

August 3, 2018

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**Re: Notice of Intent to Amend a Portion of the Arizona Strip Field Office
Resource Management Plan Related to the Kanab Creek Area of Critical
Environmental Concern, Arizona**

Dear Ms. Christian:

On behalf of the Utah Rivers Council I respectfully submit the following comments in response to the Bureau of Land Management's (BLM) "Notice of Intent to Amend a Portion of the Arizona Strip Field Office Resource Management Plan Related to the Kanab Creek Area of Critical Environmental Concern" published on June 22, 2018.

The Notice is specifically related to the proposed Lake Powell Pipeline (LPP), sponsored by the Utah Board of Water Resources (BWR). BWR's preferred Pipeline route would traverse approximately 1.5 miles of the Kanab Creek Area of Critical Environmental Concern (ACEC). One mile of the pipeline would run within an existing utility corridor that overlaps the ACEC, but the remaining one-half mile would cross the ACEC outside of the designated utility corridor. BLM's notice states that routing the pipeline outside of the utility corridor conflicts with the Arizona Strip Field Office (ASFO) Approved Resource Management Plan (RMP), but would avoid construction in steep rugged terrain. That is why BLM proposes to amend the RMP to:

- (1) Resolve the conflict between the designated Section 368 utility corridor and the ACEC decisions; and (2) Determine whether to allow the proposed Lake Powell Pipeline outside of the utility corridor, and if so, change the visual resource management class for that portion of the ACEC from Class II ... to either Class III or Class IV in order to be compatible with utility development.

The proposed LPP is currently in the NEPA process with the Federal Energy Regulatory Commission (FERC) and it appears the RMP amendment would be followed by BLM's consideration of a right-of-way grant to BWR for the LPP.

Founded in 1995, the Utah Rivers Council (URC) is a non-profit 501(c)(3) grassroots community-based organization that advocates for sound water policy and protection and conservation of Utah's rivers, streams, and clean water sources for today's citizens, future generations, and wildlife. The URC and our members are seriously concerned with the impacts water diversions and pipelines have on Utah's aquatic ecosystems as well as the fiscal impacts unnecessary water spending has on taxpayers.

The URC has a long history working to protect river ecosystems in and around the project area and we believe the proposed amendment to the Arizona Strip Field Office Resource Management Plan affects numerous stakeholders including the thousands of members of our organization, and many URC members in southern Utah and northern Arizona. These members are taxpayers, ratepayers, conservationists, fishermen, outfitters, guides and other recreationists and business leaders who have a vested interest in sustainable water management, fiscally conservative water spending, and the continued existence of aquatic ecosystems. Our experience in drafting and implementing statewide water policy, analyzing municipal water use data, studying water project economics, initiating water conservation programs and our ability to provide expertise on sustainable water policy have made our organization a leader in the conservation community in Utah.

After carefully studying the LPP for the last eight years our organization continues to have major concerns about the purpose and need for the LPP as well as the socioeconomic impacts the Pipeline will have on southwest Utah and the Lower Colorado River Basin. Additionally, our organization is seriously concerned with the impacts the LPP will have upon the fragile desert ecosystems in the region and imperiled species like the endangered southwestern willow flycatcher within the Kanab Creek ACEC.

Moreover, we believe that the proposed RMP amendment is premature and that the RMP should not be amended for the purpose of accommodating the LPP, when the project has not yet been approved, and in fact such approval may take many years, if it happens. The proposed RMP amendment appears to be undertaken to advance the controversial LPP not as a necessary aspect of the BLM's operations.

The proposed RMP amendment therefore represents a violation of the National Environmental Policy Act (NEPA) because it has no purpose. The LPP NEPA process is being segmented by BLM through the initiation of separate NEPA processes for this proposed RMP amendment and the proposed Sand Hollow Regional Pipeline (SHRP) in Washington County which is effectively an extension of the proposed LPP. This creates the appearance that this RMP amendment is being advanced to avoid cumulative impact analysis for the LPP. Since BLM has agreed to jointly prepare the environmental analysis for the LPP with FERC, as per the 2009 MOU, the cumulative impacts of the proposed RMP amendment and the proposed SHRP should be considered by BLM and FERC as part of the LPP NEPA process.

Our comments concern four general points:

I) Reasonable alternatives to the proposed RMP amendment should be considered by BLM. The preferred alignment for the LPP, which would bisect the Kanab Creek ACEC has not been chosen by BWRe because it is the least destructive, most cost-effective, or most agreed upon option. The preferred alignment has been chosen because the State of Utah wants to do an end run around the Kaibab Indian Reservation, despite the tribe's objections and preference that the LPP go through the Reservation using the existing utility corridor. BLM should consider the numerous alternatives to amending the RMP including the "no action" alternative and the proposed northern alignment for the pipeline.

Perhaps most importantly, we question why BLM would move to amend the RMP for this alignment since FERC has not yet chosen an alignment for the LPP. FERC may well choose the "no action alternative" or it may chose the northern alignment for the proposed LPP. The BLM's proposal therefore not only violates NEPA, it is being advanced specifically to limit another federal agency from complying with NEPA. BWRe's preference of bisecting the Kanab Creek ACEC is the most destructive and unreasonable option for BWRe to pursue. We question why BLM is so eager to amend the RMP for an enormously controversial Pipeline, which may never be approved and has a flawed purpose and need and has not yet been approved by the federal government.

II) Purpose and need for the LPP and therefore the proposed RMP amendment is flawed. Water supply needs in the LPP Project area have been drastically overstated, cannot be substantiated by data and a host of reasonable alternatives exist to provide additional water for southwestern Utah that have not been adequately considered by BWRe. The proposed RMP amendment isn't needed because reasonable alternatives exist for the LPP and the there is no purpose and need for the project.

The amount of water a community is using is the cornerstone of demonstrating future water needs and future spending required to serve these water needs. Accurately determining the amount of water used by a community is therefore vital to determining whether future spending is required. Exaggerating future or existing water use is no different than a government representative intentionally exaggerating the number of constituents needing services, or the amount of services an agency claims to deliver to said constituents.

In their official document submissions to FERC to receive federal permits for the proposed Pipeline, BWRe clearly indicated that Washington County residents are using far more water than the U.S. average or Utah average. On page 45 (3-5) of the April 2016 *Final Lake Powell Pipeline Water Needs Assessment* submitted by the Utah Division of Water Resources to FERC, Washington County residents used 325 gallons of municipal water per-person per day.¹

¹ Utah Division of Water Resources. *Final Lake Powell Pipeline Water Needs Assessment*, April 2016, sec. 3.2.1, pg. 42

² Utah Division of Water Resources. *Final Lake Powell Pipeline Water Needs Assessment*, April 2016, figure 4-6, pg. 45.

³ Audio from the Legislative Water Development Commission meeting August 22, 2017, audio minute 2:04:50, http://utahlegislature.granicus.com/MediaPlayer.php?view_id=2&clip_id=21769&meta_id=7414953

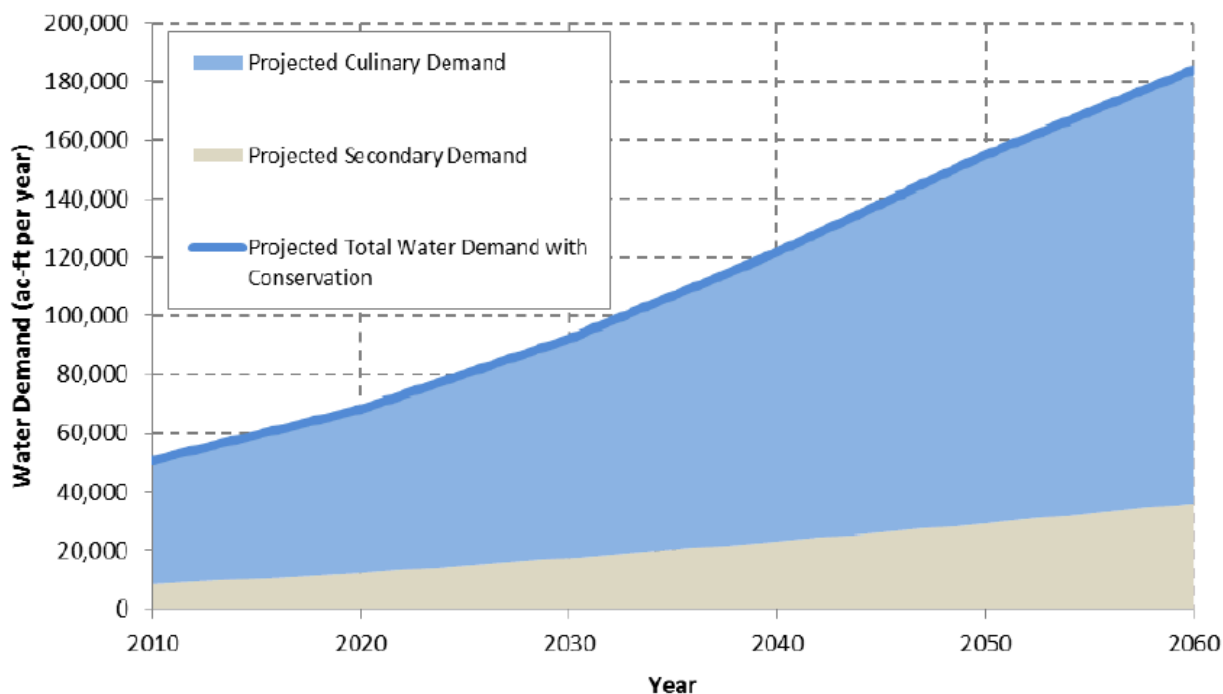
Table 3-3 WCWCD Total M&I Water Demand Forecast

Year	Population	Per Capita Use with Conservation (gpcd)	Total Projected Water Demand with Conservation (ac-ft/yr)
2010	138,530	325	50,380
2020	196,480	311	68,450
2030	279,270	295	92,220
2040	369,370	295	122,010
2050	468,990	295	154,940
2060	576,850	285	184,250

Source: DWRe 2014c

The Division calculated future water needs using this water use figure of 325 from the year 2010, because they sought to demonstrate to FERC that Southwestern Utah needs the Lake Powell Pipeline. This can be plainly seen in the April 2016 *Final Lake Powell Pipeline Water Needs Assessment* which includes the following water demand chart showing the long term water ‘needs’ of Washington County, based on this water use figure of 325 gallons.²

Figure 3-4 WCWCD Projected Demand



This water use figure of 325 has received immense criticism from Legislators, the public and the media since it is more than twice the national average and significantly higher than the per person water use of most Western U.S. cities. Perhaps that’s why on August 22 at

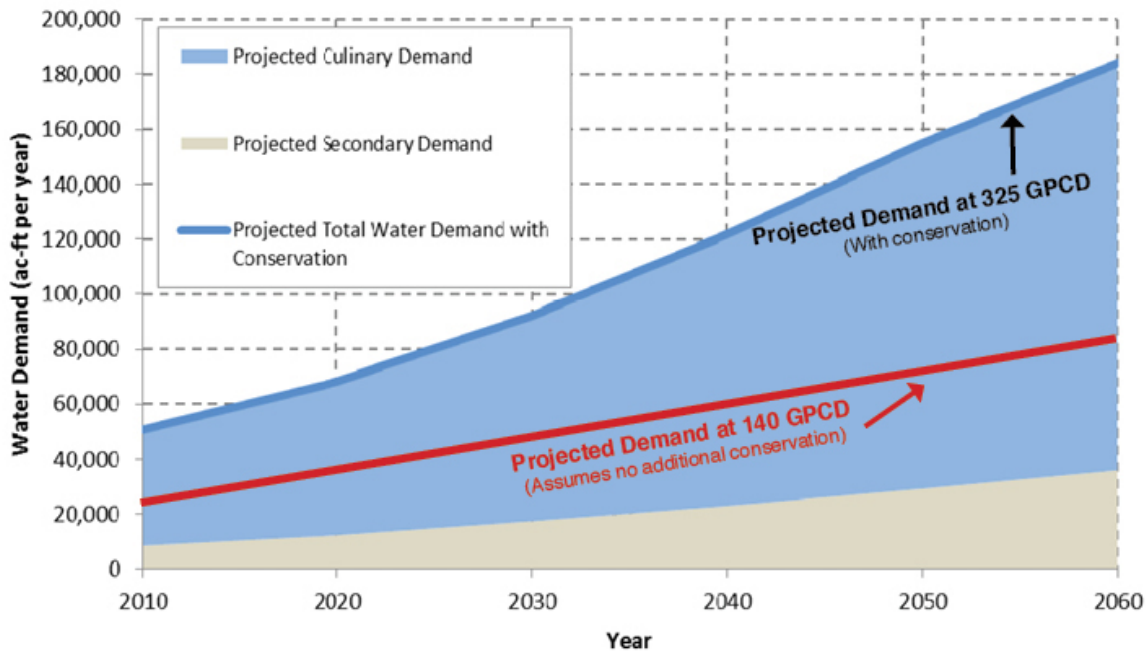
² Utah Division of Water Resources. *Final Lake Powell Pipeline Water Needs Assessment*, April 2016, figure 4-6, pg. 45.

the Water Development Commission, a representative of the Washington County Water District testified to the Commission that Washington County residents are using just 140 gallons of water per person per day:

“So we’re about, with some second use, which is an estimate, we’re in the 140 gallons per capita per day.” (Audio minute 2:16:51)

This 140-gallon figure is less than half the 325 gallon per day water use figure presented to FERC by the Division. If indeed Washington County residents are using just 140 gallons per person per day, then there is no need for water from the Lake Powell Pipeline, and therefore the proposed RMP amendment. The water demand graph below and the line in red shows future water needs based on the District’s claim that Washington County residents are using just 140 gallons of water per day.

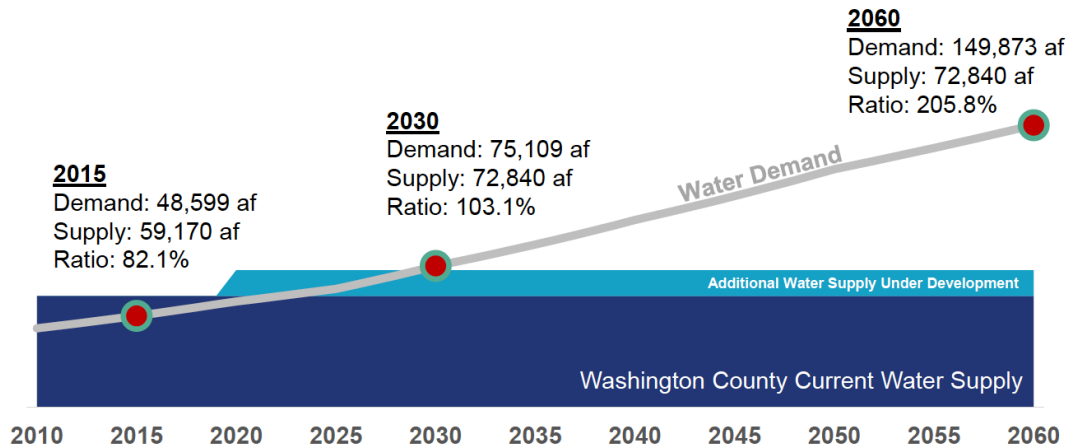
Figure 3-4 WCWCD Projected Demand



The graph above demonstrates that the District’s current water supply is enough to sustain growth beyond the year 2060 without water from the Lake Powell Pipeline. If Washington County residents are using 140 gallons of water a day, as presented by the District’s representative, then this is great news for taxpayers because it means the District is not running out of water and there is absolutely no need to spend \$3 billion on the Lake Powell Pipeline. This contradictory information is extremely disconcerting as it implies a concerted effort to misinform the Utah Legislature or FERC or both. It also implies that BLM has been misinformed about the need for the proposed RMP amendment.

Incredibly, the District representative also presented data to the Commission, which contradicts his own testimony regarding water use and future water needs.

Washington County Water Supply and Anticipated Demand



Accompanying a slide of the above graphic, the District’s General Manager testified at the August 22nd Committee meeting that Washington County had nearly 50,000 AF of water demand in 2015:

“The blue line here is current developed water supply within the County some of that is District water some of that is municipal. Our current demand in 2015 was about 50,000 acre-feet of water. By 2030 we project a demand of 75,000 acre-foot and by 2060, 149,000 acre foot. That’s assuming our population grows during that time frame to about a half a million people. That’s also assuming that we will have achieved a 35% per capita reduction by the 2060 time frame.”³

The District presented population data for the years cited in the above slide, 2015, 2030, and 2060. This makes it easy to calculate per person water use by dividing the Water Demand presented in this graph by the population numbers presented to Utah Legislative Committee by the District, which shows the per person water use is 289 in 2015, 268 in 2030 and 267 in 2060. Clearly these water use figures differ markedly from the 140 gpcd number the District representative testified to on August 22. The data presented on the slide contradicts the District’s statements about water needs.

Moreover, a comparison with the water use of other southwestern communities indicates the District drastically overstated future water demand to Legislators. The table below should help to put the water demand in the District’s graph above in perspective. The District claims that 149,873 AF of water will be needed to provide water for ~500,000 residents in Washington County by the year 2060. However, this is roughly twice the

³ Audio from the Legislative Water Development Commission meeting August 22, 2017, audio minute 2:04:50, http://utahlegislature.granicus.com/MediaPlayer.php?view_id=2&clip_id=21769&meta_id=741495

amount of water than is currently needed to serve over 600,000 people in Albuquerque, New Mexico.⁴

City	Water Authority	Year	Water Usage (af)	Number of Users	GPCD
Albuquerque, NM	Albuquerque Bernalillo County Water Authority	2015	86,319	606,780	127
Phoenix, AZ	City of Phoenix	2014	298,500	1,500,000	178
Tucson, AZ	Tucson Water	2016	87,160	722,000	117
Las Vegas, NV	Las Vegas Valley Water District	2016	319,027	1,400,000	203
Washington County, UT	Washington County Water Conservancy District	2010	50,380	138,530	325
Southwest Cities Average GPCD					156.16

It is hard to imagine the District is not aware of the water supply and demand of other southwest communities leading one to assume the agency misrepresented future demand to convince Legislators the Lake Powell Pipeline is a necessary taxpayer expenditure.

The purpose and need for the proposed LPP and therefore the proposed RMP amendment is flawed and as such should be considered as part of the LPP NEPA process to ensure detrimental environmental impacts on the Kanab Creek ACEC do not occur for no reason.

III) Segmentation of NEPA. The proposed RMP amendment has no purpose outside another project, the Lake Powell Pipeline, which is currently in the NEPA process with the Federal Energy Regulatory Commission (FERC), who is the lead agency on the project. As a result, this proposed amendment represents a segmentation of NEPA and should be included as part of the LPP NEPA process.

The scope of the environmental analysis for the proposed RMP amendment must include the consideration of the purpose and need for the project and connected and cumulative actions with potentially significant impacts, like the proposed Lake Powell Pipeline. Our organization questions why the proposed RMP amendment is not part of the LPP NEPA process unless the BWRe is trying to obtain approval for crossing the Kanab Creek ACEC before the Draft EIS for the LPP is completed.

The LPP is the largest new proposed diversion of the Colorado River across seven states and is already generating enormous controversy across the Colorado River Basin. The Pipeline would pump 86,000 acre-feet of water out of the Colorado River at Lake Powell, over 2000 feet in elevation, across 140 miles of desert to Sand Hollow Reservoir in Washington County. The LPP will consist of a 69-inch diameter pipe and will require numerous pump stations, new roads, and transmission lines.

⁴ Amount of water users, 2nd bullet point (http://www.abcwua.org/Your_Water_Authority.aspx)

A full analysis of socioeconomic impacts for the proposed RMP amendment should be included as part of the NEPA process in order to address the cumulative impacts of the LPP on the local recreation economy. The LPP license application lacks essential information about costs, economics and financial consideration and numerous questions still remain about the purported need for, environmental impacts of, economic feasibility of and taxpayer liability of the LPP and therefore the proposed RMP amendment. Our organization maintains that the proposed RMP amendment should be included in the LPP NEPA process with FERC in order to comply with NEPA, and to better serve the public interest.

Regulations implementing NEPA define “connected actions” as those that “are closely related and therefore should be discussed in the same impact statement.” 40 C.F.R. § 1508.25(a)(1). Actions are connected if they “[a]re interdependent parts of a larger action and depend on the larger action for their justification.” *Id.* § 1508.25(a)(1)(iii).⁵ Further, “[p]roposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.” *Id.* § 1502.4(a).

An agency must consider all “connected actions” in a single EIS. *Great Basin Mine Watch v. Hankins*, 456 F. 3d 955, 968-69 (9th Cir. 2006). *See also Kleppe v. Sierra Club*, 427 U.S. 390, 399 (1976) (a single environmental review document is required for distinct projects when there is a single proposal governing the projects); *Alpine Lakes Prot. Soc’y v. U.S. Forest Serv.*, 838 F. Supp. 478, 482 (D. Wash. 1993) (“In its use of the word ‘shall,’ 40 C.F.R. § 1508.25 makes mandatory the consideration of connected, cumulative, and similar actions by an agency when determining the scope of an EIS.”); *Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 998 (9th Cir. 2004) (“[p]roposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement”); *Utahns for Better Transp. v. United States Dep’t of Transp.*, 305 F.3d 1152, 1182 (10th Cir. 2002), modified in part on other grounds, 319 F.3d 1207 (2003). The “purpose of this requirement is to prevent an agency from dividing a project into multiple actions, each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.” *Great Basin Mine Watch*, 456 F. 3d at 969 (quotation marks omitted).

The Tenth Circuit utilizes an “independent utility test in which it concludes that projects that have independent utility are not connected actions under 40 C.F.R. § 1508.25(a)(1)(iii).” *Citizens’ Comm. to Save Our Canyons v. U.S. Forest Serv.*, 297 F.3d 1012, 1029 (10th Cir. 2002) (citations & quotations omitted). Where projects are interdependent, they must be reviewed together. *Id.* at 1028; *see also Thomas v. Peterson*, 753 F.2d 754, 758-59 (9th Cir. 1985) (finding agency must analyze road construction

⁵ CEQ regulations provide three definitions of connected actions, of which the “interdependent parts” definition is one. The three definitions are to be read disjunctively. *See Blue Ocean Pres. Soc. v. Watkins*, 754 F. Supp. 1450, 1457 (D. Haw. 1991) (“The case law interpretations of the regulation have been consistent with this, having treated the separate subsections as sufficient conditions, not necessary conditions.”).

project and timber sales together because “[i]t is clear that the timber sales cannot proceed without the road, and the road would not be built but for the contemplated timber sales.”). The Ninth Circuit has required the Forest Service to prepare a single EIS for multiple post-fire timber sales that were planned in response to the same fire and located in the same watershed. *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214-15 (9th Cir. 1998).

Because the BLM is violating federal law as a function of segmenting the LPP NEPA process in two ways: 1) through the separate NEPA process for the Sand Hollow Regional Pipeline, which is effectively an extension of the LPP in Washington County, and 2) through the separate NEPA process for the proposed amendment to the Arizona Strip Field Office RMP related to the Kanab Creek ACEC. Neither the SHRP nor the proposed RMP amendments have any purpose outside the proposed LPP, a project that has not been approved. The proposed amendment to the RMP should be included as part of the LPP NEPA process so as not to be a violation of federal law.

IV) Impacts to the environment and cultural resources require a full Environmental Impact Statement. The northern alignment for the LPP would be less expensive and less environmentally destructive than the preferred southern alignment. Therefore, the proposed RMP amendment would be disproportionately harmful to the natural environment and will have numerous secondary and cumulative effects, and as such a full EIS is warranted for the proposed RMP amendment.

The proposed LPP, and therefore the RMP will have impacts on cultural and paleontological resources, migratory birds, and fish and wildlife species like the threatened Mojave Desert Tortoise and southwestern willow flycatcher. There is a potential for cultural resource disturbance throughout the LPP project area, but the potential is especially high along the proposed southern alignment. There are areas of cultural resource sensitivity which could contain artifacts or other cultural resources. Furthermore, some areas in the proposed southern alignment likely have medium to high potential for significant palaeontological sites. These would include vertebrate, invertebrate, and plant fossils.

By allowing the LPP to bisect the Kanab Creek ACEC there are sure to be impacts on the natural environment. During the construction period, and for a period after, there is significant potential for harm to reptiles, small mammals, birds, and amphibians, some of which could be BLM identified Sensitive Species. This could include nest and den destruction, habitat loss, and even death. Larger species are likely to be pushed out to surrounding habitats during the construction period, stressing local populations and forcing undue competition. After construction has ceased, the potential for harm decreases, but permanent habitat loss will occur where new infrastructure like the pump stations and two track service route have been built. Disturbance and stress to local species will continue perpetually along the service route as operation and maintenance will continue throughout the life of the project.

Activity from construction will likely displace migratory birds from the area for the construction period. Hundreds of acres of vegetation will be removed or destroyed during the same period, eliminating hunting and nesting areas for predatory birds. Because of the proposed RMP amendment, the SHRP and LPP's potential to have significant cumulative impacts on environmental and cultural resources in the project area the proposed RMP should be included in the LPP NEPA process or at the very least require a full EIS.

V. Conclusion

In conclusion, the BLM should not amend the Arizona Strip Field Office RMP because the proposal is a segmentation of NEPA and should be part of the LPP NEPA process currently underway with FERC. Additionally, the purpose and need for the project is flawed and the cumulative cultural and environmental impacts of the proposed RMP amendment, the SHRP and LPP are significant and at the very least require a full EIS for the proposed RMP amendment. Our organization strongly urges the BLM to consider the cumulative effects of the proposed RMP amendment alongside the proposed Lake Powell Pipeline that would create a cascade of disastrous impacts for the project area and the regional economy. I look forward to your decision and thank you for the opportunity to provide these comments.

Respectfully submitted this 3rd day of August, 2018,



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