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May 7, 2012

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*Re: Scoping Comments on the Bureau of Land Management’s Moab Master Leasing Plan
and Final Environmental Impact Statement*

Greetings,

In accordance with 77 Federal Register 13,141 (March 5, 2012) the Southern Utah Wilderness Alliance, The Wilderness Society, the Grand Canyon Trust, Living Rivers – Colorado Riverkeeper, the Canyonlands Watershed Council, the National Parks Conservation Association, and the Center for Biological Diversity (collectively “SUWA”) submit the following scoping comments for the Moab Master Leasing Plan (Moab MLP).

As the Bureau of Land Management (BLM) determined, the Moab MLP area has “moderate to high” mineral development potential and “new resource conflicts” associated with mineral (oil, gas and potash) development which are not adequately addressed in the Moab RMP. BLM, Master Leasing Plan (MLP) Assessment Moab at 1 (Nov. 2010). Such conflicts include “impacts from leasing to recreation management objectives, visual resources and National Park Service (NPS) concerns over air quality, night-skies, soundscape and NPS visual resources.” *Id.* at 2.

As a means to resolve those conflicts, the BLM has agreed to reevaluate and revise the Moab RMP’s mineral leasing and development decisions through the preparation of the Moab MLP. We fully support that decision, which furthers the purposes of the Secretary of the Interior’s oil and gas reforms, as set forth in Instruction Memorandum (IM) 2010-117. More importantly, the Moab MLP will allow mineral leasing and development to proceed in an orderly fashion and in appropriate locations, while at the same time the BLM will provide greater protection to national parks, lands with wilderness characteristics, wildlife habitat and other important resource values in the Moab Field Office.

We encourage the BLM to evaluate a broad range of measures for mineral leasing and development in the Moab Field Office, including measures listed in IM 2010-117, as well as measures that successfully resolved resource conflicts in other areas. One such example of these measures, includes the possibility of route closures in areas to protect and improve wildlife habitat, compensating for losses in areas of development (as in the Bill Barrett Corporation West Tavaputs Plateau Project Record of Decision). We also encourage the BLM to engage the full range of interested parties during the planning process for the MLP; such engagement over mineral leasing and development decisions is highly recommended by the IM and in recent years has helped resolve conflicts over several oil and gas projects in Utah. We look forward to working with the BLM, as well as other interested parties, throughout the planning process.

I. The Moab MLP Process Should Identify a Range of Specific Measures to Guide Leasing and Development Through a Process That Provides for Meaningful Stakeholder Input

As discussed in IM 2010-117, MLPs should identify “resource protections” to resolve resource conflicts and these protections “may include lease stipulations for new leases and/or closing certain areas to leasing.” Resource protections for the Moab MLP should address the many important values in the planning area and engage interested parties.

a. The BLM Should Consider a Broad Range of Alternatives for Resource Protections

The range of alternatives is “the heart of the environmental impact statement.” 40 C.F.R. § 1502.14. *See* 40 U.S.C. § 4332(2)(C). NEPA requires BLM to “rigorously explore and objectively evaluate” a range of alternatives to proposed federal actions. *See* 40 C.F.R. §§ 1502.14(a) and 1508.25(c).

NEPA’s requirement that alternatives be studied, developed, and described both guides the substance of environmental decision-making and provides evidence that the mandated decision-making process has actually taken place. Informed and meaningful consideration of alternatives . . . is thus an integral part of the statutory scheme.

Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1228 (9th Cir. 1988), cert. denied, 489 U.S. 1066 (1989) (citations and emphasis omitted).

An agency violates NEPA by failing to “rigorously explore and objectively evaluate all reasonable alternatives” to the proposed action. *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1310 (9th Cir. 1990) (quoting 40 C.F.R. § 1502.14). This evaluation extends to considering more environmentally protective alternatives and mitigation measures. *See, e.g., Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1122-1123 (9th Cir. 2002) (and cases cited therein); *see also Utahns for Better Transportation v. U.S. Dept. of Transp.*, 305 F.3d 1152 (10th Cir. 2002), modified in part on other grounds, 319 F.3d 1207 (2003); *Or. Env’tl. Council v. Kunzman*, 614 F.Supp. 657, 659-660 (D. Or. 1985) (stating that the alternatives that must be considered under NEPA are those that would “avoid or minimize” adverse environmental effects).

Through this MLP, BLM can and should protect natural and cultural values through various management decisions, including by excluding or limiting certain uses of the public lands. *See*, 43 U.S.C. § 1712(e); IM 2010-117. Specific measures that BLM should consider in a broader range of alternatives for the MLP include the following:

- **Close areas to oil, gas and potash leasing to protect natural and cultural values**, such as lands with wilderness characteristics, important wildlife habitat and migration corridors, areas with high potential for cultural resources, and important viewsheds. Areas adjacent to Arches and Canyonlands National Parks should be prioritized for closure and identified in conjunction with input from the National Park Service.
- **Prioritize mineral leasing in areas with high development potential and minimal resource conflicts**, which will support more efficient leasing and development. BLM should consider **phased leasing and development**, which can be accomplished through identifying areas to be leased in order (as BLM did in the Pinedale, WY, RMP)¹ and by using limitations on the amount of cumulative surface disturbance that can occur and requiring reclamation prior to additional development (as BLM did in the Little Snake, CO, RMP).²
- **Allow existing leases to expire in areas with potential resource conflicts and make these areas unavailable for future leasing.** BLM made such a commitment in the Jack Morrow Hills (WY) Coordinated Activity Plan³ for an area that, like the Moab MLP planning area, contains lands with wilderness characteristics, cultural resources, wildlife habitat and other “sensitive” resources, and should do so here.
- **Develop and evaluate best management practices to reduce or resolve resource conflicts:** IM 2010-117 contains a list of best management practices that BLM should explore in the expanded range of alternatives for the MLPs. These practices include drilling multiple wells on a single pad and minimizing or prohibiting new infrastructure, many of which would minimize surface disturbance from oil and gas and potash development in the MLP planning area.
- **Apply route density limitations** to protect wildlife habitat and other sensitive resources, which will not mandate the location of routes associated with development but will require that routes are limited to a specific density that is compatible with other resources. BLM proposed such limitations in the San Juan Public Lands Draft Land

¹*See*

http://www.blm.gov/pgdata/etc/medialib/blm/wy/programs/planning/rmps/pinedale/rod.Par.45058.File.dat/05_Record_of_Decision_and_Approved_Pinedale_RMP.pdf

²*See*

http://www.blm.gov/pgdata/etc/medialib/blm/co/field_offices/little_snake_field/rmp_revision/rod.Par.83246.File.dat/01_LS-ROD_Approved-RMP.pdf

³*See* http://www.blm.gov/pgdata/etc/medialib/blm/wy/field-offices/rock_springs/jmhcap/rod.Par.9393.File.dat/00rod_cap.pdf

Management Plan,⁴ which would cap road densities based on management areas and the sensitivity of resource values. BLM can also apply other metrics to **limit habitat fragmentation** to levels appropriate for key species.

In addition to the direction found in IM 2010-117, BLM should look to the conclusions of an interdisciplinary DOI review team that released its final report and recommendations on 77 contested leases issued in Utah BLM's December 2008 lease sale⁵ ("Stiles Report") in October 2009. Note that these conclusions apply just as much to potash development as they do to oil and gas development. The report made specific recommendations for not only addressing the flaws in the specific parcels, but also the overall approach to leasing decisions, encompassing decisions made in the underlying plans, which includes the Moab Resource Management Plan. Direction from the Stiles Report that should be incorporated in the Moab MLP includes:

- Complete a comprehensive interagency air quality strategy;
- Increase coordination with the National Park Service around Moab;
- Develop best management practices to protect night skies and natural soundscapes;
- Update/complete visual resource inventories and amend visual resource management classifications based on those inventories;
- Prioritize leasing "in areas where development is most likely to occur based on historical development, adjacent development, or geologic information" as opposed to expanding into currently unleased areas;
- Issue guidance on inventorying/managing lands with wilderness characteristics; and
- Modify RMP decisions if needed.

While the existing Moab RMP does not provide an adequate balance between oil, gas and potash development and other uses and values, this MLP process provides a vehicle to provide stronger protections for cultural resources, national parks, recreational opportunities, viewsheds, wildlife, night skies, air quality, and lands with wilderness characteristics. At the same time, addressing resource conflicts in the MLP will provide a path for leasing and development to move forward with less conflicts, as well.

b. The BLM Should Involve the Public and Key Stakeholders in the Development and Evaluation of Alternatives for the Moab MLP

⁴See

<http://ocs.fortlewis.edu/forestplan/DEIS/pdf/Vol2%20Part%203%20DESIGN%20CRITERIA.pdf>.

⁵The report can be found at http://www.doi.gov/documents/BLM_Utah77LeaseParcelReport.pdf.

Public participation is a key part of BLM's planning process, and is paramount to obtaining the "public scrutiny" that is considered "essential to implementing NEPA." 40 C.F.R. § 1500.1(b). BLM's planning guidance and IM 2010-117 also specifically emphasize the importance of opportunities for meaningful public participation. In preparing the Moab MLP, BLM should provide additional opportunities for public involvement before publication of a draft environmental impact statement to obtain maximum input and investment from interested and affected parties.

During the development of the alternatives, BLM should seek input from key stakeholders, such as the National Park Service, conservation groups, oil and gas and potash industries, tribes, counties, and the Utah Division of Wildlife Resources. BLM should also release preliminary alternatives for comment. For instance, the Arizona Strip BLM Office provided preliminary management alternatives, giving the public a chance to submit comments and giving the BLM valuable insight into their management approaches (available on-line at: <http://governor.utah.gov/rdcc/Y2003/03-2902.pdf>). The Las Cruces (New Mexico) Field Office also held workshops and solicited public comments on preliminary alternatives for the Tri-County RMP (*see* RMP Newsletter 3, available at http://www.blm.gov/nm/st/en/fo/Las_Cruces_District_Office/tricounty_rmp.html).

Robust stakeholder engagement will increase the likelihood of a successful MLP process.

II. Alternatives

BLM must consider a no leasing alternative for the Moab MLP area. NEPA requires that BLM prepare a pre-leasing National Environmental Policy Act (NEPA) document that fully considers and analyzes the no leasing alternative *before* the agency engages in an irretrievable commitment of resources (i.e., the sale of non-surface occupancy oil and gas leases or potash leases). *See S. Utah Wilderness Alliance v. Norton*, 457 F. Supp. 2d 1253, 1262-1264 (D. Utah 2006); *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228-30 (9th Cir. 1988) (requiring full analysis of no leasing alternative); *Mont. Wilderness Ass'n. v. Fry*, 310 F. Supp. 2d 1127, 1145-46 (D. Mont. 2004); *S. Utah Wilderness Alliance*, 164 IBLA 118, 124 (2004) (quoting *Pennaco Energy, Inc. v. U.S. Dep't of the Interior*, 377 F.3d 1147, 1162 (10th Cir. 2004)).

BLM has never considered a no leasing alternative in the Moab or Monticello resource management plans (RMPs) and accompanying environmental analyses. Thus, as part of its MLP analysis BLM must consider a no leasing alternative—in addition to a no action alternative.⁶

⁶ A no action alternative is not the same as a no leasing alternative. The no action alternative evaluated in the Moab RMP and Monticello RMP were simply a continuation of the pre-existing management plans. The Moab PRMP dismisses the no leasing alternative by mischaracterizing its implications and conflating it with the no action alternative. *See* Moab PRMP/FEIS at 2-118 to -119. The no leasing alternative does not require BLM to buy back all existing leases. *See* Moab PRMP at 2-118. It simply requires that BLM analyze a program in which no future leases are offered. This is not a useless exercise; it allows BLM to compare the difference in impacts between the no leasing alternative and the development alternatives. BLM must fully analyze the no leasing alternative.

Federal courts have made clear that a no leasing alternative should be a vital component in ensuring that agencies have all reasonable approaches before them. *See, e.g., Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228 (9th Cir. 1988). The Moab and Monticello RMPs did not analyze the possibility of a no leasing alternative. Their previous management framework plans were not NEPA documents and thus did not constitute adequate pre-leasing analyses that considered a no leasing alternative. *Southern Utah Wilderness Alliance et al.*, 164 IBLA 118 (2004). Finally, the brief mention and rejection in the 1976 Oil and Gas Leasing Program, Moab District, Environmental Analysis Report (EAR) of the no leasing alternative was plainly insufficient and cannot be relied upon now for that necessary analysis. *See S. Utah Wilderness Alliance*, 457 F. Supp. 2d at 1262–64 (concluding that Price and Richfield EARs failed to adequately analyze the no leasing alternative). Hence, BLM has *never* had before it the possibility of totally abandoning oil and gas leasing in this planning area, something it is required to consider. *See Bob Marshall Alliance*, 852 F.2d at 1228.

III. The BLM Should Update Its Inventory of Lands with Wilderness Characteristics as Part of This Planning Process and Consider Protecting Inventoried Lands

The Interior Department has recognized the need to update the inventory and management decisions made regarding lands with wilderness characteristics in the Moab Resource Management Plan. An interdisciplinary DOI review team released its final report and recommendations on 77 contested leases issued in Utah BLM’s December 2008 lease sale (“Stiles Report”) in October 2009. The Stiles Report noted the problems in the underlying RMPs, including the Moab RMP, which included “confusion” regarding:

- What constitutes “wilderness characteristics”;
- What areas should be analyzed for their presence;
- How to determine if wilderness characteristics are present;
- How to decide if those areas that had been identified as having wilderness characteristics should be carried forward (or not) in the land-use plans;
- What stipulations are appropriate to protect wilderness characteristics; and
- The degree to which wilderness characteristics on lands not being managed to protect them should still be protected from “unnecessary or undue degradation.”

Stiles Report, at 32-33. The report also identified the lack of national guidance during preparation of the RMPs on these same issues. Consequently, the Stiles Report recommended that national guidance “should be completed and released” and “that BLM-Utah review the plans in light of this new guidance and make necessary modifications.” *Id.* at 33. Now that new guidance is in place, BLM should modify decisions in the Moab RMP that affect lands with wilderness characteristics within the Moab MLP planning area.

a. FLPMA and BLM’s Current Guidance Require the Agency to Inventory Lands for Wilderness Characteristics in Preparing the Moab MLP

Section 201 of FLPMA mandates that BLM maintain an inventory of the resources of the public lands, their resources and values.⁴³ U.S.C. § 1711. In the land use planning process, including

amendments to RMPs, Section 202 of FLPMA requires that BLM take into account the inventory and determine which multiple uses are best suited to which portions of the planning area. 43 U.S.C. § 1712. BLM's mandate of multiple use and sustained yield, as well as other relevant law and the agency's current guidance, provide for inventory and protection of wilderness values, which should also form a part of this land use planning process.

Wilderness character is a resource for which BLM must keep a current inventory and must address in land use planning. As the U.S. Court of Appeals for the Ninth Circuit held:

wilderness characteristics are among the 'resource and other values' of the public lands to be inventoried under § 1711. BLM's land use plans, which provide for the management of these resources and values, are, again, to "rely, to the extent it is available, on the inventory of the public lands, their resources, and other values." 43 U.S.C. § 1712(c)(4).

Oregon Natural Desert Ass'n v. Bureau of Land Management, 531 F.3d 1114, 1119 (9th Cir. 2008). Therefore, BLM is required to consider "whether, and to what extent, wilderness values are now present in the planning area outside of existing WSAs and, if so, how the Plan should treat land with such values." *Id.* at 1143.

BLM's current guidance for complying with its inventory obligations under FLPMA is set forth in Instruction Memorandum (IM) 2011-154, which directs offices to "conduct and maintain inventories regarding the presence or absence of wilderness characteristics, and to consider identified lands with wilderness characteristics in land use plans and when analyzing projects under [NEPA]." The application of this policy is further elaborated in Manuals 6310 (Conducting Wilderness Characteristics Inventory on BLM Lands) and 6320 (Considering Lands with Wilderness Characteristics in the BLM Land Use Planning Process). Manual 6310 directs offices that "regardless of past inventory, the BLM must maintain and update as necessary, its inventory of wilderness resources on public lands." 6310.06.A. Further, the BLM is required to consider updating its inventory when:

1. The public or the BLM identifies wilderness characteristics as an issue during the National Environmental Policy Act (NEPA) process.
2. The BLM is undertaking a land use planning process.
3. The BLM has new information concerning resource conditions, including wilderness characteristics information submitted by the public that meets the BLM's minimum standard described in the Wilderness Characteristics Inventory Process section of this policy.
4. A project that may impact wilderness characteristics is undergoing NEPA analysis.
5. The BLM acquires additional lands.

Id. The Manual also acknowledges that: "There also may be other circumstances in which BLM will find it appropriate to update its wilderness characteristics inventory." *Id.* In the context of

preparing this MLP, BLM has already identified wilderness characteristics as an issue, the ongoing process is characterized as a land use planning process (amending the governing resource management plans), and the MLP will impact wilderness characteristics. Further, previous inventory was conducted without the benefit of the specific guidance contained in IM 2011-154, Manual 6310, or any formal guidance, highlighting the importance of updating the BLM's inventory in this process.

BLM should update its wilderness characteristics inventories in compliance with the new inventory procedures and guidance. The updated inventory should be used to inform development of management alternatives that include protection of lands with wilderness characteristics as discussed in further detail below.

b. The BLM Must Evaluate Opportunities to Protect Lands with Wilderness Characteristics

Manual 6320 applies to land use planning, which includes land use plan revisions and amendments, such as this MLP process. The Manual directs the BLM to “consider the wilderness characteristics of public lands when undertaking land use planning” and to “consider a full range of alternatives for such lands when conducting land use planning.” 6320.06. Manual 6320 requires BLM to “evaluate lands with wilderness characteristic through the land use planning process” and “[w]hen such lands are present, the BLM will examine options for managing these lands and determine the most appropriate land use allocations for them.” 6320.06.A. As discussed further in the Manual, BLM must consider a “full range of reasonable alternatives” for management of lands with wilderness characteristics, which necessarily includes protecting lands with wilderness characteristics, and “where the management decision is not to protect wilderness characteristic, consider measures to minimize impacts on those characteristics.” 6320.06.A.2.d.

Consequently, BLM must evaluate opportunities to protect lands with wilderness characteristics and to minimize impacts to those values. Protecting lands with wilderness characteristics and minimizing impacts in this MLP process can be achieved by closing areas to mineral leasing and by leasing with no surface occupancy without exceptions, waivers, or modifications. 6320.06.A.2.d.

When evaluating the impacts of protecting lands with wilderness characteristics, Manual 6320 requires BLM to “[c]onsider the benefits that may accrue to other resource values and uses as a result of protecting wilderness characteristics” in land use planning processes. 6320.06.A.1.b. BLM should consider whether and how protecting lands with wilderness characteristics in this MLP process would contribute to protecting and recovering the many other values in this planning area, including those identified by the BLM and the public, such as wildlife habitat, cultural resources, national parks, and scenic values. Further, these potential benefits should support a final decision to protect inventoried lands with wilderness characteristics.

BLM should evaluate protection of lands with wilderness characteristics in a full range of alternatives, analyze and acknowledge how such protection will protect other resources, use that analysis to inform decisions on managing lands with wilderness characteristics, and protect lands

with wilderness characteristics by managing them as closed to leasing or no surface occupancy with no exceptions, waivers or modifications.

IV. BLM Should Consider Air Quality Impacts

a. BLM Obligated to Follow Air Quality Standards

The BLM has an obligation under NEPA and the Federal Land Policy and Management Act (FLPMA) to ensure that its leasing plan will conform with federal air quality standards and to disclose whether such a violation is possible. FLPMA requires the BLM to ensure that its approval of the Moab MLP—and the development which flows from it—will comply with all applicable air quality standards. *See* 43 U.S.C. § 1712(c)(8) (requiring BLM to “provide for compliance with applicable pollution control laws, including State and Federal air ... pollution standards or implementation plans”). Regulation extends this same requirement to all BLM leases, permits, and other land use authorizations that might flow from the Moab MLP. *See* 43 C.F.R. § 2920.7(b)(3) (requiring that BLM “land use authorizations shall contain terms and conditions which shall ... [r]equire compliance with air ... quality standards established pursuant to applicable Federal or State law”).

The Clean Air Act (CAA) seeks to achieve its goal of providing for clean air in part by limiting increases in air pollution concentrations. National ambient air quality standards – or NAAQS – set allowable ambient maximums for various pollutants. *See* 42 U.S.C. § 7473(b)(4). Prevention of significant deterioration (PSD) increment limits are another federal air quality standard. These are the maximum concentration of the regulated pollutants permitted by law. *See id.* Without preparing dispersion modeling for all NAAQS and PSD pollutants the BLM cannot know the impacts of these pollutants because it does not know their ambient concentrations. NAAQS and PSD are expressed in terms of specific quantities of pollutants found in the atmosphere at a specific time. The Moab and Monticello RMPs only express pollutants in terms of emissions in a given year, they do not explain how they will linger or congregate in given areas. Thus, BLM has not taken a hard look at these pollutants in the past. The BLM should prepare dispersion modeling as part of the Moab MLP.

b. BLM Should Prepare Modeling to Ensure It Complies with Federal Air Quality Standards

The BLM should prepare modeling for all NAAQS pollutants but particularly for fine particulates (PM_{2.5})⁷ and ozone, which are likely important pollutants here. In addition, the Moab MLP should disclose that the EPA will be revising the ozone NAAQS to a lower standard, a standard which the Moab area will likely violate, according to current monitoring from Canyonlands. For this reason it is critical that the Moab MLP consider the impacts to air quality of potential oil, gas and potash leasing and development through dispersion modeling (as the BLM routinely does in other projects and committed to do in the Moab and Monticello RMPs).⁸

⁷ PM_{2.5} refers to particulate matter that is 2.5 microns in diameter or smaller.

⁸ See examples listed below of BLM projects where the agency has performed some dispersion modeling.

PM_{2.5} is a pollutant subject to NAAQS. *See, e.g.*, 42 U.S.C. §§ 7408, 7409; 40 C.F.R. §§ 50.4 – 50.13. This pollutant is harmful to human health. National Ambient Air Quality Standards for Particulate Matter, 71 Fed. Reg. 2620, 2627-28 (Jan. 17, 2006). Oil and gas development and potash development results in emissions of numerous pollutants that are regulated under the Clean Air Act, including ozone, particulate matter (and specifically PM_{2.5}), nitrogen oxides, sulfur dioxide, carbon monoxide, and hazardous air pollutants.

Air emissions associated with oil, gas, and potash development begin at the surface disturbing stage and continue through full development. *See, e.g.*, Trinity Consultants, Air Quality Assessment Report Vernal and Glenwood Springs Resource Management Plans 17-28 (Jan. 2006) (showing that construction of access roads and well pads results in particulate matter pollution and operational equipment such as compressor stations and dehydrators contribute hazardous air pollutants, nitrogen oxides, sulfur dioxide, carbon monoxide, and volatile organic compounds) (excerpts attached); Sevier Lake Competitive Potash Leasing Proposal, Environmental Assessment DOI-BLM-UT-W020-2010-014-EA, at 65-66 (Feb. 2011) (demonstrating that potash leasing and development can lead to air quality impacts), *available at* http://www.blm.gov/pgdata/etc/medialib/blm/ut/fillmore_fo/minerals.Par.72100.File.dat/SevierEA_Final.pdf; Sevier Dry Lake Exploratory Testing, Environmental Assessment DOI-BLM-UT-W020-2011-0015-EA, at 25-27 (Oct. 2011) (same), *available at* http://www.blm.gov/pgdata/etc/medialib/blm/ut/fillmore_fo/sevierlakeproj.Par.82042.File.dat/Peak_ExploratoryEA_FINAL.pdf. The Moab MLP should not lump fine particulates with course particulates for analysis; it does not allow the BLM to see the specific impacts of the fine particulates and is contrary to guidance from the Environmental Protection Agency (EPA). NAAQS distinguishes between fine particulates, PM_{2.5}, and course particulates, PM₁₀. The BLM must do the same in the Moab MLP.

In an oil and gas project recently approved by the Vernal Field Office, levels of PM_{2.5}—principally from fugitive dust emissions from truck traffic—were projected to be high enough to exceed NAAQS. *See* Buys & Associates, Inc., *Rock House Emissions Inventory* for Stewart Resources' Saddletree Draw Leasing and Rock House Development Proposal, Final Environmental Assessment UT-080-07-671 (Dec. 2007), at Final Tab (excerpts attached) (containing modeling predicting exceedances of NAAQS for particulate matter principally from fugitive dust). Potash development can also lead to extensive fugitive dust generation. *See, e.g.*, Sevier Lake Competitive Potash Leasing Proposal at 65-66; Sevier Dry Lake Exploratory Testing at 25-27. This demonstrates why it is critical for the BLM to model PM_{2.5}, and to do so separately from PM₁₀.

Exposure to one of these NAAQS pollutants—ozone—can lead to adverse health effects in humans ranging from decreased lung function to possible cardiovascular-related mortality and respiratory morbidity. *See, e.g.*, 73 Fed. Reg. 16,436, 16,436 (Mar. 27, 2008). Ozone pollution also contributes to plant and ecosystem damage. *See, e.g.*, 72 Fed. Reg. 37,817, 37,883-95 (July 11, 2007). It damages trees and other plants thereby affecting landscapes in national parks, among other places.⁹

⁹ *See* EPA, Ozone – Good Up High, Bad Nearby (Sept. 3, 2009) <http://www.epa.gov/oar/oaqps/gooduphigh/bad.html>.

The BLM has recently released environmental analyses, for two separate projects that analyzed ozone in the Uinta Basin: the West Tavaputs Plateau Natural Gas Development project and the Anadarko Greater Natural Buttes development. This demonstrates that the BLM is capable of analyzing this pollutant. These projects do not constitute analysis of potential ozone impacts in the Moab MLP area. Rather, they simply demonstrate that such analysis is feasible as it has been accomplished by the BLM in a neighboring district office. As mentioned previously, considering the elevated levels of ozone measured at Canyonlands and the pending release of a stricter ozone standard, it is critical that the Moab MLP undertake this analysis. The Moab MLP must also analyze how ozone pollution will impact Arches and Canyonlands national parks and their air quality related values (AQRVs). See National Park Service, Memorandum from Regional Director to Director, Utah State Office, BLM (Nov. 24, 2008) (NPS Memo) (attached).

c. Importance of Analyzing Cumulative Air Quality Impacts

i. Cumulative Impacts to Air Quality

In 2009 a federal district court issued a temporary restraining order on a determination that the Moab RMP lacked sufficient analysis of the impacts on air quality from oil and gas development in the planning area. See *S. Utah Wilderness Alliance v. Allred*, Civ. No. 08-2187 (RMU), 2009 WL 765882 (D.D.C. Jan. 17, 2009). This determination is still applicable. In fact, with the potential added pollution from potash development as well, this insufficiency is only heightened. The BLM should use the Moab MLP process to rectify these inadequacies in air quality analysis. The Moab BLM does not have adequate cumulative impact analysis to demonstrate that it has taken a hard look at the impacts of all approved activities in the planning area, coupled with the potential oil, gas, and potash leasing and development in the Moab MLP area, on air quality.

The Council on Environmental Quality recognizes that “the most devastating environmental effects may result not from the direct effects of a particular action, but from the combination of individual minor effects of multiple actions over time.” CEQ, *Considering Cumulative Effects Under The National Environmental Policy Act* (1997). As the D.C. Circuit has explained, “[a] meaningful cumulative impact analysis must identify (1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected in that area from the proposed project; (3) other actions – past, present, and proposed, and reasonably foreseeable – that have had or are expected to have impacts in the same area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate.” *Grand Canyon Trust v. Federal Aviation Admin*, 290 F.3d 339, 345-47 (D.C. Cir. 2002). Furthermore, NEPA requires that BLM’s cumulative impacts analysis provide “some *quantified* or *detailed* information,” because “[w]ithout such information, neither courts nor the public . . . can be assured that the [agency] provided the hard look that it is required to provide.” *Neighbors of Cuddy Mountain v. United States Forest Service*, 137 F.3d 1372, 1379 (9th Cir. 1998) (emphasis added).

General statements about ‘possible’ effects and ‘some risk’ do not constitute a ‘hard look’ absent an explanation of why more definitive information could not be provided.” See *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214 (9th Cir. 1998). Cumulative impacts analysis clearly requires that past and present actions be included in the analysis as well. The

Moab MLP is the perfect opportunity for the BLM to analyze the potential cumulative impacts to air quality—in terms of quantified and specific air quality modeling—from activity in this region.

Nearby data shows that this area will soon exceed ozone NAAQS. According to the Monticello RMP, ozone concentrations in the region are nearing NAAQS limits. *See* Monticello PRMP/FEIS at 3-5 to -6 (showing concentrations of ozone in the region that are just below the current NAAQS limit of 0.075 parts per million (ppm)). However, the EPA is currently in the process of revising its NAAQS ozone limits. *See* National Ambient Air Quality Standards for Ozone, 75 Fed. Reg. 2938 (Jan. 19, 2010); *see also* EA at 152. The new range of limits for ozone that the EPA proposes will likely mean that the project area will no longer comply with federal air quality standards. *Compare* 75 Fed. Reg. at 2938 (proposing a new ozone NAAQS between 0.060 and 0.070 ppm), *and* Monticello PRMP/FEIS at 3-5 to -6 (indicating that current ozone levels in Canyonlands National Park are at 0.070 ppm—located adjacent to the proposed development area—and are at 0.073 and 0.072 in Montezuma County, Colorado and San Juan County, New Mexico, respectively—both of which are nearby). The BLM has not prepared any cumulative analysis in the form of quantitative analysis or dispersion modeling to consider impacts to ozone from development in the region. Such analysis is necessary to understand potential ozone formation. The Moab MLP is the opportune document to undertake such analysis.

The National Park Service has reminded BLM that without conducting ozone modeling, BLM does not have the “information necessary to determine whether air quality standards could be violated.” NPS Memo 2. The EPA has also said as much. In response to the Moab RMP, EPA stated, “the absence of detailed dispersion modeling does not provide for confidence that [NAAQS will be met] Ozone is of particular concern.” Letter from Larry Svoboda, Environmental Protection Agency (EPA), to Brent Northrup, BLM Moab Field Office 1-2 (Sept. 12, 2008) (EPA Moab RMP Comments) (attached). The BLM recognizes that modeling is required to assess ozone pollution from oil and gas development. BLM, Response to Public Comments, Comments on the [Moab] Draft EIS by Resource Type 70 (2008) (“Predicting ozone associated with oil and gas development requires air dispersion modeling, which was not used in [the Moab RMP].”). Therefore, the BLM should use the Moab MLP to analyze the impacts of the proposed oil, gas, and potash leasing and development along with other activities on ground-level ozone in the region.

ii. Cumulative Impacts Analysis Must Also Consider Other Sources of Pollution

The Moab MLP should also analyze the significant contributions to particulate matter pollution, and other relevant pollutants, that come from other activities it has authorized in the Moab and Monticello RMPs. The BLM has never considered, through quantified analysis, the contributions from off-road vehicles (ORVs) and other motorized vehicles traveling on routes designated in the Moab and Monticello RMPs’ travel plans. In arid Utah, travel by motor vehicles, including trucks and off-road vehicles, on dirt roads generates a significant amount of dust; in addition, the vehicles themselves produce emissions (e.g. tailpipe emissions). *See, e.g.*, EPA, AP-42, Fifth Edition, Vol. I, Chap. 13, § 13.2.2 (Nov. 2006), *available at*

<http://www.epa.gov/ttn/chief/ap42/ch13/final/c13s0202.pdf> (referencing EPA guidelines for calculating these fugitive dust emissions); Price Field Office Proposed Resource Management Plan and Final Environmental Impact Statement 4-5 (2008), *available at* http://www.blm.gov/pgdata/etc/medialib/blm/ut/price_fo/Planning/PRMP/PRMP_Vol1.Par.6229.File.dat/Vol_2_04_Chapter4.pdf (stating that off-highway vehicle use and truck traffic on unpaved roads creates dust and vehicle emissions); Trinity Consultants, Air Quality Assessment Report at 25-28 (calculating fugitive dust emissions for vehicles related to oil and gas development).

Fugitive dust from vehicular travel is a significant health and environmental issue. EPA told BLM in its comments on the nearby Price RMP that “[f]ugitive dust conditions on ... county roads may approach the NAAQS for particulate matter.” Letter from Larry Svoboda, EPA, to Selma Sierra, BLM 8 (Oct. 2, 2008) (EPA Price RMP Comments) (attached). Oil, gas, and potash projects create significant fugitive dust. *See supra* (referring to Buys & Associates, Inc., *Rock House Emissions Inventory*); *see, e.g.*, Sevier Lake Competitive Potash Leasing Proposal at 65-66; Sevier Dry Lake Exploratory Testing at 25-27.

The Moab and Monticello RMPs did not consider the ambient concentrations of fugitive dust emissions from the authorized motor vehicle use (e.g. use approved in the Moab and Monticello travel plan), let alone the concentrations in combination with oil, gas, and potash development. Indeed, just as the Price RMP acknowledges that “[a]ir quality emissions were not considered in Travel Plan decisions within the Draft [RMP] or the Proposed [RMP]” the Moab and Monticello RMPs also did not consider these emissions. Price RMP, Public Comments and Responses – Price Draft RMP/EIS WC Supplement – September 2007, Sorted by Category 8, *available at* http://www.blm.gov/pgdata/etc/medialib/blm/ut/price_fo/Planning/PRMP.Par.91386.File.dat/2007_09_PriceDraftRMPEIS_WldrnsSup_CmmtsandResponsesCategory.pdf. The BLM should take the opportunity in the Moab MLP to consider these sources of pollution when evaluating cumulative impacts. Such information is vital in determining the appropriate level of oil, gas and potash development in the MLP area.

These procedures for calculating and assessing fugitive dust are familiar to the BLM as they have been applied in other areas. *See* Tumbleweed II Exploratory Natural Gas Project, Environmental Assessment DOI-BLM-UTG010-2009-0090-EA, at App. D (2010) (Tumbleweed II EA), *available at* http://www.blm.gov/pgdata/etc/medialib/blm/ut/vernal_fo/planning/tumbleweedii0.Par.10179.File.dat/AppendixD.pdf (calculating fugitive dust emissions for vehicles related to an oil and gas project); *see also* Trinity Consultants, Air Quality Assessment Report at 25-28 (calculating fugitive dust emissions for vehicles related only to oil and gas development). The BLM also knows how to calculate the fugitive dust emissions that are generated by wind erosion acting on exposed soils. *See, e.g.*, Tumbleweed II EA App. D at 7 (containing formula for the effects of wind erosion on exposed soils, expressed in varying particulate sizes).

To illustrate the significance of this pollution generated by ORV use on designated trails, SUWA provided an analysis by an air quality expert which examined likely emissions from three routes in the Monticello Field Office planning area. *See* Megan Williams, Fugitive Dust Inventory – ORV Travel on Unpaved Routes (Oct. 3, 2008) (attached). This emissions inventory was developed using the EPA’s guidance on estimating fugitive dust emissions from vehicle travel on

unpaved roads and generally follows the instructions and recommendations that SUWA set forth in a June 18, 2008 letter to the Moab and Monticello field offices. *See, e.g., id.*; Letter from Scott Braden, SUWA, to Thomas Heinlein, Monticello Field Office (June 18, 2008) (attached). These estimates indicated how the Monticello Field Office—but are equally applicable to the Moab Field Office—should have inventoried fugitive dust from those routes that are designated as part of the RMP’s route designation plan. This inventory demonstrates how severely inadequate the Monticello Field Office’s—and the Moab Field Office’s—emissions inventory was because of its failure to inventory fugitive dust from vehicle travel on designated routes and from the mere existence of routes, which are then susceptible to wind erosion.

The inventory prepared by SUWA’s air quality expert showed that estimated vehicle travel on the Valley of the Gods scenic byway—some sixteen miles of unpaved road—could result in up to 5.6 tons per year of PM_{2.5} and 55.8 tons per year for PM₁₀. Williams, Fugitive Dust Inventory. This single route alone surpassed the Monticello RMP’s projected yearly emissions for PM₁₀ (thirty-one tons per year). Monticello RMP at 4-29. It alone nearly matched the Monticello RMP’s projections for PM_{2.5} (seven tons per year) from all activities approved by the RMP. *Id.* The expert also projected emissions for two other routes in the Monticello Field Office. *See* Williams, Fugitive Dust Inventory. These two routes, combined, consisted of thirty-eight miles of unpaved surface; they would likely contribute up to 51.2 tons per year of PM₁₀ and 5.1 tons per year of PM_{2.5}. *Id.* In all, vehicle travel on the three routes analyzed by the expert could result in up to 107.0 tons per year of PM₁₀ and 10.7 tons per year of PM_{2.5} from fifty-four miles of unpaved routes. *Id.* These estimates were three times the projected PM₁₀ emissions and nearly one and one-half the projected PM_{2.5} emissions in the entire Monticello RMP. *Compare id., with* Monticello RMP at 4-29. Considering that the Monticello RMP designated 2,800 miles of unpaved routes in the planning area, it is certain that BLM emissions inventory substantially understated the true impacts from the activities permitted and envisioned in that plan. If one were to extrapolate these estimates to the full 2,800 miles of unpaved routes designated in the Monticello RMP then PM₁₀ emissions would be approximately 5,548 tons per year and PM_{2.5} emissions would be approximately 555 tons per year, well above the Monticello RMP’s predictions.

Therefore, the Monticello RMP significantly understated particulate matter pollution in the planning area; the Moab RMP has done the same. The BLM should inventory likely fugitive dust emissions from vehicular travel on designated routes as well as wind erosion on those routes, differentiated for PM₁₀ and PM_{2.5}, in order to begin to understand the true cumulative impacts of ongoing and reasonably foreseeable activities on air quality in the MLP area. BLM should then perform dispersion modeling to know how individuals, plants, and wildlife will be affected by these activities.

The BLM has the tool and wherewithal to model for all criteria pollutants. The BLM’s Vernal RMP performed dispersion modeling for all NAAQS criteria pollutants, with the exception of ozone. Vernal RMP at 4-14 to -34. This demonstrates that the BLM may also prepare such cumulative analysis for the Moab MLP.

The Moab and Monticello RMP’s lack of cumulative impacts analysis of the air impacts of oil, gas and potash development and motor vehicle use on routes designated in the Moab RMP

means that it does not know whether it has authorized activities that will result in, or are now exacerbating ongoing exceedances of federal air quality standards thereby affecting public health. The BLM should perform dispersion modeling in the Moab MLP to accurately assess impacts to all criteria pollutants.

iii. BLM Does Not Prepare Modeling at the Site Specific Stage, It Should Therefore Prepare Modeling Now

The Moab RMP's Record of Decision was signed on October 31, 2008. Before this RMP was finalized, however, EPA Region 8 submitted comments on the BLM's final environmental impact statement. EPA Moab RMP Comments. The EPA's comments identified the lack of adequate air quality analysis and called into question the BLM's decision not to perform quantitative air quality analysis at the land use planning stage. *See id.* at 1-3. Specifically, the EPA stated that "the absence of detailed dispersion modeling [did] not provide for confidence that" the BLM's projection that pollution concentrations in the planning area would remain below national ambient air quality standards (NAAQS). *Id.* at 1. Furthermore, the EPA recommended that the BLM commit, in the Record of Decision, to conduct quantitative air quality analysis "for project-specific assessments performed pursuant to NEPA." *Id.* at 2. In response to EPA's comments, the BLM committed to conduct quantitative air quality analysis "as appropriate" for project-specific developments. Moab RMP at 5-120 to -121. However, it is now clear that the BLM's Moab Field Office does not in fact intend to conduct site-specific quantitative analyses for oil and gas development projects for all criteria pollutants—or potash development or any other surface disturbing activities—and is therefore ignoring the substantial cumulative impacts of these activities on air quality.

For example, the BLM's Moab Field Office has analyzed at least the following oil and gas projects, since the Moab RMP became effective, without conducting quantitative air quality analyses:

- Three wells analyzed in the Whiting Threemile Wells Environmental Assessment, UT-060-2008-178 (Nov. 21, 2008).
- Twelve wells analyzed in the Delta Greentown Field Exploratory Environmental Assessment, UT-060-2008-098 (Nov. 25, 2008).
- Fifteen wells analyzed in the Middle Mesa and Bull Horn Wells, Environmental Assessment DOI-BLM-UT-060-2009-0033-EA (May 30, 2009).
- One well analyzed in the Gunnison Valley Fee 22-9 Horizontal Leg, Categorical Exclusion Review and Approval, DOI-BLM-UT-Y010-2009-0170-CX (Oct. 20, 2009).
- Four wells analyzed in the Gunnison Valley Wells, Environmental Assessment DOI-BLM-UT-Y010-2010-0015-EA (Jan. 2010).
- One well analyzed in the National Fuel Corporation Westwater 32-13 Well, Environmental Assessment DOI-BLM-UT-Y010-2009-0093-EA (Jan. 14, 2010).

- Nine wells analyzed in the Big Flat Area 9-Well Oil and Gas Exploration Project Fidelity Exploration and Development Company, Environmental Assessment DOI-BLM-UT-Y010-2010-0117-EA (July 2011).¹⁰

Since the approval of the Moab RMP the Moab Field Office has prepared environmental analyses for at least forty-five oil and gas wells. None of these analyses included any dispersion modeling. Thus, since the Moab RMP was approved, the BLM has approved significant oil and gas development in the field office without any dispersion modeling. The same is true for potash development and for other site-specific approvals in the Moab Field Office. The same could be said for the Monticello Field Office. BLM clearly has been avoiding dispersion modeling for activities in the Moab MLP area. Now is the time for the agency to tackle this issue.

Without explanation, some recent oil and gas projects approved in the Moab Field Office have begun to include emissions inventories but not dispersion modeling.¹¹ However, as the EPA has previously indicated, without dispersion modeling the public cannot be assured that the BLM is observing NAAQS and other federal air quality standards. *See* EPA Moab RMP Comments at 1.

Modeling is particularly important here because, as the EPA explained to BLM “monitored data from Canyonlands National Park has shown an increasing trend upwards near EPA’s new ozone NAAQS.” *Id.* at 2. Canyonlands National Park sits adjacent to the Moab MLP. The National Park Service explained that in 2008 ozone levels at Canyonlands reached 0.075 parts per million, the NAAQS limit. NPS Memo at 2. The National Park Service has also stated to BLM in no uncertain terms that

[t]he air quality analyses that BLM has performed [for the Moab RMP] do not provide the information necessary to determine whether air quality standards could be violated, or if visibility and other [air quality related values (AQRVs)] could be adversely impacted. We believe a study using appropriate air quality models, and considering all other regional sources, needs to be done prior to lease offerings to determine whether additional safeguards are needed to keep the area as attainment and protect AQRVs.

NPS Memo at 2.

Thus, despite the fact that the Moab and Monticello field offices have ambient concentrations of pollutants near NAAQS and despite the fact that the EPA specifically asked the BLM to commit to site-specific analysis of oil and gas development projects, BLM’s practice has been to avoid dispersion modeling for all oil and gas development activity—as well as all other pollution-

¹⁰ Available at

http://www.blm.gov/pgdata/etc/medialib/blm/ut/moab_fo/oil_and_gas_lease.Par.12689.File.dat/Fidelity%20FINAL%20EA%20wo%20Appendices.pdf.

¹¹ *See* Proposed Greentown Development, Air Emissions Analysis (Nov. 2009), accompanying the Gunnison Valley Wells Environmental Assessment; Westwater #32-13 Drilling Emissions Estimate (Nov. 30, 2009), accompanying the National Fuel Corporation Westwater 32-13 Well Environmental Assessment.

generating activity—in the field office. The BLM should use the Moab MLP to rectify this situation and prepare a full cumulative impacts analysis making use of dispersion modeling for all NAAQS criteria pollutants.

iv. BLM Should Not Reference the Uinta Basin Air Quality Study

The Moab MLP must not rely on the discredited and plainly inadequate Uinta Basin Air Quality Study (UBAQS) for air quality analysis. UBAQS does not analyze potential pollution beyond 2012 and is of no value here for that reason alone. Furthermore, the EPA has informed the BLM that the “EPA, the National Park Service, and the Forest Service, recognized that there were important shortcomings in the UBAQS modeling protocols that will need to be improved to meet the provisions of NEPA.” Letter from Larry Svoboda, EPA, to Bill Stringer, BLM 2 (Oct. 16, 2009) (attached). The EPA reminded the BLM that the agency has already entered into a memorandum of understanding with IPAMS that “the UBAQS effort was not an analysis undertaken pursuant to provisions of NEPA.” *Id.* at 7. The EPA also lists the most significant flaws of UBAQS. *See id.* First, the PM_{2.5} and PM₁₀ “values could be over the NAAQS, but there is little to no discussion of what is causing such impacts.” *Id.* Second, UBAQS poor ability to predict high PM_{2.5} values (in other words, the model does not match up with the high values of PM_{2.5} recorded in Vernal). *See id.* And third, UBAQS takes a limited analysis, examining only pollutant concentrations in 2006 and 2012. *See id.* The EPA also indicates that UBAQS has likely “understated by large amounts” off-road mobile source emissions. *Id.* at 8.

Ironically, UBAQS actually predicted exceedances of the ozone NAAQS in the Uinta Basin and it shows exceedances for San Juan County too. *See* IPAMS, Uinta Basin Air Quality Study (UBAQS) TS-10, TS-28 to -29 (June 30, 2009), available at http://ipams.org/wp-content/uploads/UBAQS_Final_Report_Jun30_2009.pdf (showing predicted exceedances of the ozone NAAQS 0.075 parts per million standard in the Uinta Basin and showing 2006 exceedances of NAAQS in the project area). Furthermore, the predicted concentrations for ozone in much of the MLP area will violate the new standards proposed by the EPA for the ozone NAAQS. *Compare id.* (showing probable concentrations above 0.070 ppm in all of San Juan County in 2012), with 75 Fed. Reg. at 2938 (proposing a new NAAQS limit for ozone between 0.070 and 0.060 ppm). UBAQS also predicts exceedances of the 24-hour maximum average NAAQS for PM_{2.5} and PM₁₀. *See* Letter from Svoboda to Stringer at 9. Therefore, if the BLM is to rely on UBAQS for cumulative impacts analysis it will need to prevent future leasing and development in order to maintain federal air quality standards.

UBAQS relies on old, Western Regional Air Partnership (WRAP) Phase II data, rather than the updates WRAP Phase III data. UBAQS does not evaluate the contributions of oil shale and tar sands development predicted for the Uinta Basin, nor does it consider ORVs and other motorized travel on designated routes, which are also shortcomings in the Monticello RMP. *See supra.* UBAQS does not make use of the recent PM_{2.5} data collected from monitoring in the Uinta Basin. Finally, UBAQS has never been subject to public comment and is an air quality analysis that was prepared by IPAMS, an oil and gas industry trade group. *See, e.g.,* IPAMS, About IPAMS, <http://ipams.org/about-ipams> (last visited May 24, 2010). UBAQS does not satisfy the BLM’s NEPA obligation and is not a satisfactory analysis of cumulative impacts. Letter from

Megan Williams to David Garbett, SUWA 5-6 (June 25, 2010) (attached). All of these factors demonstrate that the BLM should not rely on UBAQS for cumulative air quality analysis.

V. BLM Should Consider Climate-Related Impacts

The Moab MLP should consider the impacts of climate change on the MLP area as well as the potential contributions of oil, gas, and potash leasing and development on climate change. Neither the Moab RMP nor Monticello RMP has analyzed these impacts. Now is the appropriate, and legally mandated time for the BLM to undertake such analysis.

The BLM should review and emulate the Climate Change Supplementary Information Report prepared for the Montana, North Dakota, and South Dakota BLM. Available at http://www.blm.gov/pgdata/etc/medialib/blm/mt/blm_programs/energy/oil_and_gas/leasing/eas.Par.26526.File.dat/SIRupdate.pdf. This document provides model discussion of the phenomenon of climate change as well as the preparation of greenhouse gas emission inventories. The Moab MLP should emulate these facets of this document.

The Moab MLP should also discuss how climate change in conjunction with any planned leasing and development will cumulatively effect vegetation, wildlife, and other resources in the MLP area.

The EPA has provided a succinct recommendation for how greenhouse gas emissions should be analyzed. See Letter from Larry Svoboda, EPA, to Keith Rigrup, BLM 8-9 (Dec. 8, 2009) (attached). The BLM should follow those recommendations here.

The BLM should also require the adoption of recommended technologies and practices found in the EPA's Natural Gas STAR Program. See EPA, Recommended Technologies and Practices, <http://www.epa.gov/gasstar/tools/recommended.html> (Feb. 2, 2012). These technologies and practices will serve to limit the impacts of oil and gas development in the MLP area on climate change.

VI. BLM Should Evaluate Potential Contributions to Regional Climate Change and Dust on Snow Problems

It is critical that the Moab MLP evaluate the potential contributions of the activities it envisions on soil disturbance which leads to early snowmelt in nearby mountains when transported in wind storms. It should also analyze the potential cumulative impacts in this arena from other ongoing, planned, and reasonably foreseeable future activities in the planning area, as neither the Moab RMP nor the Monticello RMP have undertaken such analysis.

The problem of disturbed desert dust causing regional climate change and early snowmelt is discussed in numerous recent scientific articles. See, e.g., J.C. Neff *et al.*, *Increasing Eolian Dust Deposition in the Western United States Linked to Human Activity*, *Nature Geoscience* 1, Advanced Online Publication, 189 (2008) (attached) (documenting how the dust on snow phenomenon is largely coincidental with increased settlement of the American West); Thomas H. Painter *et al.*, *Impact of Disturbed Desert Soils on Duration of Mountain Snow Cover*,

Geophysical Research Letters, vol. 34, L1202 (June 23, 2007) (attached) (describing how dust on snow leads to early snow melt); Thomas H. Painter *et al.*, *Response of Colorado River Runoff to Dust Radiative Forcing in Snow*, Proceedings of the National Academy of Sciences of the United State of America (Sept. 20, 2010) (describing the extent of early snowmelt in the entire Upper Colorado River Basin) (attached). Recently, scientists estimated that disturbed desert soils traceable to settlement of the American West landing on mountain snowpack in the Upper Colorado River Basin was resulting in a net loss of approximately 5% of the annual flow of the Colorado River as measured at Lees Ferry. See Painter *et al.*, *Response of Colorado River*. It is likely that most of this dust on mountain snowpack is coming from nearby lands, where soil-disturbing activity makes lands susceptible to wind erosion; activities such as energy development, off-road vehicle use, and grazing serve to destabilize soils. See, e.g., Jayne Belnap *et al.*, *Dust in Low Elevation Lands: What Creates It and What Can We Do About It?*, Presentation, Colorado River District Seminar, Grand Junction, Colorado (Sept. 18, 2009), http://www.crwcd.org/media/uploads/2009_09_18_Belnap_Seminar.pdf.

As the EPA mentioned in its comment letter to the BLM regarding the recent Cedar City RMP scoping, the dust on snow issue is significant in the West. See Letter from Svoboda to Rigtrup at 3. The BLM's management of the Moab MLP planning area can have a significant impact on the amount of disturbed desert dust that makes its way to the nearby mountain ranges. The best way to address this problem is to limit surface disturbance. The Moab MLP should discuss how leasing and subsequent development decision it makes will, or will not, help to alleviate dust on snow problems.

The methodology for inventorying dust generation, discussed above, could be applied to any activity that will cause fugitive dust (e.g. mining, potash development, oil and gas development, grazing) in order to estimate total dust emissions. Disclosing this information is a necessary step in the NEPA process and in ensuring that the public receives all the information necessary begin to understand these impacts. Although there may not yet be a widely accepted method for modeling dust on snow impacts at the present time, BLM should still attempt to create an emissions inventory for fugitive dust for the various alternatives it analyzes in the Moab MLP. This would allow BLM and the public to understand the differences between the impacts of the various alternatives, impacts that would likely significantly influence the dust on snow problem. The Moab MLP should not attempt to shirk such analysis by suggesting that no models exist to accurately predict the effects of surface disturbance on dust on snow problems. The BLM may use qualitative methods to analyze this problem.

VII. BLM Should Consider Water Quality Impacts

In addition to complying with 43 U.S.C. § 1712(c)(8) and 43 C.F.R. § 1610.5-3, BLM must meet 43 C.F.R. § 2920.7(b) which requires that “[e]ach land use authorization shall contain terms and conditions which shall . . . [r]equire compliance with . . . water quality standards established pursuant to applicable Federal and State law.” There are several EPA approved TMDLs within the Moab MLP planning area, including Onion Creek, Mill Creek and Ken’s Lake, the terms of which must be followed. See <http://www.waterquality.utah.gov/TMDL/> (listing approved TMDLs). There are also several impaired water bodies listed on the state of Utah’s approved 2010 303(d) list within the Moab MLP planning area. See <http://www.waterquality.utah.gov/WQAssess/currentIR.htm>. BLM must not approve any

activity which would lead to further impairment of these streams and lakes. NEPA also requires that BLM indicate that lessees and/or operators might need to obtain permits for the discharge of storm water from culverts or diversion ditches that would be built as a result of energy development. *See* 40 C.F.R. § 1502.25(b). Stormwater runoff from diversion ditches and culverts have been recognized as “point source discharges” for which a National or Utah Pollution Discharge Elimination System Permit (NPDES or UPDES permit) is required under the Clean Water Act. *See, e.g., Northwest Envtl. Defense Center v. Brown*, 640 F.3d 1063, 1069-73 (9th Cir. 2011); *see id.* at 1070 (comparing point and nonpoint source pollution).

VIII. BLM Should Consider Impacts on National Parks and State Parks

The Moab MLP should evaluate the potential impacts from oil, gas, and potash leasing and development on nearby Arches and Canyonlands national parks. It should also consider impacts to Dead Horse Point State Park. The Moab and Monticello RMPs do not adequately evaluate potential impacts in this regard.

One potential impact that the Moab MLP should consider is denigration and development within the viewshed of Arches, Canyonlands, and Dead Horse Point.

Mineral and energy development adjacent to and within the view of national and state parks can severely mar the landscape and diminish the scenic qualities that draw millions of visitors to southern Utah national parks each year as well as state parks. The Colorado Plateau is a vast, wide, open landscape that affords incredible views, in some cases 360 degree views of undeveloped land for significant distances. Public land management boundaries are indistinguishable to most visitors. Therefore, the BLM should analyze and consider how the national parks’ visual resources will be impacted by potential oil, gas, and potash leasing and development. Specifically, the infrastructure required for this type of development—road building, drill pads, haul trucks, and evaporation ponds—could diminish the appeal of these remote, protected landscapes of the Colorado Plateau if they are allowed to cover the lands within the viewshed of the national and state parks.

For example, currently, the Moab RMP makes available for oil and gas leasing lands that form part of the backdrop at Delicate Arch. This viewshed is inappropriate for leasing. The same can be said for the viewshed from Dead Horse Point State Park. Many of the lands within view of this incomparable overlook are also available for leasing with only minor surface and timing limitations. Any area within view of overlooks at Deadhorse Point State Park should be closed to leasing or subject to no surface occupancy (NSO) limitations. The Island in the Sky overlooks in Canyonlands National Park, such as the Grand View Point, the White Rim Overlook, and the Buck Canyon Overlook viewsheds should be protected from all surface disturbance related to oil, gas and potash development. Potash leasing and development in the recently identified Ten Mile KPLA, Hatch Point area, and lands immediately west of Arches National Park also threaten park resources and should be fully considered in the Moab MLP.

The National Park Service has previously raised issues related to oil and gas leasing in the Hatch and Lockhart Basin areas because of potential impacts to park viewsheds. *See* NPS Memo. It has also raised issues with oil and gas leasing west of Arches National Park because of impacts

to viewsheds. *See id.* These outstanding issues from the BLM's December 2008 oil and gas lease sale in the National Park Service's comments should be addressed in the Moab MLP. *See generally id.*

The Moab MLP should also consider the potential impacts on noise and night skies at the national parks and state park. Any leasing that could lead to development in the Moab MLP that will be audible from these locations should be eliminated. Likewise, the Moab MLP must consider how development may be visible at night from these parks.

The NPS manages park units to protect natural, cultural, and historic sounds fundamental to the purposes and values for which the parks were established. The NPS Natural Sounds Program Mission is "...to protect, maintain, or restore acoustical environments throughout the National Park System." Noise impacts the acoustical environment by obscuring the listening environment for both visitors and wildlife. An appropriate acoustical environment is also an important element in how visitors experience the cultural and historic resources in the national parks. Places of deep quiet are most vulnerable to noise. Therefore, wildlife in remote wilderness areas and park visitors who journey to these quiet places are likely to be especially sensitive to noise. According to the National Park Service, Arches and Canyonlands have some of the lowest ambient sound levels measured out of 65 NPS units. The Moab MLP must analyze this resource and protect the soundscape of the national parks from the sound of oil, gas, and potash development.

Finally, clean air is also an important park resource, both for vistas as well as for the health and safety of plants, animals, and visitors. This importance is emphasized by the designation of Arches and Canyonlands national parks as "Class I areas" under the Clean Air Act. The BLM is also instructed to consider air quality related values in national parks. The Moab MLP should consider these important designations in its analysis and protect the airshed of the Arches, Canyonlands, and Deadhorse Point.

Visitors to national parks and wilderness areas consistently rate visibility and clear scenic vistas as one of the most important aspects of their experience.¹² Particulate matter, nitrogen oxides, sulfur dioxide, and VOCs are haze-causing pollutants that obscure scenic vistas in national parks by impairing a viewer's ability to see long distances, color, and geologic formation. The Moab MLP must endeavor to protect these vistas by limiting these pollutants.

IX. BLM Should Consider Impacts to Recreation

The BLM should consider the impacts of its potential oil, gas and potash leasing and development decisions on recreation in the Moab MLP area.

One tool that will facilitate the BLM's analysis in this area is the National Visitor Use Monitoring (NVUM) Program for the Moab Field Office. This NVUM Program was developed through an interagency agreement with the Forest Service to be useful, in part, for making

¹² Clean Air Task Force, *Out of Sight: Haze in Our National Parks*, available at http://www.catf.us/resources/publications/files/Out_of_Sight.pdf (last visited May 7, 2012).

decisions during the planning process. BLM's website on the program explains the NVUM's relevance and applicability:

Such visitor monitoring information enables BLM to incorporate statistically valid visitor use monitoring information into planning and management decisions as well as long-term monitoring assessment. The [Forest Service] NVUM system provides BLM with accurate data with high confidence levels for reporting to Congress and constituents, thereby building credibility and establishing legal protection in decision-making.

BLM, Visitor Use Surveys & Research,

http://www.blm.gov/wo/st/en/prog/Recreation/national_recreation/visitor_use_surveys.html

(Oct. 20, 2009).

Because the NVUM is the best data BLM has on recreational uses in the Moab Field Office to date, its findings and conclusions should have been incorporated into BLM's Moab MLP. BLM, National Visitor Use Monitoring Results for Moab Field Office (Dec. 2007), *available at* <http://action.suwa.org/site/DocServer/BLMNVMsurveyMoab.pdf?docID=2821> (last visited May 1, 2012).

As stated in the NVUM:

In terms of total participation, the top five recreation activities of the visits to the Moab Field Office were viewing natural features, hiking/walking/trail running, relaxing (hanging out, escaping heat and noise), viewing wildlife and driving for pleasure (Table 16). Each visitor also indicated what activity was their main reason for coming to the BLM for that visit. The top main activities were hiking/walking/trail running, bicycling (including mtn. bikes), driving passenger cars for pleasure, viewing natural features, and non-motorized water travel.

NVUM at 12. In addition, Table 16 has the following relevant and significant findings:

- Of survey respondents, around 43% participate in strictly non-motorized activities, including hiking, biking, non-motorized water travel, rock climbing, fishing, horseback riding, and camping in primitive areas.
- Adding in activities that were most likely non-motorized, but could have also been motorized (e.g. viewing natural features, relaxing, visiting historic sites, and viewing wildlife), the number jumps to 59%.
- Only 18% of respondents said that their main activity is a strictly motorized activity such as driving a passenger vehicle for pleasure, riding a dirt bike or ATV, driving a 4WD vehicle, motorized water activities, camping in undeveloped sites, and snowmobiling. If limited to riding a dirt bike, ATV, or 4WD vehicle as their main activity, the number drops to 6% of the respondents.

The survey shows that non-motorized recreation is unequivocally favored by a wide margin in the Moab Field Office. It also helps the BLM understand why and how people are recreating in the Moab MLP area and how oil and gas leasing and development could impact this.

BLM has an obligation under its ORV regulations “to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands.” 43 C.F.R. § 8342.1. The NVUM provides BLM with the information to manage the Moab MLP planning area to provide recreation opportunities that are representative of the interests expressed in the NVUM. Currently, the existing Moab and Monticell RMPs heavily favor motorized use, which will aggravate, rather than minimize conflicts.

Many people use the Moab Field Office as a destination for recreation. In fact, according to Figure 1 of the NVUM, 81% of those who agreed to be interviewed said they came to the Moab Field Office for recreation. NVUM at 6. Of those, a smaller sample of only recreationists was interviewed about their primary purpose for coming to the Field Office. 68% of those survey respondents said that their primary purpose for coming to this area is as a recreation destination, as opposed to a side trip, a recreation trip where the destination was somewhere else, or other trip purposes. NVUM at 16. When asked what they would do if they could not come to the Moab Field Office for recreation, 62% said they would have gone elsewhere for the same activity. *Id.* Thus, recreation is an extremely important value to those who come to lands within this particular field office and in the Moab MLP area.

X. BLM Should Consider Socioeconomic Impacts

The Moab MLP should consider the socioeconomic impacts from oil, gas, and potash leasing and development. These impacts include not only the potential benefits from the development of these resources but also the costs and tradeoffs from their development. Oil, gas, and potash development could have substantial, adverse socioeconomic impacts in the Moab MLP area. These impacts are particularly likely to come from harm to recreation and tourism, harm to ecological services, and harm to air and water quality.

National parks and other federally and state managed lands are a huge economic draw to southern Utah and the Moab MLP area. The BLM should consider the economic implications of oil, gas, and potash leasing and development and their potential to degrade the very resources that draw so many visitors to the area. For the national parks alone, in 2010, nearly 1.5 million (1,450,313) visitors to Arches and Canyonlands national parks contributed approximately \$150 million (\$144,177,381) to the regional economy sustaining over 2,300 jobs. Headwaters Economics, Economic Impact of National Parks <http://headwaterseconomics.org/headwaters/economic-impact-of-national-parks/> (last visited May 7, 2012).

The Moab MLP should also consider the potential adverse socioeconomic impacts from oil, gas, and potash leasing and development on recreation on BLM lands in the Moab MLP area. Recently, a study was released that highlights the economic importance of the Colorado River; the BLM should review this study and incorporate its findings in the Moab MLP analysis and decision. *See* Southwick Assoc., Economic Contributions of Outdoor Recreation on the

Colorado River & Its Tributaries (May 3, 2012), available at http://protectflows.com/wp-content/uploads/2012/05/Colorado-River-Recreational-Economic-Impacts-Southwick-Associates-5-3-12_2.pdf.

The Moab MLP should quantify the costs of increased air and water pollution from any potential development that might result from the Moab MLP. The Moab MLP should also quantify the cost of ecological services that might be lost as a result of oil, gas, or potash development in the area. These ecological services could include such processes as water filtration or soil stabilization.

XI. BLM Should Consider Viewsheds

In addition to the potential impacts to the viewshed of national and state parks, the Moab MLP should consider impacts to the viewshed of scenic vistas on BLM-managed lands.

The viewsheds at the Needles Overlook, Anticline Overlook, Canyonlands Overlook, the Monitor and Merrimac Overlook, and the Needle's access highway in Indian Creek, for example, should all be free from the sights of future oil, gas, and potash development.

The Moab MLP should include a viewshed analysis to ensure that such viewsheds will be protected.

XII. BLM Should Consider Eligible and Suitable Wild and Scenic River Segments

As part of the Moab MLP process, the BLM should consider the designation of eligible and suitable Wild and Scenic River segments within the planning area. This will necessitate a new analysis of which river segments may be eligible and suitable in the Moab MLP area.

The Wild and Scenic Rivers Act (WSRA) requires federal agencies, including BLM, to consider the potential for national wild, scenic and recreational river areas in all planning efforts, including in the Moab MLP process. 16 U.S.C. § 1276(d)(1). During the first WSRA review phase, BLM must determine which river segments are "eligible" to be considered part of the National Wild and Scenic Rivers System (NWSRS). 16 U.S.C. § 1273(b). Eligible river segments are those that are free-flowing and have at least one outstandingly remarkable value, including but not limited to "scenic, recreational, geologic, fish and wildlife, historic, and cultural" values. 16 U.S.C. §§ 1271, 1273(b). Eligible segments are then given a tentative classification of "wild," "scenic," or "recreational," based on the level of human development associated with that segment. *Id.* § 1273(b)(1)–(3); BLM Manual § 8351.32 Wild and Scenic Rivers – Policy and Program Direction for Identification, Evaluation and Management (Dec. 22, 1993), *hereinafter* "BLM Manual." Eligibility involves solely river values; no other concerns, e.g. manageability or resource conflicts, are considered at this stage.

Once BLM determines that a river segment is eligible, "its identified outstandingly remarkable values shall be afforded adequate protection, subject to valid existing rights, and until the eligibility determination is superseded, management activities and authorized uses shall not be

allowed to adversely affect either eligibility or the tentative classification.” BLM Manual § 8351.32(C); *see also* BLM Manual § 8351.33(A).

After determining which river segments are eligible, and protecting them accordingly, BLM must then determine which eligible segments are “suitable” for inclusion in the NWSRS. The “suitability” determination considers tradeoffs between river protection and corridor development, including the environmental and economic results of designation. 16 U.S.C. § 1275(a). Once BLM determines a segment is suitable, it must manage it so as to preserve the outstandingly remarkable values and not impair any future suitability decision. BLM Manual § 8351.32(C).

After BLM makes its suitability determinations, the agency must coordinate with the State of Utah, local and tribal governments, and other federal agencies to recommend segments to Congress for inclusion in the NWSRS. Only Congress can designate rivers as part of the NWSRS. 16 U.S.C. §§ 1273(a), 1275(a). In order to adequately protect Utah’s valuable and spectacular rivers, BLM should emphasize the designation of suitable rivers.

The BLM should be careful not to violate the WSRA and the BLM Manual by failing to recommend segments that otherwise qualify as suitable because they are supposedly protected by some other management prescription, including wilderness study area status, area of critical environmental concern (ACEC) designation, or special recreation management area (SRMA) designation. 16 U.S.C. § 1275(a); BLM Manual § 8351.33(A). These other management prescriptions are only temporary, and do not offer permanent protection specifically for the rivers’ outstandingly remarkable values. If the BLM were to fail to recommend segments that otherwise meet the suitability criteria as suitable, BLM violates the WSRA by applying criteria outside of those enumerated in the WSRA and the BLM Manual, and allows for the potential degradation of these rivers and their outstandingly remarkable values. 16 U.S.C. § 1275(a); BLM Manual § 8351.33(A). BLM’s failure to recommend these otherwise-suitable sections would defeat the purpose of the WSRA, which is to protect rivers and their outstandingly remarkable values. 16 U.S.C. §§ 1271, 1272, 1276(d).

The Moab MLP should consider recommending Indian Creek under the WSRA. Indian Creek possesses outstandingly remarkable cultural values in the form of significant rock art that must be protected. Monticello RMP Appendix H-84. In addition, the Monticello RMP eligibility study found that Indian Creek also possesses outstandingly remarkable recreation values. *Id.* at 4-383. Based on the eligibility study, BLM should add recreation as an outstandingly remarkable value for this waterbody. As explained, other management prescriptions, such as ACEC and SRMA designations are not a substitute for Wild and Scenic River suitability. The BLM has admitted that not recommending Indian Creek suitable “would have long-term, adverse impacts.” *Id.* at 4-383 to -384. To protect the outstandingly remarkable values of Indian Creek, BLM should recommend this segment suitable.

The Moab MLP should also find Tenmile Canyon eligible and suitable for inclusion in the NWSRS and classified as wild. Tenmile Canyon has several outstanding and remarkable values that the BLM has not identified previously: 1) it is a perennial stream and riparian ecosystem in an otherwise dry corner of the MLP area and 2) it possesses nationally and regionally significant

cultural and archaeological resources. These resources are documented by Colorado Plateau Archaeological Alliance and acknowledged by BLM in the Moab RMP. This action should also be taken in concert with eliminating the designated motorized route below Dripping Spring. The suitability designation should extend from Dripping Spring to the Green River.

Finally, the Moab MLP should upgrade the classification of the relevant stretches of the Colorado River. In violation of the WSRA and its own manual, the BLM previously chose to downgrade the classification of Segment 6 of the Colorado River from “wild” in the eligibility study to “scenic” in the governing RMPs. Moab RMP at 2-40; *id.* at Appendix J-67, J-68; *see* BLM Manual § 8351.32(C); 16 U.S.C. § 1273(b). It is BLM’s own policy to protect the values identified in the eligibility process by protecting the outstanding and remarkable values and tentative classifications, yet BLM disregarded its policy and failed to designate certain river segments as eligible with the proper criteria. *See* BLM Manual Section 8351.32C.

The change in management from wild to scenic changes the emphasis: “The basic distinctions between a ‘wild’ and a ‘scenic’ area are the degree of development, types of land use, and road accessibility.” BLM Manual 8351.5(B)(1). Thus, the classification of a river as wild or scenic is a factual assessment of the degree of development in the river corridor and should not have changed between the eligibility study and the RMP. *See* Moab RMP at Appendix J-8. By initially classifying Segment 6 of the Colorado River as wild, BLM acknowledged that this segment was “free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted.” 16 U.S.C. § 1273(b)(1). This change in classification was contrary to the BLM Manual, inadequately protected the outstanding and remarkable values that led to the original classification, was contrary to the facts, and was an inaccurate portrayal of the degree of development in this segment of the Colorado River.

BLM apparently based its decision to downgrade the classification of Segment 6 of the Colorado River on “evidence of past human activities.” Moab RMP, BLM Response to Comments, at 661. However, the eligibility study noted that there was “[n]o development present within the river corridor,” and the Moab RMP provided no explanation of what these activities were, or why the evidence came to light between the draft and final RMP, and not before. Moab RMP at Appendix J-39. Furthermore, tentative classifications may only be superseded by a BLM determination of nonsuitability, typically made in the RMP process or by congressional action to study the river segment further. BLM Manual §§ 8351.3, 8351.32(C), 8351.33(A), 8351.52(C).

In this case, BLM determined that the segment was suitable, but nonetheless downgraded the classification level. Therefore, BLM’s decision to downgrade the classification, and resulting protection, of Segment 6 of the Colorado River violated the BLM Manual and stated policy. *See* Moab RMP, BLM Response to Comments, at 126-27. Indeed, the eligibility study found several outstanding and remarkable values, including fish, cultural, wildlife, ecological, scenery, and recreational values for this segment of the Colorado, and in order to protect these values, this spectacular river segment must be reclassified as wild. Otherwise, the Moab MLP must describe the new evidence found of human activities, and clarify why this information was not reported in the eligibility study. Absent compelling socioeconomic reasons that would change the suitability, the suitability determinations and tentative classifications should correspond to the eligibility findings.

Thus, BLM's unsupported reclassification of river segments must be corrected in the Moab MLP.

XIII. BLM Should Consider Noise

The Moab MLP should consider the potential impacts of ambient noise on visitors to public lands as well as on wildlife. This analysis should consider decibel attenuation studies for popularly visited overlooks and recreation sites. The Moab MLP should also analyze what impact noise from oil, gas, and potash development would have on wildlife in the region.

XIV. BLM Should Consider Impacts to Threatened, Endangered, and Sensitive Species

The Moab MLP should avoid impacts from oil, gas, and potash development on threatened, endangered, or sensitive (TES) species in the Moab MLP area. This document should analyze the potential threats to the various TES species in the region.

XV. BLM Should Consider Night Skies

The National Park Service recognizes dark night skies as an important cultural, natural, and scientific resource. The BLM should use the Moab MLP to ensure the protection of the night skies in the Moab MLP area as well as at Arches and Canyonlands national parks.

National parks have become some of the last sanctuaries of darkness amidst a rising surge of light pollution. Many visitors go to national parks just to experience the dark, starry skies, which in turn brings economic benefit to the parks and surrounding communities. A 2007 visitor survey by Southern Utah University in Utah national parks found that 90% believe that some places need to be preserved especially for their nighttime visibility, and 80% believed that communities near national parks should assist in maintaining dark skies. In addition to the visitor experience, wildlife species depend on natural patterns of light and dark for navigation, to cue behaviors, or hide from predators. These factors should be discussed and analyzed in the Moab MLP.

The NPS has found that light from distant cities affect night skies over 200 miles away and that almost all national parks have noticeable light pollution. In addition, one of the greatest threats to our night skies is air pollution. According to the park service, "Air pollution particles...increase the scattering of light at night, just as it impacts visibility in the daytime. Managing natural lightscapes and artificial light pollution is therefore a priority for the National Park Service from both a recreational and ecological perspective. The Moab MLP should honor this priority and harmonize its management of oil, gas, and potash leasing and development with the improvement and maintenance of dark nights skies in and around Arches and Canyonlands national parks.

XVI. BLM Should Prioritize Areas of Critical Environmental Concern

When developing a land use plan amendment, such as the Moab MLP, FLPMA mandates that BLM “give priority to the designation and protection of areas of critical environmental concern” or ACECs. 43 U.S.C. § 1712(c)(3). ACECs are areas “where special management is required (when such areas are developed or used or where no development 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.” *Id.* § 1702(a). A critical aspect of the statutory language cited above is FLPMA’s requirement that BLM “give priority” to ACEC designation *and* protection. 43 U.S.C. § 1712(c)(3). In essence, FLPMA directs BLM to prioritize protection and designation of ACECs across all alternatives under consideration, not simply the “conservation” alternative.¹³

Although the Moab and Monticello RMPs did not give priority to the designation and protection of ACECs, the Moab MLP may rectify that situation now. The Moab MLP should consider designating the White Wash ACEC, Labyrinth Canyon ACEC, Upper Courthouse ACEC, Canyon Rims ACEC, Behind the Rocks ACEC, Mill Creek Canyon ACEC, Colorado River ACEC, Lockhart Basin ACEC and Indian Creek ACEC as described in Alternatives B and/or E and the Shay Canyon ACEC and Lavender Canyon ACEC from Alternative A in the Monticello RMP. *See* Monticello PRMP/FEIS at Map 50, Map 51; Moab PRMP/FEIS at Map 2-14-B. In the alternative, the Moab MLP must consider no surface occupancy lease stipulations or similarly protective management for these potential ACECs.

In the Moab MLP, once BLM has determined that certain areas in the planning area contain the requisite relevant and important values (R&I values) and that the current land use plans do not protect all of the R&I values—which the BLM has already done for the planning area in the Moab and Monticello RMPs—the agency must give priority to the *designation* of those areas as ACECs over other competing resource uses and likewise give priority to the *protection* of those areas over other competing resource uses.

Other provisions of FLPMA, the National Historic Preservation Act, and Special Recreation Management Areas (SRMAs), and other management prescriptions and regulations do not necessarily protect the R&I values of ACECs. These designations, companion laws, and prescriptions do not release the BLM from its obligation to prioritize the designation and

¹³ BLM’s ACEC Manual (1613) provides additional detail on the criteria to be considered in ACEC designation, as discussed in the applicable regulations, as well. *See* Manual 1613, Section .1 (Characteristics of ACECs); 43 C.F.R. § 8200. An area must possess *relevance* (such that it has significant value(s) in historic, cultural or scenic values, fish & wildlife resources, other natural systems/processes, or natural hazards) and *importance* (such that it has special significance and distinctiveness by being more than locally significant or especially rare, fragile or vulnerable). In addition, the area must require *special management attention* to protect the relevant and important values (where current management is not sufficient to protect these values or where the needed management action is considered unusual or unique), which is addressed in special protective management prescriptions. 43 U.S.C. § 1702(a). An ACEC is to be as large as is necessary to protect the important and relevant values. Manual 1613, Section .22.B.2 (Size of area to receive special management attention).

protection of ACECs. SRMAs are designated to provide recreation opportunities for users of different types, e.g. motorized, equestrian, biking, hiking, etc., and have nothing to do with protecting R&I values of potential ACECs. The NHPA deals only with cultural resources, and applies different management prescriptions than ACECs. Wilderness study areas can be eliminated by Congress, such a decision may not contemplate management directives and purposes related to ACEC management. Therefore, the BLM should not use existing designations as a rationale for not considering ACEC designation.

BLM is also required to evaluate information it receives during the Moab MLP planning process according to agency guidance. Specifically, BLM Manual 1613 (Areas of Critical Environmental Concern) provides the following:

Provide temporary management of potential ACEC, if necessary

If an area is identified for consideration as an ACEC and a [land use] planning effort is not underway or imminent, the District Manager or Area Manager must make a preliminary evaluation on a timely basis to determine if the relevance and importance criteria are met. If so, the District Manager must initiate either a plan amendment to further evaluate the potential ACEC or provide temporary management until an evaluation is completed through resource management planning.

BLM Manual 1613, Section .21E.

Sincerely,

/s/ David Garbett

David Garbett
Steve Bloch
Attorneys
Southern Utah Wilderness Alliance