



August 10, 2015

Via FedEx Overnight

Marietta Eaton
Monument Manager
Canyons of the Ancients National Monument
Bureau of Land Management
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Re: Protest of the Proposed Decision to Issue New Ten-Year Term Grazing Permits for Yellow Jacket (#08018) and Flodine Park Allotments (#08066) in Canyon of the Ancients National Monument

Dear Ms. Eaton:

Great Old Broads and the undersigned organizations (collectively “Protesters”) hereby file this protest of the Bureau of Land Management (“BLM”)’s Proposed Decision to Issue New Ten-Year Term Grazing Permits for Yellow Jacket (#08018) and Flodine Park Allotments (#08066) in Canyon of the Ancients National Monument (the “Proposed Decision”). This protest of the Proposed Decision is filed in accordance with 43 C.F.R. § 4160.2.

Canyon of the Ancients National Monument (“CANM”) contains “the highest known density of archaeological sites in the Nation” and thus “holds evidence of cultures and traditions spanning thousands of years.” Proclamation Establishing CANM (June 9, 2000). CANM is a special area that includes prime habitat for a variety of plant and wildlife species and provides valuable recreational opportunities. The Protesters are gravely concerned that BLM is proposing to expand grazing in such a unique and important area on allotments where grazing is not the status quo. BLM’s decision to do so without analyzing the environmental impacts of new grazing is astounding. If BLM finalizes the Proposed Decision, the agency will violate numerous environmental laws, including the National Environmental Policy Act (“NEPA”), the Federal Land Policy and Management Act (“FLPMA”), and the National Landscape Conservation System (“NLCS”). For the reasons identified in this protest, the Protesters respectfully request that BLM abandon the Proposed Decision and permanently close the Flodine and Yellow Jacket allotments to grazing. The Protesters have enclosed a variety of letters, scientific articles, photos, and other documents and hereby incorporate those documents into this Protest.

INTERESTED PARTIES STATEMENT.

Great Old Broads for Wilderness (“Broads”) is a national organization that inspires and engages the voices and activism of elders to preserve and protect wilderness and wildlands. Our 5,500+ members give voice to the millions of older Americans who want their public lands



protected for this and future generations. We bring the grassroots to many protection campaigns, providing boots on the ground and members who show up at hearings, engage with planning processes, assist with stewardship projects and more. Broads has 36 chapters (Broadbands), including two in the Four Corners Region (SW Colorado, Moab, UT) whose 370 local members advocated for the designation of Canyons of the Ancients National Monument (CANM) in order to ensure meaningful protections for its unsurpassed archaeological resources. Broads members/volunteers/staff have partnered with CANM to conduct monitoring of impacts from motorized vehicles and provided input to the travel management plan. We have participated in field trips and trainings regarding grazing/riparian management and have monitored impacts in the wilderness study areas within the Monument. Additionally, our members recreate frequently in the Monument - hiking, biking, horseback riding, birding, botanizing, camping, exploring the many cultural sites and more. CANM's canyons, streams, mesas, pinyon juniper woodlands, meadows and sagebrush communities coupled with the ancestral Puebloan cultural sites make for an outstanding experience. CANM's failure to ensure protection of the objects and values named in the Monument proclamation directly harms these experiences and are an ongoing cause for concern.

Grand Canyon Trust's (the "Trust") mission is to protect and restore the Colorado Plateau — its spectacular landscapes, flowing rivers, clean air, diversity of plants and animals, and areas of beauty and solitude. The Trust works toward creating a region where generations of people and all of nature can thrive in harmony. The Trust's vision for the Colorado Plateau 100 years from now has three key facets:

- The region is still characterized by vast open spaces with restored, healthy natural areas and habitat for all native plants and animals.
- Human communities enjoy a sustaining relationship with the natural environment.
- People who live and visit here are willing, enthusiastic stewards of the region's natural resources and beauty.

The Trust and its members are interested in and enjoy the CANM as an important wild place in the Colorado Plateau. They will be adversely affected by the harms posed to the allotments and its resources by the grazing to be authorized by the BLM in the Propose Decision.

Western Watersheds Project ("WWP"), a non-profit 501c3 membership organization dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. WWP has over 1500 members, including members who live in Utah. WWP is active in seeking to protect and improve the riparian areas, water quality, fisheries, wildlife, and other natural resources and ecological values of western watersheds. To do so, WWP actively participates in agency decision-making concerning Forest Service and BLM lands throughout the West, and the Forest Service and BLM's management of livestock grazing in Idaho, Nevada, Utah, and Wyoming. WWP is an Interested Public on the two allotments and has been actively involved in oversight of CANM for the last 2 years.

WildEarth Guardians is a non-profit corporation with more than 105,302 members and supporters nationwide. WildEarth Guardians maintains offices in Salt Lake City, UT, Tucson, AZ, Santa Fe, NM, Missoula, MT, Portland, OR and Denver, CO. WildEarth Guardians' mission



is to protect and restore wildlife, wild places, wild rivers, and health in the American West. WildEarth Guardians has an active public lands grazing reform campaign. As part of this campaign, WildEarth Guardians actively works to assure that sensitive ecosystems, water quality and native wildlife are protected from the negative effects of grazing domestic livestock on federal, public lands.

The Natural Resources Defense Council (“NRDC”) has over 2 million members and online activists nationwide. NRDC uses law, science and the support of its members and activists to protect the planet's wildlife and wild places and to ensure a safe and healthy environment for all living things. Since its inception over forty years ago, NRDC has worked to protect the nation's wildlands and natural values on public lands and to promote sustainable solutions to safeguard these lands from inappropriate development and activities.

WildLands Defense is a non-profit that works to inspire and empower the preservation of wild lands and wildlife in the West. WildLands Defense's activists' and supporters' on-the-ground presence, extensive experience enforcing existing statutory and regulatory regimes, and the group's unparalleled conviction provide managers and policy-makers a clear and competent picture of the conditions of our public lands and wildlife communities on the ground as they exist, as well as lend decision-makers the sense of informed urgency as to the need for policy changes into the future.

Thomas L. Fleischner, Ph.D., is professor of environmental studies at Prescott College in Arizona, and the author of numerous articles on conservation biology, natural history, and environmental policy. He chaired the Public Lands Grazing Committee of the Society for Conservation Biology and currently serves on the board of governors of that organization. He has a long interest and involvement with public lands grazing issues. His writings include *Ecological Costs of Livestock Grazing in Western North America* and *Land Held Hostage: A History of Livestock and Politics* and *Reducing Livestock Effects on Public Lands in the Western United States as the Climate Changes: A Reply to Svejcar et al.*

Sierra Club's mission is “to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; and to educate and enlist humanity to protect and restore the quality of the natural and human environments.” Sierra Club has more than 2.1 million members and supporters nationwide, including more than 50,000 Coloradans. Although we are comprised of a diverse population, the tie that binds us is our commitment to conserving those places, processes and organisms that will sustain our natural heritage with all of its biological diversity. The Canyon of the Ancients National Monument has a wealth of natural and cultural resources. Given the fragility of this landscape, that is inherent in an arid environment, maintaining these resources in a sustainable condition is incompatible with livestock grazing. In the face of a changing climate maintaining ecosystem resiliency is paramount to system sustainability. Livestock grazing in this fragile environment will undermine system resiliency by degrading soils and altering vegetation cover and composition, ultimately resulting in system instability and decline.

STATEMENT OF ISSUES AND REASONS.

I. **BLM failed to comply with NEPA.**

“NEPA places upon federal agencies the obligation to consider every significant aspect of the environmental impact of a proposed action. It also ensures that an agency will inform the public that it has considered environmental concerns in its decision-making process.” *Citizens’ Comm. to Save Our Canyons v. Krueger*, 513 F.3d 1169, 1177–78 (10th Cir. 2008) (internal quotation and citations omitted). The fundamental objective of NEPA is to ensure that an “agency will not act on incomplete information, only to regret its decision after it is too late to correct.” *Marsh v. Oregon Natural Res. Council*, 490 U.S. 360, 371 (1989).

NEPA requires BLM to prepare an Environmental Impact Statement (“EIS”) before undertaking “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(C). BLM may prepare an Environmental Assessment (“EA”) to determine whether an EIS is required and issue a Finding of No Significant Impact (“FONSI”) with a convincing statement of reasons to justify its decision not to prepare an EIS. 40 C.F.R. § 1501.4; 40 C.F.R. § 1508.13.

BLM has failed to comply with NEPA by not preparing an EIS or an EA for the Proposed Decision. BLM cannot excuse its NEPA obligations by relying on the 2005 EA for the following reasons.

a. BLM failed to consider the CANM Management Plan and the National Landscape Conservation System.

After preparing the 2005 EA, two major legal developments occurred. First, BLM issued the CANM Monument Management Plan (“Management Plan”). Second, Congress passed the National Land Conservation System (“NLCS”). As described below, the Proposed Decision will violate numerous provisions of the Management Plan and NLCS. Because NEPA requires BLM to consider whether a proposed action threatens violations of other laws, BLM was required to consider whether the Proposed Decision will violate the Management Plan and NLCS in a new NEPA analysis. 40 C.F.R. § 1508.27(10). Simply asserting in a non-NEPA document that the decision is consistent with the Management Plan and NLCS does not satisfy NEPA’s hard look or public participation requirements.

b. A new NEPA analysis is required to address changed conditions and new information.

BLM should have prepared a new NEPA analysis to address the following significant information and changed conditions that have arisen since the preparation of the 2005 EA:

i. *Climate Change*

Climate change is a fundamental environmental issue affecting federal public lands and resources. In the past ten years, significant new scientific information has arisen about climate

change and the impacts of grazing on public lands and resources in light of climate change. *See, e.g., “Adapting to Climate Change on Western Public Lands: Addressing the Ecological Effects of Domestic, Wild, and Feral Ungulates” by Beschta, R.L., et al. (27 Jan. 2012); and see Council on Environmental Quality NEPA Revised Draft Greenhouse Gas Guidance, Dec. 2014* (summarizing climate change issues and citing various studies and sources of information that have become available after 2005). Climate change is affecting conditions on public lands related to, for instance, water availability, drought, wildfire, wildlife, vegetation, soils, invasive species, etc. Grazing exacerbates climate change-induced conditions.

Climate change issues related to federal actions “fall[] squarely within NEPA’s focus.” CEQ NEPA Revised Draft Greenhouse Gas Guidance, Dec. 2014, p. 2. To fulfill the agency’s NEPA obligations, BLM must consider how climate change has altered the baseline environmental conditions and will change the impacts of the Proposed Decision. Specifically, CEQ’s draft NEPA guidance on climate change explains that federal agencies should consider the following:

- (1) the potential effects of a proposed action on climate change as indicated by its GHG emissions; and
- (2) the implications of climate change for the environmental effects of a proposed action.

CEQ NEPA Revised Draft Greenhouse Gas Guidance, Dec. 2014, p. 3. BLM did not consider climate change in the 2005 EA, so a full analysis must be completed before issuing the proposed grazing permits.

For example, BLM must analyze how livestock grazing reduces resiliency on public lands, constrains adaptation, harms resources facing more severe temperatures and weather conditions, spreads invasive species, stresses wildlife and plants, reduces water infiltration and instream water flows, and reduces or eliminates the protection afforded by biological soil crusts. Such an analysis is particularly important for the Flodine and Yellow Jacket allotments, where grazing has historically resulted in a lack of compliance with applicable land standards. *See* 2005 EA (BLM recognized that the Flodine and Yellow Jacket allotments were not meeting numerous standards as a result of livestock grazing). Given that the Proposed Decision is for ten-year grazing permits, BLM must consider how climate change is poised to affect these issues over the next ten years, and how those effects combined with the impacts of livestock grazing will affect the resources on the allotments.

ii. Biological crusts

Biological crusts provide important ecological services, including increased soil stability, moisture infiltration, and native species resiliency. Without disturbances from grazing over the past ten years, biological crusts have re-established in many areas within the Flodine and Yellow Jacket allotments. Staff members with Great Old Broads and the Grand Canyon Trust recently walked the sites and found that biological crusts (particularly cyanobacteria) have reemerged and that soils exhibit a high potential for biological crusts. In Flodine Park, crusts were found most often under shrubs. In Yellow Jacket, crusts were found most often out in the open, where

extensive light cyanobacteria crusts are present and almost certainly have increased with ten years of no authorized grazing. The new formations are documented in the attached photos.

In light of this new information and changed conditions, the 2005 EA's findings about the lack of biological crusts in many areas and the impacts of the grazing permits are no longer accurate. Given that crusts are sensitive and highly susceptible to damage from trampling by ungulates, the Proposed Decision will negatively impact the newly developed biocrusts and reverse the progress over the past ten years' progress toward restoration of more mature and protective biocrusts. BLM must revisit the allotments to update the agency's evaluation of the conditions on the allotments and analyze the impacts of the Proposed Decision on biocrusts. BLM must also consider the multiple studies and articles issued since 2005, some of which are listed in the references and included with this protest, that address relevant issues related to biological soil crusts.

iii. Land acquisition

Since issuing the 2005 EA, BLM has acquired thousands of acres of new land in the Yellow Jacket and Flodine allotments from the former grazing permittee, the Wallace family. BLM must add this land to the environmental baseline and consider the impacts of the Proposed Decision on this additional land. Further, BLM must conduct a new land health assessment for this area and determine whether the relevant public land health standards are being met.

As BLM recognized in the 2009 EA for the land acquisition (the "Wallace EA"), the new land provides increased opportunities for recreation, additional wildlife habitat, and a large number of cultural resources. BLM must consider whether the Proposed Decision harms these additional uses of the land. For example, the Proposed Decision may prevent BLM from expanding recreational opportunities, impair new recreational opportunities, and harm cultural resources. BLM did not take a "hard look" at these impacts on this land in the 2005 EA when it was in private hands, so BLM must consider the impacts of the Proposed Decision may result in now in a new NEPA analysis.

iv. Vegetation and invasive species

BLM must consider the changes to vegetation and invasive species that have occurred over the past ten years. Staff members at Great Old Broads and Grand Canyon Trust recently visited the allotments and surveyed current vegetation conditions. They reported the following observations:

- Both McElmo and Yellowjacket creeks have early stages of Russian Olive and stands of tamarisk that will fill in both systems (particularly RO, since it doesn't have a biological control) unless eradication efforts are undertaken. There are occasional young cottonwood (*Populus fremontii*) and newly-forming coyote willow (*Salix exigua*) clones along McElmo Creek and coyote willow along Yellowjacket Creek, but these will likely be browsed by cattle if grazing resumes and overtaken by Russian Olive and/or tamarisk.



- There are a few patches of Russian knapweed (*Rhaponticum repens* formerly *Acroptilon repens*) in Yellowjacket Creek. If that is not a focus of active management, and if cattle are reintroduced, it will quickly spread.
- Galleta grass (*Pleuraphis jameii*), a native grass capable of withstanding heavy grazing in reduced structure, forms major monocultures in Yellowjacket where Russian thistle or cheatgrass aren't dominant. Only occasional presence of native rice grass (*achnatherum hymenoides*) and/or needle-and-thread grass (*Hesperostipa comata*) are present. Very little diversity of grasses currently exists, though rice grass is occasionally seen, e.g., sheltered in a shrub or on a rocky ledge or site likely less often grazed in the past. Reintroducing cattle will prevent recovery of native species and perpetuate the lack of diversity.
- An astounding proportion of Flodine Park is nearly solid (70%-90%) Russian thistle (*Salsola tragus*) and cheatgrass (*Bromus tectorum*).
- Much more of Yellowjacket allotment has native grass sites, but they are almost always galleta grass, with very little diversity. In many places, galleta grass is mixed with cheatgrass, and thus those areas will almost certainly be tipped toward cheatgrass dominance with reintroduction of cattle.
- A high diversity of native forbs, and good biocrusts, are on a smallish plateau in the far southeast corner of Yellowjacket. It probably never has been used much by cattle, as it is rocky and a bit steep to get up there, though horse prints crushing biocrusts were observed to be frequent. It is impressive in its diversity and in stark contrast to most of the allotment. For instance, at least four different species of *Eriogonum* (buckwheat) were observed to be present.
- A noticeably higher diversity of native plants is present in areas where cattle did not graze compared to areas where cattle did graze under the previous grazing permits.

As these observations note, invasive vegetation is prevalent throughout the allotments despite years of no grazing. Many years of additional rest are likely necessary to reverse the prevalence of cheatgrass and Russian thistle on these allotments. Indeed, BLM recognized in the 2005 EA that native vegetation will recover fastest with no grazing. However, new information demonstrates that ten years was not enough for full recovery. Resuming cattle grazing now will likely tip the vegetation balance in favor of cheatgrass rather than native grasses. Similarly, resumption of cattle grazing will set back willow development and favor Russian olive, knapweed, and tamarisk in riparian areas. Rather than spending resources on issuing new grazing permits, BLM should focus on active removal of invasive species around creeks and Russian olive to reverse encroachment and promote recovery of native species.

BLM must survey the allotments to assess the current state of invasive and native vegetation to disclose and consider this information in a new NEPA analysis.

v. Cultural resources

CANM provides an unparalleled opportunity to observe and study cultural resources due to the high concentration of such resources. When the CANM was established in 2000, thousands of cultural resource sites needed to be recorded and studied.

Over the past ten years, significant changes have occurred related to the cultural resources in the allotments and the impacts of grazing on cultural resources. Most notably, BLM has acquired thousands of additional acres in the allotments that include cultural resources—these resources were not included in BLM’s analysis in the 2005 EA. For example, one significant resource—a historic stone building—exists on the former Wallace lands and could easily be pushed over and damaged by livestock. Additionally, changes to potential mitigation measures have occurred, as BLM admits that fences are deteriorating and in need of repair. Fencing is a key mitigation measure for excluding cattle from sensitive areas with cultural resources, so fencing problems may increase the impacts to cultural resources. These examples of changes highlight the need to conduct a new NEPA analysis for cultural resources.

BLM cannot rely on its 2014 cultural resources inventory to fulfill the agency’s NEPA obligations because that is not a NEPA document nor was it included as part of the 2005 EA. The 2014 inventory only looked at a small subset of sites and the BLM thus does not know the conditions of other uninventoried sites or the impacts of grazing upon them. Further, BLM’s decision to consider the impacts of grazing on cultural resources based on conditions after ten years without grazing is arbitrary and unscientific. Regardless, the 2014 cultural analysis shows that fencing is needed to prevent degradation of such resources but the Proposed Decision fails to ensure that such fencing will occur to protect all resources that are at risk from grazing.

BLM should suspend finalizing the Proposed Decision until it honors the Hopi Tribe’s request for tribal consultation and it finishes a study in Grand Staircase-Escalante National Monument about the impacts of livestock on cultural resources.

vi. Trespass livestock and horses

Trespass animals exacerbate the impacts of cattle grazing through competition for resources, cumulative disturbances of biological crusts and vegetation, etc. In both Flodine and Yellow Jacket allotments, recent observations and evidence of horse scat shows that trespass horses are prevalent. The BLM must consider these impacts as part of the cumulative effects, potential mitigation measures, and baseline of the Proposed Decision. BLM must also consider whether trespass occurrences have impeded recovery of natural resources during the past ten years or will impede recovery once grazing commences on these allotments.

vii. Economic Impacts

Economic realities have significantly changed since 2005—the U.S. faced the largest recession in generations. Thus, the discussion of the economic benefits in the 2005 EA is outdated and inaccurate. Further, BLM must also consider the economic costs of the proposed grazing as explained in the attached recommendation from Grand Canyon Trust. Given the new

economic realities facing grazing permittees, the costs of grazing likely outweigh the benefits. By ignoring this information, BLM fails to take a “hard look” at the negative impacts of grazing.

viii. Threatened, endangered, and sensitive species

BLM must disclose and consider impacts to species listed as threatened or endangered under the Federal Endangered Species Act (“ESA”) and sensitive species, and their habitat that may be present in the allotment areas. Numerous changes to these species and their habitat have occurred since 2005. Since 2005, several species have been listed in Colorado, including: Gunnison Sage Grouse (threatened), Lesser Prairie Chicken (threatened), New Mexico Meadow Jumping Mouse (endangered), Red Knot (threatened), and the Yellowbilled Cuckoo (threatened). In the 2005 EA, BLM revealed that some of these species and their known, potential, or historic habitat may be present in this area, including habitat for Gunnison sage grouse and the yellow-billed cuckoo. The listing of these species warrants a new NEPA analysis.

Fish and Wildlife has also taken actions in the past ten years that could affect the impacts of the Proposed Decision, including the following changes to critical habitat and recovery plans for several listed species in Colorado:

- Recovery plan issued for the Black-Footed Ferret
- Critical habitat established for the Southwestern Willow Flycatcher
- Revised critical habitat for the New Mexico Meadow Jumping Mouse
- Final recovery plan for the Mexican Spotted Owl
- Revised critical habitat for the Piping Plover
- Revised critical habitat for the Canada Lynx

The 2005 EA revealed that the allotments may include some of these listed species or their potential or known habitat: the historic range of the Black-footed ferret, the Mexican Spotted Owl, and the Southwestern flycatcher. The Wallace EA revealed that the newly acquired land includes or potentially could include Colorado Pikeminnow, the Mexican Spotted Owl, and the Southwestern flycatcher.

Other changes likely have occurred to these species and their population distribution, as the 2005 EA revealed large gaps in the understanding of these species. For example, BLM admitted that no surveys for the Mexican Spotted Owl had been conducted since 1992 but field assessments were planned for 2003. BLM must consider the changes to the Mexican Spotted Owl and its distribution over the past 23 years. BLM fully updated its special status species policy in December 2008. The agency needs to assess whether the Proposed Decision complies with this revised policy and if new sensitive species designated since 2005 or habitat occur on allotments.

These new listed species and changes to critical habitat and recovery plans are examples of changes that have occurred in the past ten years requiring BLM to take a “hard look” at whether any of these species and their habitat are now part of the environmental baseline and

what the impacts of the proposed decision are on these endangered, threatened, and sensitive species.

Other changed conditions and new information may affect listed and sensitive species as well. For example, BLM noted that certain creeks in the allotments analyzed in 2005 were marginally suitable for willow flycatchers. EA, p. 37. Given the lack of grazing over the past ten years, habitat potential for willow flycatchers and other species could likely have improved, increasing the presence of such species and the quality of their potential habitat. BLM must reassess the impacts of the proposed decision in light of these potential changes.

ix. Forage

As BLM admits in the Proposed Decision, the 2005 EA relied on forage data gathered in 2001, making the forage information in the 2005 EA fourteen years old and thus very outdated. Current conditions suggest that there is likely nowhere near 200 pounds of perennial grasses and forbs available for forage in many areas. In light of this stale data, changes in vegetation noted above, and repeated drought conditions, BLM must re-inventory and consider the available forage for grazing. Finally, BLM should reanalyze the forage potential without considering invasive species, as it did in 2005. *See* 2005 EA at G-1.

x. Fences

BLM admits in the public notice that the lack of cattle grazing over the past ten years has resulted in fences falling into disrepair and non-functioning condition. The deterioration of fences will significantly change the impacts of grazing by allowing cattle to access sensitive areas. BLM cannot rely on speculation about future repairs to fences to sweep new impacts under the rug.

xi. Land Health Assessments

Given this plethora of changed conditions on the allotments that will certainly affect compliance with land health standards, BLM must conduct new land health assessments (“LHA”). BLM completed the last LHA in 2001—years before the agency acquired thousands of acres of land from the Wallace family. Before issuing a final decision, BLM must survey the conditions on the Yellow Jacket and Flodine allotments, including the newly acquired land, to provide key information for the environmental baseline. Indeed, BLM relied heavily on the LHAs as part of the NEPA analysis in the EA and should do the same in a new EA based on updated LHAs. BLM cannot credibly argue that the LHA from 2001 is still accurate in light of the significant changes over the past 14 years.

BLM has a rare opportunity to determine how conditions have changed on these allotments after ten years without livestock grazing and whether this rest time has brought the land into compliance with Rangeland Health Standards and Public Land Health Standards and Guidelines. A new LHA analysis will provide valuable information about the effects of leaving land largely ungrazed by livestock for a period of ten years—BLM must consider these impacts in a new NEPA analysis.

xii. Drought

Given the prolonged drought conditions in the past ten years, changes in water, soil, and vegetation have occurred and must be considered by BLM in a new NEPA analysis. BLM must also consider the greater likelihood of future drought given trends since 2005 and climate change that were not considered in 2005 EA, and how effects of that could exacerbate impacts from grazing.

xiii. Agency resources and outdated data

BLM must consider its inability to manage existing grazing allotments and collect necessary data before permitting new allotments, which will require additional resources the agency clearly does not have. At the time of the 2005 EA, the agency relied on assessments of allotments that were a few years old. Ten years have passed but the agency has been unable to find the resources to update the data assessments or take actions necessary to protect existing allotments through preventing trespass cattle, restoring land wildlife, and resources, and surveying cultural resources that need to be protected.

c. The 2005 EA does not satisfy BLM's NEPA obligations.

BLM cannot fulfill its NEPA obligations for the Proposed Decision by relying on the 2005 EA. The 2005 EA is ten years old and fails to mention, let alone assess, the significant changes and new information discussed in this protest. Thus, the 2005 EA does not accurately reflect the baseline conditions and therefore does not provide an accurate evaluation of the environmental impacts of the Proposed Decision. BLM's reliance on such a stale document violates NEPA. *See* 46 Fed. Reg. 18026, 18036 (March 23, 1981) (“[I]f the proposal has not yet been implemented, or if the EIS concerns an ongoing problem, EISs that are more than 5 years old should be carefully reexamined to determine if the criteria in [40 C.F.R. § 1502.9] compel preparation of an EIS supplement.”)

i. Purpose and Need of Proposed Action

The Purpose and Need statement in the 2005 EA does not reflect a proper purpose and need statement for the Proposed Decision. In the 2005 EA, BLM stated that the purpose of the project was “analyzing potential site-specific impacts on resources that would result from issuing new term permits for livestock grazing in the allotments identified above.” EA, p. 1. This statement reflects the purpose of the *EA*, not of the *proposed action*, which is improper. *See* http://www.blm.gov/wo/st/en/prog/planning/nepa/webguide/document_pages/6_2__examples_of_purpose.html#5.

The need statement further provides that the permits are “needed” to authorize continued grazing on public lands, to address lands that are failing to achieve standards, to assure protection of historic and scientific interests, and to comply with the 1985 San Juan/San Miguel RMP. This statement is flawed because it is skewed toward issuing the permits and it reflects a

proposal to *renew* grazing permits, rather than considering whether to issue *new* permits for allotments that have not been grazed for a substantial time.

Further, the 2005 EA proposed issuing grazing permits to different permittees with some differences in the proposed cattle numbers, Animal Unit Months (“AUMs”), and seasons for grazing. Another major difference between the actions analyzed in the 2005 EA and the Proposed Decision is that the 2005 EA also included several other allotments for grazing, including Cahone Mesa, Goodman Gulch, Sand Canyon East, Sand Canyon West, and Hamilton Mesa. BLM is arbitrarily relying on an inaccurate and outdated Proposed Action and Purpose and Need Statement from the 2005 EA.

ii. Baseline information.

Under NEPA, BLM must “describe the environment of the areas to be affected or created by the alternatives under consideration.” 40 C.F.R. § 1502.15. The 2005 EA does not fulfill BLM’s obligation to document the environmental baseline in the EA due to the significant changes in conditions since its issuance. As identified in this protest, numerous conditions on Yellow Jacket and Flodine allotments have changed since 2005, including biological soil crusts, vegetation, climate-change induced resource alteration, and BLM’s land acquisition. Further, cattle grazing has not been authorized in the past ten years, so grazing is no longer part of the baseline or status quo. BLM needs to conduct new surveys and analysis of the rangeland health conditions to determine compliance with range and land health standards in the newly acquired land.

iii. Alternatives

NEPA requires the agency to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(E); 40 CFR § 1508.9(b). It must “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(a)). The alternatives analysis is considered the heart of a NEPA analysis. 40 C.F.R. § 1502.14.

Given the significant changed conditions and differences in the Proposed Decision and the proposed action considered in the 2005 EA, BLM cannot rely on the alternatives in the 2005 EA. BLM should consider the following alternatives in a new EA that consider:

- less grazing—changed conditions on the land, such as drought and climate change and invasive species displacement of forage, warrant alternatives that consider less grazing. For example, BLM should consider whether the newly acquired land allows changes to grazing allocations that will shift impacts to less-sensitive areas. Additionally, climate change is changing seasonal conditions such as frozen soil and water availability, which may exacerbate certain impacts and thus require shifts in grazing seasons.



- different ranchers—BLM’s Proposed Decision chose new permittees for grazing in these allotments without preparing an environmental analysis to make that decision. Different ranchers could alter the impacts of the Proposed Decision due to different compliance histories or grazing choices.
 - permanent retirement—BLM should consider the environmental impacts (including benefits) of permanently retiring the grazing allotments in light of benefits achieved over the past ten years of rest.
 - cultural resources—BLM should consider an alternative that excludes grazing from particularly sensitive cultural resource areas.
 - no-action—BLM’s no-action alternative in the 2005 EA was to renew livestock grazing permits that had been permitted in the past. Given that livestock grazing has not occurred for ten years, BLM must develop a new no-action alternative that reflects that livestock grazing is not the status quo
 - shorter seasons—BLM should consider an alternative that further restricts seasons to provide greater protections.
 - rest periods—BLM should consider alternatives that require greater periods (seasons or years) of rest in the allotments or pastures.
- d. BLM’s Determination of NEPA Adequacy (“DNA”) is arbitrary and capricious.

“DNAs, unlike EAs and FONSI, are not mentioned in the NEPA or in the regulations implementing the NEPA.”). *Pennaco Energy, Inc. v. U.S. Dep’t of Interior*, 377 F.3d 1147, 1162 (10th Cir. 2004). DNAs are not to replace supplemental EAs or EISs but rather may be used “for the purpose of determining whether new information or changed circumstances require the preparation of a supplemental EA or EIS.” *Idaho Sporting Congress Inc. v. Alexander*, 222 F.3d 562, 566 (9th Cir. 2000). Such non-NEPA documents “cannot serve as a substitute” for a NEPA analysis. *Id.*

BLM’s DNA was arbitrary and capricious because it failed to acknowledge the significant new information and changed conditions and failed to recognize that the 2005 EA does not fulfill BLM’s NEPA obligations for the Proposed Decision for the reasons discussed in this protest. Further, the DNA document includes the following erroneous statements and inadequate information that make the determination arbitrary and capricious:

- The DNA erroneously claims that the proposed action is the same.
- The DNA claims that the alternatives are the same. The status quo has changed, so a new no-action alternative is needed.
- The DNA does not evaluate NEPA’s significance factors.
- The DNA erroneously claims that there is no new information or circumstances that would change the analysis of the proposed action or the impacts.
- BLM has taken an inconsistent and contradictory approach here in comparison to its decision to complete a new EA for other allotments (Yellow Jacket Canyon, Alkali, Lower Aztec Canyon, etc.)
- The DNA fails to acknowledge that the baseline has changed and is no longer representative of the affected environment.

- The DNA erroneously relies on the FONSI.
- The DNA is inconsistent with the agency's previous decision to issue a new EA before re-issuing grazing permits for these allotments.

e. The Proposed Decision will have significant impacts that must be considered in an EIS.

BLM must prepare an environmental impact statement because the effects of the Proposed Decision will significantly affect the environment. Indeed, the Proposed Decision implicates several significance factors under 40 C.F.R. § 1508.27.

The context of the Proposed Decision is extraordinary. BLM is proposing to authorize grazing in a National Monument on allotments that have not been grazed in a decade.

The intensity of the impacts of the Proposed Decision will be significant for the following reasons:

- As the 2005 EA acknowledged, the allotments are not achieving numerous rangeland and public land health standards and livestock grazing is a causal factor. Contributing to non-achievement of these standards causes adverse impacts and threatens a violation of environmental laws. 40 C.F.R. § 1508.27(b)(1), (10).
- As explained above, the allotments include incredible scientific resources that can provide BLM with unique information about how a ten-year period of rest influences the health of previously grazed land—authorizing the Proposed Decision will destroy these scientific resources. *Id.* at (b)(8). Similarly, the impacts on areas that have not faced grazing in ten years are uncertain and thus must be considered in an EIS. *Id.* at (b)(5)
- The Proposed Decision will degrade geographic areas with unique characteristics, as the grazing allotments include important cultural and historical resources and CANM was recognized as having the highest density of archaeological resources in the U.S. CANM includes ecologically critical areas as it provides habitat for threatened, endangered, and sensitive species. *Id.* at (b)(3), (9).
- BLM cannot claim an EIS is not needed because the Proposed Decision will have beneficial impacts to invasive species or economics, or less adverse impacts than other alternatives. *Id.* at (b)(1).
- BLM's decision has generated controversy about the extent of the impacts on cultural resources and land that has not been grazed in ten years. *Id.* at (b)(4).
- A decision to re-open grazing in degraded allotments threatens to establish precedent for future actions. *Id.* at (b)(6). For example, BLM has taken action to reduce grazing on some allotments in the CANM—in the future, the agency may point to this action to justify re-opening some areas that are not currently grazed.
- The Proposed Decision and other grazing permit renewals and issuances will have cumulatively significant impacts that must be considered. *Id.* at (b)(7).

f. Alternatively, BLM should have supplemented the 2005 EA.

BLM has a duty to supplement an EA where significant new circumstances or information relevant to environmental concerns arise. *See*, 40 C.F.R. § 1502.9(c) (requiring supplementation); *Marsh*, 490 U.S. at 371-74 (if new information “is sufficient to show that the remaining action will affect the quality of the human environment in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared”) (internal quotations omitted); *Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1023-24 (9th Cir. 1980) (“A federal agency has a continuing duty to gather and evaluate new information relevant to the environmental impact of its actions.”). For the reasons stated above, significant new information and circumstances warrant a supplemental EA.

II. BLM’s proposed decision is inconsistent with the Management Plan and violates FLPMA.

All resource management decisions made by BLM must conform to the approved land use plan. 43 C.F.R. § 1610.5-3(a); *and see* 43 U.S.C. § 1732(a), 1752(c). To conform to a land use plan, a resource management decision “shall be specifically provided for in the plan, or if not specifically mentioned, shall be clearly consistent with the terms, conditions, and decisions of the approved plan.” 43 C.F.R. § 1601.0-5. After issuing the 2005 EA, BLM adopted the monument management plan that governs CANM. The Proposed Decision is inconsistent with numerous provisions of the Management Plan and thus violates FLPMA.

a. Soil resources

The Management Plan sets a goal of managing soil resources in a manner that preserves and/or enhances existing ecological integrity and function and an objective of ensuring the Public Land Health Standards and Guidelines for upland soils are met, or that significant process is being made toward meeting them. The Management Plan specifies that management actions must apply special management practices to areas with biological soil crusts.

Biological soil crusts are an important ecological feature of the allotments that are very sensitive to disturbance and destruction from cattle grazing. In the 2005 EA, BLM admitted that neither Yellow Jacket nor Flodine Park were meeting upland soil standards and that the causal factor was livestock grazing. *See* Table 1. Although crusts have partially re-established since that time during rest periods, BLM has not revealed new data indicating that the allotments are meeting those standards or that the proposed grazing will allow for continued “significant progress” toward meeting them. BLM only determined that alternatives in the 2005 EA would “move toward achieving,” which is not the same as “significant progress” toward achieving. Any cattle placed on these allotments will destroy the thin and fragile crusts that have started to develop during the ten years of non-grazing, as demonstrated by the impacts of trespass horses on the allotments. Authorized grazing will cause significantly more destruction, and will degrade rather than preserve and enhance the soil crusts. Given that livestock grazing has caused non-compliance with these standards in the past, grazing under the Proposed Decision will destroy biological soil crust and be inconsistent with the Management Plan. Further, BLM has not demonstrated the special management practices it will use to meet the requirements of the

Management Plan. BLM must begin by assessing the growth of such crusts over the past ten years.

b. Vegetation Resources

The Management Plan sets a goal of sustaining a biologically diverse landscape that supports a variety of habitats, as well as native plant and animal species, and controlling noxious weed populations and preventing new infestations. The Management Plan also sets objectives of protecting and enhancing upland vegetation communities and aquatic, wetland, and riparian areas to ensure Public Land and Health Standards and Guidelines are met or significant progress is made toward meeting them. To achieve these goals and objections, the Management Plan requires actions that protect or enhance riparian and aquatic resources, ensure livestock plans are comparable with riparian system management goals, and manage riparian areas in a manner that moves them toward achieving Proper Functioning Condition.

BLM has not disclosed data showing that significant progress was made toward achieving the Public Land and Health Standards and Guidelines on the allotments even without grazing for the past ten years. As explained above, invasive species are present on the allotments and native plant diversity is lower in areas where cattle have grazed in the past. In the 2005 EA, BLM revealed that neither Yellow Jacket nor Flodine Park would meet or achieve significant progress toward meeting the standards for healthy productive plant and animal communities under any of the grazing alternatives. *See* Table B-1. Reintroducing cattle will perpetuate the prevalence of non-native species, promote further replacement of natives with non-natives, prevent recovery of native species in both uplands and riparian areas, and hinder recovery of plant diversity. Thus, resuming grazing will not protect or enhance riparian or upland vegetation resources.

c. Special status plant species and significant plant communities

The Management Plan sets goals of managing listed and proposed threatened/endangered plant species in a manner that complies with the ESA; implementing management plans that conserve candidate species, and their habitats, in order to ensure that actions authorized, funded, or carried out by the BLM do not contribute to the need for the species to become listed; and managing the condition of special status plants and significant plant communities, and their habitats, to a point where special status recognition is no longer warranted. The Management Plan sets objectives of inventorying potential habitats for special status plants and significant plant and biological crust communities and monitoring known populations of special status plants and significant plant and biological crust communities.

The Management Plan requires actions to develop a monitoring plan for significant plant and biological crust communities, conduct annual monitoring of the condition and extent of these communities where a disturbance is likely to occur, develop an inventory plan for sensitive plant and significant plant and biological crust communities within two years of the signing of the ROD, locate new routes away from significant biological crust communities, with a minimum of a 50 foot buffer, and evaluate, and if needed, relocate routes if monitoring indicates damages or

disturbances to special plant species, and/or to significant plant and biological crust communities.

BLM's Proposed Decision does not explain how it is consistent with these requirements or that it is conducting the requisite management, inventories, and monitoring. Further, the Proposed Decision will not locate grazing away from significant biological crust communities or significant plant or animal species and thus will damage soil crusts, plant communities, and habitat for imperiled species. Finally, BLM has not disclosed data showing that significant progress was made toward achieving the Public Land and Health Standards and Guidelines on the allotments even without grazing for the past ten years.

d. Livestock grazing

The Management Plan sets the goal of managing livestock grazing in a manner that is consistent with the Public Land Health Standards and Guidelines for Livestock Grazing Management in Colorado and that maintains a thriving ecological balance, effective multiple-use relationships, and productive forage resources. The Management Plan sets the following objectives:

- Manage livestock grazing in a manner that achieves Public Land Health Standards and Guidelines for upland and riparian/wetland plant communities by adjusting use levels, timing and intensity, and by implementing rangeland improvement projects.
- Manage livestock grazing in a manner that ensures the long-term sustainability of rangeland ecosystems and promotes the resistance and resilience of rangeland plants and soils to the effects of recurring drought.
- Manage livestock grazing in a manner that meets the vegetation, recreation, fish and wildlife, water quality and cultural resource objectives and protects sensitive or high-quality resources.

The Management Plan requires the following actions:

- Analyze existing conditions and identify additional fieldwork during preparation of NEPA documentation for issuance of permits.
- Make one of the following determinations in an event that a permit is relinquished or cancelled:
 - Reissue term grazing permit
 - Close, either temporarily or permanently, the allotment to grazing where any of the following exists and is attributable to livestock grazing:
 - damage to cultural resources;
 - fragile soil/biological crusts essential for soil and water resource protection;
 - low forage production (less than 200 pounds/acre);
 - inadequate facilities to manage livestock grazing (such as fencing, water, or forage availability); and/or
 - degraded riparian and/or upland conditions.

- Implement protective measures where biological crust communities are identified, such as winter grazing only (December and January) when soil is frozen.
- Fence streams and riparian areas where reduced livestock numbers, or season of use adjustments, do not result in achieving PFC and/or in meeting Public Land Health Standards and Guidelines.
- Develop a Rangeland Monitoring Strategy and Plan within 2 years of the signing of the ROD in order to assess rangeland health conditions on a regular basis. Establish a process, based upon monitoring results, designed to implement necessary management revisions.
- Implement more stringent spring deferment, or allow no spring use, where Public Land Health Standards and Guidelines are not being met, or where significant progress is not being made toward meeting them, and where current livestock management is determined to be a substantial contributing factor.

The Proposed Decision is not consistent with these requirements in the Management Plan. As explained in the 2005 EA, the allotments were not meeting numerous Public Land Health Standards and Guidelines due to livestock grazing, and BLM did not provide an updated analysis of whether the allotments are currently complying with the standards. The Proposed Decision will neither ensure the long-term sustainability of rangeland ecosystems nor promote the resistance and resilience of rangeland plants and soils because it will prevent the development of new biological soil crusts and will damage current biocrusts, prevent recovery of native plant species and promote the spread of non-native species, alter the hydrology of the area, and promote further drying of the landscape. Grazing will also damage cultural resources and degrade habitat for many wildlife species. Accordingly, the Proposed Decision will not meet these objectives nor protect resources.

The Monument Plan explicitly requires that BLM analyze existing conditions and identify additional fieldwork during NEPA documentation for permit issuance—BLM has not completed a new NEPA analysis since the Monument Plan was issued, thereby ignoring this direction.

Most egregiously, the Proposed Decision is inconsistent with the Management Plan because BLM was required to close, either temporarily or permanently, the allotments to grazing because the following issues exist and are attributable to livestock grazing:

- Damage to cultural resources
 - BLM claims that the 2014 cultural resource analysis found no adverse impacts to cultural resources—but this analysis included a sample of only 11 sites, which are only a small percentage of the sites in the allotments. BLM’s decision to assess impacts of grazing on cultural resources based on data from ten years without grazing is arbitrary and unreasonable. Impacts to cultural resources from grazing that ceased ten years ago are likely hard to observe—trampling and damage to resources may not be obvious after so many years, so BLM cannot rely on delayed assessments to determine whether new grazing will result in negative impacts to cultural resources. Further, available information indicates that the Jackson castle site shows historic degradation that must be considered.



- BLM is relying on the permittee to build an exclosure fence to prevent future degradation but there is no indication that this fence is certain to be built.
- Fragile soil/biological crusts essential for soil and water resource protection
 - BLM continues to rely on outdated information about biological soil crusts from the 2005 EA/2001 assessment, which fails to recognize the new biological soil crusts that have developed over the past ten years. BLM's determination on this point in the Proposed Decision, p. 10, suggests that its previous conclusion that biological crust should increase in size and complexity under these grazing alternatives is arbitrary and unsupported—BLM found that livestock grazing was the causal factor in failure to achieve soil standards. In light of this information and the essential crusts that are currently present in the allotments, BLM should have permanently closed these allotments. Once livestock were removed for an extended time, soil crusts began recovering in many areas on the allotments, showing that prior grazing was preventing such development. New grazing would damage these developing crusts.
- Low forage production (less than 200 pounds/acre)
 - Again, BLM continues to rely on outdated vegetation production studies from 2001 Rangeland Health Assessment that do not reflect current conditions that have faced serious drought for some time. However, BLM found in the 2005 EA that 38% of acres in Flodine and 84% of acres in Yellow Jacket were producing less than 200 pounds per acre of forage. Further available information indicates that the allotments have little production potential. Observations of current conditions show that most areas on these allotments do not have 200 pounds per acre of forage when considering the appropriate forage species.
- Inadequate facilities to manage livestock grazing (such as fencing, water, or forage availability)
 - BLM admits in the Proposed Decision that serious damage to fencing has occurred but does not explain why this does not render the fencing inadequate to manage grazing, especially in light of fencing needs for cultural resources. BLM cannot rely on the permittee to fix the fences at a later date—BLM must determine before issuing the Proposed Decision that facilities are adequate to manage grazing.
 - BLM's determination in the Proposed Decision on this factor ignores the impact of climate change and continued drought on water resources and forage ability—the decision fails to even explain whether there is adequate water and forage available.
 - BLM disclosed that 80 locations in Flodine are rated high priority for maintenance of facilities while no assessment has been completed on Yellow Jacket. In the Proposed Decision, BLM fails to explain how these high priority locations do not constitute inadequate facilities. BLM must explain how its failure to maintain and inspect facilities complies with these requirements.

- Degraded riparian and/or upland conditions
 - BLM's Proposed Decision relies entirely on the 2005 EA to analyze this prong and concludes that grazing should improve and make significant progress toward meeting standards. By using data that is a decade old, BLM's conclusion is arbitrary because the data do not reflect conditions today. For example, BLM should have considered whether riparian and upland conditions have improved and are now meeting standards given the lack of grazing over the last ten years. BLM was required to determine whether degraded upland and riparian conditions exist and are the result of livestock grazing. BLM failed to do so and available information indicates that livestock grazing was a causal factor in such conditions, thereby requiring closure of the allotments on a permanent basis. Further, the 2005 EA did not analyze the private lands subsequently acquired—ignoring a large portion of the allotments fails to comply with the Management Plan.
 - BLM's available data indicates that McElmo Creek and Yellow Jacket Creek are not meeting riparian health standards or PFC. BLM's conclusion that upstream activities are impairing riparian conditions fails to account for the damage caused by livestock grazing. BLM admitted in a meeting with interested parties that riparian areas would continue to fail to meet rangeland health standards—given this admission, the agency cannot authorize grazing that will prevent achievement of these standards.

BLM does not have discretion to ignore the Management Plan's direction to close the allotments where these conditions exist. Because these conditions exist and are caused by livestock grazing, BLM must act to close the allotments to grazing. Even if BLM did have discretion, the agency is squandering an important opportunity to restore and protect these allotments by allowing grazing to continue degrading important resources. BLM should take action now to close the allotments while no permits exist for the allotments—the agency will likely face more resistance against closing allotments in the future once permits are issued.

The Proposed Decision is also inconsistent with the requirement to impose protective measures for biological soil crust communities, such as grazing occurring only during winter seasons when the ground is frozen; and the requirement to fence riparian areas and streams where livestock grazing has not resulted in achieving PFC and/or Public Land Health Standards and Guidelines. Further, BLM does not have necessary the Rangeland Monitoring Strategy for regular range health monitoring and process for making changes to management based on monitoring results. BLM should also consider its option to create a forage reserve allotment for these areas.

e. Terrestrial and Aquatic Wildlife Species and Habitats

The Management Plan requires that BLM take numerous actions to protect wildlife and their habitat. For example, BLM should manage habitat for native fish and wildlife species in a manner that optimizes biological diversity, contributes to the recovery of ESA-listed species, restores sagebrush grasslands to support populations of Gunnison Sage-grouse, reintroduces bighorn sheep and Gunnison Sage-grouse, improves forage and cover conditions for Mule Deer, etc. BLM is required to, *inter alia*, include measures to protect, preserve, and restore natural

functions of floodplains, wetlands and aquatic/riparian habitats; conduct ESA Section 7 consultation for implementation-level activities such as this and prohibit activities that would result in harm or jeopardy to ESA-protected or BLM species sensitive species.

BLM has failed to do so. The authorized grazing will harm natural resources and the land by reducing grasslands and other vegetation, degrading riparian and aquatic resources, compacting soils, spreading invasive species, destroying biological soil crusts, and disturbing or trampling species. Further, as explained in this protest, BLM's activities meet the may affect threshold that requires Section 7 consultation under the ESA and changes to management actions to prevent harm to listed species. Similarly, BLM must follow its new procedures for sensitive species and prohibit grazing to protect species from harm resulting from grazing.

f. BLM's choice of permittee.

The Proposed Decision provides a conclusory statement that the requirements of 43 C.F.R. § 4110.1 have been met but fails to explain how the agency determined the applicants have "satisfactory records of compliance" with their grazing permits. Without copies of the applications, the public cannot confirm whether these requirements were met. For example, BLM must determine adequate performance exists under 43 C.F.R. § 4130.1-1(b), which provides a subjective determination – "substantial compliance." The public should be informed how BLM determines whether an applicant has demonstrated "substantial compliance" and whether the chosen applicants have a record of non-compliance and the reasons for such non-compliance. For example, the public should know whether BLM had enough information and data about the applicants' compliance on other allotments to support an adequate determination—available information suggests that BLM is missing data from the Marble Wash area. Finally, BLM fails to explain how it applied the factors in 43 C.F.R. § 4130.1-2 to determine the chosen applicants.

In conclusion, BLM should not have authorized new grazing on allotments that historically did not comply with several Rangeland Health Standards as a result of livestock grazing management. *See* Proposed Decision, p. 1. BLM's cursory explanation that the Proposed Decision is consistent with the Management Plan is arbitrary because it fails to assess and demonstrate compliance with numerous applicable provisions, including the Standards for Public Land Health Guidelines for Livestock Management.

III. BLM's Proposed Decision does not comply with the National Landscape Conservation System.

Under the National Landscape Conservation System, BLM must "conserve, protect, and restore nationally significant landscapes that have outstanding cultural, ecological, and scientific values for the benefit of current and future generations." 16 U.S.C. § 7202(a); *see also* BLM Manual 6100, § 1.6(A); *and see* Secretarial Order No. 3308 (Nov. 15, 2010). NLCS also requires that BLM manage National Monuments "in accordance with any applicable law . . . relating to [the area]" and "in a manner that protects the values for which the [area was] designated." 16 U.S.C. § 7202(c); *see also* BLM Manual 6100, § 1.6(A)(2) & (B)(1); BLM Manual 6220, § 1.6(A)(2) & (B)(1).

The CANM Management Plan explains that “The Canyons of the Ancients National Monument is part of the NLCS, with a vision that emphasizes the protection of entire landscapes of cultural and natural values in order to maintain their integrity amongst the surroundings that sustain them. The term ‘landscape’ in the NLCS title is a key element as to how public lands within the NLCS system are to be managed. The emphasis is on protecting entire landscapes for cultural and natural values, instead of preserving only isolated parcels and fragmented ecosystems.”

BLM’s Proposed Decision to issue new grazing permits violates numerous requirements of the NLCS and the agency’s own policy guidance addressing its management of NLCS lands, including:

- BLM is required “to ensure that conserving, protecting, and restoring the values for which NLCS units were designated are the highest priorities in the planning for and management of these lands.” BLM Manual 6100, §1.4(A)(1).
 - BLM should make protection of cultural and natural resources the highest priority in managing these lands because protection of those resources was the purpose of the CANM—authorizing grazing that threatens to harm cultural resources fails to do so.
- BLM is required to ensure that activities such as grazing are consistent with the relevant proclamation, NLCS policy and guidance, and land use plan decision. BLM Manual 6100, §1.4(C)(1).
 - As explained throughout this protest, BLM has failed to do so.
- “NLCS units encompass some of the West’s most scenic and iconic landscapes.” Thus, BLM is required to “emphasize the conservation, protection, and restoration of these scenic values” and “maintain and promote ecological connectivity and resilience and to restore, to the extent feasible, the natural system function and species composition of disturbed areas within NLCS units.” Finally, “BLM will use the best available science in managing NLCS units.” BLM Manual 6100, §1.6(A)(7)-(9)
 - Rather than protecting or restoring scenic and ecological values, BLM’s Proposed Decision will harm land and natural resources that have begun to recover from years of grazing-induced degradation.
- “NEPA analyses of proposed actions within NLCS units will disclose the effects of each alternative on the values for which the area was designated. “ BLM Manual 6100 §1.6(c)(4).
 - BLM has not completed a NEPA analysis of grazing in these areas since NLCS was passed, so the agency has failed to comply with this requirement.
- Where FLPMA’s multiple-use mandate conflicts with a National Monument’s proclamation, “the designating language will apply.” BLM Manual 6100, § 1.6(B)(1)
 - BLM cannot excuse violations of the CANM proclamation on the grounds that grazing is allowed or required under FLPMA.
- BLM should promote CANM as a site for scientific research and use it “as a laboratory for testing innovative land management practices, including adaptive management, consistent with the conservation, protection, and restoration of the values for which these



lands were designated. Findings from such research will be made available to the scientific and educational communities and will be distributed for use throughout the BLM in order to inform future management decisions.” BLM Manual 6100 §1.6(F)(3)-(4).

- As explained in this protest, BLM’s decision to re-authorize grazing prevents the agency from studying the impacts of closing allotments to grazing where previous data shows numerous violations of Rangeland Heath Standards.
- BLM has numerous specific requirements related to cultural and paleontological resources that are especially applicable to CANM, which houses the largest number of cultural resources in the country. *See* BLM Manual 6100 § 1.6(G) and (L). For example, BLM must identify priority areas within CANM for nomination to the National Register of Historic Places, for cultural resource inventories, and for archaeological research.
 - BLM fails to consider whether these areas are located within the allotments or demonstrate that it has completed a cultural resource inventory on these allotments. Given the purpose of the CANM and the Hopi’s explanation that numerous cultural resources exist in these allotments and many more are undocumented, these areas should be designated as priorities for cultural and paleontological resource inventories.
- BLM must make NLCS units available for recreational opportunities and designate visual resource management classes for all NLCS units to ensure protection of scenic values and the aesthetic character of the landscape. BLM Manual § 6100, 1.6(M).
 - BLM failed to assess the impacts of grazing on recreation or ensure that grazing will not prevent or impair recreation on the allotments. Further, BLM failed to designate or disclose the visual resource management class for these allotments. Given that BLM is restricting some human foot travel in the areas under the Management Plan, BLM’s decision to allow cattle grazing, a much more harmful impact than foot travel, is arbitrary.
- Livestock grazing may only occur if it is consistent with the designating proclamation and other applicable law. BLM Manual § 6100, 1.6(L). Grazing management practices on the CANM must be implemented to protect the cultural resource and natural resource values for which it was designated. *Id.* Finally, BLM must use NLCS units as a laboratory for innovative grazing techniques to conserve, protect, and restore NLCS values.
 - As explained throughout this protest, the grazing authorizations are inconsistent with the proclamation and other laws. Thus, grazing may not occur under the NLCS. Even if it could, BLM must authorize grazing in a much more protective manner and use these authorizations to study innovative grazing techniques. For example, BLM should continue to use these allotments to study the restoration of allotments following cessation of livestock grazing and compare those impacts to the baseline data that shows violations of Rangeland Heath Standards caused by grazing.
- BLM is required to use the best available science to manage national monuments. BLM Manual 6220, § 1.6(A)(7); *and see id.* at (M).
 - BLM has ignored the best available science in reaching the proposed decision, including the scientific articles attached and included in the references list at the end of this protest that document numerous harms posed by livestock grazing.

- BLM is required to comply with similar requirements in its policy manual 6220.
 - However, the agency is failing to do so in similar ways to those discussed above.

In conclusion, BLM's Proposed Decision fails to analyze or comply with nearly every policy, guidance, and requirement stemming from the NLCS, thus rendering it unlawful and arbitrary. This fails to comply with the requirement that BLM "document how the activity is consistent with the proclamation or designating legislation." BLM Manual 6220 § 1.6(c)(3). Under NLCS, BLM must manage these lands under higher and more protective standards and cannot rely on minimum standards allowed for permitting grazing in other areas.

IV. BLM failed to comply with the ESA in issuing the grazing permit.

Under section 7(a)(2) of the ESA, "[e]ach federal agency shall . . . insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat of such species." 16 U.S.C. § 1536(a)(2) (emphasis added); *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 524 F.3d 917, 924 (9th Cir. 2008). The ESA imposes a procedural consultation process "to ensure compliance with the [ESA's] substantive provisions." *Thomas v. Peterson*, 753 F.2d 754, 764 (9th Cir. 1985). To fulfill these procedural duties, federal agencies must consult with the appropriate federal fish and wildlife agency under § 7 whenever it takes an action that "may affect" a listed species. See 16 U.S.C. § 1536(a)(2); 50 C.F.R. § 402.14(a).

In addition to the listed species described above, several other listed species are federally protected in Colorado, including: Mexican spotted owl (threatened), Piping Plover (threatened), Razorback Sucker (endangered), Lesser Tern (endangered), Greenback Cutthroat Trout (threatened), Pawnee Montane Skipper (threatened), Colorado Pikeminnow (endangered), Preble's Meadow Jumping Mouse (threatened), Canada Lynx (threatened), Southwestern Willow Flycatcher (endangered), Black-Footed Ferret (endangered), Butterfly, Uncompahgre Fritillary Entire (endangered), Chub, Bonytail Entire (endangered), Chub, Humpback Entire (endangered), and Whooping Crane (endangered). BLM must determine whether any of the species or habitat protected under the ESA are located in the allotments and whether the Proposed Decision may affect those species or critical habitat. If any listed species or critical habitat may be affected by the proposed decision, BLM must consult with U.S. Fish and Wildlife Service over the impacts of the proposed action on those species or critical habitat before issuing a final decision.

V. BLM is violating the National Historic Preservation Act.

BLM must comply with the National Historic Preservation Act ("NHPA"). 16 U.S.C. § 470 *et seq.* The NHPA sets the policy for the Federal Government to "administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations." 16 U.S.C. § 470-1(3). BLM is prohibited from approving any "undertaking" unless the agency takes into account the effects of the undertaking on historic properties that are included in or eligible for inclusion in the National Register of Historic Places. 16 U.S.C. §§ 470f. BLM must "[r]eview existing information on

historic properties within [that] area,” and “take the steps necessary to identify historic properties within the area of potential effects.” 36 C.F.R. § 800.4(a)(1)-(2), § 800.4(b). NHPA is a “stop, look, and listen provision” that requires BLM to consider the impacts of grazing on historic properties and sacred sites before issuing authorizations. *See Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 805 (9th Cir. 1999). The NHPA provisions apply to properties of “traditional religious and cultural importance to an Indian tribe”, which may be eligible for inclusion in the National Register. *Id.* at 805 (citing 16 U.S.C. § 470a(d)(6)). Thus, BLM must engage in consultation with tribal governments to carry out these requirements. *See id.* The Proposed Decision fails to acknowledge the NHPA, let alone demonstrate compliance with the Act. BLM must consider the NHPA requirements, including the examples cited herein, and comply with them before issuing new grazing authorizations on these allotments.

VI. BLM is violating the CANM Proclamation.

The CANM Proclamation explains that it was established to protect the cultural and historic resources, wildlife habitat, and natural resources located within the national monument.¹ The Proclamation explained that CANM’s purpose is “protecting the objects listed above” in the proclamation—those objects are the cultural, historic, and natural ones described in the proclamation—grazing is not listed as an object above and thus CANM was not established to protect grazing. The Proclamation’s statement that laws and policies governing livestock grazing continue to apply does not allow BLM to elevate grazing over cultural resources, natural resources, or wildlife protection.

As explained in this protest, the Proposed Decision will harm cultural, historic, and natural resources and wildlife throughout the allotments. In particular, numerous cultural resources are present in the allotments—as the Hopi Tribe explained in the attached letter from February 2014, 2,373 sites archaeological and historic sites, constituting 43,912 acres, have been recorded in the allotments analyzed in the 2005 EA. Further, the Wallace Acquisition lands included 25 documented and 700 likely cultural sites, including Jackson’s Castle and the Hamilton Tower Site, wildlife habitat, and unique riparian areas. Sites that are particularly vulnerable to livestock impacts include those with standing walls and rock art, as past impacts to cultural resources include pushed walls, abraded rock art, trails, soil compaction, erosion, etc.

Thus, the Proposed Decision is inconsistent with the Proclamation’s designation of CANM to protect the cultural resources within. Further, the Proposed Decision contains no analysis of how it complies with the CANM Proclamation and will ensure of protection of cultural resources. In sum, BLM cannot authorize grazing where it will not ensure protection of objects that are to be protected in the CANM.

¹ Available at http://www.blm.gov/co/st/en/BLM_Programs/land_use_planning/rmp/canyons_of_the_ancients/resources/proclamation.html



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VII. BLM has not complied with public disclosure and participation requirements.

Under NEPA, BLM is required to fully disclose information supporting its analysis and provide a full and fair discussion of the environmental impacts of a proposed action in an EIS that “guarantees that the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.” *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 768 (2004) (internal quotation omitted). By not preparing a new NEPA analysis, BLM has failed to adequately disclose information and thereby prevented the public from providing reasoned public comments that may assist the agency in its decision-making process.

Further, BLM failed to provide all interested parties of notice of the proposed decision and to consult, cooperate, and coordinate with interested parties as mandated by the agency’s own grazing regulations. *See, e.g.*, 43 C.F.R. 4160.1; 43 C.F.R. § 4130.2(b); 43 CFR 4100.0-5. As the letter to BLM dated July 31, 2015 (attached and incorporated herewithin) explained, numerous interested parties did not receive notice of the proposed decision. Similarly, BLM failed to respond to inquiries of the interested public and provide information when requested, which falls short of the agency’s duty to consult, cooperate, and coordinate.

RELIEF REQUESTED

For the reasons identified in this protest, we respectfully request that BLM withdraw the proposed decision. Due to the incompatibility of the proposed grazing with the CANM Management Plan and various other laws, we request that BLM permanently retire the Yellow Jacket and Flodine Park Allotments from grazing. If BLM does not permanently retire these allotments, we request that BLM prepare a new and updated National Environmental Policy Act (“NEPA”) environmental assessment (“EA”) or an environmental impact statement (“EIS”), a new cultural resources analysis, a new rangeland health analysis, and a new decision that documents its compliance with all of applicable laws and requirements, including those discussed herein. If BLM rejects these requests and issues the new ten-year grazing permits, we hereby request that BLM exercise its authority to suspend all grazing on these allotments pending resolution of any subsequent appeals and litigation.

Sincerely,

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