NEPA’s hard look at environmental consequences also must be based on “accurate scientific information” of “high quality.” 40 C.F.R. § 1500.1(b). “Agency regulations require that public information be of ‘high quality’ because ‘accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.’ 40 C.F.R. § 1500.1(b).” *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1151 (9th Cir. 1998). Essentially, NEPA “ensures that the agency, in reaching its decision, will have available and will carefully consider detailed information concerning significant environmental impacts.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. at 349. This includes an obligation for the agencies to assess the impacts and effects of their actions. These effects are: “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.” 40 C.F.R. § 1508.8.

The agencies’ preferred alternative consistently chooses management prescriptions that result in the “greatest potential impacts,” while failing to adequately analyze the results of those decisions. As such, the agencies failed to take the required hard look at the Proposed MMP’s potential direct, indirect, and cumulative environmental impacts. Implications for certain resources, objects, and values are described in further detail below.

1) Cultural Resources

The agencies failed to take NEPA’s required hard look at the Proposed MMP’s impacts to cultural resources, including direct, indirect, and cumulative impacts. *See W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1047 (9th Cir. 2013). For instance, the agencies failed to analyze the impacts of increased visitation from designating fourteen cultural resource sites as “public use (developed)” or identify a strategy to manage increased visitation or mitigate adverse impacts. Proposed MMP at 2-6, 3-10. The Proposed MMP also notes that management actions

related to recreation activities, including climbing routes and hiking trails, may impact cultural resources. Proposed MMP at 3-10.

In general, the Proposed MMP fails to establish a general limit on group size, and instead imposes varying group size limits for only a few known cultural resource sites throughout the Monument, including Comb Ridge accessed from Butler Wash (limited group size of 12), Mule Canyon south of SR-95 (limit for eight pack or saddle animals), and the Arch Canyon Backcountry RMZ (limited group size of 12). *See* Proposed MMP at 2-13. The Proposed MMP generally relies on special recreation permit (SRP) triggers based on group size for frequently visited sites in the monument. *See* Proposed MMP at 2-14 – 2-21. These differing triggers for SRPs are arbitrary, as the agencies provided no explanation for differing group size limits or why certain sites can seemingly accommodate unlimited visitors, 50 visitors, or only 12 visitors. The agencies failed to analyze the direct and indirect impacts to the known sites from establishing particular group size limits, or lack thereof.

The agencies also failed to analyze the direct and indirect impacts on cultural resources from keeping open all existing OHV trails within the Monument during the many years before they adopt a travel management plan. Nor did the agencies analyze impacts to cultural resources from closing “the least number of acres of high archaeological sensitivity” and providing “limited OHV access to the greatest number of acres of high archaeological sensitivity,” compared to other alternatives. *Id.* at 3-15. Merely acknowledging that cultural resource sites located nearer to a road are more likely to be looted, vandalized, or otherwise harmed does not substitute for an analysis of how the existing OHV route network and new OHV area designations will actually impact cultural resources.

Despite making rights-of-way area designations that resulted in 238 known cultural sites being located in areas “open” to rights-of-way, and over 2,000 known sites being located in “avoidance” areas – where development is still an option – the agencies conducted no analysis of how right-of-way development from a pipeline, transmission line, or other utility could actually impact these known sites. Proposed MMP, 3-12. Instead, the agencies simply note that impacts could result from right-of-way grants that facilitate other surface-disturbing activities and could lead to indirect impacts to cultural resources if the purposes of the grant were to introduce an “incompatible visual feature or provide new access.” *Id.* at 3-11. Such vague language does not satisfy NEPA’s mandate to conduct a searching analysis of how right-of-way grants and subsequent development may adversely impact known cultural sites. And, as with all management actions that could impact cultural resources, that the agencies intend to complete an activity-level cultural resource management plan and associated NEPA review in two years’ time does not obviate the need to take a hard look at the Proposed MMP’s impacts, particularly those that could occur before the cultural resource plan is completed.

The Proposed MMP also failed to adequately analyze cumulative impacts to cultural resources. To satisfy NEPA, the cumulative impacts assessment must do two things. First, BLM must catalogue the past, present, and reasonably foreseeable projects in the area that might impact the environment. *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 809–10 (9th Cir. 1999). Second, BLM must analyze the impact of those projects when added to the impacts of the proposed action. *Id.* Here, the Proposed MMP’s analysis of cumulative impacts to cultural

resources is all of two paragraphs. In noting that reasonably foreseeable future actions with the potential to directly impact cultural resources include the construction of livestock enclosures, construction and use of an ATV trail, expansion of existing trails and parking areas at Shay Canyon and House on Fire, and expansion of facilities associated with the Superbowl Campground, the Proposed MMP simply states that these actions could cause surface disturbance. *See* Proposed MMP at 3-109. The Proposed MMP then notes that these reasonably foreseeable future actions may also indirectly impact cultural resources by affecting the settings of cultural sites. *Id.* Simply mentioning that reasonably foreseeable future actions may cause surface disturbance and may “affect[] the settings” of cultural sites – which is ambiguous at best – falls far short of NEPA’s searching cumulative impacts analysis requirement.

Moreover, the agencies rely on the decade-old 2008 Monticello RMP reasonably foreseeable development scenario, without conducting any up-to-date analysis, to identify the reasonably foreseeable mineral development that could impact cultural resources. *See* Proposed MMP at 3-109. The Proposed MMP also lacks any analysis of whether potential new access roads associated with mineral development around the monument could expose cultural resource within the monument to adverse impacts by increasing access to otherwise remote areas of the monument. And even though the Proposed MMP directs the agencies in subsequent implementation-level travel planning for most of the monument to integrate the entire San Juan County OHV route system, the Proposed MMP’s cumulative impacts section contains no analysis of adverse effects to cultural resources from this reasonably foreseeable scenario. *Id.* at 2-25. Likewise, the Proposed MMP fails to analyze, or indeed even mention, the cumulative impacts to cultural resources from increased vegetation management within the Monument. *Id.* at 2-6.

Summary of protest and requested remedy: The agencies paltry, and often nonexistent, analysis of the Proposed MMP’s direct, indirect, and cumulative impacts to cultural resources failed to satisfy NEPA’s hard look mandate. The agencies must thoroughly analyze impacts to cultural resources from OHV routes, ROW designations, vegetation management, and recreational visitation. This includes establishing clear and thoughtful limits on group sizes and acknowledging the potential impacts of the visitation limits to cultural resources. The agencies must also analyze the cumulative impacts of the Proposed MMP to cultural resources, including updating the reasonably foreseeable development scenario.

2) Lands and Realty

BLM failed to acknowledge the impact that Proclamation 9681 and the elimination of thousands of acres of lands surrounding the Shash Jaa’ and Indian Creek units from protected status will have on the development of ROWs within the monument. *See* TWS et al. BENM Draft MMP comments, submitted November 15, 2018, Section XIV.

In response to our comments regarding BLM’s obligation to analyze the impacts of opening lands surrounding the monument to extractive industries, BLM responded:

*Additionally, the following statement has been removed from the MMPs/EIS:
‘Expanding resource uses adjacent to Federal lands, particularly energy and mineral development, increases the demand for land use authorizations on Federal*

lands to accommodate those uses.’ This statement does not accurately reflect the agencies’ anticipated future demand for land use authorizations in the BENM.

See Proposed MMP at O-96

Simply removing a sentence indicating that energy and mineral development will occur on adjacent Federal lands does not mean such activities will not occur, nor does it eliminate BLM’s obligation to take a hard look at the resulting potential impacts. BLM does not provide any explanation as to why that statement no longer “accurately reflect the agencies’ anticipated future demand for land use authorizations in the BENM.” Under NEPA, BLM cannot simply state that a certain outcome is no longer anticipated without providing a reasoned explanation. BLM must analyze the impacts from energy and mineral development on lands outside the reduced monument boundaries, given that such development could result in increased land use authorizations within the Monument.

Summary of protest and requested remedy: The Proposed MMP, including the cumulative impacts section, includes no discussion of the impacts of opening lands surrounding the monument to extractive industries. As such, the agencies have not met their obligation to take a hard look at the potential impacts from lands and realty decisions extending outside of the planning area. The agencies must thoroughly analyze and discuss the direct, indirect, and cumulative impacts that will result from opening lands surrounding the monument to extractive industries and the widespread development of ROWs throughout the planning area.

3) Endangered and Sensitive Species

The Proposed MMP fails to explain the direct, indirect, and cumulative effects to threatened and endangered species and their habitat, thus violating NEPA’s hard look standard. For example:

1) *Mexican spotted owl*

For the Mexican spotted owl (*Strix occidentalis lucida*), Alternative E will generally result in high levels of threats within the planning area and therefore will likely result in damage to potential or designated critical habitat and/or take of the owls. See Proposed MMP at 3-48, 3-84, 3-98, 3-101, 3-102 and Table LSG-2. Even the Proposed MMP acknowledges that recreation, OHVs, and surface-disturbing activities can impact the Mexican spotted owl, see Proposed MMP at 3-71, but Alternative E fails to reduce the amount of the species’ habitat available for OHV use or to close critical and potential habitat to ROW authorization. See Proposed MMP at Table SSS-5. The owls’ recovery plan also speaks to the harm that can occur from livestock grazing, timber cutting, coal and uranium mining, and oil and natural gas development, but the agencies nonetheless have selected a preferred alternative that fails to assess the direct, indirect, and cumulative impacts and leaves the owls threatened.

2) *Southwestern willow flycatcher*

For the Southwestern willow flycatcher (*Empidonax traillii extimus*), Alternative E will generally result in high levels of threats within the planning area and therefore will likely result

in damage to potential or designated critical habitat and/or take of the flycatchers. *See e.g.* Proposed MMP at 3-48, 3-84, 3-98, 3-101, 3-102 and Table LSG-2. For example, Alternative E would “not apply any provisions specifically to protect wilderness characteristics” including at the San Juan River. *See* Proposed MMP at Table 2-4. The Proposed MMP also acknowledges that recreational activities could cause displacement of bird species including the Southwestern willow flycatcher and that Alternative E does not minimize these impacts to the full extent possible. *See* Proposed MMP at 3-70. The Proposed MMP further acknowledges that surface-disturbing activities and livestock grazing impact the southwestern willow flycatcher, *see* Proposed MMP at 3-70, but then promotes Alternative E which fails to reduce the amount of the species’ potential habitat available for grazing or OHV use or to close potential habitat to ROW authorization. *See* Proposed MMP at Table SSS-5; 3-102 (noting Alternative E’s impacts to migratory birds due to “[r]esource uses (including ROWs, OHV use, livestock grazing, vegetation treatments, and larger group sizes) and less restricted recreational activities...”). The Proposed MMP fails to assess the direct, indirect, and cumulative impacts to the Southwestern willow flycatcher that will result from the preferred alternative.

3) *Colorado River fishes*

For the endangered Colorado River fishes, the Colorado pikeminnow (*Ptychocheilus Lucius*), razorback sucker (*Xyrauchen texanus*), humpback chub (*Gila cypha*), and bonytail chub (*Gila elegans*), Alternative E will generally result in high levels of threats within the planning area and therefore will likely result in damage to potential or designated critical habitat and/or take of the fishes. *See e.g.* Proposed MMP at 3-48, 3-84, 3-98, 3-101, 3-102 and Table LSG-2. While the Proposed MMP states that “[m]anagement alternatives that limit OHV use, grazing, recreational use, and ROW development; protect wilderness characteristics; and restrict surface disturbance within the 100-year floodplain would also likely protect special status species in the San Juan River,” *see* Proposed MMP at 3-75. The Proposed MMP does a poor job of analyzing the direct, indirect, and cumulative impacts to the Colorado river fishes from Alternative E and fails to ensure necessary measures to prevent harm to fish. *See* Proposed MMP at 3-76; 3-102.

4) *California condor*

For the California condor (*Gymnogyps californianus*), Alternative E will generally result in high levels of threats within the planning area. *See e.g.*, Proposed MMP at 3-48, 3-84, 3-98, 3-101, 3-102 and Table LSG-2. The Proposed MMP acknowledges that Alternative E “[w]ould be anticipated to have the greatest potential for indirect impacts to California condor.” *See* Proposed MMP at 3-73. While the Proposed MMP acknowledges that condors may at least move through the Planning Area and that certain activities have the potential to adversely impact the species, it states that “[b]ecause of the low likelihood of presence in the Planning Area, the large range of the species, and the temporary, intermittent nature of recreational disturbances, it is anticipated that any potential indirect impacts would be negligible.” *See* Proposed MMP at 3-72. Relying on the low likelihood of the presence of the species to conclude that impacts to the species would be negligible does not meet the hard look standard, especially with respect to endangered species that are trying to recover from low numbers.

5) *Yellow-billed cuckoo*

For the western Distinct Population Segment (DPS) of the yellow-billed cuckoo (*Coccyzus americanus*), Alternative E will generally result in high levels of threats within the planning area and therefore will likely result in damage to potential or designated critical habitat and/or take of the cuckoos. *See e.g.* Proposed MMP at 3-48, 3-84, 3-98, 3-101, 3-102 and Table LSG-2. Alternative E would “not apply any provisions specifically to protect wilderness characteristics” including at the San Juan River. *See* Proposed MMP at Table 2-4. The Proposed MMP also acknowledges that recreational use could cause displacement of bird species including the yellow-billed cuckoo and that Alternative E does not minimize these impacts to the full extent possible. *See* Proposed MMP at 3-70. The Proposed MMP likewise acknowledges that surface-disturbing activities and livestock grazing impact the yellow-billed cuckoo, *see* Proposed MMP at 3-70, but Alternative E then fails to reduce the amount of the species’ potential habitat available for grazing or OHV use or to close potential habitat to ROW authorization. *See* Proposed MMP at Table SSS-5. This analysis fails to meet the hard look standard that NEPA requires.

6) *Jones cycladenia*

For the Jones cycladenia (*Cycladenia humilis* var. *jonesii*), Alternative E will generally result in high impacts within the Planning Area. *See e.g.* Proposed MMP at 3-48, 3-84, 3-98, 3-101, 3-102 and Table LSG-2. Compared to Alternative B, Alternative E would leave an additional 39,054 acres available for livestock grazing in the Indian Creek allotment in the Indian Creek Unit, *see* Proposed MMP at Table LSG-3, where the species’ habitat has been modeled. *See* Draft MMP Vol. 2 Maps SSS-11 and SSS-12. Similarly, Alternative E would leave an additional 24,479 acres open in the Comb Wash allotment in the Shash Jaa’ unit, *see* Proposed MMP at Table LSG-3, where the species’ habitat has also been modeled. *See* Draft MMP Vol. 2 Maps SSS-11 and SSS-12. The Proposed MMP notes that Jones cycladenia “[w]ould be most susceptible to management decisions regarding livestock grazing [and] recreation (including OHV riding),” *see* Proposed MMP at 3-77, however Alternative E does little to ensure that the scope and scale of these activities will be significantly lessened. The Proposed MMP acknowledges that the preferred alternative is among those with the greatest potential impact (*id.* at 3-77) but fails to take a hard look and adequately analyze the direct, indirect, and cumulative impacts that managing under this alternative would have for Jones cycladenia.

7) *Navajo sedge*

For the Navajo sedge (*Carex speculosa*), Alternative E will generally result in relatively high impacts within the planning area. *See e.g.* Proposed MMP at 3-48, 3-84, 3-98, 3-101, 3-102 and Table LSG-2. In contrast to Alternative B, Alternative E would leave an additional 39,054 acres available for livestock grazing in the Indian Creek allotment in the Indian Creek unit, *see* Proposed MMP at Table LSG-3, where habitat for the species has been modeled to potentially occur. *See* Draft MMP at SSS-11 and SSS-12. Similarly, Alternative E would leave an additional 24,479 acres open in the Comb Wash allotment in the Shash Jaa’ Unit, *see* Proposed MMP at Table LSG-3, where habitat for the species has been modeled to potentially occur. *See*

Draft MMP Vol. 2 Maps SSS-11 and SSS-12. The Proposed MMP notes that Navajo sedge “[w]ould be most susceptible to management decisions regarding livestock grazing [and] recreation (including OHV riding),” *see* Proposed MMP at 3-77, however Alternative E does little to ensure that the scope and scale of these activities will be significantly lessened. Despite acknowledging that Alternative E is among those with the greatest potential impacts to this species (*id.*), the Proposed MMP continues to prioritize this alternative without taking the adequate hard look at the direct, indirect, and cumulative impacts of the agencies’ actions.

Summary of protest and requested remedy: The Proposed MMP’s preferred alternative fails to fully acknowledge and prevent the potential harm to the endangered and sensitive species within the monument, including the Mexican spotted owl, Southwestern willow flycatcher, Colorado River fishes, California condor, Yellow-billed cuckoo, Jones cycladenia, and the Navajo sedge. Throughout the Proposed MMP, the agencies fail to take the adequate hard look at direct, indirect, and cumulative impacts to these special species. Furthermore, continued management of areas around the planning area under the Monticello RMP and Manti-La Sal LRMP is likely to result in cumulative effects that are not adequately addressed in the Proposed MMP. Such dereliction of duty violates the monument proclamation, the ESA, NEPA, and is arbitrary and capricious. The agencies must revisit their analysis and take an adequate and necessary hard look at the direct, indirect, and cumulative impacts of their preferred alternative to all special status species within the monument.

4) Ecological Intactness

The agencies failed to take NEPA’s required hard look at the Proposed MMP’s impacts to ecological intactness, including direct, indirect, and cumulative impacts. As highlighted in Section IV(D)(2) covering “lands and realty” above, the Proposed MMP, including the cumulative impacts section, includes no discussion of the impacts of opening lands surrounding the monument to extractive industries and other surface disturbing activities. As such, BLM and USFS has not met its obligation to take a hard look at the potential impacts to ecological intactness from their management decisions extending outside of the planning area.

Summary of protest and requested remedy: The agencies fail to take a hard look at the direct, indirect, and cumulative impacts to ecological intactness, including the failure to consider the cumulative impacts from development or other surface disturbing activities on lands surrounding the planning area but within the original monument. The agencies must revisit their analysis to account for all impacts to ecological intactness, specifically calculating the potential cumulative impacts to monument resources from their management decisions extending outside of the planning area.

5) Water Resources

The agencies have failed to characterize adequately the water resources values identified in Proclamation 9558 and therefore have necessarily failed to derive management alternatives that will safeguard these values. For the same reason, the agencies have also neglected their legal obligation to consider the environmental impact of their various alternative management scenarios on the full range of Monument values the agencies are obligated to protect.

Proclamation 9558 identifies water resources as Monument objects that must be protected. *See* TWS et al. BENM Draft MMP comments, submitted November 15, 2018, Section XXI. Key to safeguarding water quality and quantity and plant and animal species, as well as other watershed and wetland values, is managing activities upstream and elsewhere in the relevant watersheds. Yet, the agencies do not acknowledge or address this connection and fail to consider protective management schemes for upstream and watershed-wide activities although NEPA, 16 U.S.C. § 7202(a) and Secretarial Order 330 require such analysis. As a result, the Proposed MMP fails to take a hard look at the management scenarios on water resources and is necessarily inadequate.

The Proposed MMP states that “[d]etermining appropriate riparian buffer widths depends on hydrology, slope and soil characteristics, vegetation, surface roughness, adjacent land use and management, and the nature of recreational use[.]” Proposed MMP at 3-55. The agencies also state that “[w]ider buffers with more restrictive uses within the buffer would generally be more protective of riparian, wetland, and water resources.” *Id.* However, the agencies do not analyze whether the buffers and restrictions association with the various management alternatives are sufficiently robust to protect the Monuments’ water resources. *E.g. see* Proposed MMP at ES-10. Similarly, the agencies fail to determine the minimum buffers necessary to fully safeguard the riparian corridors, wetlands, water quality and water quantity in the monument. *Id.*

Further, the agencies do not discuss the environmental consequences of the proposed management alternatives on water quality. The Proposed MMP acknowledges that water quality in the Monuments is impaired:

Water quality concerns within the Planning Area include high stream temperatures, low dissolved oxygen, high sediment loads and nutrient concentrations, high salinity, and high coliform bacteria concentrations. Many of these concerns are associated with riparian health and cover, water quantity, and natural conditions.

Proposed MMP at 3-53. Plainly, management alternatives that would adequately protect water quality would necessarily respond to existing water quality, for example by providing more robust buffers and more restrictive management requirements on areas impacting waters where quality has been degraded and that are failing to meet Utah Water Quality Standards or alternatively where the highest quality water should be maintained at existing levels. Because it fails to analyze water quality across the entire planning area and base its management alternatives on these existing conditions, the Proposed MMP and its associated environmental analysis are not adequate.

Furthermore, The Proposed MMP does not characterize the future needs of local communities, plants and wildlife for high quality water or how the management alternatives will impact these requirements. In other words, the agencies do not attempt to quantify the actual impact that the various management scenarios will have on future water quality or to determine whether these impacts are acceptable given their duty to protect monument values and to comply with Utah Water Quality Standards. As a result, the Proposed MMP and its associated environmental analysis are not adequate.

Summary of protest and requested remedy: Throughout the Proposed MMP, BLM and USFS have failed to adequately address, analyze, and disclose the effects of the various management schemes on water resources and water quality. Without such information, the agencies cannot properly design and evaluate management alternatives and cannot ensure that their ultimate decision complies with the Antiquities Act or Utah Water Quality Standards. As a result, the Proposed MMP is arbitrary and capricious and fails to comply with NEPA. The agencies must revisit their analysis to account for activities upstream and elsewhere in the relevant watersheds, analyze whether buffers and restrictions are adequate to safeguard riparian corridors, wetlands, water quality, and water quantity in the monument, and assess how management actions will impact the future needs of local communities, plants, and wildlife.

6) Livestock Management

The Proposed MMP provides for increasing the number of range structures on the monument. Proposed MMP at 2.4.5.1. The original language in the Draft MMP only discussed existing structures. The BLM's analysis of impacts assumed that increasing water sources would distribute cattle more evenly and reduce impacts on heavily used areas (Proposed MMP at 2.10) but failed to analyze the increased grazing pressure on the vast areas in the drier, more vulnerable uplands. These projects divert water from riparian systems and attract more livestock to upland areas, resulting in more trampling, soil erosion, soil compaction, bare ground, and weeds such as smooth brome. The agencies responded to our comment on the lack of analysis by claiming that they didn't need to analyze specific range improvement projects in an MMP. See Proposed MMP at O-83.

To justify its lack of analyses, the Proposed MMP relies on inconclusive and incomplete rangeland health information. The Utah Standards and Guidelines (S&G) are insufficient to protect monument objects from livestock grazing, and Proposed MMP failed to take a hard look at the inadequacies of this measure. The S&Gs are designed to be general, baseline indicators of rangeland health. For example, the S&Gs identify the presence of invasive species but do not quantify their extent or the influence of livestock on their populations; this measure alone is insufficient to protect the desert landscape from flammable exotic invasive species. The S&Gs were established in order to address "the basic components of healthy rangelands" (emphasis added) and in order to establish a general baseline for range conditions, but not to serve as the "terms and conditions of various authorizations" and rather have terms and conditions that will reflect the standards and guidelines. 60 Fed. Reg. 9956, February 22, 1995. Meeting the S&Gs is the *minimum* level of management BLM is accountable for; in the case of the monument, the BLM has also established it as the *maximum* level of oversight (i.e. as long as the general S&Gs are being met, grazing can continue). There is nothing that prevents the agency from establishing more stringent criteria when conditions warrant more intensive scrutiny, as would be appropriate pursuant to the monument proclamation.

Not only is this application of the S & Gs insufficient for resource protection on the monument, but it ignores the agency's own policy that cautions against the improper use of S&G assessments to make grazing and other management decisions. The BLM's "Interpreting Indicators of Rangeland Health", which is commonly used to decide if S&Gs are met, states that the technique should be used in association with quantitative monitoring and inventory information, and "is designed to... provide a preliminary evaluation of soil/site stability,

hydrologic function, and integrity of the biotic community... help land managers identify areas that are potentially at risk of degradation,” and be used as a communication tool with a wide range of audiences. See Pellant, M., P. Shaver, D.A. Pyke, and J.E. Herrick. 2005. Interpreting indicators of rangeland health, version 4. Technical Reference 1734-6; *see also* BLM Technical Reference 1734-6 at 1.² The Technical Reference explicitly states, “The approach is NOT to be used to: ...**Make grazing or other management decisions; Monitor land or determine trend**” Ibid. (emphasis added).

In spite of this, the BLM relies on compliance with S&Gs to claim that livestock are not degrading the objects protected by the monument Proclamation. The Proposed MMP states “The rangeland health information presented in the MMPs/EIS is the best available information regarding rangeland health in the Planning Area and is sufficient to inform the decisions to be made in the MMPs/EIS.” See Proposed MMP Appendix O at O-80. But without any quantitative data to support it, S&Gs are not comprehensive, not intended to provide detailed information about specific habitat types, not quantifiable, highly subjective, and conducted at too irregular and too infrequent intervals to be useful for identifying and mitigation damage to monument resources.

The Proposed MMP claims that most allotments are meeting rangeland health, which indicates that properly managed grazing will not damage soils, water, or vegetation. As we pointed out in our previous comments, this is not supported by the data supplied in the EIS. See TWS et al. BENM Draft MMP comments, November 15, 2018, Section XVIII. The Proposed MMP fails to provide evidence to support the assertion that failure of some allotments to meet standards is the product of past grazing practices and drought. Further, grazing should be managed so that the frequent droughts experienced in the planning area do not impact monument resources. In other words, drought is not an excuse for poor range condition. Given the extent of resource condition disclosed by BLM in the AMS, we are not assured that maintaining current management is sufficient to meet the vision for these NCLs.

Summary of protest and requested remedy: Throughout the Proposed MMP, the BLM has failed to adequately address, analyze, and disclose the effects of authorizing livestock grazing on the planning area on issues such as the spread of exotics, removal of vegetation for habitat and forage for wildlife, soils and biological soil crusts, and alteration of ecosystem processes. The Proposed MMP has not accurately or consistently represented the proposed action, violating NEPA and making any analysis arbitrary and capricious. The agencies must revisit their analysis to adequately address, analyze, and disclose the direct, indirect, and cumulative effects of authorizing livestock grazing throughout the planning area.

7) Vegetation Management and Removal

We protest the provision in the Proposed MMP that added language to maintain “or increase” the existing level of vegetation treatments, including chaining throughout much of the monument. Proposed MMP at 2-6. Chaining is a controversial method with a body of research casting doubt on the efficacy of this method, as we documented in our comments on the Draft MMP. See TWS et al. BENM Draft MMP comments, submitted November 15, 2018, Section XI. The Proposed

² Available online: www.blm.gov/nstc/library/pdf/1734-6.pdf.

MMP fails to address the well-known, long-term resource damage and unintended consequences that chaining has inadvertently caused in the past. Without this, the agencies cannot claim that they used “The best available data were used in the preparation of the analysis... in the EIS” Proposed MMP at 3-2. Monument objects are often incompatible with the high levels of surface disturbance and vegetation removal attendant in these treatments, and the long-term benefits assured by land managers often fail to materialize. The degree of uncertainty in treatment results and long-term impacts is not taken into enough account in the Proposed MMP.

The monument exists in the context of rapid change across both human and natural systems. Those changes have the ability to produce stressors that require an unprecedented level of monitoring to inform adaptive management which is designed to mitigate in ways that reduce loss of ecological value thus retaining as much resiliency as possible. Following treatment, monitoring is necessary following treatment to assess success. However, the Proposed MMP’s monitoring plan does not require a detailed monitoring plan and objective, clearly stated goals. Traditional monitoring methods such as trend is not adequate because many of those methods are not statistically reliable or do not measure the variables that need to be monitored to determine project success. Neither is relying on rangeland health assessments, which are not to be used for monitoring.

The Proposed MMP allows an increase in fuels projects to address what may be increased potential for wildfires in the future, although it admits there has not been a significant increase in the annual number of fire ignitions or acres burned over the last 10 years. *See* AMS at 2.3.2.5 and 2.3.2.6.2. It cites the invasion of annual grasses and conifer woodlands as the primary factors for this potential trend. However, it failed to take into account the fact that invasion of annual grasses can be the most common result of vegetation treatment projects, as we noted in our comments in the draft and provided extensive evidence for. *See* TWS et al. BENM Draft MMP comments, submitted November 15, 2018, Section XI. If weeds are present in the planning area before treatment there is increased risk of their expansion post-treatment. There is a very real possibility that treatments will result in exacerbating the problem of invasive species in the planning area.

Summary of protest and requested remedy: The Proposed MMP fails to address the well-known, long-term resource damage and unintended consequences that chaining has inadvertently caused in the past. Monument objects are often incompatible with the high levels of surface disturbance and vegetation removal attendant in these treatments, and the long-term benefits assured by land managers often fail to materialize. The agencies have failed to take a hard look at these impacts, as the degree of uncertainty in treatment results and long-term impacts is not taken into enough account in the Proposed MMP. The agencies should not allow chaining in any part of the monument as it is inconsistent with the proper care and management of monument objects. Additionally, the agencies should create a detailed monitoring plan with objective goals to understand the most effective techniques for adaptive management for vegetation and account for the fact that vegetation treatment projects often result in increased invasive species.

8) Biological Soils and Crusts

Throughout the Proposed MMP, the BLM has failed to adequately address, analyze, and disclose the effects of planning activities on soils and biological crusts and how those effects will be mitigated.

For instance, the agencies admit that there will be impacts to soils from the vegetation removal and soil compaction associated with livestock grazing (although there are far more impacts than these). They propose that this will be mitigated by proper livestock management, including construction of range improvements. However, these improvements will result in impacts of their own as they attract livestock to new areas. No analysis of these reasonably expected impacts was done, however. Despite evidence of the fragility of these soils and the biological soil crust protecting them, the analysis of impacts only runs to a few sentences of unsupported generalizations. Proposed MMP at 3-61. The Proposed MMP also asserts that “No survey or inventory data has been collected specific to biological soil crusts within the Planning Area and is not required for the BENM planning effort” but does not explain why that information is not required. *See* AMS at 2-132. This is not an adequate analysis to capture all the potential effects of the management actions across alternatives on soils.

The Proposed MMP also errs in its analysis of the impacts from vegetation management actions to soils and biological soil crusts. Proposed MMP at 3-61. The analysis states that mechanical vegetation treatments would not disturb soil structure and stratification but, depending on the size of the anchor chain used in chaining, uprooting vegetation and dragging a large chain across the soil would lead to heavy soil disruption and overturning of soil strata, not to mention compression in fine-textured soils. Biological soil crust would be almost entirely destroyed in the path of the mechanical equipment. BLM has anecdotally surmised that biological soil crust crushed by equipment would just be “broken up into smaller pieces, but it’s still there.” But those organisms are damaged and cannot perform the functions of intact crust, including soil stabilization, water retention, and nitrogen-fixation. In fact, recent research indicates that restoration of biological soil crust may not be as easy as had been hoped. *See* Warren, S.D., St. Clair, L.L., Leavitt, S.D., 2019. Aerobiology and passive restoration of biological soil crusts. *Aerobiologia* 35, 45–56.³

The Proposed MMP goes on to assert, without supporting evidence, that the effects of these impacts on soils “may continue for approximately 2 to 5 years” but that “long-term soils would...stabilize”. Soil and biological crust recovery from a chaining treatment will not recover in that time. Studies from elsewhere on the Colorado Plateau show long-term increases in bare ground, soil compaction, and decreases in biological soil crust for many years post-treatment. Loamy soils that have been compressed takes decades to develop its former porosity and fine-textured soils may take even longer. *See* Castellano, M.J., and T.J. Malone. 2007. Livestock, soil compaction, and water infiltration rates: Evaluating a potential desertification recovery mechanism. *Journal of Arid Environments* 71(1):97-108. The Proposed MMP will commit a grave error in assuming that the effects of vegetation treatments on soils will be minor and temporary, especially since it is now proposing to treat new areas with relatively undisturbed soils in the final EIS. The damage has the potential to be irreparable on a management-scale time frame.

³ Available at: <https://doi.org/10.1007/s10453-018-9539-1>.

The Proposed MMP says that the magnitude of impacts will not vary across alternatives. This is difficult to understand considering that Alternative B restricts vegetation management actions to a smaller area, which is less impactful to soils than the other Alternatives. The large amount of vegetation treatments proposed will make it difficult for the agencies to attain the Goals and Objectives set out for soils in 2.4.9 2-23 to promote sustainable soil functions. The goal to protect sensitive soils and biological soil crusts comes with a very large caveat – “to the extent practicable”. One feels such protections may never be practicable in practice.

Summary of protest and requested remedy: Throughout the Proposed MMP, the BLM has failed to adequately address, analyze, and disclose the effects of planning activities on soils and biological crusts and how those effects will be mitigated. The Proposed MMP has not accurately or consistently represented the proposed action, making any analysis arbitrary and capricious. We protest the failure to include a comprehensive analysis of the proposed action on these elements. The agencies must conduct adequate analysis to capture the reasonably expected impacts from conducting range improvements, the impacts to biological soils and crust from chaining, and the magnitude of impacts that varies across alternatives and that protection of soils and crusts should be a priority in monument management. The agencies must acknowledge that the effects from the proposed action on biological soils and crusts is not minor and temporary, but rather extensive and irreparable.

9) Climate Change Impacts

The Proposed MMP only gives a cursory glance at the direct, indirect, and cumulative effects of downstream fossil fuel combustion that is likely to result from development on lands outside of the planning area, but within the original boundaries of the monument. Several federal courts have found that when developing an RMP, the NEPA process requires BLM to take a hard look at the indirect effects of downstream combustion of fossil fuels extracted from federal lands. *See, e.g., Citizens*, 377 F. Supp. 3d 1223; *Wilderness Workshop*, 342 F. Supp. 3d 1145; *San Juan Citizens Alliance v. United States BLM*, 326 F. Supp. 3d 1227, 1244 (D. N.M. 2018); *W. Org. of Res. Councils v. U.S. Bureau of Land Mgmt.*, No. CV 16-21-GF-BMM, 2018 WL 1475470, at *13 (D. Mont. Mar. 26, 2018). BLM must “quantify and analyze the impacts,” *San Juan*, 326 F. Supp. 3d at 1244, and may not dispense with that obligation by claiming that the indirect effects are “too speculative” without further analysis. *Wilderness Workshop*, 342 F. Supp. 3d at 1156. Specifically, BLM “cannot rely on production estimates while simultaneously claiming it would be too speculative to rely upon the predicted emissions from those same production estimates.” *Citizens*, 377 F. Supp. 3d at 1237.

The Proposed MMP’s response to our draft comment (and similar public comments) is inadequate. *See* Proposed MMP Appendix O at O-4 – O-6. In the response to comments, the agencies falsely describe limited direct and indirect impacts by stating “management actions would result in air pollutant emissions that would be less than emissions prior to Monument designation.” *See* Proposed MMP Appendix O at O-4. This rationale falsely describes climate change impacts from development potential within the area before the monument was established, rather than comparing development impacts under the more recent and realistic comparison of Proclamation 9681 versus Proclamation 9558.

Instead of doing the necessary analysis, the agencies state “[d]evelopment of the unpatented mining claims or State trust lands within the BENM is speculative.” See Proposed MMP Appendix O at O-4. As such, the agencies fail to discuss the quantitative and realistic impact of those estimates in the context of the alternatives and overall MMP.

At the same time, the agencies include the social and economic considerations of development potential in the land excluded from the monument under Proclamation 9681. This analysis speaks to the estimates of natural gas well development and potash production, including “opportunity for local jobs (an estimated 430 direct, indirect, and induced jobs per year.” See Proposed MMP at 3-113. The agencies also consider tax revenue derived from development activities. *Id.*

This is not the reasoned analysis or hard look required by NEPA and runs directly contrary to the approach mandated by the federal courts. The agencies’ lack of analysis and reliance on outdated pre-monument leasing estimates in the Proposed MMP is very similar to the scenario presented to the courts in both *Wilderness Workshop* and *Citizens*, both of which concluded that BLM acted in an arbitrary and capricious manner by failing to take a hard look at the indirect effect of fossil fuel combustion while simultaneously relying on production estimates and economic benefits. See *Wilderness Workshop*, 342 F. Supp. 3d at 1156 (“It is arbitrary and capricious for a government agency to use estimates of energy output for one portion of an EIS, but then state that it is too speculative to forecast effects based on those very outputs.”); *Citizens*, 377 F. Supp. 3d at 1237 (same). These cases and the inadequate discussion of the indirect impacts here compels the same conclusion.

Summary of protest and requested remedy: To meet NEPA’s requirements and properly analyze the climate change impacts of lands within the original monument but outside of the current planning area, BLM must incorporate the best available science and draw the appropriate conclusions from this science, meeting the “hard look” standard. In the Proposed MMP, the agencies fail to provide adequate analysis for the decisions they are making. As such, the Proposed MMP fails to take the “hard look” that NEPA requires and the Proposed MMP must be updated to acknowledge the likely direct, indirect, and cumulative consequences of the proposed action.

E. The Baseline Assessment of the Planning Area is Insufficient.

The agencies fail to meet the baseline assessment requirement provided in 40 C.F.R. § 1502.15, which requires agencies to “describe the environment of the areas to be affected or created by the alternatives under consideration.” As stated in *Half Moon Bay Fisherman’s Marketing Ass’n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988), the Ninth Circuit determined “without establishing . . . baseline conditions . . . there is simply no way to determine what effect [an action] will have on the environment, and consequently, no way to comply with NEPA.”

Appendix A lists the monument objects and values within the current planning area, but fails to provide a clear identification, inventory, and assessment of the monument objects. Without knowledge of where and to what extent monument resources exist throughout the planning area, the agencies cannot adequately meet the baseline assessment requirements.

Furthermore, the agencies should have considered whether there is looting, vandalism, and habitat destruction within the planning area as part of the no action alternative. Assessing these impacts and on-the-ground threats would provide the agencies with a more realistic urgency in planning for protection of these resources.

Summary of protest and requested remedy: The agencies fail to establish and describe the current baseline conditions in the monument. Without knowledge of where and to what extent monument resources exist, the agencies cannot adequately plan for their protection. Furthermore, the agencies should have assessed whether there is looting, vandalism, and habitat destruction within the planning area as part of the no action alternative to more adequately describe the monument's current management.

V. The Agencies Fail to Comply with the National Historic Preservation Act.

Section 106 of the National Historic Preservation Act (NHPA) requires federal agencies to “take into account the effect of [an] undertaking on any historic property. 54 U.S.C. § 306108. To carry out this broad purpose, the NHPA’s implementing regulations generally require four steps.

First, the agency must define the area of potential effects. 36 C.F.R. § 800.4(a). The area of potential effects is “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties.” *Id.* § 800.16(d).

Second, after defining the area of potential effects, the agency must make a “reasonable and good faith effort” to identify historic properties within that area. 36 C.F.R. § 800.4(b). As the Advisory Council emphasized in its preamble to the Section 106 regulations, knowing the historic properties at risk from an undertaking is essential: “It is simply impossible for an agency to take into account the effects of its undertakings on historic properties if it does not even know what those historic properties are in the first place.” 65 Fed. Reg. 77698, 77,715 (Dec. 12, 2000).

Third, if historic properties are present within the area of potential effects, the agency must determine whether the proposed undertaking will adversely affect those properties. *Id.* § 800.5. An adverse effect exists “when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the [NRHP] in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.” *Id.* § 800.5(a)(1). Adverse effects include “reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.” *Id.* They also include the “[i]ntroduction of visual, atmospheric[,] or audible elements that diminish the integrity of the property's significant historic features.” *Id.* § 800.5(a)(2)(v).

Finally, if the agency determines that the undertaking may cause an adverse effect on the historic properties within the area of potential effects, it must “develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.” *Id.* § 800.6(a); *Dine Citizens Against Ruining Our Env't v. Bernhardt*, 923 F.3d 831, 846 (10th Cir. 2019).

The proposed Plan violates the NHPA in at least two ways. First, the Proposed MMP appears to define the area of potential effects (APE) as the entirety of the planning area although the agencies never use the term “area of potential effects.” Proposed MMP at 3-5. While the planning area certainly is relevant to analyzing cultural resource impacts under NEPA, the NHPA requires the agencies to define APEs more narrowly as “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties,” 36 C.F.R. § 800.16(d), for within that area the agencies must make a “reasonable and good faith effort” to identify historic properties, 36 C.F.R. § 800.4(b). The Proposed MMP violates the NHPA because it authorizes several immediate uses of monument lands that could potentially impact cultural resources, such as designating 14 cultural resource sites as Public Use (Developed) but fails to define APEs for each potentially impacted area.

Second, the agencies failed to make a “reasonable and good faith effort” to identify historic properties within the monument. 36 C.F.R. § 800.4(b). Only 8.2% of BLM lands and 34% of USFS lands within the Shash Jaa’ unit, and only 14.7% of the Indian Creek unit, have been surveyed for cultural resources. Proposed MMP at 3-6 – 3-7. The agencies conducted no surveys or inventories of historic cultural properties within the monument and relied only on a review of existing literature based on previous surveys. Proposed MMP at 3-5 – 3-8. Instead, the agencies note that a Class III cultural resource inventory will be conducted “as funding is available.” Proposed MMP at 3-10. But the agencies’ commitment to complete a Class III survey in the future, and contingent upon elusive funding, “does not substitute for a more intensive survey now,” particularly where, as here, “the threat to historic sites is posed by *existing* authorized uses.” *Montana Wilderness Ass’n v. Connell*, 725 F.3d 988, 1009 (9th Cir. 2013). Indeed, even though the agencies commit that an activity-level cultural resources management plan – to “provide site-specific, implementation-level direction to effectively manage recreation and other uses while protecting the integrity of significant cultural resources, Proposed MMP at 2-5 – would be developed within 2 years, the Proposed MMP authorizes several ongoing, existing uses that could cause adverse impacts before the cultural resource management plan is completed.

For example, even though a cultural resource site is more likely to be subject to “looting, vandalism, or other negative human-caused impacts if it is nearer to a road” on which OHVs travel, the Proposed MMP authorizes OHVs on all roads and trails designated for such use immediately before issuance of Proclamation 9558 until an implementation-level travel management plan is completed for the monument – a years-long endeavor. Yet the agencies failed to survey the existing OHV route network for cultural properties. Proposed MMP at 3-15, 3-79. Likewise, while the Proposed MMP designates 14 cultural resource sites as Public Use (Developed), which inevitably will increase visitation and adverse impacts, the agencies failed to survey the areas surrounding these public use sites.

Thus, because the Proposed MMP’s authorized uses pose significant threats to cultural resources within the monument, the agencies violated the NHPA by failing to make a “reasonable and good faith effort” to identify historic properties within the monument, or at least in those areas potentially affected by the Proposed MMP’s authorized existing uses. *See Montana Wilderness Ass’n*, 725 F.3d at 1009 (holding that agency’s failure to conduct more detailed cultural resource

inventory violated the NHPA where resource management plan at issue addressed a national monument designated to preserve and protect historic and cultural objects, where only 8 to 16 percent of the monument area was surveyed for cultural resources, and the Proposed MMP authorized existing uses that could damage cultural resources); *see also* USFS Manual 2300, Chapter 2360 – Heritage Program Management, 44,45 (noting that at least some level of field survey is required for projects or actions subject to NEPA review).

Summary of protest and requested remedy: The Proposed MMP violates the NHPA because it authorizes several immediate uses of monument lands that could potentially impact cultural resources, such as designating 14 cultural resource sites as Public Use (Developed) but fails to define APEs for each potentially impacted area. Additionally, the agencies fail to make a “reasonable and good faith effort” to identify historic properties within the monument because the majority of the monument has not been inventoried for cultural resources. The agencies must immediately prioritize and have a clear source of funding for Class III inventories throughout the planning area to adequately inform management actions as well as the forthcoming implementation-level cultural resource plan. Through this process, the agencies must prioritize particularly vulnerable areas including heavily visited areas and sites along OHV routes.

VI. The Agencies Fail to Comply with the Endangered Species Act.

The Endangered Species Act (ESA) sets out a substantive duty for all federal agencies to ensure that their actions do not jeopardize the continued existence of threatened or endangered species or destroy or adversely modify listed species’ designated critical habitat.⁴ 16 U.S.C. § 1536(a)(2). The ESA also prohibits the “take” of threatened or endangered species. 16 U.S.C. § 1538(a)(1)(B)&(G).

To assist federal agencies in complying with their ESA duties, Section 7 of the ESA (and its implementing regulations) set out a detailed consultation process. 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402 *et seq.* When a federal agency determines that an action it proposes to take “may affect listed species or critical habitat,” that agency must assess the effects of its action. 50 C.F.R. §§ 402.12; 402.14(a); 16 U.S.C. § 1536(c). If the agency determines that the proposed action is “likely to adversely affect” any listed species or critical habitat, then the agency must initiate formal consultation with the Fish and Wildlife Service (FWS). 50 C.F.R. § 402.14.

To conduct ESA-compliant consultation, agencies must also analyze the “entire” agency action. *Conner v. Burford*, 848 F.2d 1441, 1452-53 (9th Cir. 1988) (citing 16 U.S.C. § 1536(b)(3)(A)); *Ctr. for Biological Diversity v. Rumsfeld*, 198 F. Supp. 2d 1139, 1155 (D. Ariz. 2002). This means that a biological opinion’s analysis of effects to listed species and critical habitat “must be coextensive with the agency action.” *Conner*, 848 F.2d at 1458; *Greenpeace v. Nat’l Marine Fisheries Serv.*, 80 F. Supp. 2d 1137, 1143 (W.D. Wash. 2000) (agency “must prepare a . . .

⁴ The ESA’s definition of critical habitat includes “specific areas within the geographical area occupied by the species, at the time it is listed in accordance with [section 4 of the ESA], on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection.” 16 U.S.C. § 1532(5)(A)(i). Thus, by the definition of habitat being designated as critical habitat it is “essential to the conservation of the species” and “may require special management considerations or protection.” *Id.*

biological opinion equal in scope” to action consulted upon); *Rumsfeld*, 198 F. Supp. 2d at 1156 (“breadth and scope of the analysis must be adequate to consider all the impacts”). Accordingly, courts strike down biological opinions that fail to perform a comprehensive analysis of the entire action, including analyses that omit key areas or impacts. *See, e.g.,* Conner, 848 F.2d at 1453-54 (analysis of entire agency action for oil and gas leasing must also include impacts from development); *Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 902-03 (9th Cir. 2002) (overturning Forest Service’s Section 7 analysis because it omitted key geographic area affected by proposal). Further, in designating an “action area” for analysis, the agency must consider “all areas to be affected directly or indirectly by the Federal Action and not merely the immediate area involved in the action.” 50 C.F.R. § 402.02; *Native Ecosystems Council*, 304 F.3d at 902 (emphasis added).

In addition, the effects of the agency action which must be evaluated during ESA consultation include “the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated or interdependent with that action.” 50 C.F.R. § 402.02. “Indirect effects” include effects “that are caused by the proposed action and are later in time, but still are reasonably certain to occur.” *Id.* These direct and indirect effects must be considered together with a separate category of impacts known as “cumulative effects,” which are “those effects of future State or private activities, not involving Federal activities, that are reasonably certain to occur within the action area of the Federal action subject to consultation.” *Id.*

Courts have repeatedly found that impacts are “reasonably certain to occur” and thus must be analyzed under the ESA as “indirect effects” where federal actions induce private or off-site development. For example, when considering the potential effects of the operation of a military base, a court required the U.S. Army to consider the indirect impacts caused by groundwater pumping required by its operation and people the base attracted to the area. *Rumsfeld*, 198 F. Supp. at 1139; *Fla. Key Deer v. Paulison*, 522 F.3d 1133, 1144-45 (11th Cir. 2008) (finding FEMA’s flood insurance program may cause jeopardy to endangered Florida key deer by encouraging development); *Nat’l Wildlife Fed’n v. Fed. Emergency Mgm’t Agency*, 345 F.Supp.2d 1151, 1173-74, 1176 (W.D. Wash. 2004) (Section 7 consultation on FEMA flood insurance program must address harmful impacts of induced property development in flood zone because “development [was] reasonably certain to occur as a result of” the program, even though FEMA did not “authorize, permit, or carry out the actual development that causes the harm.”); *Sierra Club v. U.S. Dep’t of Energy*, 255 F. Supp. 2d 1177, 1187-89 (D. Colo. 2002) (agency consultation concerning approval of right-of-way must address indirect impacts of a mine the construction of which was made possible by the right-of-way); *Riverside Irr. Dist. v. Andrews*, 758 F.2d 508, 512 (10th Cir. 1985) (“To require [an agency] to ignore the indirect effects that result from its actions would be to require it to wear blinders that Congress has not chosen to impose” under the ESA).

Consultation must also consider the value of critical habitat for recovery. *Gifford Pinchot v. U.S. Fish and Wildlife Serv.*, 378 F.3d 1059 (9th Cir. 2004). As the Ninth Circuit noted, “it is logical and inevitable that a species requires more critical habitat for recovery than is necessary for the species survival.” *Id.* at 1069. “Conservation is a much broader concept than mere survival. The

ESA's definition of conservation speaks to the recovery of a threatened or endangered species." *Id.* at 1071-72.

The Proposed MMP is "likely to adversely affect" ESA-listed species or result in adverse modification of their habitat, as well as the potential "take" of individual members of the species. For example, the Proposed MMP condones numerous harmful activities under the agencies' proposed Alternative E which can negatively impact ESA-listed wildlife. *See e.g.* Proposed MMP Appendix P at P-9, 3-48, 3-84, 3-98, 3-101, 3-102 and Table LSG-2. Consequently, formal consultation under the ESA is necessary with respect to the threatened and endangered species impacted by the Proposed MMP – Mexican spotted owl, southwestern willow flycatcher, Colorado pikeminnow, razorback sucker, bonytail chub, humpback chub, California condor, western yellow-billed cuckoo, Jones cycladenia, and Navajo sedge.

The agencies appear to recognize this mandate, stating that "[t]he BLM and USFS would not sign a ROD until the USFWS issues a Biological Opinion and the formal Section 7 consultation is complete." *See* Proposed MMP at 4-1. We remain concerned, however, that the consultation will be inadequate in light of the Proposed MMP's cursory dismissal of the Proposed MMP's impacts to ESA-listed species.

Summary of protest and requested remedy: The Proposed MMP is "likely to adversely affect" ESA-listed species or result in adverse modification of their habitat, as well as the potential "take" of individual members of the species. Nonetheless, the agencies choose to move forward with a management alternative that leaves ESA-listed species at risk. The agencies must revisit their analysis to comply with the ESA and protect all listed species. The agencies are required to complete and thorough Section 7 consultation, complying with all legal mandates, prior to sign a record of decision.

VII. BLM Fails to Comply with the Federal Land Policy and Management Act.

A. The Proposed MMP violates FLPMA's Mandate to Protect Areas of Critical Environmental Concern (ACECs)

In developing land use plans, FLPMA requires BLM to "give priority to the designation and protection of areas of critical environmental concern." 43 U.S.C. § 1712(c)(3) (emphasis added). FLPMA's requirement that BLM "give priority" to designation and protection of ACECs is not nullified or diminished by monument designation. 43 U.S.C. § 1712(c)(3). In other words, even though BLM must manage the monument to protect the objects and values as set out in the proclamation, it must nevertheless prioritize protection of ACECs within the monument boundaries as well.

The 2008 Monticello RMP includes three ACECs within the planning area – San Juan River, Lavender Mesa, and Shay Canyon – which were retained in the Proposed MMP. To meet FLPMA's statutory requirement of prioritizing the protection of ACECs, BLM must apply special management to protect the values identified for each of the ACECs and designate new ACECs as appropriate. Layering protective designations is consistent with applicable law and policy and failing to do so because of monument designation violates BLM's statutory obligation

under 43 U.S.C. § 1712(c)(3). As highlighted throughout the Proposed MMP, special designations emphasize the protection of natural, prehistoric, and historic resources within the monument and are consistent with the proclamation's purpose. *See* Proposed MMP at 3-43.

In August 2018, TWS, the Trust, and SUWA submitted various ACEC nominations, including the Bears Ears ACEC and Indian Creek ACEC cited in the Proposed MMP, as well as five additional ACECs that should have been considered throughout the planning process. *See* Exhibit C for all ACEC nominations. The Proposed MMP fails to adequately consider these ACEC nominations. The Proposed MMP includes broad, conclusory language that "The BLM did not retain the portion of the nominated ACECs outside of the existing ACECs for analysis because those areas do not meet both the relevance and importance criteria." *See* Proposed MMP at 3-62. However, there is no information provided to indicate the ACEC proposals were properly considered. In fact, the Proposed MMP in Appendix O states the "ACEC nominations were submitted to the BLM after the publication of the Draft MMPs/EIS and therefore could not be considered in the development of the Draft MMPs/EIS. These nominated ACECs may be considered in a future planning process." *See* Proposed MMP Appendix O at O-211. This language indicates that the ACEC proposals were not fully considered in the changes made between the Draft and Proposed MMP. We are glad to see the existing ACECs retained in the Proposed MMP, but we believe the BLM failed to give adequate attention and consideration to our additional ACEC proposals in the development of this plan.

The MMP should manage all ACECs as rights-of-way exclusion areas. Currently, the preferred alternative would manage the San Juan River, Lavender Mesa, and Shay Canyon ACECs as ROW avoidance areas – a determination that is at odds with BLM's own acknowledgment that designating ACECs as ROW exclusion areas best protect the areas' relevant and important values.

Summary of protest and requested remedy: The Proposed MMP fails to give priority to the protection and designations of ACECs by choosing the least protective alternative and failing to adequately consider citizen nominated ACECs submitted by TWS, the Trust, and SUWA in August 2018. The agencies should revisit their analysis and develop management prescriptions that sufficiently protect ACECs, including managing all ACECs as ROW exclusion areas. The agencies should revisit and ultimately adopt the ACEC nominations submitted by TWS, the Trust, and SUWA in August 2018, as they adequately articulate reasoning for protecting the area's relevant and important values and deserve this additional layer of protection.

B. The Proposed MMP Violates FLPMA's Mandate with Respect to Lands with Wilderness Characteristics.

In order to meet their statutory and regulatory obligations – and to uphold the letter and spirit of the monument proclamation – BLM and USFS should manage identified lands with wilderness characteristics (LWC) (including Forest Service inventoried wilderness evaluation areas documented in the 2018 draft wilderness evaluation conducted pursuant to FSH 1909.12, chapter 70 for the Manti-La Sal National Forest plan revision) for protection of wilderness values. 43 U.S.C. § 1732(b). Management of these lands, which comprise a significant portion of the overall monument, for protection of wilderness values will ensure lasting conservation of the objects identified in the proclamation.

While the Proposed MMP recognizes that the planning area contains 101,497 acres of inventoried LWC (including USFS-administered land), the preferred action fails to manage *any* qualifying lands for the protection of wilderness characteristics. *See* Proposed MMP at 3-23.

Under the preferred alternative, the agencies state they will “prioritize” other uses over the protection of LWC. The agencies’ preferred alternative provides the least amount of protection of all alternatives for LWC. *See* Proposed MMP at 3-24. In its discussion of environmental consequences related to LWC, the agencies repeatedly acknowledge that “managing lands with wilderness characteristics for multiple uses . . . could diminish wilderness characteristics over time.” *See* Proposed MMP at 3-25.

Additionally, BLM violates its own procedures and policies in failing to weigh resource values before deciding to prioritize other land uses over LWC. *See, e.g.*, 2012 LWC Manual at .60(A)(1)(b) (BLM must “consider the benefits that may accrue to other resource values and uses as a result of protecting wilderness characteristics”). There is simply no discussion of *why* BLM decides to favor other uses over the protection of LWC. BLM does not identify what values the other resource uses (aside from surface-disturbing activities) will generate that make its decision to forgo protections for LWC the right one. *See* Proposed MMP at 3-24 – 3-25.

For the reasons stated above, the management strategy outlined in the Proposed MMP is in violation of the monument’s proclamation and does not comply with FLPMA’s mandate that the BLM protect the public lands from “unnecessary or undue degradation.” 43 U.S.C. § 1732(b). This is yet another instance where the agencies considered various alternatives that would protect and preserve the area’s natural values, but knowingly choose to open the areas up to the threats they identify.

Summary of protest and requested remedy: The Proposed MMP fails to manage lands with wilderness characteristics for protection of their wilderness values. As such, the agencies fail to protect the monument from “unnecessary and undue degradation,” in violation of FLPMA. The agencies also fail to weigh resource values before deciding to prioritize other land uses over managing the lands for wilderness characteristics, in violation of agency policy (2012 LWC Manual). The agencies should revisit their analysis and manage the 101,497 acres of inventoried lands with wilderness characteristics for protection of their wilderness values.

C. The Proposed MMP Fails to Protect Sensitive Species as Required by FLPMA and NFMA.

The agencies have failed to demonstrate that their actions under the preferred alternative will not contribute to the need for ESA listing of BLM or USFS sensitive species. As noted in the Draft MMP (*see* Draft MMP at 3-63), BLM is directed to “undertake conservation actions for such species before listing [under the ESA] is warranted” and, “improve the status of such species so that their Bureau sensitive recognition is no longer warranted.” *See* Special Status Species Management Manual for the Bureau of Land Management, Section 6840.2.⁵

⁵ Available at: https://www.blm.gov/sites/blm.gov/files/uploads/mediacenter_blmmanual6840.pdf.

Similarly, the USFS is directed to “maintain viable populations” of sensitive species and to “[d]evelop and implement management practices to ensure that species do not become threatened or endangered because of Forest Service actions.” *See* FSM 2600 - Wildlife, Fish, and Sensitive Plant Habitat Management, Chapter 2670 – Threatened, Endangered, and Sensitive Plants and Animals. Section 2670.22. Furthermore, the USFS must “[a]void or minimize impacts to [sensitive] species.” *Id.* at Section 2670.32. The Proposed MMP sums up these duties by stating that “[i]n general, objectives of the BLM and USFS for managing special status species include...initiating proactive conservation measures that reduce or eliminate threats to BLM and USFS sensitive species to minimize the likelihood of a need for listing of those species under the ESA.” *See* Proposed MMP at 3-66.

Though the Proposed MMP asserts that “[a]ll action alternatives propose new management to provide for the proper care of Monument objects and values, which would address existing conditions and potential stressors to special status species and their habitats and result in *overall beneficial impacts*,” *see* Proposed MMP Appendix P at P-9, the overall content of the Proposed MMP and Alternative E does not support that assertion. Alternative E does not establish protections to minimize or eliminate threats to wildlife, including sensitive species, or even to ameliorate current activities negatively impacting these species. *See e.g.* Proposed MMP at 3-48, 3-84, 3-98, 3-101, 3-102 and Table LSG-2. The Proposed MMP itself comes to this conclusion in its analysis of USFS species of conservation concern that occur or have the potential to occur in the planning area. In their analysis of the threats affecting these sensitive species, the agencies listed grazing, recreation, OHV use, and other activities harmful to wildlife and generally managed in a relatively unrestrictive manner under Alternative E as threats commonly shared by many of these species. *See* Proposed MMP Appendix P at P-5. Indeed, the Proposed MMP itself notes that Alternative E is generally among the alternatives that would have the highest potential impacts on these species across the various types of environmental consequences analyzed. *See* Proposed MMP Appendix P at P-9.

In its discussion of USFS sensitive species the Proposed MMP repeatedly uses the phrase “[t]he action alternatives would create a framework that *could* provide the necessary habitat conditions for these species to persist within the Planning Area.” *See* Proposed MMP Appendix P at P-15 (emphasis added). In order to provide for the reduction or elimination of threats to BLM and USFS sensitive species, to improve their status, and decrease the likelihood of ESA listing, the mere possibility that the Proposed MMP “could” provide for the species to continue to “persist” is not adequate. Furthermore, development and improper management of the lands surrounding the Planning Area could result in cumulative impacts to sensitive species. Lands outside of the Planning Area should be managed not only for the protection of monument objects (including certain sensitive species) in accordance with Proclamation 9558, but also to ensure the adequate protection of BLM and USFS sensitive species. The agencies will therefore be failing to enact conservation measures to reduce or eliminate threats to BLM and USFS sensitive species and improve their status. This will threaten population viability and increase the likelihood of the need for ESA listing.

Summary of protest and requested remedy: The agencies admit the serious harm that would occur to sensitive species under the preferred alternative. While the agencies point to measures in existing plans under which they operate, they do not provide a meaningful explanation as to how the Proposed MMP will comply with their legal duties to minimize impacts, improve the status, and generally protect BLM and USFS sensitive species. This is in violation of FLPMA and NFMA. The agencies should revisit their analysis to provide a meaningful explanation as to how the Proposed MMP will minimize impacts to sensitive species, while improving the species status and protecting from additional harm.

D. The Proposed MMP Fails to Prevent Undue Degradation of the Monument Resources through Livestock Grazing Impacts.

As highlighted above, FLPMA mandates that BLM “shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” 43 U.S.C. §1732(b). BLM’s duty to prevent unnecessary or undue degradation under FLPMA is mandatory, and BLM must, at a minimum, demonstrate compliance with the degradation standard. *See, e.g., Sierra Club v. Hodel*, 848 F.2d 1068, 1075 (10th Cir. 1988). In no case does Alternative E afford more protection or benefits for any of the vegetation, wildlife, natural resources or named monument objects on the monument than Alternative B. Allowing livestock grazing is more likely to degrade the monument’s resources than not allowing livestock grazing to continue. The Proposed MMP does not provide any justification for these impacts or describe why they are necessary and why livestock grazing is elevated above protections of vegetation, soils, rare species, or other monument objects. The BLM also claims that implementation of its Best Management Practices will be enough to ensure resource protection. *See* Appendix I, Section 1.5. Assuming these are already in place, these practices have not been enough to prevent several allotments from not meeting standards and from trends to be stable or downward.

Further, the Proposed MMP states “If monitoring indicates that...grazing is impacting...objects and values...appropriate mitigation measures *may* be used to minimize those impacts.” [Emphasis ours.] This is a change from the Draft MMP, which says that “appropriate mitigation *would* be used.” [Emphasis ours.] The agencies appear to reserve for themselves the option to mitigate damage from livestock or just carelessly allow it.

Summary of protest and requested remedy: The Proposed MMP fails to provide justification for the unnecessary and undue degradation that will occur to natural resources from allowing widespread livestock grazing throughout the monument. This is in violation of FLPMA. The agencies must revise their analysis to justify why livestock grazing is elevated above protections for vegetation, soils, rare species, and other monument objects. The agencies must revise the Proposed MMP to provide that mitigation measures *must* be used to minimize impacts from grazing.

VIII. The USFS Fails to Comply with its obligations under the National Forest Management Act, NEPA, and Related Regulations.

A. The USFS Fails to Determine that the Substantive Provisions of the Planning Rule at 219.8(a) are Directly Affected by the Proposed Amendment and Fails to Respond to Related Substantive Comments on the Draft MMP.

When amending a plan that was completed under the 1982 planning rule, the Forest Service is required to determine which specific substantive requirements within 36 C.F.R. 219 §§ 219.8 through § 219.11 are directly related to the proposed action and apply the requirements accordingly. 36 C.F.R. § 219.13(b)(5).⁶ While the planning rule does not provide a clear test for what constitutes “directly related,” the rule requires that the determination must be based on the purpose and effects (adverse and beneficial) of the proposed action, and informed by best available science, scoping, the effects analysis, monitoring or some other rationale. 36 C.F.R. § 219.13(b)(5)(i).

The Forest Service in its April 10, 2018 supplementary scoping notice identified the provisions that may be directly affected by the proposed action (“In the event that the Forest Service determines that it intends to amend the Forest Plan, we hereby give notice that substantive requirements of the 2012 Planning Rule (36 C.F.R. § 219) likely to be directly related and, therefore, applicable to the Forest Plan amendment are 36 C.F.R. §§ 219.8 (b) (1), (5), and (6), regarding social and economic sustainability; 36 C.F.R. §§ 219.10 (a)(1), (4), (5), (7), (8), and (10), regarding integrated resource management for multiple use; and 36 C.F.R. §§ 219.10 (b)(1)(ii), (iii), and (vi), regarding cultural and historic resources, areas of tribal importance, and management of designated areas.”). 83 Fed. Reg. 15,355. The agency did not identify § 219.8 that addresses ecological sustainability including watershed, water quality, water body, and riparian area management, among other things. This omission of § 219.8 and § 219.9 was raised in scoping comments and in comments on the Draft MMP. The Forest Service responded to the comments raised on the Draft MMP by saying that it had determined that the requirements at § 219.9 were applicable and had applied them accordingly. The agency, however, failed to respond to the comment related to § 219.8. *See* Proposed MMP Appendix O at 222-3. The failure to respond to substantive comments is a violation of NEPA. 40 C.F.R. § 1503.4 and FSH 1909.15, 25.1.

Watersheds, water bodies, and riparian resources are listed as Monument objects of interest. Appendix A at A-16. The purpose of the MMP (and by extension the Forest Service amendment to the Manti-La Sal National Forest LRMP) is to provide for the proper care and management of Monument objects. Proposed MMP 1-1. Given this and absent any explanation as to why the Forest Service chose not to apply the requirements at § 219.8, it was arbitrary and capricious for the Forest Service to not find that the requirements of § 219.8 were applicable to the amendment and a violation of NFMA.

Furthermore, the determination that § 219.9 is directly related to the amendment triggers the need to comply with § 219.8 as directed in § 219.9(a) that states:

Ecosystem integrity. As required by § 219.8(a), the plan must include plan components, including standards or guidelines, to maintain or restore the ecological integrity of terrestrial and aquatic ecosystems and watersheds in the plan area,

⁶ This provision was promulgated to ensure that the updated provisions of the 2012 planning rule (which are grounded in more modern ecological science than the 1982 rule and, for instance, consider climate change and principles of conservation biology) would apply to planning amendments, and, importantly, to thwart attempts by the Forest Service to continually amend plans in order to avoid utilizing the updated rule provisions.

including plan components to maintain or restore their structure, function, composition, and connectivity.

In other words, the planning rule's ecosystem (coarse filter)/species-specific (fine filter) approach to species conservation relies on the development of ecosystem plan components that can only be developed by adhering to the requirements of § 219.8.

B. The USFS Fails to Appropriately Identify and Analyze the Correct List of Special Status Species and to Utilize the Manti-La Sal National Forest's Species of Conservation Concern List and Associated Scientific Information in its Analysis, in Violation of NEPA and NFMA.

When developing plan components, the Forest Service is required to provide the ecological conditions necessary to maintain a viable population of each species of conservation concern (SCC) within the plan area. 36 C.F.R. § 219.9(b). The Regional Forester is tasked with developing a list of SCCs. 36 C.F.R. § 219.9(c). In doing both, the agency must use best available scientific information. 36 C.F.R. § 219.3.

When amending a plan that was completed under the 1982 planning rule, the Forest Service is required to determine which specific substantive requirements within 36 C.F.R. 219 §§ 219.8 through 219.11 are directly related to the proposed action and apply the requirements accordingly. 36 C.F.R. § 219.13(b)(5). The Forest Service must include information in the initial notice for the amendment about which substantive requirements are likely to be directly related to the amendment. 36 C.F.R. § 219.13(b)(2).

The goal of NEPA is to foster informed decision-making by ensuring that detailed information is available and carefully considered and to promote public participation in decision-making. To that end, agencies must disclose the scientific information and analyses on which they rely in their environmental effects analyses and decision-making processes.

BLM published a scoping notice for the development of the MMP on January 16, 2018. 83 Fed. Reg. 2181. The Forest Service published a notice on April 10, 2019 notifying the public about the BLM's intention to develop an environmental impact statement and MMP. 83 Fed. Reg. 15,354. The notice explained the Forest Service's requirement at 36 C.F.R. § 219.13(b)(5) and stated "In the event that the Forest Service determines that it intends to amend the Forest Plan, we hereby give notice that substantive requirements of the 2012 Planning Rule (36 C.F.R. § 219) likely to be directly related and, therefore, applicable to the Forest Plan amendment are 36 C.F.R. §§ 219.8 (b) (1), (5), and (6), regarding social and economic sustainability; 36 C.F.R. §§ 219.10 (a)(1), (4), (5), (7), (8), and (10), regarding integrated resource management for multiple use; and 36 C.F.R. §§ 219.10 (b)(1)(ii), (iii), and (vi), regarding cultural and historic resources, areas of tribal importance, and management of designated areas."). 83 Fed. Reg. 15,355. The agency did not identify § 219.9 that addresses biological diversity and SCCs.

Consistent with the scoping notice's statement on "directly related" provisions, the Draft MMP did not address SCCs. First, the Draft MMP stated that special status species includes Forest Service sensitive species, the terminology used prior to the 2012 planning rule in reference to at risk species. *See Proposed MMP at 3-63* ("For the purposes of this EIS, special status species

refers to species listed as threatened, endangered, or candidate under the ESA as well as to species identified as sensitive by the BLM, USFS, and UDWR.”)⁷ Second, the Draft MMP dismissed SCCs from the issues analyzed in detail in the EIS. *See* Proposed MMP at 1-5 (“The USFS is currently revising the 1986 Manti-La Sal LRMP under 36 C.F.R. § 219. Included in the revision process is the requirement to identify species of conservation concern.... Because [this issue is] being addressed as a component of the ongoing Manti-La Sal National Forest forest-wide LRMP revision, [it does] not need to be addressed in a comprehensive framework for the USFS’s allocation of resources and management of the public lands in the BENM. Thus, [this issue was] dismissed from detailed analysis because [it does] not respond to the purpose and need for the Federal action.”)

The Proposed MMP, however, offers mixed messages on the applicability of SCCs to the amendment planning process. Like the Draft MMP, the Proposed MMP dismisses SCCs from the issues analyzed in detail in the EIS stating that because SCCs are being addressed in the Manti-La Sal’s cotemporaneous LRMP revision, SCCs do not need to be addressed in the BENM MMP. Proposed MMP at 1-5. In conflict with this declaration, however, is the Forest Service’s Response to Comments that assert that the Forest Service has determined that the requirements at § 219.9, including SCCs, are applicable and that the US Forest Service has completed the required analysis of the potential effects on SCCs, provided in Appendix P. Proposed MMP Appendix O at O-222 to O-223. The Proposed MMP further states “The comment erroneously states that Species of Conservation Concern (SCC) have not been identified for the Forest Service Project Area. The signed letter by the Regional Forester, **dated April 26, 2017**, identifies the plant and animal SCC for the Manti-La Sal National Forest, including the portion of the Shash Jaa’ Unit of National Forest System lands.” Emphasis added.

Despite the fact that the Forest Service had developed a list of SCCs for the Manti-La Sal National Forest (and the supporting scientific information for its development) in 2017, the fact was not mentioned in the aforementioned Federal Register notices, the Proposed MMP or other BENM planning documents. Further, the Forest Service did not invoke the SCC list and associated scientific information in the discussion of the Affected Environment or Effects Analysis (Chapter 3) for special status species in the Draft or Proposed MMP⁸ or in the Analysis of the Management Situation (dated August 28, 2018, *see* Section 2.15.2.2.2 that specifically refers to Forest Service Sensitive Species).⁹ The Forest Service’s decision to not disclose and utilize available information is arbitrary and capricious and in violation of NEPA and NFMA.

⁷ Note that the DEIS’ Glossary does not even include Forest Service sensitive species in its definition of special status species. *See* Glossary-7 (“Special status species: Includes proposed species, listed species, and candidate species under the Endangered Species Act; State listed species; and BLM State Director designated sensitive species.”).

⁸ In the Special Status Species section of the Proposed MMP, the Forest Service inserted a sentence in the first paragraph referring the reader to Appendix P and then proceeded to discuss Forest Service sensitive species in the remaining portion of the section.

⁹ The Special Status Species sections of the Draft MMP and Proposed MMP address Forest Service sensitive species and not SCCs. The list of Forest Service sensitive species and the Manti-La Sal National Forest’s SCC list are different. The Abajo Daisy, Fenders Cowbane, Navajo Mountain Beardtongue, Alcove Bog Orchid, Fringed Myotis and Utah Sallfly, while not listed as Forest Service Sensitive Species, are on the Forest Service SCC list and found to exist or potentially exist in the Forest Service portion of BENM. *See* Proposed MMP at Appendix P.

Finally, because when the Draft MMP were published, the Forest Service clearly still believed that § 219.9 was not directly related to the amendment, it failed to include an analysis of the effects of the proposed action on the SCCs, and more broadly to ensure ecosystem integrity and diversity as required in § 219.9(a) in violation of NEPA and NFMA. To remedy this, the Forest Service must undertake a supplemental EIS to address this specific issue.

C. The USFS Fails to Provide the Public the Opportunity to Comment on a Proposed Amendment as Required at 36 CFR 219.5(a)(2).

The process for amending a plan includes: Preliminary identification of the need to change the plan, development of a proposed amendment, consideration of the environmental effects of the proposal, providing an opportunity to comment on the proposed amendment, providing an opportunity to object before the proposal is approved, and, finally, approval of the plan amendment. 36 C.F.R. § 219.5(a)(2).

The Draft MMP did not include a proposed amendment, and the public was not afforded the required opportunity to comment on it. This is a violation of NFMA.

D. The USFS Erred in Not Including a Standard in the Proposed Amendment that Requires Protection of Monument Objects.

The Proposed MMP provides a proposed amendment to the Manti-La Sal LRMP in Appendix Q. The proposed amendment consists of 1) the establishment of a Bears Ears National Monument Designated Area, 2) the establishment of a Desired Condition that Monument objects are protected, 3) the establishment of a standard that “The Bears Ears National Monument Designated Area shall be managed per the Shash Jaa’ Unit Monument Management Plan”, and 4) the statement that timber harvest is not suitable within the Designated Area. Proposed MMP at Appendix Q-1.

The Forest Service planning rule defines plan components including desired conditions and standards. A desired condition is a “description of specific social, economic, and/or ecological characteristics of the plan area, or a portion of the plan area, toward which management of the land and resources should be directed. Desired conditions must be described in terms that are specific enough to allow progress toward their achievement to be determined, but do not include completion dates.” 36 C.F.R. § 219.7(e)(1). The Forest Service handbook explains that desired conditions “describe the aspirations or visions of what the plan area (or portions thereof) should look like in the future.” FSM 1909.12, 22.11. For a project to be consistent with a forest plan, the project must either work towards the desired condition or at least not foreclose the opportunity to achieve the desired condition in the future. 36 C.F.R. § 219.15(d)(1).

In contrast, a standard is “a mandatory constraint on project and activity decisionmaking, established to help achieve or maintain the desired condition or conditions, to avoid or mitigate undesirable effects, **or to meet applicable legal requirements.**” 36 C.F.R. § 219.7(e)(1)(i) and (iii). Emphasis added. “Standards are used when the requirement is absolute such as to ensure compliance with law such as the timber requirements of sections 6(g)(3)(E) and (F) of the NFMA to protect aesthetics, fish, recreation, soil, watershed, and wildlife (16 U.S.C.

1604(g)(3)(E) and (F)), or to protect threatened or endangered species under the Endangered Species Act.” FSM 1909.12, 22.13.

The Antiquities Act, as discussed earlier in this protest, requires the Forest Service to protect Monument objects, not just to work towards – or at least not foreclose the possibility of – an aspirational vision. The Forest Service, therefore, must express this legal duty to protect Monument objects in the amendment as a standard and not as a desired condition, and erred in not doing so. Because we were not provided a proposed amendment, as required, on which to comment, this is our first opportunity to raise this concern. *See* Section VIII(C), above.

E. The USFS Fails to Comply with Public Participation Requirements in Violation of NFMA.

The forest planning rule emphasizes the need for and value of robust public participation in planning processes. 36 C.F.R. § 219.4 and § 219.16. In furtherance of this concept, the Forest Service, in undertaking a plan amendment, is required to “[p]rovide opportunities for public participation as required in §219.4 and public notification as required in § 219.16” and, in particular, “include information in the initial notice for the amendment (§ 219.16(a)(1)) about which substantive requirements of §§ 219.8 through 219.11 are likely to be directly related to the amendment.” § 219.13(b)(2).

BLM published a notice of intent to publish and EIS on January 16, 2018. 83 Fed. Reg. 2181. BLM established a deadline of April 11, 2018 by which the public should submit comments. *See* 83 Fed. Reg. 2181. (“Consistent with the January 16, 2018, BLM Notice of Intent, comments on issues as part of the public scoping process for the EIS may be submitted in writing prior to March 19, 2018, or 15 days after the last BLM public scoping meeting, whichever is later.”)

The Forest Service published a notice in the Federal Register on April 10, 2018 “to ensure that all persons and entities interested in Forest Service activities are aware of the Bureau of Land Management’s (BLM) January 16, 2018 Notice of Intent (NOI) to prepare an environmental impact statement (EIS) (83 FR 2181).” 83 Fed. Reg. 15,354. The announcement informed the public about which substantive provisions of the planning rule may likely be directly related to the proposed action and subsequent amendment as required. *Id.* (“In the event that the Forest Service determines that it intends to amend the Forest Plan, we hereby give notice that substantive requirements of the 2012 Planning Rule (36 C.F.R. § 219) likely to be directly related and, therefore, applicable to the Forest Plan amendment are 36 C.F.R. §§ 219.8 (b) (1), (5), and (6), regarding social and economic sustainability; 36 C.F.R. §§ 219.10 (a)(1), (4), (5), (7), (8), and (10), regarding integrated resource management for multiple use; and 36 C.F.R. §§ 219.10 (b)(1)(ii), (iii), and (vi), regarding cultural and historic resources, areas of tribal importance, and management of designated areas.”)

The Forest Service provided the public with ***just one day*** by which to submit comments in response to this notice. Not only is this completely inappropriate and antithetical to the planning rule’s requirements to provide robust opportunities for public participation, but it also prevented the public from effectively responding to critical and required information – namely which provisions of the 2012 planning rule will apply to the amendment. The Forest Service erred in only providing the public one day to comment on critical substantive information.

Summary of protest and requested remedy: USFS violated procedural and substantive provisions of the planning rule and NEPA. First, USFS failed to correctly identify that § 219.8(a) is directly related to the amendment and comply with its provisions. It also failed to respond to comments related to this point that were submitted on the Draft MMP. USFS failed to identify the correct special status species list and utilize it in the analysis, failed to include an analysis of the effects of the proposed action on the SCCs, and more broadly to ensure ecosystem integrity and diversity as required in § 219.9(a). USFS failed to provide the public the opportunity to comment on its proposed amendment as required, and then erred in its use of plan components in the proposed amendment provided in the Proposed MMP. Finally, USFS failed to provide the public a reasonable amount of time (more than one day) to respond to its directed related finding as proposed in the notification of the development of a plan amendment. The USFS must revisit and revise its analysis to comply with all of the procedural and substantive procedures mentioned above.

IX. The Agencies Fail to Comply with the American Indian Religious Freedom Act, Executive Order 13007, and the Religious Freedom Restoration Act.

The American Indian Religious Freedom Act (AIRFA) establishes the “policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise [their] traditional religions ..., including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.” 42 U.S.C. § 1996. “AIRFA requires federal agencies to evaluate their policies and procedures with the aim of protecting Indian religious freedom, to refrain from prohibiting access, possession and use of religious objects and the performance of religious ceremonies, and to consult with Indian organizations in regard to proposed actions.” *Wilson v. Block*, 708 F.2d 735, 745-46 (D.C. Cir. 1983). To comply with AIRFA, an agency must “obtain[] and consider[] the views of Indian leaders” and “avoid[] unnecessary interference with Indian religious practices.” *Id.* at 747. Similarly, Executive Order 13007 provides that agencies “shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites.” 61 Fed.Reg. 26771 (May 24, 1996); *see also Te-Moak Tribe of W. Shoshone Indians of Nevada v. U.S. Dep't of the Interior*, 565 F. App'x 665, 667 (9th Cir. 2014) (citing 43 U.S.C. § 1732(b); 43 C.F.R. § 3809.5) (noting that E.O. 13007's requirements are incorporated into FLPMA). The Religious Freedom Restoration Act provides that governmental activity may not substantially burden a person's free exercise of religion unless the activity is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. 42 U.S.C. § 2000bb-1(a), (b).

Here, the Proposed MMP provides that the agencies will identify “an appropriate site as a ceremonial ground and Tribal learning center for permitted gatherings,” while facilitating the use of other sites for ceremony “on a case-by-case basis.” Proposed MMP at 2-5 (emphasis added). However, each Tribe has specific ceremonies and traditions that are performed at specific sacred sites. The identification of a single site within the monument for all Tribes to conduct ceremonies and gatherings, while subjecting additional site approvals to review on a case-by-

case basis, unreasonably burdens the Tribe's access to sacred sites and performance of religious ceremonies. And the Proposed MMP requires no consultation with the Tribes to determine the location of the single "appropriate" ceremonial site. Moreover, the Proposed MMP's mandate that Tribes' uses of ceremony sites, beyond the single designated ceremony site, will be approved on a case-by-case basis makes the agencies the final decision maker on whether Tribes can exercise their religious rights, and will require Tribes to disclose the location of their sacred sites in order to access those sites, which they may be reticent to divulge. *See Pueblo of Sandia v. United States*, 50 F.3d 856, 860 (10th Cir. 1995).

Summary of protest and requested remedy: The agencies failed to acknowledge, accommodate, and respect unique interests and traditions of the various American Indian Tribal Sovereign Nations that are interested in the management of the monument. The identification of a single site within the monument for all Tribes to conduct ceremonies and gatherings, while subjecting additional site approvals to review on a case-by-case basis, unreasonably burdens the Tribe's access to sacred sites and performance of religious ceremonies. This is in violation of AIRFA, Executive Order 13007, and the Religious Freedom Restoration Act. The agencies may not mandate any requirements that limit a Tribe's ability to exercise its rights under AIRFA, Executive Order 13007, the Religious Freedom Restoration Act, and status as a sovereign nation. It is illegal and unethical for the agencies to require Tribe's to disclose sensitive information about location of sacred sites and ceremonies in order for case-by-case approval. The agencies should instead provide the interested Tribes with co-management status, pursuant to the language of Proclamation 9558.

X. BLM Fails to Consider and Honor the Secretary of the Interior's Paramount Duty to Safeguard National Park System Units.

The Secretary of the Interior oversees both BLM and the National Park System. "The network of National Parks . . . are unique resources that the Federal Government holds in trust for the American people." *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 290 (1984). And, the Secretary is the fiduciary responsible for safeguarding those "trust" lands. The National Park System Organic Act, enacted in 1916, obligates the Secretary to "to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." 54 U.S.C. § 100101(a). Congress reaffirmed those duties in 1970 and 1978 amendments to the Organic Act, 54 U.S.C. § 100101(b)(1) & (2), and made clear that the Act imposes upon the "[t]he Secretary . . . an ***absolute duty***, which is not to be compromised, to fulfill the mandate of the 1916 Act ***to take whatever action and seek whatever relief as will safeguard the units of the National Park System.***" Senate Report 95-528, 95th Cong., 1st Sess., 9 (Oct. 21, 1977) (emphasis added). *See also Daingerfield Island Protective Soc. v. Babbitt*, 823 F. Supp. 950, 955 (D.D.C. 1993) ("Congress clearly intended the Secretary of the Interior . . . to have an affirmative duty 'to take whatever action and seek whatever relief as will safeguard the units of the National Park System.'" (quoting Senate Report 95-528 at 9)).

The Proposed MMP threatens to harm "the scenery, natural and historic objects, and wild life" in Canyonlands National Park and Natural Bridges National Monument, contrary to the Secretary's

duty to preserve those irreplaceable resources “in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” 54 U.S.C. § 100101(a). The Secretary cannot ignore his affirmative duties to protect the Parks when acting through BLM. Just as the Secretary must consider and address his trust responsibility towards Indian tribes when BLM actions would impact those tribe and their lands (e.g., *N. Cheyenne Tribe v. Hodel*, 12 Indian L. Rptr. 3065, 3074 (D. Mont. 1985); *Island Mt. Protectors*, 144 IBLA 168, 185 (1998)), he similarly must consider and honor his “affirmative duty” to safeguard National Park System resources (*Daingerfield Island*, 823 F. Supp. at 955) when acting through BLM.

BLM’s Preferred Alternative E in the Proposed MMP allows for increased development and incompatible uses adjacent to Canyonlands National Park and near Natural Bridges National Monument which could lead to impairment of park resources including dark night skies, natural quiet, viewsheds, adjacent NPS recommended Wilderness, native plants, wildlife and water resources. Specifically, the development of ROWs, grazing, vegetation treatments, and OHV use throughout the monument not only put the protection and proper care and management of the objects within the monument at risk but they can also result in the impairment of adjacent NPS resources.

Summary of protest and requested remedy: The Secretary of the Interior ignores his affirmative duties to protection National Parks surrounding the monument. This is in violation of the 1916 Organic Act and subsequent amendments. The agencies must revise their analysis to prevent increased development and uses that are incompatible with management of the nearby Canyonlands National Park and Natural Bridges National Monument. Specifically, the agencies must minimize the development of ROWs, grazing, vegetation treatment, and OHV use.

CONCLUSION

Thank you for your attention to these protest points. We look forward to receiving your prompt response, as required by 43 C.F.R. § 1610.5-2(a)(3).

Sincerely,

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Appendix I: Description of Exhibits

- Exhibit A:** TWS et al. Bears Ears National Monument Scoping Comments, submitted April 11, 2018
- Exhibit A1: Protocol for a Citizens' Wilderness Inventory and Evaluation under the U.S. Forest Service's Chapter 70 Directives
- Exhibit A2: Q&As Relating to Wilderness Planning under Chapter 70 of 2015 Planning Rule Directives, Version 1.1
- Exhibit A3: Wilderness Inventory and Evaluation in National Forest Planning: An Analysis of Early Implementation of the 2012 Planning Rule (December 2014)
- Exhibit A4: Wilderness Inventory and Evaluation in National Forest Planning: An Analysis of Early Implementation of the 2012 Planning Rule (2016 Update)
- Exhibit B:** TWS et al. BENM Draft MMP Comments, submitted November 15, 2018
- Exhibit B1: BENM TES Maps
- Exhibit B2: McClure, M.L. and B.G. Dickson. 2017. Identifying hotspots of ecological objects identified in the Bears Ears National Monument proclamation. Conservation Science Partners, Inc. Truckee, CA, USA.
- Exhibit B3: Dickson, B.G., McClure, M.L., and Albano, C.M. 2017. A landscape-level assessment of conservation values and potential threats in the Bears Ears National Monument. Conservation Science Partners, Inc. Truckee, CA, USA.
- Exhibit C:** TWS et al. ACEC nominations Appendices.zip
- Exhibit C1: 9681 – Indian Creek ACEC.zip
- Exhibit C2: 9681 – Bears Ears ACEC.zip
- Exhibit C3: Headwaters ACEC.zip
- Exhibit C4: Indian Creek ACEC.zip
- Exhibit C5: Mancos Mesa ACEC.zip
- Exhibit C6: White Canyon ACEC.zip
- Exhibit C7: Cedar Mesa ACEC.zip

- Exhibit D:** TWS et al. Bears Ears Fugitive Dust Supplemental Information, submitted March 19, 2019
- Exhibit D1: Duniway et al. 2019. Wind erosion and dust from US drylands: A review of causes, consequences, and solutions in a changing world.
- Exhibit E:** NPCA and Coalition to Protect America’s National Parks Scoping Comments, submitted April 11, 2018
- Exhibit F:** NPCA and Coalition to Protect America’s National Parks Draft MMP Comments, submitted November 15, 2018