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Via electronic mail (blm_ut_mb_mlpcomments@blm.gov) and via U.S. Mail with attachments

Bureau of Land Management
Canyon Country District Office
Attn: MLP Comments
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Following are comments from The Wilderness Society, Southern Utah Wilderness Alliance, Living Rivers and the Sierra Club on the Moab Master Leasing Plan and Draft Resource Management Plan Amendments (RMPs)/Draft Environmental Impact Statement (Draft Moab MLP).

The Moab MLP is an important tool for guiding the development of potash and oil and gas while minimizing conflict with the many outstanding resource values in the planning area, including Arches and Canyonlands national parks, wilderness-quality lands and world-class recreation areas. This smart from the start approach can provide the framework for both lasting conservation and responsible development. Updating the Moab and Monticello RMPs through the Moab MLP will incorporate needed conservation while also planning for ongoing development in a manner that avoids significant conflicts. Further, by adopting a balanced approach for this area, the BLM can provide a useful example for other fields offices in Utah (and throughout the West) that are developing or planning to develop MLPs. We encourage the BLM to complete the Moab MLP in the coming months to finalize these important changes.

Overall, we support Alternative C as the best approach for the MLP. Alternative C takes into account the lasting impacts from oil and gas and potash leasing and development, challenges with water quality and quantity, air quality, and the valuable national parks, recreation, wilderness and cultural resources in the planning area. Some refinements discussed below also apply to Alternative C. Alternative B also contains provisions that we can support, with additional improvements, discussed below. Similarly, to the extent BLM adopts all or part of Alternative D, the Preferred Alternative, the improvements discussed below should be incorporated. Alternative A does not meet the goals of the MLP, will not rectify imbalances in the current RMPs or reduce conflicts, and should not be adopted.

I. Compliance with Chapter V of H-1624-1 - Planning for Fluid Mineral Resources and Instruction Memorandum No. 2010-117

In preparing the Moab MLP, the BLM must follow specific directives set out in Instruction Memorandum (IM) No. 2010-117: Oil and Gas Leasing Reform—Land Use Planning and Lease Parcel Reviews (May 17, 2010) and Chapter V, BLM Handbook H-1624-1: Planning for Fluid Mineral Resources (January 28, 2013). Since the Moab MLP is the first “stand-alone” MLP prepared outside of a broader RMP Amendment, and addresses many of the specific resource conflicts in the Moab area that gave rise to IM No. 2010-117, BLM should be especially attentive to addressing the requirements of the IM in this MLP. Further, as mentioned above, the Moab MLP will serve as a model for future MLPs in Utah (which will similarly be stand-alone plan amendments) and elsewhere. Thus, it is critical that the BLM adhere to the specific requirements of IM 2010-117 and Chapter V. While BLM has fulfilled many of the applicable requirements, additional revisions are needed to fully comply with agency policy.

a. BLM must develop a unique “vision” and “framework” for the Moab MLP.

An MLP is “a mechanism for completing the additional planning, analysis, and decisionmaking that may be necessary” in an area where conflict between oil and gas development and other resource values is likely. The BLM acknowledges that, “in some cases, leasing of oil and gas resources may not be consistent with protection of other important resources and values” and states that “there is no presumed preference for oil and gas development over other uses.” (IM 2010-117). Accordingly, Chapter V directs the BLM to develop and incorporate in MLPs “a guiding framework for the development of the area and provide a vision for how future development will proceed.” (H-1624-1, V.A.).

Although the Draft MLP contains planning criteria and other useful guideposts, it lacks a vision statement. This is a critical step to developing MLPs, as the vision should inform the development and evaluation of the additional elements, including alternatives, “resource conservation objectives” (RCOs) and “resource protection measures” (RPMs). When developing a “vision” and “framework” for the Moab MLP the following principals should be adhered to:

- The **vision and framework must be explicitly stated** in the MLP. While the purpose and need for the MLP is clearly identified in the Introduction, BLM does not overtly state the guiding vision and framework for the MLP. The vision and framework are the cornerstones of an effective MLP and guide the development of RCOs and RPMs. The vision and framework should be easily identifiable within the body of the MLP.

BLM has developed explicit “vision” statements for other MLPs. For example, in the White River Field Office (“WRFO”) Record of Decision (ROD) and Approved RMP, BLM included an explicit “Overall Vision” statement for the Dinosaur Trail MLP:

The BLM WRFO will provide for a level of oil and gas development that is appropriate to the Nation’s energy needs in a manner that respects local custom and culture and maintains the ecological integrity of the area and significant natural, cultural, social, and historical values. Within the Dinosaur Trail MLP, the BLM will minimize impacts from oil and gas exploration and development to the area’s important natural resources and special areas including Areas of Critical Environmental Concern, Wilderness Study Areas, and Dinosaur National Monument by managing leasing opportunities in a phased approach in order to take advantage of new information and the best available technology. (WRFO RMP, 1.4.1)

- The vision and framework should have the ultimate goal of **resolving potential resource conflicts**. Those conflicts include impacts to any of the “important resource values” identified in Section 1.4.1 of the Introduction and in more detail in Chapter 4 of the MLP, “Affected Environment”. Just as the WRFO “vision” specifically identifies the need to respect a variety of important resource values”, so too should the “vision” developed for the Moab MLP. Resources of particular concern in this area include lands with wilderness characteristics, lands abutting Canyonlands and Arches National Parks, recreation and cultural values as well as air quality and wildlife. These resources, among others, should be addressed in the Moab MLP vision statement.
- The BLM must **refer back to the vision and framework** throughout the MLP. More specifically, the RCOs and RPMs -“the two main elements of a master leasing plan”- should be developed so as to achieve the “vision” for how development will proceed. Additionally, in Chapter 4, “Environmental Consequences”, BLM should go beyond simply addressing how the various alternatives will impact important

resources and examine how the impacts on resources under different alternatives affects the ultimate “vision” of the MLP.

The Dinosaur Trail MLP used the “vision” stated above to develop specific RCOs and RPMs, including the following RPM for wildlife: “Planned or required unitization of federal lands to eliminate redundant infrastructure, thereby reducing habitat fragmentation.” (WRFO RMP 2.43.2)

Recommendation: BLM must develop a comprehensive “vision” statement and “framework” for the Moab MLP taking into consideration the important resource values. The “vision” and “framework” should be explicitly stated and should be incorporated throughout the MLP. The vision and framework can then best inform the BLM’s consideration of which alternative, or attributes from different alternatives, to select.

b. BLM must identify and describe the “important resources” in the MLP area.

BLM has adequately addressed the requirement to identify and describe the “important resources” within the Moab MLP planning area. We appreciate the thoroughness of BLMs inventory found in Chapter 3 - Affected Environment, which includes the description of the following resources: air quality, cultural resources, lands and realty, lands with wilderness characteristics, livestock grazing, minerals, paleontological resources, recreation, riparian resources, social and economic, soil and water, ACECs, National Historic Trails and Backways and Byways, wild and scenic rivers, special status species, vegetation, visual and audible resources, and wildlife and fisheries. This extensive compilation of resources in the planning area works to highlight and reinforce the need for an MLP.

c. BLM must develop and adopt RCOs and RPMs for the Moab MLP.

RCOs and RPMs are the “two main elements of master leasing planning for an area...”(H-1624-1, V.C.). They function to protect the important resource values of the area by providing “standards for subsequent development and reclamation...” (H-1624-1, V.C.1). RCOs have been developed and are explicitly stated in the “Alternatives” for each identified “important resource.” The RPMs are also included in the “Alternatives” chapter and listed as “management action by alternatives” and also as “stipulations” in Appendix A.

Although BLM has included RCOs and RPMs in the Draft Moab MLP, there are nevertheless several additional requirements from IM 2010-117 and Chapter V that BLM must comply with, including the following:

- BLM must base the RCOs and RPMs on the “vision” and “framework” for the Moab MLP. For example, if the “vision” prioritizes the avoidance of potential impacts on lands with wilderness characteristics, recreation and critical wildlife habitat, the RCOs and RPMs should provide clear standards (numeric or otherwise) and measures for implementing that component of the “vision” and “framework.” Without an explicit “vision” BLM cannot ensure that the RCOs and RPMs already developed work towards achieving the objectives of the plan.
- BLM must explicitly state if RPMs apply to areas currently under lease. In Chapter 1.1 and again in Chapter 4.2.2, BLM states, “The resource protection measures identified in the Moab MLP will also apply to areas currently under lease where they do not conflict with the rights granted to the holder of the lease” and that “the BLM can subject the development of existing leases to reasonable conditions, as necessary, through the application of Conditions of Approval at the time of permitting.” While this appears to be a statement affirming that RPMs will

be applied to existing leases, neither Chapter 2 - Alternatives nor Appendix A (where the RCOs and RPMs are described in detail) identify whether they apply to existing leases or under what circumstances they would or would not apply.

BLM can and should be more explicit in stating when and where RPMs apply to existing leases. For example in the WRFO ROD and Approved RMP, when addressing Reclamation, BLM states, “In areas under an existing lease, a program would be developed in cooperation with current leaseholders to apply (where appropriate) the most current reclamation standards and practices to existing well pads, roads, and pipeline.” (WRFO RMP 2.4.3). Further, Handbook 1624-1, which confirms that the BLM may attach “reasonable [new] conditions” to existing leases, **requires** the BLM to “identify whether the resource protection measures identified in the MLP will also apply to areas currently under lease.” H-1624-1 at V.C.2. This type of specificity allows BLM to ensure that the goals of the MLP are being met despite prior leasing decisions.

- RPMs should be developed to **reduce environmental impacts and achieve RCOs**. The baseline CSU stipulation incorporates many of the RPMs outlined in Chapter V. However, to meet the objectives identified in the Moab MLP, the following RPMs should be included as part of the baseline CSU stipulation: required unitization of federal lands, phased development and phased leasing of oil and gas and specific emission capture technologies.

Recommendation: BLM must develop a “vision” and develop RCOs and RPMs based on that vision statement. RPMs such as unitization, phased leasing and development and the requirement to use specific emission capture technologies should be integral in meeting that “vision”. Additionally, BLM should more explicitly state when and where particular RPMs will apply to existing leases.

II. Conditions for Applying Waivers, Exceptions and Modifications Are Not Sufficiently Defined.

Lease stipulations are set out in Appendix A to the Draft MLP. All stipulations are subject to some form of exceptions, waivers and modifications, although some are specifically described and others aren't. The Draft MLP notes that: “General exception, modification, and waiver criteria have been developed that apply commonly to many lease stipulations.” Appendix A, p. A-2. These criteria generally come down to the discretion of the authorized officer without specific criteria to be applied. Specific criteria are useful and necessary because they provide more certainty for the agency, the oil and gas industry and other stakeholders - ensuring all parties get the benefit of the bargain set out in the lease. The Draft MLP incorporates some of these criteria, noting that: “Specific exceptions, modifications, and waivers have also been developed for some of the lease stipulations by alternative and are also provided in Table A-1.” Appendix A, p. A-2. **For the MLP, specific criteria should be applied to most, if not all stipulations.** Doing so is required by Chapter V and related policies. See H-1624-1 at V.C.2. (“The BLM should design the purpose and criteria for exception, waiver and modification for each stipulation to recognize and accommodate changing environmental protection needs over time.); *id.* at IV.C.3. (“The plan or plan amendment should also identify the documentation requirements for supporting a waiver, exception or modification and any public notification associated with granting them.”).

For instance, in the Preferred Alternative, a stipulation prohibiting the use of heavy trucks on routes used for recreational access within the Canyon Rims Special Recreation Management

Area (SRMA) is subject to tailored exception criteria and general criteria for modification and waiver. Appendix A, p. A-6. Similarly, in the Preferred Alternative, the Baseline Controlled Surface Use stipulation, designed to “minimize the amount of surface disturbance and related impacts resulting from mineral development in areas with sensitive resources,” is only subject to exception under specific criteria but can be waived or modified via general criteria. Appendix A, pp. A-12 - A-13. In contrast, waiver, exception and modification for a stipulation applied to protect high use recreational routes are all subject to specific criteria in the Preferred Alternative. Appendix A, pp. A-18 - A-19. **We recommend that BLM provide specific criteria for waiver, exception and modification for all stipulations and also limit the overall application of waivers, exceptions and modifications.**

For instance, in the Dinosaur Trail MLP, the White River Field Office incorporated no surface occupancy stipulations to protect lands with wilderness characteristics that were not subject to waiver, exception or modification. White River RMP Amendment, Appendix 1, p. 1-17.¹

Per BLM’s regulations:

If the authorized officer has determined, prior to lease issuance, that a stipulation involves an issue of major concern to the public, modification or waiver of the stipulation shall be subject to public review for at least a 30-day period. In such cases, the stipulation shall indicate that public review is required before modification or waiver. If subsequent to lease issuance the authorized officer determines that a modification or waiver of a lease term or stipulation is substantial, the modification or waiver shall be subject to public review for at least a 30-day period.

43 C.F.R. § 3101.1-4. BLM has not required public comment prior to the authorized officer granting waiver or modification for any stipulations, but the MLP should expressly provide for that opportunity. Furthermore, there are no requirements for stakeholder consultation prior to approving waivers, exceptions or modifications. This should be expressly provided for in the final MLP. The BLM’s previous practice, including in Moab, often excluded the National Park Service (NPS) from decisions to revise stipulations that are specifically proposed to protect park values. This departs from the approach adopted in the Dinosaur Trail MLP, where the BLM is requiring consultation with NPS before stipulations designed to protect Dinosaur

¹ Available at: http://www.blm.gov/style/medialib/blm/co/programs/land_use_planning/rmp/white_river/documents/wrfo_oil_and_gas_approved.Par.55320.File.dat/02WRFO_OG_ROD-ARMPA_Apdx1_Stips_Aug2015_508c.pdf

National Monument's viewshed, soundscape and night skies can be waived or excused.² The Moab MLP is being prepared to address potential conflicts and certain categories of resources are of major concern to the public, justifying the inclusion of a provision requiring public notice and comment before waivers, exceptions, or modifications are granted.

Recommendations: BLM should provide durable resource protections through lease stipulations that eliminate or limit the availability of waivers, exceptions and modifications. More specifically, the plan should not provide for general waivers, exceptions, and modifications, but should only provide for lease stipulation exemptions where strict, resource-specific criteria have been identified, including consultation requirements with affected tribes and agencies, including NPS. Also, for stipulations designed to protect recreation areas, wilderness quality lands, and national park resources, BLM should make modification or waiver subject to public comment.

III. Revisions to Specific Stipulations

The Draft MLP's preferred alternative goes a long way toward resolving long-standing conflicts through the development of specific NSO and CSU stipulations. However, we believe there is room to strengthen and clarify a number of stipulations. The following recommendations can help ensure that the Final MLP more closely adheres to the requirements and intent of the MLP policy and guidance and long-term goals of the field office.

a. BLM should increase protections for recreation resources.

Recreation is arguably one of the most important values for the greater Moab community. According to BLM's own analysis, more than two million visitors enjoy a variety of recreational experiences within the planning area annually. (Moab MLP - Ch.3.1.1). Given the significance of this resource to the community and Nation, BLM should focus on protecting those areas most used to recreate.

- i. The Preferred Alternative prohibits surface disturbing activities within 0.5 miles of developed recreation site boundaries. This applies to 24,311 acres within the planning area based on BLM's analysis. Given the noise pollution, visual impairment, and increased truck traffic and associated fugitive dust associated with increased oil and gas development, we recommend a 1 mile NSO stipulation from the boundary of developed recreation site boundaries -

² The waiver and exception language reads:

Exception: The BLM Authorized Officer may grant an exception if it is determined that the action as proposed in the Surface Use Plan of Operation or Master Development Plan would not result in a failure to meet the performance standards above; or, a BLM evaluation, in consultation with the National Park Service, determines that the area is not visible, cannot be heard, and night skies would not be affected as observed from key observation points on the National Monument, including along Harpers Corner Road and near the Visitor Center.

Waiver: The BLM Authorized Officer, in consultation with the National Park Service, determines that operations (visual, noise, light) on the entire lease area would not be detectable from Dinosaur National Monument.

BLM, White River Field Office Record of Decision and Approved Resource Management Plan Amendment for Oil and Gas Development at Appendix 1-31 (Aug. 2015), available at http://www.blm.gov/style/medialib/blm/co/programs/land_use_planning/rmp/white_river/documents/wrfo_oil_and_gas_approved.Par.55320.File.dat/02WRFO_OG_ROD-ARMPA_Apdx1_Stips_Aug2015_508c.pdf.

as proposed under Alternative C - as more appropriate. A 1 mile NSO will help to reduce the impact of development on these developed recreation sites.

- ii. There are six special recreation management areas (SRMA) within the planning area totaling 511,452 acres. Under the Preferred Alternative all VRM Class II, Hatch Wash Hiking and Backpacking Focus Area and anticline road in the Canyon Rims SRMA are managed as NSO while the remainder are managed as Baseline CSU; 11 focus areas in Labyrinth Rims/Gemini Bridges SRMA are managed as NSO while the remainder is managed as base line CSU; 2 focus areas in South Moab SRMA are managed as NSO while the remainder is managed as Baseline CSU; and the Colorado Riverway, Dolores River Canyons and Indian Creek SRMAs are all managed as NSO. This is an unnecessarily convoluted management strategy for areas that have already been identified as areas “where the existing or proposed recreation opportunities and desired recreation setting characteristics are recognized for their unique value, importance, and/or distinctiveness....” We propose supporting the designation already bestowed upon these areas by managing all SRMAs as NSO as proposed under Alternative C. *See infra* for more information and comments on SRMAs.

b. BLM should make a more concerted effort to protect watersheds and water resources.

Water is vital to the overall success of a desert ecosystem. This scarce resource provides innumerable and invaluable ecosystem service. Degradation of this particular resource has far reaching impacts - more so than any other within the planning area. BLM must strengthen the stipulations that aim to protect watersheds, streams, aquifers and riparian ecosystems.

- i. The Preferred Alternative prohibits surface occupancy within 500 feet of intermittent and perennial streams, rivers, riparian areas, wetlands, water wells, and springs; within 100 feet of ephemeral streams and within 750 feet of the Colorado River and Fishers Creek. In order to prevent the degradation of these water sources and ensure the long-term success of any developed well pads, we recommend that surface occupancy be prohibited within 660 feet of intermittent and perennial streams, rivers, riparian areas, wetlands, water wells, and springs, within 200 feet of ephemeral streams and within 1,000 feet of the Colorado River and Fishers Creek. As stated in Chapter 4.11.5 “Increasing the NSO stipulation for the Colorado River and Fishers Creek “could also prevent the infestation and spread of invasive, nonnative plant species, provide protection to nearby riparian vegetation, and support overall functioning condition.” Similar benefits would be seen by increasing the NSO stipulations for other water sources as described above. If BLM agrees that this resource is of significant value, applying these stipulations as described in Alternative C is a common sense solution. *See infra* for additional information on protecting water resources.
- ii. Additionally, the Three Rivers Mineral Withdrawal Area must be closed to leasing to protect riparian resources. The Preferred Alternative manages this area as NSO with no exceptions, modifications or waivers. However, given the location of the withdrawal area, the potential for significant negative impact, and the already stringent disturbance limitations, BLM should go one step further and close the area to development entirely.

- iii. The Courthouse Wash Watershed is the recharge area for the springs in Arches National Park and the Salt Wash Watershed is an important watershed that drains through Arches. Both are integral to the success of Arches National Park's ecosystems. While the national park is not itself within the planning area, many of the decisions made in the MLP will affect the park. Arches is protected under our National Park system and BLM must ensure that this MLP will not negatively impact the goals of the National Park Service. An easy way to mitigate such impacts is to manage the Courthouse Wash and Salt Wash Watersheds as NSO.
- iv. Lastly, all BLM-identified Wild and Scenic River segments of the Green and Colorado Rivers should be closed to development. These segments have already been identified as meeting the criteria for "suitable" under the Wild and Scenic Rivers Act. In order to protect riparian, wildlife, scenic, and recreational values along the major river corridors and to allow for their designation under the Act in the future BLM must manage for their wild and scenic qualities. The only way to ensure this is to close the segments to development. The Preferred Alternative manages these areas as NSO with general modifications, exceptions and waivers. The potential for these qualities to be degraded exists within the current management structure. BLM should close all suitable segments to development.

c. BLM must ensure cultural resources are adequately protected.

The planning area is home to numerous cultural and sacred sites and has been inhabited since 10,000 B.C. It is crucial that the unique history embedded in this landscape be preserved for future generations. Specifically, 13 cultural sites have been identified by BLM. Under the Preferred Alternative surface-disturbing activities are prohibited within 0.5 miles of these cultural sites. Given the topography of the area, 0.5 miles is not appropriate to preserve the visual and audible conditions associated with these sites. At a minimum we recommend expanding the NSO stipulation to within 1 mile of the 13 identified sites.

d. BLM should protect wilderness characteristics in all inventoried lands with wilderness characteristics

Based on BLM's review, there are a total of 220,460 acres identified by the BLM as lands with wilderness characteristics within the Planning Area. Despite acknowledging that all 220,460 acres possess wilderness characteristics, under the Preferred Alternative, BLM has chosen to protect only 192,084 acres for those characteristics, and has chosen to manage them under the Baseline CSU stipulation. BLM should more strongly manage to protect wilderness characteristics on all 220,460 acres by applying an NSO stipulation. The Baseline CSU goes a long way in mitigating the impacts of oil and gas development. However, it will not ensure that those wilderness qualities are preserved for future generations. BLM's own analysis states, "Development of oil and gas and potash could introduce sights, noises, and infrastructure in or adjacent to lands with wilderness characteristics, which could impair the feeling of solitude and degrade naturalness." (Section 4.21.3). Managing all agency-identified lands with wilderness characteristics under an NSO stipulation will help to preserve the outstanding opportunities for solitude and primitive recreation cherished by so many.

e. BLM should increase protections for National Park viewsheds.

The national park experience is defined not only by the natural state found within a park's boundaries but also by the sights and sounds witnessed in the area abutting the park. Canyonlands and Arches National Parks draw over 1.5 million visitors annually, and given the topography of the region those visitors get to witness some of the most stunning vistas found anywhere in the United States - some extending for over 100 miles. In fact, these views are essential to the park experience in this part of the country. As a result BLM should ensure that the activities permitted within the viewsheds of these parks in no way diminish this unique resource. The Preferred Alternative would close VRM Class II and VRI Class II areas around Arches as well as VRM Class II areas on the northern boundary of Canyonlands and a three mile buffer along the eastern boundary of Canyonlands to mineral leasing. We support the BLM's decision to close these areas and recommend that the viewsheds from the northern boundaries of Canyonlands and Arches that fall outside of the VRM Class II areas as well as the eastern side of Arches also be closed to mineral leasing. The viewsheds are essential to the visitor experience and should be managed in a way that benefits all those who visit these incredible places.

Recommendations: BLM should strengthen protection for key resources in the MLP by incorporating the changes identified above.

IV. Site Specific Concerns

a. Air quality analysis needs further attention.

We have attached the comments of Megan Williams, an air quality expert, to address the Moab MLP's analysis of air quality issues. *See generally* Letter from Megan Williams to Steve Bloch (Nov. 18, 2015) (attached as Exhibit 8). As Ms. Williams explains, the Moab MLP requires additional air quality analysis to sufficiently consider, analyze and disclose the various alternatives under consideration. This shortcoming also includes the Moab MLP's treatment of greenhouse gasses and climate change. Ms. Williams also identifies shortcomings in BLM's quantitative analysis that under predict potential air pollution impacts. Ms. Williams offers various mitigation measures for the BLM's consideration to help address air quality problems. Finally, Ms. Williams offers an alternative plan for the BLM's consideration.

Most importantly, Ms. Williams' comments demonstrate that the Moab MLP has not addressed the air quality impacts from any potential potash leasing and development. Given the existing elevated levels of background pollution in the Moab MLP area and BLM's obligation to observe federal and state air quality standards, there is simply no room for new pollutants that potash development and processing will generate. Indeed, under every alternative analyzed in the draft MLP contemplated oil and gas development will exacerbate background pollution levels. Given the Moab MLP's analysis inadequacies and significant air pollution problems, BLM should select Alternative C. Only Alternative C will prevent the growth of potash emissions and potentially comply with BLM's obligation to ensure its activities conform with federal and state air quality standards.

b. Surface water quality: treatment of State of Utah 303(d) list of impaired waters and heightened protection of surface waters.

BLM should revise Alternative D to expressly provide for an adaptive response to biennial changes to the state of Utah's "303(d)" list of impaired waters,³ beginning with the soon-to-be-completed 2012-2104 list.⁴ Currently, Alternative D precludes surface disturbing activities from mineral development within seven hundred and fifty feet of waters appearing on the State's 2010 approved 303(d) list. See Draft MLP at 2-41 to -42. As it now stands, the MLP would place these restriction only on new leases adjacent to the Colorado River and Fisher Creek because, according to BLM, those are "the only water bodies in the Planning Area that [are listed on the State's 303(d) list of impaired waters]. See *id.* at 3-71. That list, however, is set to change in the very near future.

On March 27, 2015, the Utah Department of Environmental Quality, Division of Water Quality ("DWQ"), submitted its revised 2012-2014 "Integrated Report" to EPA for final approval or disapproval. See DWQ, Monitoring and Reporting, Water Quality Assessments Program, <http://www.deq.utah.gov/ProgramsServices/programs/water/wqmanagement/assessment/currentIroct.htm> (last updated Nov. 13, 2015). The revised Integrated Report is the most current documentation on the water quality condition of the State's waters, including rivers and streams. *Id.* To date, "EPA has completed their review" of DWQ's submission and "very soon" will approve or disapprove of the submission. *Id.* If approved, numerous waters including Kane Spring Wash, Mill Canyon Wash, and North Cottonwood Creek, will be listed as impaired and as a result, will warrant further protections such as those provided to waters currently listed on the State's 303(d) list. See, e.g., DWQ, Integrated Report, Chapter 5 303(d) List of Rivers and Streams at 30-32 (Kane Springs Wash assessment unit UT14030005-001; North Cottonwood Creek assessment unit UT14030005-015; Courthouse Wash which includes Mill Canyon Wash assessment unit UT14030005-017) (excerpts attached as Attachment 9). Cf. Draft MLP at 3-71 (stating that these waters were added to Utah's 2014 "303(d)" list of impaired waters).

Expressly reserving the right to attach NSO stipulations to new leases issued adjacent to identified impaired waters, including those identified as part of the state's biennial 303(d), is entirely consistent with the stated objective to "take appropriate actions to maintain water quality" and "meet State and Federal water quality standards, including designated beneficial uses and anti-degradation requirements." Draft MLP at 2-40 to -41.

In addition, the MLP mistakenly omitted the Dolores River and its tributaries which are also listed on the State's 2010 approved 303(d) list due to high level of total dissolved solids *and* overlaps with the MLP Planning Area. See Department of Environmental Quality, Division of Water Quality ("DWQ"), Enclosure 4, River, Stream, Lake and Reservoir Assessment Units Needing a Total Maximum Daily Load (TMDL) Analysis - 2010 303(d) List at 1 (Dolores River, Assessment Unit ID UT14030004-001) (excerpts attached as Exhibit 10); EPA, Watershed Quality Assessment Report, Utah, Lower Dolores Watershed, <http://iaspub.epa.gov/>

³ See 33 U.S.C. § 1313(d)(1) (states must identify and implement water quality standards for impaired waters).

⁴ The MLP should use the most current impaired water bodies list as of the time the document is finalized. All indications are that EPA will approve Utah's 2012-2014 303(d) list by the end of 2015 and thus the final MLP should reflect the changes (e.g. addition and removal of stream segments) and provide for appropriate NSO stipulations.

tmdl.waters10/attains_watershed.control?p_state=UT&p_huc=14030004&p_cycle=2010&p_report_type= (click hyperlink “Waterbody Map” for Dolores River UT14030004-001_00) (last updated Nov. 17, 2015) . The NSO stipulation that is proposed to be attached to new leases issued adjacent to the Colorado River and Fisher Creek should also be attached to leases issued adjacent to the relevant segments of the Dolores River and its tributaries.

The surface waters within the MLP planning area are important and provide support for other resources including riparian vegetation, wildlife habitat, wildlife uses, recreation use, and municipal public drinking water supplies. See, e.g., Draft MLP at 3-71. However, these same surface waters are threatened by human activities, including mineral development. *Id.* at 3-78 - to -79. As currently drafted, the MLP does not explain how or provide data or analysis to support the determination that proposed buffers are sufficient to protect water quality resources and their associated resource values. See *id.* at 4-131 to -142. Rather, the MLP explains that mineral development and its associated surface disturbing activities threaten water quality and then provides comparisons between the impacts of the several considered alternatives. See generally *id.* For example, the MLP does not make clear why a one hundred foot buffer is appropriate to protect ephemeral or intermittent streams rather than a two hundred foot (or larger) buffer. See, e.g., Draft MLP at 2-41 (compare Alternatives C and D). Similarly, no explanation is provided for why a seven hundred and fifty foot buffer is appropriate to protect 303(d) listed waters rather than a one thousand foot (or larger) buffer. *Id.* at 2-41 to -42 (compare Alternatives C and D).

The best management practices related to mineral development near waterways also provides no explanation or justification regarding the adequacy (or inadequacy) of the selected buffer distances. See generally Draft MLP, Appendix B - Best Management Practices.

We urge BLM to adopt the protective buffers proposed in Alternative C. See, e.g., Draft MLP at 3-71 (“Surface water resources are important in this arid region.”); *id.* (“The 100-year floodplains of all perennial, intermittent, and ephemeral drainages are important components of the surface water system.”); *id.* at 3-73 (“Springs and seeps are important sources of water in isolated areas, providing water for wildlife, grazing, and recreationists as well as supporting riparian vegetation and wildlife habitats.”).

c. Protecting sensitive visual resource management resources.

The Draft MLP should provide an explanation, with citation to data or information, to support the assumption made in the MLP that the proposed one mile NSO setback from the rims along the Colorado and Green Rivers is adequate to protect their “internationally recognized” and “world-famous” scenic values. Draft MLP at 3-117; *id.* at 2-52 (Alternative D adopts a slightly modified version of Alternative B which establishes a 1-mile setback). The proposed one mile setback is *intended* “to protect the visual resources along the rims of the Colorado and Green Rivers.” *Id.* at 2-52. The canyon rims along the Colorado and Green Rivers and one mile setback there from are visible to visitors in numerous “high” or “very high” use recreation sites throughout the Planning Area and thus, does not protect the region’s world renown visual resources for these visitors. See, e.g., *id.* at 3-120, Fig. 3-6; *id.* at 3-121, Fig. 3-7.

To the extent that the setback is intended to protect visual resources for only visitors to areas below the canyon rims (e.g., boaters floating the relevant rivers), the Draft MLP does not offer any qualitative or quantitative analysis or data to demonstrate that a one mile buffer is sufficient. See generally *id.* 4-191 to -202 (providing only a comparison between the various considered alternatives). For example, BLM should more fully assess if a one mile setback is appropriate when compared to the two mile setback proposed in Alternative C, or some larger setback. See *id.* 2-52. Similarly, BLM should explain how the proposed exceptions to the NSO

setback will affect visual resources for visitors above and below relevant canyon rims. *Id.* Appendix A at A-39 (“The Authorized Officer may grant an exception if a viewshed analysis indicates no impairment of the visual resources of the rims from either the rims or from the rivers.”).

d. All BLM-identified lands with wilderness character should be treated equally.

The MLP inappropriately distinguishes between lands with wilderness characteristics (“LWCs”) that were identified by BLM during the planning and development of the 2008 Moab and Monticello RMPs and LWCs identified afterward, such as the Dead Horse Cliffs, Dripping Spring, Lockhart, Trough Springs, and Upper Indian Creek. See Draft MLP 2-12 to -13 (BLM will apply a “Baseline CSU stipulation” - which is set forth in the MLP - *only* to oil and gas leases in LWCs identified in the 2008 RMPs). No explanation is provided in the MLP for why LWCs identified after completion of the 2008 RMPs will not receive the same level of protection as those identified in the RMPs. See, e.g., *id.* at 3-30 to -31; *id.* at 4-33 to -37. If BLM is to accomplish its stated goal of “implement[ing] authorizations . . . in a manner that minimizes impacts to [LWCs],” the agency must treat all LWCs in similar fashion. *Id.* at 4-33.

Furthermore, BLM should, at a minimum, explain its rationale for protecting only the LWCs identified in the 2008 RMPs. The proposed unequal treatment of LWCs is arbitrary because, among other things, it ignores the fact that the MLP was initiated *as a result of leasing conflicts in sensitive areas, including LWCs*. See, e.g., BLM, Instruction Memorandum No. 2010-117, Oil and Gas Leasing Reform - Land Use Planning and Lease Parcel Reviews *1 (May 17, 2010) (“The leasing process established in this [Instruction Memorandum] will create more certainty and predictability, protect multiple-use values when [BLM] makes leasing decisions, and provide for consideration of natural and cultural resources.”) (attached); see also *id.* at *4 (an MLP should identify and evaluate resource conflicts including “[t]he effect of oil and gas leasing on lands that the BLM may identify as having wilderness characteristics”).

Finally, the arbitrary treatment of LWCs identified post-2008 RMPs does not comply with BLM’s obligation to “consider a full range of alternatives for [LWCs] when conducting land use planning” that analyze “the effects of (1) plan alternatives on [LWCs] and (2) management of [LWC] on other resources and resource uses.” BLM, Manual 6320 - Considering Lands with Wilderness Characteristics in the BLM Land Use Planning Process (Public) § 6320.06 (March 15, 2012). *But see* Draft MLP at 4-33 to -37 (only providing a comparison between considered alternatives). All BLM-identified LWCs should be treated equally and BLM should expressly reserve the right to attach a “Baseline CSU stipulation” to future LWCs identified by the agency, including those under currently under consideration. See, e.g., Draft MLP at 3-30 (BLM has inventoried only five of nine citizen proposed wilderness submissions).

e. Increase protection of the Old Spanish National Historic Trail.

Congress designated the Old Spanish National Historic Trail under the National Trail System Act (NTSA). 16 U.S.C. § 1244(a)(23). The NTSA was intended “to promote the preservation of [the] . . . historic resources of the Nation,” and states that “efforts shall be made to avoid activities incompatible with the purpose for which [the] trail [was] established.” 16 U.S.C. §§ 1241, 1246(c). BLM Manual 6280 on National Trails Management clarifies BLM’s policy and encourages eliminating or moderating adverse impacts to trail resources. See BLM Manual, 6820 - Management of National Scenic and Historic Trails and Trails Under Study or Recommended as Suitable for Congressional Designation (Public) (Sept. 14, 2012).

BLM should adopt Alternative C to comply with the NTSA and BLM’s Manual and preserve the historic integrity and natural condition of the Old Spanish National Historic Trail. BLM’s preferred alternative would permit impacts to the trail from mineral development, allowing a

potash processing facility along the trail. Draft MLP at 4-146. The preferred alternative could also impact the scenic, natural and historic settings of the trail. *Id.* Therefore it is incompatible with the purpose of the Old Spanish National Historic Trail. Alternative C, however, would preserve the historic character of the trail, including the trail's viewshed. *Id.* Alternative C complies with NTSA's mandates and Congress's intent to protect the nation's irreplaceable historic resources.

f. Prioritize areas of critical environmental concern and protect identified potential ACECs.

FLPMA requires the BLM to "give priority to the designation and *protection* of areas of critical environmental concern." 43 U.S.C. § 1712(c)(3). Areas of Critical Environmental Concern are defined as "areas within the public lands where special management attention is required . . . to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes." 43 U.S.C. § 1702(a). Once BLM has identified the relevant and important values within the planning area, it must ensure their protection.

Behind the Rocks, Highway 279/Shafer Basin/Long Canyon, Indian Creek, and Shay Canyon ACECs are each managed to protect the relevant and importance value of scenery. While NSO stipulations go a long way towards ensuring the identified resource values are protected, loosely and ill-defined modification and waiver criteria leave the door open for surface disturbance that would harm ACEC values. Further, BLM acknowledges that its preferred alternative - applying NSO stipulations to the ACEC - could still result in impacts to these areas' scenery from horizontal drilling that occurs outside the ACEC to access the federal mineral resources within. Draft MLP at 4-143. To comply with FLPMA's mandate to protect this value, BLM should adopt Alternative C and close these ACECs to all mineral leasing.

Even when BLM does not designate an ACEC, FLPMA requires BLM to protect identified relevant and important values for ACECs it considered but determined did not need special management. The Moab RMP identified relevant and important values for several potential ACECs that it ultimately did not designate as ACECs. *See* BLM, Moab Field Office, Record of Decision and Approved Resource Management Plan, 30 (Oct. 2008) (Moab RMP ROD). The Moab RMP identified relevant and important values for the Canyon Rims, Upper Courthouse, Labyrinth Canyon, and White Wash ACECs, each of which it decided to manage as parts of Special Recreation Management Areas (SMRAs). *Id.* at 31-33. BLM must ensure that these SMRAs protect the relevant and important values it identified in the RMP process.

g. Protecting special recreation management areas.

BLM should manage Special Recreation Management Areas (SRMAs) in the MLP planning area to provide maximum protection to valuable recreation resources and limit impacts from mineral development. SRMAs are areas with recognized high recreation use and allow the BLM to focus on and manage for recreation over other multiple uses in certain areas. BLM, Moab Field Office, Record of Decision and Approved Resource Management Plan, 29 (Oct. 2008) (Moab RMP ROD). BLM recognizes that the planning area is an internationally-recognized destination and that "[t]he economy of the area is heavily dependent upon recreation-based businesses." Draft MLP at 3-46. Visitors engage in a variety of recreation ranging from rafting, hiking and climbing to mountain biking, horseback riding and off-highway vehicle use. *Id.* To protect this valuable recreation resource, BLM should manage these SRMAs to maximize visitor experience and minimize conflicts between recreation and mineral development.

BLM should select an alternative that attaches NSO lease stipulations across the board to SRMAs within the planning area, rather than only certain focus areas within the SRMAs. Applying NSO stipulations to the SRMAs is consistent with the stated goals of the Moab and Monticello RMPs, IM 2010-117, and would allow BLM to better meet the management objectives for which they were set aside.

Canyon Rims SRMA: The Canyon Rims SRMA encompasses the Canyon Rims potential ACEC, recognized for its high value scenery. See BLM, Moab Field Office, Proposed Resource Management Plan and Final Environmental Impact Statement, 3-133 (Aug. 2008) (Moab RMP FEIS). The SRMA was created to provide scenic overlooks, scenic driving opportunities, camping, hiking and backpacking opportunities, and an opportunity to escape crowds. Moab RMP ROD, App. M at M-2. However, in its current form BLM's preferred alternative would allow impacts from oil and gas development - truck traffic, noise and visual impacts - to interfere with recreation and degrade its relevant and important scenic values. Draft MLP at 4-64. To eliminate these impacts and ensure a better recreation experience, BLM should apply NSO stipulations to the entire SRMA.

Labyrinth Canyon/Gemini Bridges SRMA: The Labyrinth Canyon/Gemini Bridges SRMA incorporates the Labyrinth Canyon, Upper Courthouse, and White Wash potential ACECs with identified relevant and important values including high value scenery, historic values, rare plant resources, and natural systems resources. Moab FEIS at 3-137-3-141. In terms of recreation, the SRMA was established to allow quality river recreation in Labyrinth Canyon, camping, on- and off-trail hiking, scenic driving, mountain biking and backcountry driving experiences. Moab RMP ROD, App. M at M-4. To comply with FLPMA and the SRMA's management objectives, BLM must analyze the MLP's impacts to both the identified relevant and important values and recreation. BLM has not done this. The Draft MLP does not mention the potential impacts to the potential ACEC's relevant and important values. BLM's preferred alternative would allow interference with the recreation management objectives from the noise, traffic and visual impacts of mineral development. Draft MLP at 4-64. Furthermore, in some sections of the SRMA, BLM's preferred alternative would actually roll back protections from that which it established in the Moab RMP, allowing baseline CSU stipulations where NSO was previously required. Compare Moab RMP ROD at Map 12, with MLP at Map 2-26 B/D. BLM should adopt Alternative C and apply NSO stipulations to the entire SRMA.

South Moab SRMA: BLM established the South Moab SRMA to provide "opportunities for hiking, camping, motorized and mechanized touring." Moab RMP ROD, App. M at M-6. BLM's preferred alternative would allow noise, traffic and visual impacts to interfere with these recreation opportunities in the SRMA. Draft MLP at 4-64. To meet the SRMA management objectives, BLM should adopt Alternative C and apply NSO stipulations to the entire SRMA.

Recommendations: BLM should incorporate more stringent protections protect these resources within the Moab MLP Planning Area, as described above.

V. Additional Provisions from Other Master Leasing Plans

The BLM has now completed 7 MLPs and there are provisions in these MLPs that would be beneficial for incorporation in the Moab MLP:

a. Stipulations not subject to waiver, exception and modification.

As noted above, the Dinosaur Trail MLP incorporates stipulations that are not subject to waiver, exception or modification, especially for stipulations regarding recreation, wilderness characteristics and national park resources. Ensuring the application of stipulations is important for ensuring protection of sensitive resources and increasing certainty and setting expectations for all stakeholders

b. Phased leasing and development.

The Dinosaur Trail MLP incorporates phased leasing, providing that:

Within the Dinosaur Trail MLP, the BLM will minimize impacts from oil and gas exploration and development to the area's important natural resources and special areas including Areas of Critical Environmental Concern, Wilderness Study Areas, and Dinosaur National Monument by managing leasing opportunities in a phased approach in order to take advantage of new information and the best available technology.

Approved RMP, p. 1-4; *see also* IM No. 2010-117 at § II.B (listing “phased leasing” and “phased development” as measures to address and resolve resource conflicts that the BLM should consider adopting in MLPs)⁵ Under the phased approach, leasing will first proceed in that portion of the Dinosaur Trail planning area with the most accessible oil and gas resources and fewest potential resource conflicts, and later proceed to areas with lower development potential. Here, BLM could apply a similar phased approach, by first providing for leasing and development in that portion of the planning area where industry interest is most heavily focused and where resource conflicts are minimal, and later providing for leasing and development elsewhere.

Similarly, the Beaver Rim MLP, prepared by the Lander Field Office, also incorporates phased leasing, as well as phased development, by using a surface disturbance cap. More specifically, the Beaver Rim MLP provides that the BLM will:

Make parcels in the Beaver Rim area available for lease starting in the CSU areas outside of crucial winter range. Allow no more than 5 percent surface disturbance in the township in which the parcel is located until interim reclamation goals are achieved. Require co-location of new disturbance if technically feasible. If new disturbances cannot be co-located, they must be at least 1.2 miles from existing disturbance.

Lander Record of Decision and Approved RMP, Record No. 2028.⁶ This type of surface disturbance cap would be especially appropriate in the Moab MLP, given the existence of

⁵ Available at: http://www.blm.gov/style/medialib/blm/co/programs/land_use_planning/rmp/white_river/documents/wrfo_oil_and_gas_approved.Par.81262.File.dat/01WRFO_OG_ROD-ARMPA_Aug2015_508c.pdf

⁶ Available at: <https://eplanning.blm.gov/epl-front-office/projects/lup/18602/49179/53513/default.jsp?projectName=Lander+Resource+Management+Plan+Revision&projectDisplayName=Lander+Resource+Management+Plan+Revision>

leases in sensitive areas and as the broadly-applicable Baseline CSU stipulation already includes reclamation and mitigation requirements, and the environmental impacts of development were forecasted under the assumption that disturbed acreage would be successfully reclaimed. See, e.g., DMLP at p. 2-15-16, p. 4-39 (Assumptions...Disturbed areas would be successfully reclaimed within a scope of 10 years”).

c. Consultation with the National Park Service and tribes regarding visual and cultural resources.

In light of the proximity of Arches and Canyonlands National Parks, coordination with the National Park Service has been an important part of developing this MLP - and this coordination should continue. In the Dinosaur Trail MLP, BLM created a lease stipulation that requires preparation of a visual resource and noise management plan prior to development that also provides:

In areas north of Highway 40, the Plan must also be coordinated with the National Park Service, with particular emphasis on views seen from key observation points within Dinosaur National Monument (DNM), along the Harpers Corner Road, and at the Visitor’s Center/Headquarters.

White River Record of Decision and Approved RMP, Appendix 1, pp. 1-30 - 1-31. To compare, an NSO stipulation designed to protect the viewshed from Canyonlands National Park contains no Park Service consultation requirements and provides wide agency discretion to remove such protection under general waiver and modification. See DMLP at p. A-38-39. Like the Dinosaur Trail MLP, the Moab MLP must require consultation with the National Park Service before BLM is allowed to remove any lease stipulation designed to protect Arches or Canyonlands National Park.

The Dinosaur Trail MLP also required consultation with Indian Tribes, as well as other state and federal agencies, before BLM could grant exceptions for stipulations designed to protect cultural resources:

The Authorized Officer may grant an exception to this stipulation, if through an environmental analysis and consultation with the Colorado SHPO, ACHP, and Indian Tribes, it is determined that other acceptable mitigation can be developed to protect or preserves sites and data.

White River Record of Decision and Approved RMP, Appendix 1, p. 1-23. Notably, this stipulation did not allow for waivers or modification, but only this specific exception. *Id.* To compare, the NSO stipulation designed to protect cultural sites under the preferred alternative of the Draft Moab MLP allows for both general waiver and modification, and allows for “an exception if the project is not visible or audible from the cultural site or cultural concentration area.” DMLP at p. A-4. Again, like the Dinosaur Trail MLP, the Moab MLP must require that BLM consult with affected tribes and agencies before the agency removes lease stipulations and other protective measures.

d. Identify conditions of approval.

In addition to specifying lease stipulations, the White River RMP Amendment, which includes the Dinosaur Trail MLP, specified best management practices and conditions of approval for development. White River Record of Decision and Approved RMP Amendment, Appendix 2.⁷ While the Draft Moab MLP identifies best management practices, it can and should specifically identifying conditions of approval for specific resources, such as watersheds, that shall be applied if specific conditions exist.

Recommendations: BLM should incorporate these tools from other MLPs into the Moab MLP as described above.

VI. Potash

a. BLM should adopt Alternative C and close the planning area to future potash leasing and permitting.

We recommend that BLM adopt Alternative C and close the Planning Area—which already contains potash leases and development facilities—to any new, additional potash leasing or permitting. The planning area, which bridges Arches and Canyonlands National Parks, includes an outstanding collection of cultural, paleontological, wilderness, and recreational resources. As detailed below, additional potash leasing and development, including that prescribed by the preferred alternative of the Draft MLP, would threaten these other resources, and would also require significant commitments of water resources. In light of these threats, and the existing potash leases in the planning area, BLM should not issue any new potash leases or permits under the MLP. However, recognizing our stated preference for Alternative C, we have provided several recommendations to help mitigate unwanted impacts from potash leasing and development in the event that BLM adopts Alternative D, its Preferred Alternative.

b. If BLM does not adopt Alternative C, then the proposed plan should only authorize modified Upper Ten Mile Potash Leasing Area and revise the stipulations that would attach to leases within designated “Potash Leasing Areas.”

Alternative D includes a “phased potash leasing approach.” See Draft MLP at p. 2-18. Under the phased approach, potash permitting and leasing is only allowed in “Potash Leasing Areas” (PLA). *Id.* at p. 2-19. Three PLAs, totaling more than 100,000 acres, and their associated “Potash Processing Facility Areas” (PPFA), totaling more than 40,000 acres, would be established upon issuance of the Record of Decision. *Id.* at p. 2-19. These areas would be open to leasing and permitting in the “first phase” of potash development. *Id.* at p. 2-31. In subsequent phases, PLAs could be both removed and added to the planning area. *Id.* at p. 2-22-23. In total, approximately 640,283 acres could be made available for potash leasing and permitting under the phased approach. See *id.* at p. 2-31.

We recommend that the Plan change which areas are open to permitting and leasing as PLAs, such that only the Upper Ten Mile PLA is subject to phased leasing, and that BLM reconsider the criteria under which PLAs can be removed from the planning area in the absence of actual potash production.

⁷ Available at: http://www.blm.gov/style/medialib/blm/co/programs/land_use_planning/rmp/white_river/documents/wrfo_oil_and_gas_approved.Par.13659.File.dat/03WRFO_OG_ROD-ARMPA_Apdx2_BMPs_Aug2015_508c.pdf

i. BLM should redefine the areas open for leasing and permitting in the “first phase” of potash development.

The three PLAs open to potash development under the “first phase” of the phased development plan were established around valid existing rights in the form of potash leases and permits. See Draft MLP at p. 2-19 (“Identified PLAs include blocks of public land in areas where potash leases (Upper Ten Mile) or potash permits (Red Wash and Hatch Point) have been issued.”). Conversely, areas not containing valid existing rights were either deferred from potash leasing and permitting until a subsequent phase of development or closed to future leasing and development altogether. See p. 2-31 (“Approximately 536,664 acres outside of PLAs are open [for potash leasing] subject to the results of the first phase of potash leasing within the PLAs.”). However, in recent months, the collection of authorized permits and leases in the planning area has changed significantly, and we recommend that BLM revise the MLP to reflect the most current inventory of valid existing rights in the planning area. In addition, we identify resource conflicts that would be avoided by adopting our suggested revisions.

(a) Red Wash PLA and Hatch Point PLA should be excluded from potash development.

Both the Red Wash and Hatch Point PLAs were established based on the presence of existing prospecting permits in the areas. See pp. 2-19-20 (“The Red Wash PLA would be identified in the Red Wash area where potash prospecting permits have been issued...The Hatch Point PLA would be identified in the Hatch Point area where potash prospecting permits have been issued.”). More specifically, during preparation of the Draft Plan, the Red Wash PLA, at 29,956 acres, contained 14 prospecting permits, while the Hatch Point PLA, at 44,536 acres, contained 22 prospecting permits. See Attachment 1. The PLA boundaries were drawn to encompass these valid existing rights. See DMLP at p. 2-19.

However, because the permits that were used to form the boundaries of these PLAs have since terminated, BLM should defer leasing in these areas until after the “first phase” of development. In the Hatch Point PLA, BLM recently denied a permit extension for all 22 permits in the Hatch Point PLA, and the permits expired no later than May 31, 2015. See Attachment 2. Similarly, in the Red Wash PLA, BLM recently determined that all 14 of the permits in the area had automatically terminated on March 2, 2015 for failure to timely pay rentals. See Attachments 3, 4. That is, all of the prospecting permits in the Hatch Point and Red Wash PLAs have terminated, and valid existing rights in potash resources no longer exist in the two areas.

Furthermore, potash development in the Red Wash and Hatch Point PLAs would threaten wilderness resources in those areas. As BLM determined in its most recent inventory of the planning area, both PLAs contain lands with wilderness characteristics. See Draft MLP at p. 4-34 (“The Red Wash and Hatch Point PLAs overlap lands with wilderness characteristics...”), Map 2-7-B/D (“Land Identified by the BLM as Having Wilderness Characteristics in the 2008 RMP”), Map 2-54-B/D (“Sagebrush/Steppe Habitat with Moderately high to Very High Ecological Intactness.”), Map 2-55-B1/D. Potash development in these areas would doubtlessly compromise the naturalness, opportunities for primitive and unconfined recreation, and solitude in these areas. See Draft MLP at p. 4-35; see also, e.g., p. 4-148 (“Potash development in the Hatch Point PLA would be visible from Needles and Anticline Overlook State backways...”).

Finally, the Draft MLP lacks a detailed evaluation of the potential impacts of transporting potash from the Red Wash and Hatch Point PLAs (as well as the Upper Ten Mile PLA). Those

impacts could be significant, in particular on recreational, wilderness, and scenic resources both in and outside of the PLAs. Although the BLM acknowledges that transporting potash “would involve complexities, such as slurring potash by pipeline, as well as other additional costs,” the Draft EIS does not identify or take a hard look at those “complexities” and “costs.” See Draft MLP at p. 4-49. The recent construction of Fidelity’s Big Flats pipeline shows how industrial infrastructure can dramatically impact the recreational and scenic values of this sensitive landscape, and underscores the need for the BLM to account for the potential impacts of not only drill pads, but also associated infrastructure as it decides where and how to permit future potash leasing and development.

Recommendation: Because the Red Wash and Hatch Point PLAs no longer contain prospecting permits, and development in these areas would threaten wilderness resources, potash leasing and permitting should not be permitted in these areas

(b)The boundary of the Upper Ten Mile PLA should more closely reflect the area encompassed by existing leases in the area.

At present, there are four existing leases within the boundary of the proposed Upper Ten Mile PLA, occupying less than 8,000 acres. See Draft MLP at p. 2-20 (“The Upper Ten Mile PLA includes lands surrounding four existing potash leases...”); Attachment 5. Yet, under the preferred alternative, the Upper Ten Mile PLA would occupy almost 30,000 acres, allowing permitting and leasing on 20,000 acres for which no valid existing rights currently exist. See Draft MLP at p. 2-19. These additional, unleased lands should be removed from the Upper Ten Mile Plan and thus deferred from leasing until a subsequent phase of development.

First, deferring these unleased lands from development would be consistent with the phased approach that otherwise limits development to specific areas already containing valid existing rights. Moreover, if neighboring lands proved productive, the Plan includes a specific mechanism that would open these other, unleased lands to permitting and leasing. See p. 2-22 (“To identify an area as a new PLA, the Authorized Officer would consider, at a minimum, the criteria listed below...There has been a sufficient level of potash production from an existing PLA identified by this MLP or adjacent areas to indicate that commercial quantities of potash may be produced in the area under consideration.”). That is, the unleased lands could later be designated as a PLA in the event that commercial quantities of potash are first developed from the adjacent, existing leases.

Second, excluding these unleased lands from the Upper Ten Mile PLA would help mitigate conflicts with other important resources. The unleased lands to the southeast of the existing leases overlap a large area of high use routes and trails that wind toward Arches National Park, as well as the corridor of the Old Spanish National Historic Trail. See Maps 2-20-B/D, 2-46-C. And, to the south and west of the existing leases, unleased lands in the Upper Ten Mile PLA are highly likely to contain scientifically significant fossils. See DMLP at p. 4-54 (“... the Upper Ten Mile PLA overlaps known PFYC 5 locations, so the potential for impacts to paleontological resources would be higher in this area.”). These impacts to recreational, cultural, and paleontological resources provide further justification for limiting the boundary of the Upper Ten Mile PLA to only those lands encompassed by existing leases.

Recommendation: Because, elsewhere in the Plan, PLA boundaries are limited to areas already containing permits and leases, and the Plan contains a mechanism that could expand the Upper Ten Mile PLA, BLM should restrict the boundary of the PLA to encompass only currently leased lands for the first phase of development.

- ii. **Applications for prospecting permits should not sustain a PLA designation in the absence of production of commercial quantities of potash.**

As part of the phased approach, PLAs can be both added and removed from the planning area. See Draft MLP at p. 2-22-24. With respect to PLA removal, the Plan provides, in pertinent part:

Removing an Area from a PLA[:] If, within a PLA, the production of commercial quantities of potash is not achieved within a 10 year time period from the date of the MLP Record of Decision is signed. [sic] The Authorized Officer may remove the PLA after additional decision making. In making this decision, the Authorized Officer generally will not remove an area from a PLA where: ▪ *There are any applications for or existing potash prospecting permits or exploration licenses for potash;* or ▪ *There are any applications for or existing preference right leases or expressions of interest for or existing competitive potash leases.*

Id. at p. 2-23-24 (emphasis added). Thus, under the preferred alternative, the presence of applications for prospecting permits within a PLA would be sufficient to sustain the life of a PLA.

However, the existence of applications for prospecting permits should not be enough to sustain the existence of a PLA. Prospecting permit applications require minimal documentation and a small processing fee. See 43 CFR §§ 3505.12, 3505.13. Thus, with minimal resources, a single interested stakeholder could prevent or delay the removal of a PLA by merely filing a permit application. Also, at present, more than 50% of the planning area is covered by permit applications. See pp. 3-4 (“Public lands within the Planning Area include about 785,567 acres...the BLM has [recently] received 223 potash prospecting permit applications (PPA) covering 416,614 acres.”). The extent of existing applications further suggests that prospecting permit applications will likely always fall within PLA boundaries.

Recommendation: The existence of prospecting permit applications should not be allowed to preclude or delay PLA removal.

- iii. **In addition to the phased leasing approach, BLM should revise the prescriptions and stipulations that apply to leases within PLAs.**

Above, we made several recommendations concerning which parts of the planning area should be open to potash leasing and permitting in the first phase of the phased potash leasing approach. We also recommended that BLM reconsider the criteria under which PLAs can be removed from the planning area in the absence of potash production. Here, we make several recommendations concerning the stipulations that will be applied to leases within PLAs, including the proposed diligent development requirements.

- (a) **The MLP should provide separate diligent development requirements for new and existing potash leases.**

As written, Alternative D would impose the same ten year diligent development requirement on both new and readjusted potash leases. See Draft MLP at p. 2-26-27 (“All new potash

leases, as well as all potash leases subject to readjustment would be subject to the following diligent development requirements...”).⁸

While a ten year diligent development requirement should be attached to any new leases, the same timeframe should not apply to existing leases due for readjustment. Since there are only four viable, existing leases within the potash leasing area, the Plan should more narrowly address how the diligent development requirement would apply to these leases.⁹ Specifically, since the four existing leases are not up for readjustment until 2024, under Alternative D, BLM could not pursue cancellation for lack of production until 2034, even though the Plan itself has a 15 year life span. See Attachment 6. Instead, since there are only four existing leases, all with the same readjustment date, and all held by the same lessee, BLM should readjust those leases to include a diligent development window of two years, assuming the Moab MLP ROD is published in 2016. This would, in effect, provide the lessee with ten years from the date of the ROD, until approximately 2026, to develop its leases, and would be more consistent with the timeframe for new leases to establish production of commercial quantities of potash, as well as the overarching intent of the MLP “to determine the feasibility of potash development” within ten years of the ROD. See Draft MLP at p. ES-4.

Recommendation: BLM should impose a separate and shorter diligent development period for existing leases in the planning area.

(b) The exception to the Baseline CSU stipulation for “small-scale potash processing facilities” should be eliminated.

Under Alternative D, the stipulations that apply to oil and gas leases would also apply to new potash leases, including the Baseline CSU stipulation. See Draft MLP at pp. 2-14-2-16, 2-18 (“To the extent possible, the stipulations developed for oil and gas leasing are applicable to potash leasing.”), pp. 2-27-29. However, for potash resources, the Baseline CSU stipulation would include an exception as to both well spacing and the location of potash processing facilities. Absent this exception, potash processing facilities would only be allowed in “Potash Processing Facility Areas” (PPFAs), totaling 42,492 acres. Although BLM states that the PPFAs would be located to avoid resource conflicts, the proposed PPFAs would actually harm natural and cultural resources.¹⁰ Consequently, the proposed PPFAs need to be reduced in size to truly avoid potential resource conflicts.

⁸ We would also like to point out that the Draft MLP does not clearly describe when a diligent development requirement would attach to existing potash leases in the planning area. Some of the Plan language suggests that diligent development would be required on existing leases by ten years after issuance of the ROD. P. 2-24 (“A CSU stipulation for achieving potash production in a ten year timeframe is found in the potash stipulation section below.”), but other Plan language indicates that diligent development requirements would be attached upon lease readjustment, p. 2-26 (“All new potash leases, as well as all potash leases subject to readjustment would be subject to the following diligent development requirements: The Authorized Officer would pursue lease cancellation if after ten years from the date of lease issuance, potassium or related products are not being produced in paying quantities from: (a) The lease; or...”). We urge BLM to apply existing leases to a diligent development requirement until they are up for readjustment.

⁹ There were two existing leases located directly adjacent to Arches National Park—UTU-067454 and UTU-02739A. However, BLM appears to have cancelled, or is currently pursuing cancellation of, these leases. See Attachment 7. The cancellation process should be finalized before BLM completes the MLP.

¹⁰ See Draft MLP at p. 2-2 (asserting that “surface impacts would be minimized by...locating potash processing facilities in areas identified with the least amount of sensitive resource...”); *but compare*, e.g., Map 2-56-C (Old Spanish National Historic Trail) and Map 2-55-B1/D (Sagebrush/Steppe Habitat within [PPFAs]) with Map 2-13-B/D (Potash Processing Facility Areas).

Further, under the exception, the BLM “could grant an exception to the stipulation for small-scale potash processing facilities located within the PLA where it can be shown that the proposed operation would not cause unacceptable impacts. These facilities would produce no more than 10,000 tons of potash per year and would disturb no more than 100 un-reclaimed acres within a PLA.” Draft MLP at p. A-14. The exception as to “small-scale potash processing facilities” should be eliminated from the Plan.

Under the exception, small-scale processing facilities could be constructed anywhere within the 103,619 acre-area encompassed by the three initial PLAs, as well as in any subsequently designated PLAs falling anywhere within a 213,218 acre subset of the planning area. *See id.* at p. 2-28. That is, the exception would allow potash processing facilities to create viewshed, surface, and other environmental impacts across a much wider range of the planning area than the 42,492 acres of designated PPFAs. *See id.* at p. 2-29 (“Potash processing facilities can require a substantial commitment of public lands.”), p. 4-37 (“...small-scale potash processing facilities...could overlap with some areas with wilderness characteristics.”), p. 4-81 (“If the smaller potash processing facility were to be developed, surface disturbance could lead to erosion and runoff into nearby riparian areas. There also could be a greater risk of the introduction of invasive, non-native plant species.”), p. 4-146 (“...an exception under Alternative D allows a small-scale potash processing facility within a PLA. This facility could... reduce the scenic, natural, and historic settings from the viewshed along the [Old Spanish National Historic Trail]...”), p. 4-169 (“If the smaller scale processing facility were to be developed, damage, degradation, or removal of habitat for special status species would occur within the 100 acres, along with fragmentation of habitat.”). In addition, although the exception limits the size and density of such facilities, it fails to include any safeguards or meaningful criteria for granting the exception, including, for example, a requirement that BLM consult with the National Park Service. *See, e.g.,* White River Field Office Oil and Gas RMPA (2015) at Appendix 1—Oil and Gas Lease Stipulations and Lease Notices, p. 1-31 (“Waiver: The BLM Authorized Officer, in consultation with the National Park Service, determines that operations (visual, noise, light) on the entire lease would not be detectable from Dinosaur National Monument.”).

Recommendation: The exception for “small-scale potash processing facility” should be eliminated because it would expose an additional 213,218 acres of the planning area to the significant environmental impacts associated with potash processing, and it does not contain adequate safeguards to protect against these impacts.

Thank you for considering these substantive comments. We look forward to seeing them addressed in the Proposed RMP Amendment and would be glad to answer any questions in the interim.

Very truly yours,

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List of Attachments:

1. LR2000 Report showing existing potash prospecting permits in Red Wash and Hatch Point PLAs, with permits in the Red Wash PLA highlighted.
2. BLM letter finding that all 22 permits in the Hatch Point PLA expired no later than March 2, 2015.
3. BLM letter finding that 12 of the 14 permits in the Red Wash PLA expired no later than March 2, 2015.
4. BLM letter finding that the other 2 of the 14 permits in the Red Wash PLA expired no later than March 2, 2015.
5. LR2000 Report showing existing leases in the planning area, with the two leases outside Arches National Park highlighted.
6. LR2000 Reports for each of the 4 individual leases in the Upper Ten Mile PLA, showing readjustment due in 2024.

7. BLM lease cancellation correspondence related to the two leases adjacent to Arches National Park.
8. Comments from Megan Williams - letter to Steve Bloch (Nov. 18, 2015).
9. Excerpts from DWQ, Integrated Report, Chapter 5 303(d) List of Rivers and Streams at 30-32 (Kane Springs Wash assessment unit UT14030005-001; North Cottonwood Creek assessment unit UT14030005-015; Courthouse Wash which includes Mill Canyon Wash assessment unit UT14030005-017).
10. Excerpts from Department of Environmental Quality, Division of Water Quality (“DWQ”), Enclosure 4, River, Stream, Lake and Reservoir Assessment Units Needing a Total Maximum Daily Load (TMDL) Analysis - 2010 303(d) List at 1 (Dolores River, Assessment Unit ID UT14030004-001).