



Office of the Governor

State of Utah

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Submitted electronically: tstonemanning@blm.gov

The Honorable Tracy Stone-Manning
Director
Bureau of Land Management
U.S. Department of Interior
BLM Washington Office
1849 C Street NW, Rm. 5665
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RE: Appeal -- Governor's Consistency Review | Grand Staircase-Escalante National Monument Resource Management Plan and Final Environmental Impact Statement

Dear Director Stone-Manning:

The State of Utah submits this appeal of the response by the Bureau of Land Management (BLM) to the Governor's consistency review regarding the Grand Staircase-Escalante National Monument (GSENM) Proposed Resource Management Plan (Proposed RMP) and Final Environmental Impact Statement (FEIS). The State respectfully requests that the BLM fully reconsider the issues raised as well as respond to the recommendations not addressed in the BLM's response. The State fully incorporates herein the Governor's consistency review and the Protest it previously submitted on the GSENM Proposed RMP/FEIS.

Preliminary Issues

1. Conflict of Interest

Before the BLM reviews this appeal, it must designate an unconflicted decision maker who can properly decide the issues contained therein. While BLM regulations provide that the BLM Director will decide an appeal of the Governor's consistency review, 43 C.F.R. § 1610.3-2(e), she is conflicted from doing so by her acceptance of employment with an interested party. Even if this decision could be properly delegated to the Deputy Director, the Deputy Director is also conflicted out from deciding this appeal based on her former employer, who is the same interested party.

Director Tracy Stone-Manning was recently named as the future president of The Wilderness Society, to begin her term there in February 2025. Federal law imputes the interests of prospective employers to federal employees and prevents participation in matters that would affect those interests on pain of criminal punishment, 18 U.S.C. § 208, and it also prohibits participation in matters where a “reasonable person with knowledge of the relevant facts” would “question the[employee’s] impartiality in the matter,” 5 C.F.R. § 2635.502. Here, the Director’s future employment with The Wilderness Society makes impartial decision making on the appeal impossible. The Trump Administration issued a presidential proclamation reducing the boundaries of the GSENM in 2017. Within a few days, The Wilderness Society joined other plaintiff organizations in suing the President, the Secretary of the Interior, and the Director of the BLM in their official capacities to require them to continue to implement the earlier 1996 Monument proclamation and to enjoin implementation of the new Monument proclamation and to declare the new proclamation to be unlawful. *Wilderness Society v. Trump*, No. 1:17-cv-02587 (D.D.C). In 2020, the Trump Administration finalized a revised GSENM RMP. But in 2021, President Biden issued a new proclamation for the GSENM, effectively returning it to the prior status in the 1996 proclamation. While The Wilderness Society’s 2017 lawsuit has been administratively closed, the court ordered the continued submission of status reports and provided that the parties could move to return the cases to the active docket as appropriate. The issues in it remain live because other parties, including the State, have filed challenges to Proclamation 10286, which currently are pending before the Tenth Circuit. *Garfield Cnty. v. Biden*, No. 23-4106 (10th Cir.). The Wilderness Society has intervened in that case to defend the Biden proclamations. Furthermore, The Wilderness Society has also submitted comments on the GSENM Draft RMP/Draft EIS that oppose positions taken by Utah. Thus, the Director’s participation in this appeal would be inappropriate and unlawful.

Deputy Director Nada Culver, even if she could decide the appeal, is conflicted out from doing so for related reasons. In 2017, Ms. Culver was Senior Counsel for The Wilderness Society and Director of its BLM Action Center. Given the nature of the litigation involving President Trump’s proclamation on the GSENM, it is virtually certain that Ms. Culver participated in that litigation in 2017 and likely until she left The Wilderness Society in 2019. It is also highly likely that she participated in other issues related to the GSENM during that same period on behalf of The Wilderness Society given her role as Senior Director for Policy and Planning. That litigation and the proclamation continue to present a live issue, as discussed above. Federal law requires that federal employees act impartially and without preferential treatment of parties. 5 C.F.R. § 2635.101(b)(8). Yet attorney ethical duties effectively require that Ms. Culver not take a position adverse to her former client. Colo. R. Prof’l. Cond. 1.9. Therefore, she too cannot be the decision maker.

Further, in 2017, while Ms. Culver was Senior Counsel for The Wilderness Society and Director of its BLM Action Center, a Settlement Agreement was entered in *Southern Utah Wilderness Alliance v. U.S. Department of the Interior*, 2:12-cv-0257 (D. Utah) (the “Settlement Agreement”). The mediation that resulted in the Settlement Agreement was conducted by David Aemmer, a Tenth Circuit Court Mediator. The State (and other intervenors), despite having been

granted intervention in the case as of right, were not allowed to actively participate in the mediation; the State, in fact, refused to sign the final Settlement Agreement.

The Settlement Agreement required BLM to re-evaluate thirteen TMPs in the State of Utah and mandated that BLM meet specific requirements for each of those TMP re-evaluations. Ms. Culver actively participated in the settlement discussions and engaged in the mediation of the Settlement Agreement. Indeed, Ms. Culver is listed in Paragraph 42 of the Settlement Agreement as one of the attorneys for the named plaintiffs, The Wilderness Society. Further, the State is aware of witnesses who observed or knew of Ms. Culver's participation in the settlement negotiations.

Since taking her position with BLM, two TMPs subject to the Settlement Agreement have been released with eleven more in the wings. Three of those TMPs have been finalized with Records of Decision, and releases of additional TMPs are anticipated this year. Currently, the State has filed a lawsuit against BLM on one of those TMPs (the San Rafael Desert TMP: *State of Utah v. Dept. of Interior*, 2:24-cv-00172 (D. Utah)), and shortly will be commencing litigation on a second final TMP, the Labyrinth Rims/Gemini Bridges TMP.

Throughout the TMP processes, the State has observed that these TMPs are not being directed or decided at the local field office level as is the usual course of action. Instead, Ms. Culver is directly involved in the final decision-making processes, and, in many cases, is superseding or overriding the local-level decisions. This is problematic, not only because of her general prior activism and positions but also because she represented one of the plaintiffs in the litigation against BLM on specific TMPs while in-house counsel at The Wilderness Society and now appears to be using her position by interfering with planning decisions typically made by local BLM officers.

Whoever determines the appeal for the BLM must have appropriate authority under the statutes and regulations and be free of any conflicts of interest or appearance of bias, but such a person must also be appropriately apprised of the issues. The BLM must find an appropriate decision maker if it seeks to rule on the appeal.

2. Recommendations not responded to are deemed accepted

According to the consistency regulations, “[i]f the State Director does not accept the recommendations of the Governor(s), the State Director shall notify the Governor(s) and the Governor(s) shall have 30 days in which to submit a written appeal to the Director of the Bureau of Land Management.” 43 C.F.R. § 1610.3-2(e). This regulation creates a clear procedural requirement for the BLM to notify the Governor if it does not accept any recommendation, which is necessary to allow the State to appeal the decision as the regulations allow.

Given the language in 43 C.F.R. § 1610.3-2(e), the State believes, in instances where the State Director has failed to notify the Governor of a decision to either accept or reject specific recommendations, the Governor's recommendations should be considered accepted by default. In this appeal, the State has identified several recommendations where no notification was provided by the State Director regarding acceptance or rejection of the recommendations. If the State Director intended to accept the recommendations in full, no further notification would be necessary. However, if the State Director does not intend to accept the recommendations in full,

the State requests formal specific notification of such rejections of the recommendations so that the Governor has the required (and additional) 30 days to submit a written appeal as guaranteed by the regulations.

The recommendations in question are referenced below in the appeal, but it is important to note that these were clearly identified recommendations in the Governor's consistency review. The lack of notification regarding whether these recommendations were accepted or rejected calls into question whether the BLM has carefully reviewed the Governor's submission or followed the required procedures, potentially impacting the Governor's ability to appropriately exercise his appeal rights on behalf of the State.

Appeal Arguments

The State appreciates that the Acting State Director, at the beginning of the transmittal letter for the response, recited the proper standard for reviewing consistency. As the Acting State Director states, FLPMA regulations provide that "land use planning decisions 'shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein' of State and local governments and Indian Tribes 'so long as the guidance and resource management plans [of the State and local government and Tribe] are also consistent with the purposes, policies, and programs of Federal laws and regulations applicable to public lands.'"

At the same time, in the response itself, the BLM does not honor these requirements. Many of the arguments justify land use decisions or restrictions based on their being consistent with federal regulations, within the discretion afforded by those regulations, or even consistent with other policy choices the BLM has made that are not contained in any statute or regulation. Yet the question is not whether the land use planning decision and restrictions are consistent with federal policy—if they were not, the Governor's consistency review would be irrelevant because other federal law would prohibit them. The question is whether there is a sufficient justification to displace the State RMP, and there is not. The State's recommendations, all based on the State RMP and State law, must therefore be accepted.

Additionally, the response at many points misstates the State's objection, addresses only a strawman argument, or even attempts to dispute the State's interpretation of the State's RMP. This calls into question whether the BLM approached this task in good faith and truly gave "careful consideration to the issues raised" by the State, as the transmittal letter asserted. While the State points out where this occurred and clarifies its positions, it also requests that the Department approach this task with the appropriate sincerity due to the concerns raised by the Governor concerning the displacement of State law and policy within Utah, which Congress and federal law have directed the Department to carefully consider.

I. BLM's Failure to Disclose All Key Inconsistencies (The Failure to Accomplish the Prerequisite to the Governor's Consistency Review)

In the Governor's consistency review, the State pointed out that the BLM's letter to the Governor and Appendix O in the FEIS described only "some key consistencies and differences between the two plans." This phrasing indicated that the BLM did not identify all the key

inconsistencies, much less all inconsistencies it was aware of between the plans. Federal regulations clearly require the BLM Director to submit the Proposed RMP to the Governor and to identify “any known inconsistencies with State or local plans, policies or programs.” 43 C.F.R. § 1610.3-2(e). By disclosing only “some key” inconsistencies and failing to disclose all known inconsistencies, the BLM has not met its legal obligation. The State asserts that the BLM’s failure to provide a full list of all known inconsistencies at the outset of the consistency review process undermines the transparency and integrity of the process and puts the State at a disadvantage in responding to the Proposed RMP.

The State’s Position: The State asserts that the BLM should have disclosed all key inconsistencies that it was aware of prior to initiating the 60-day consistency review. The phrase in Appendix O stating that “some key consistencies and differences between the plans are summarized below” means that other key inconsistencies existed but were left out of the summary. This omission disadvantages the State, preventing it from fully responding to the BLM’s position on issues the BLM already knew about.

BLM’s Response: In its response, the BLM argues that “the comparison of consistency between the plans requires a degree of summarization to compare concepts, not differences in specific wording.” The BLM further contends that “identifying each instance of differences in language between plans that are developed for different purposes and based on different authorities is impractical.” However, this response does not address the core issue raised by the State. The concern is not about the impracticality of performing a detailed side-by-side comparison of the State RMP and the Proposed RMP, but rather that the BLM failed to disclose inconsistencies that it knew about. The BLM’s failure to disclose these inconsistencies, even in a summarized form, is a direct violation of its legal obligation to identify all known inconsistencies to the Governor.

State’s Reaffirmation: The State reaffirms its request that the BLM provide a complete disclosure of all key inconsistencies it was aware of before the 60-day review period began. This disclosure would not only assist the State in responding more effectively but would also promote transparency and a more meaningful review process. The harm caused by the BLM’s failure to fully disclose these inconsistencies has already been discussed in the Governor’s consistency review, as it places the State at a disadvantage by limiting its ability to respond to all known issues.

Impact on the Process: By withholding information on even key inconsistencies between the State RMP and the Proposed RMP, the BLM has prejudiced the State. FLPMA and BLM regulations properly put the onus of ensuring consistency on the federal government, not the State. It is not the legal obligation of the State to become familiar enough with the sprawling Proposed RMP/FEIS within 60 days of its promulgation to identify and describe the inconsistencies; rather, it is the obligation of the BLM to identify and address those inconsistencies throughout the planning process. Requiring the State to raise concerns about issues that the BLM has already anticipated but did not disclose contravenes the law and disadvantages the State’s sovereign interests, including by preventing the State from addressing all inconsistencies significant to the State within the limited time period provided. Moreover, this lack of transparency and attempt to side-step the core issue by responding to a tangent has been a consistent problem throughout this planning process, preventing honest dialogue between the BLM and the State. Even now, in this

Governor's consistency review process, the BLM is still failing to straightforwardly coordinate with the State. It must fully identify all known inconsistencies and then provide the Governor with an additional 60 days to review them.

II. Coordination and Process Issues

The State raised concerns in Section II of the Governor's consistency review about the BLM's failure to engage meaningfully with the State and other stakeholders early in the planning process, including as described in the State's Protest. As part of that, the State raised concerns regarding the BLM's failure to use the State's status under NEPA as a cooperating agency to ensure that the planning process aligned with the State RMP, particularly regarding the inclusion of the State in early stages of alternative development. The BLM's response to these concerns fails to adequately address the fundamental issues raised by the State.

State's Position: The State contends that the BLM did not engage with the State in a timely and substantive way. The State had requested a more robust coordination process that included state agencies, local governments, and permit holders as active contributors from the outset of the planning process, particularly in the opportunity to participate in alternative development. The BLM's approach failed to align with the State's RMP, which requires the participation of state representatives and local governments as integral members of the interdisciplinary team (IDT). Additionally, the State asserts that the BLM has the discretion under NEPA to involve the State at the earliest point possible, and that doing so would have been consistent with both NEPA and the State RMP. Instead, by adopting an artificially expedited timeline and not including the State substantively early on, any discussions came too late to be able to affect the decision making. The failure to involve the State early in the process has resulted in an incomplete planning effort and a missed opportunity for collaboration. Finally, as detailed in the Protest and incorporated into the Governor's consistency review, the State explained how the meetings the BLM actually had with the State were ineffectual because they were informational only; the BLM sent only personnel who could not make decisions, and those personnel even refused to provide some information.

BLM's Response: The BLM's response dismisses the State's concerns. First, in the letter preceding its substantive response, the BLM asserts that the "manner in which the BLM conducts its planning and NEPA processes is directed by federal statute and regulation" and consistency requirements do "not supersede the BLM's obligation to comply with applicable Federal laws and regulations." But that is irrelevant because the State asserts that the BLM could have lawfully conducted its planning and NEPA processes consistently with the State RMP's directions on process but chose not to do so.

Second, the BLM asserts that the coordination process was sufficient and that the BLM worked with the State's Public Lands Policy Coordinating Office and other local cooperating agencies. However, the BLM's response does not adequately address the State's point that early involvement in alternative development—especially in relation to the NEPA process—was not provided to the degree that was necessary for meaningful State participation. NEPA does not prohibit the BLM from involving the State early enough in the process to contribute to alternative development, and the BLM was required to do so under FLPMA. Although the response notes that

there were coordination meetings and that the State was designated as a cooperating agency, it fails to address the numerous failings detailed in the Protest, including the nonexistent or limited coordination that occurred at meetings until it was too late in the process to have any effect.

State’s Reaffirmation: The State reaffirms its position that the BLM violated its duty to coordinate with the State at appropriate stages of the planning process, as required by the State RMP. This failure to engage early in the process has led to a misalignment with the State’s RMP, which specifically requires that state representatives be included as members of the IDT. Furthermore, it meant that the State could not substantively and meaningfully contribute, as the State RMP and federal law require. The State requests that the BLM seriously consider the importance of early coordination, which is entirely within the bounds of NEPA and would have provided a more effective and collaborative planning process. Furthermore, the State reaffirms its position that the BLM has the discretion to involve the State early in the NEPA process, specifically in alternative development, and that this involvement would have been consistent with both NEPA and the State RMP. Accordingly, the State reaffirms that the BLM must reopen the Proposed RMP to additional opportunities for coordination, including the proposal and selection of additional alternatives that capture the State RMP’s policies that were not captured in the existing alternatives. Additionally, the BLM must also re-open the Proposed RMP for public comment, including on all of the State’s proposals that came too late in the process to be considered at the Draft RMP stage in public comment given the failure to coordinate, regardless of whether they were raised later in the process. In any event, the changes that have been made since the Draft RMP/Draft EIS must also be submitted to public comment or otherwise coordinated with the State to fulfill the coordination required by the State RMP, which is consistent with FLPMA and NEPA.

III. Monument Designation

The State raised that not only the creation of the Monument but also its planning and implementation, including any designation in the Monument of 5,000 acres or more, be coordinated with the State according to the State RMP. The Monument planning must respect State interests and must recognize and protect “access to public roads, existing and potential mining claims, grazing rights, private property rights, etc.” The BLM does not respond to these points.

State’s Position: The State contends that throughout the planning process, the State has been substantively excluded and its interests and policies disrespected.

BLM’s Response: The BLM’s response misses the point. It states that the consistency process does not apply to the presidential proclamation, but Utah specifically noted deficiencies in the planning process. The response also states that the point is not addressed except in the “transmitting letter,” but the transmittal letter again addresses only the proclamation, not the planning process.

State’s Reaffirmation: The State reaffirms its position that the BLM violated its duty to respect the State’s interests by engaging in substantive coordination, including recognizing and protecting “access to public roads, existing and potential mining claims, grazing rights, private property rights, etc.” and on all designations of over 5,000 acres. Accordingly, the BLM must re-open coordination and comment to ensure that these requirements are met.

IV. Objects

In Section IV of its Governor’s consistency review, the State identified a significant inconsistency in the BLM’s approach to the protection of resources in the GSENM. The BLM has not yet finalized an inventory of Monument objects. Yet it asserts that the lack of a finalized inventory of Monument objects has not hindered planning, stating that the Proposed RMP is “compatible with the protection of all the resources included in Proclamation 10286” and that selecting an alternative consistent with the protection of all resources will inherently protect the objects of historic and scientific interest. However, this response, while intended to reassure, effectively translates into a stance of “maximal protection” for any resource that could eventually be classified as an object—whether or not it will be inventoried or identified as such.

State’s Position: The State strongly disagrees with this approach, as it is inconsistent with the principles laid out in the State RMP. The State RMP clearly recognizes that while a reasonable level of protection for Monument objects is appropriate, “reasonable protection should not be translated to mean the maximum amount of protection possible.” The Proposed RMP’s effective stance of maximal protection is squarely inconsistent with this. In its Governor’s consistency review, the State raised the concern that the BLM’s posture of maximal protection, as opposed to reasonable protection, is not required by federal law nor the Proclamation and that such an approach unnecessarily restricts traditional uses and access (deemed “discretionary” by the BLM)—such as grazing rights and public roads—without properly distinguishing between Monument objects and other resources that are not designated as such. The Proposed RMP takes a blanket approach to restrict many uses based on hypothetical objects, regardless of whether those objects are ever actually determined to be protectable Monument objects.

BLM’s Response: Instead of addressing this fundamental issue, the BLM merely cut and pasted the same response that the State critiqued without any further consideration or meaningful engagement. To begin, the BLM’s failure to engage sincerely with the State’s critique suggests a lack of genuine effort to resolve the inconsistency identified despite such effort being required by the FLPMA statutory text and regulations. The question is not whether “the BLM will inherently be selecting an alternative that is consistent with the protection of the objects of historic and scientific interest in GSENM identified in Proclamation 10286”—it is whether such an approach protects too much. The response also states: “Indeed, providing proper care and management to the Monument objects identified in Proclamation 10286 also frequently involves protecting resources in GSENM that are not identified as Monument objects.” That is also not responsive to the State’s concern. It is irrelevant that properly protecting Monument objects can protect other resources because the concern is that more than Monument objects are being protected as Monument objects, thereby improperly prioritizing some resources and uses over others. That properly recognizing Monument objects will have collateral effects does not mean that the BLM’s choice cannot be held to account just because a proper choice might reach the same result in some cases. That is the definition of arbitrary.

State’s Reaffirmation: The State reaffirms that the BLM is developing an RMP that is fundamentally inconsistent with the State RMP. It treats non-Monument objects as Monument objects because the BLM doesn’t know what are and are not objects. This approach is not mandated

by federal law. Both federal and State laws require and promote only reasonable protection rather than maximum protection. So why then cannot the BLM be consistent with the State RMP that reasonable protection is not the maximum protection of every resource? The State RMP direction is consistent with federal law and the BLM has failed to show why that approach would be inconsistent or why it could not adopt that recommendation. It again simply didn't respond to the issue and moved on.

The State recommends as it did in section IV of the Governor's consistency review that the BLM's planning process be restarted to incorporate a clearer distinction between Monument objects and non-Monument object resources so the BLM can avoid the negative impacts that come with managing non-Monument objects as Monument objects. The BLM must finalize its inventory of Monument objects and revise the Proposed RMP to reflect this inventory. The Proposed RMP should then be adjusted to protect as objects only those resources that are identified as Monument objects while managing other resources in a multiple-use framework, as required by the FLPMA and the State RMP. Again, it is important to recognize that no federal law prohibits this approach. Nothing in code, regulation, or proclamation requires the BLM to manage non-Monument object resources as Monument objects. The BLM's failure to provide a meaningful response to this request, and instead cut and paste its previous response without addressing the substance of the State's concerns, represents a failure to properly engage in the consistency review process and is inconsistent with the spirit of collaboration required under federal law.

Another potential cure would be for the BLM to modify the Proposed RMP to reserve any decision based on the existence of uninventoried objects to implementation-level planning. Instead of restricting uses now, those uses would be determined based on an inventory of Monument objects once prepared. Because all the categorical decisions in the Proposed RMP are based on hypothetical objects, most decisions would need to be reserved for implementation-level planning for specific issues.

Request for Better Consideration: The State requests that the Director carefully reconsider this issue in the appeal. The BLM's approach of maximal protection in the absence of a finalized inventory of Monument objects is neither required by law nor consistent with the BLM's legal obligations under FLPMA and the State RMP. The State further requests that the BLM engage sincerely with the concerns raised and revise its approach to protect valid Monument objects while ensuring that non-Monument object resources are managed according to a multiple-use framework, as mandated by federal law and consistent with the State RMP.

V. Rejection of Multiple Use and Sustained Yield

The State appeals the State Director's decision not to accept any recommendations related to multiple-use and sustained yield principles in the Proposed RMP. The BLM's response fails to address the inconsistency and misinterprets the State's position. This failure to engage meaningfully is part of a broader pattern throughout the planning process.

State's Position: The State has consistently maintained that when the BLM does not need to diminish multiple-use activities to protect specific Monument objects, it must not. The State's position, as outlined in the Governor's consistency review, is that allowing multiple-use and

sustained yield principles to be implemented to the maximum extent allowable is required by the State RMP and federal law. The State RMP makes clear that non-use (saving the land for conservation purposes) cannot trump multiple use principles, only use limitations required to protect specific Monument objects can. The State noted that no alternative fully captured these principles.

BLM's Response: In its response, the BLM misunderstood or refused to engage with the core issue raised by the State. The BLM responded by asserting that “managing GSENM in a manner that elevates multiple uses above the protection of objects identified in Proclamation 10286, as the State RMP would require, would be inconsistent with federal law.” The response also stated (quoting FLPMA Section 302(a)) that “because GSENM is a component of the National Landscape Conversation System, the BLM must manage the monument ‘in a manner that protects the values for which the components of the system were designated.’” The response also disputes that the BLM failed to consider an alternative that would maximize multiple use and sustained yield, stating that Alternative A “would maximize such uses to the extent consistent with the protection of the objects identified in Proclamation 10286.”

State's Reaffirmation: This response dramatically misrepresents the State's position. The State does not advocate that multiple-use activities override the proper care of Monument objects but rather stresses that, absent a legitimate connection between multiple uses and the deterioration of a qualified Monument object, conservation should not take precedence over multiple-use and sustained yield principles. The critical issue here is the BLM's failure to identify Monument objects, which leaves the BLM unable to properly manage and care for these objects. Without identifying the objects, the BLM has proposed a “lowest common denominator” approach to managing the entire Monument, focusing on natural process conservation even in areas where no Monument objects have been identified, known, or are likely to be found. This approach diminishes multiple-use and sustained yield activities and elevates conservation without a clear connection to the proper care of specific Monument objects. That approach is inconsistent with the State RMP and federal law.

To be consistent with the State RMP, the BLM's Proposed RMP must be managed under the principles of multiple use and sustained yield, except where deviations from these principles are necessary to properly care for Monument objects in accordance with Proclamation 10286 and FLPMA. As the State pointed out, the BLM cannot be consistent with this part of the State RMP without first identifying the Monument objects that require additional management, or at the very least ensuring that limitations will depend upon future inventorying of specific objects and be tied to only those. The BLM's refusal to identify these objects yet adopting broad protections as if they have been identified everywhere has resulted in a Proposed RMP that unnecessarily diminishes multiple-use activities, elevates conservation beyond what is necessary, and disregards the multiple-use framework required by federal law and the State RMP.

The BLM's argument based on Section 302(a) of FLPMA is also unavailing. Managing the lands to protecting the values for which the Monument was designated means managing it to protect the Monument objects protected by the Antiquities Act, not managing it to promote conservation generally. That cannot occur without first identifying Monument objects and

determining what the proper care for those objects is. It is disingenuous for the BLM to hide behind section 302 of FLPMA.

The State's critique remains that the BLM's Proposed RMP essentially adopts a lowest common denominator approach. This approach suggests that because the BLM has not identified the Monument objects, it cannot identify proper care for those objects. So, instead, it has proposed an approach that treats the entire Monument as though it requires "proper care" for Monument objects and that proper care is focused on natural process conservation, even in areas that do not contain Monument objects or for which natural process conservation is unnecessary to protect them. This is not only inconsistent with the State RMP but also fails to honor the federal principles of multiple use and sustained yield, which the State RMP supports. The lowest common denominator approach goes far beyond the State RMP's policy of reasonable protection of resources and objects.

Additionally, the BLM is incorrect that Alternative A incorporated the multiple-use and sustained yield principles in the State RMP and federal law. Alternative A, the no action alternative, did not maximize multiple use principles. Rather, the Proposed RMP clearly states that it "generally allows for maximum discretionary uses." As the State explained in its Protest, this is not enough. BLM defines "discretionary uses" as uses "for which the BLM retains the discretion to authorize or decline to authorize." That is quite different than the multiple-use and sustained yield framework in the State RMP and in federal law.

Recommendation: To resolve this inconsistency, the State recommends that the BLM first identify the Monument objects within the GSENM. Once these objects are identified, the BLM should then determine the proper care and management for those objects, respecting the balance with other land uses. The BLM must then honor multiple-use, sustained yield, access, and enjoyment principles in all areas and management prescriptions unless those principles conflict with the proper care of identified Monument objects. This approach aligns with the State RMP and federal law, including section 302(a) of FLPMA, ensuring that all uses are managed properly and that Monument objects receive the appropriate care where necessary.

Regardless, the BLM must respect the principles of multiple use and sustained yield by incorporating these principles into an alternative and adopting it. Because no alternative incorporated these principles, this suggestion must be put to public comment.

The Need for Meaningful Change: The BLM has been aware of these requirements from the very beginning. It cannot talk or edit its way out of this issue. The BLM can extricate itself only by taking the time to identify Monument objects, deciding how to properly care for those Monument objects, and then honoring multiple-use, sustained yield, access, and enjoyment principles in all cases except where they conflict with the proper care of specific Monument objects.

VI. Management Zones

The State appeals the State Director's decision not to accept any recommendations regarding the management zones proposed in the Proposed RMP for the GSENM.

State's Position: In its Governor's consistency review, the State articulated its position against overregulation on public lands through special designations or management areas—indeed, any designation that would restrict uses of the land. The State identified the Proposed RMP's four management areas—Front Country, Passage, Outback, and Primitive Zones—as such designations that are inconsistent with the State RMP and not required by federal law. The State's position is clear: special designations, including the Proposed RMP's management zones, are inconsistent with the State RMP's framework for managing public lands in a manner that honors multiple uses, sustained yield, and access.

BLM's Response: Rather than engaging with the State's position and working to align the State RMP and the Proposed RMP, the BLM's response dismissed the State's concerns by asserting that management areas are not technically “special designations” and implying that they are therefore not inconsistent with the State RMP. If the BLM intended that dismissive response, it was made in bad faith. The Governor of Utah spent significant time in the Governor's consistency review explaining the State's opposition to special designations, and how, under the State RMP, the designation of management areas constitutes a special designation. The BLM's response suggests that the State misunderstands its own RMP and is, therefore, dismissive of the State's legal framework. The BLM does not engage in an honest conversation about the inconsistency but instead sidesteps the issue by relying on a semantic argument that fails to address the core of the State's concern.

The second part of the BLM's response provides further insight into its approach to the consistency review process. Rather than engaging with the State and attempting to find a truly consistent RMP, the BLM asserts that it has “discretion” under its policies to use an area management approach to control “discretionary uses” and that such an approach “is consistent with” the BLM's policy of “protecting and restoring world-class outdoor recreation opportunities in BLM [sic]” and “is consistent with the BLM's obligation to ensure proper care and management to monument objects.” The response fails to explain how such an approach is *required* by any legal authority. This response shifts the focus from consistency between the State RMP and the Proposed RMP to internal consistency with BLM policies. The BLM essentially suggests that as long as the Proposed RMP aligns with its own policies, it does not need to consider the State's RMP. That approach violates FLMPA. Indeed, such an erroneous approach, which conflicts with the BLM's own recitation of its obligations in its transmittal letter, suggests that the BLM is relying upon its misinterpretation of the State's RMP to avoid recognizing the inherent conflict that necessitates an adequate explanation.

State's Reaffirmation: The State asserts again that its RMP specifically prohibits the management area approach. The BLM owes the State deference in the State's interpretation and explication of its own RMP. The term “special designation” as used in the State RMP is not a technical term that is meant to be limited by the meaning the BLM ascribes to it but instead is intended to be broadly interpreted as referring to any particular designation that the BLM uses to impose special conditions, limitations, or restrictions. Even if this were unclear, the other provisions and policies of the State RMP cited in the Governor's consistency review make this plain. For instance, as the Governor's consistency review noted, the State RMP rejects “land-use

restrictions,” “new roadless areas and similar designations that limit access,” and “the management of non-wilderness federal lands as de facto wilderness, including ‘wildlands,’ ‘lands with wilderness characteristics,’ ‘wilderness inventory areas,’ and other such administrative designations (e.g., national monuments and roadless areas).” The management areas or zones meet these descriptions.

The absence of management zones would still be consistent with BLM’s policies on outdoor recreation and proper care of Monument objects. Not only would removing management zones support world-class recreation opportunities, but the removal would also enable the BLM to meet its obligation to protect and manage Monument objects in a way that is fully consistent with both federal law and the State RMP (which is the goal of the consistency process). The BLM’s refusal to engage in a meaningful discussion about the inconsistency highlights its unwillingness to genuinely consider how the State’s recommendations could improve the Proposed RMP, even when doing so would make the Proposed RMP more consistent with both federal law and policy, as well as the State RMP. Not implementing the management zones does not in any way impede the BLM’s ability to comply with federal law and policy, so it must defer to consistency with the State RMP and remove the special designations. Because these special designations or management areas come with multiple restrictions on multiple use, they are inconsistent with the State RMP.

Request for Honest Consideration: The State is appealing the State Director’s decision to decline making changes to the Proposed RMP because the BLM has failed to engage honestly with the State’s concerns regarding the implementation of management areas. The BLM’s refusal to address the inconsistency between the proposed management areas and the State RMP not only dismisses the State’s legal framework but also undermines the purpose of the consistency review process. The BLM must reconsider its stance and take the time to meaningfully evaluate the State’s position. Accepting the State’s recommendation to remove the management zones will align the Proposed RMP with federal law, BLM policies, and the State RMP, while also ensuring compliance with FLPMA. The BLM cannot continue to disregard the State’s position without compromising the integrity of the planning and consistency process.

VII. Management of WSAs and LWCs

The State appeals the State Director’s decision not to accept the recommendations regarding the management of Wilderness Study Areas (WSAs) and Lands with Wilderness Characteristics (LWCs) described in the Proposed RMP. Again, the BLM asserts that consistency with its own policies is good enough to displace the requirements of the State RMP.

State’s Position: The State described at length the policies in its State RMP opposing restrictions on land uses to promote wilderness-like characteristics, including the specific designation of “lands with wilderness characteristics,” other than in Wilderness areas designated by Congress. It also described how the State RMP opposes further restrictions on multiple uses than necessary to protect Monument objects, including to promote conservation or wilderness-like characteristics. And it described how the State RMP opposes any more restrictions on land use in WSAs than that required by FLPMA.

BLM's Response: The BLM acknowledges some inconsistency with the State RMP, which it notes opposes administrative designations that would restrict or prohibit use. This contradicts the prior section of the response, where the BLM disputed that the State RMP's prohibition on "special designations" applied more broadly. Yet BLM still fails to acknowledge the much more specific policies in the State RMP, including the State's opposition to the LWC designation in particular and to many specific use limitations.

Regardless, the BLM does not justify even this acknowledged inconsistency by citing any federal requirement or legal authority. Instead, the response asserts that "the BLM is within its legal authority to identify and manage areas as lands with wilderness characteristics for the protection of wilderness resources." Yet again, this misses the point. The response is an internal audit of the BLM's compliance with its own policies, which is not the purpose of this, or any, consistency review. The issue is whether the BLM can accept the State's recommendations and still be consistent with its legal obligations under FLPMA and the State RMP, and it could. The purpose of the consistency review process is not to evaluate internal consistency with BLM policies; rather, it is to assess whether accepting the State's recommendations would be consistent with BLM and federal policies and, if so, to incorporate those recommendations. The central issue is whether the BLM can accept the State's recommendations and remain compliant with its obligations under FLPMA. If it can, the BLM is obligated to do so. It can, so it is.

The other statements by which the BLM performs a consistency review with federal policy are similarly irrelevant, even though they raise additional questions. The BLM states that its management of LWCs is consistent with Sections 201 and 202 of FLPMA and its Manual 6320. The BLM does not specify with which part of FLPMA Section 201 its management direction is compliant. However, Section 201(a) of FLPMA states that "the preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent a change of the management or use of public lands" (43 U.S.C. § 1711). Not changing the management of the LWCs is compliant with Section 201, which also aligns with the State RMP, the goal of this consistency review. The Proposed RMP's management directives are not consistent with Section 202 because that section contains the requirement to be consistent with the State RMP.

The BLM fails to recognize that consistency with the State RMP also falls "within its legal authority to identify and manage" these areas. Not only is it within its legal authority to manage LWCs under a multiple-use and sustained yield framework, but it is also consistent with the State RMP.

Additionally, the BLM argues that the Proposed RMP "does not create de facto wilderness." The Proposed RMP is inconsistent with the State RMP's policy of not creating de facto wilderness, as the State interprets it, because the Proposed RMP creates de facto wilderness, especially for all LWCs managed to protect wilderness characteristics. The stringent use limitations that the State RMP opposes in de facto wilderness areas, including roads, are present. And even under federal law, those areas are effectively wilderness. The BLM identifies no key differences between such de facto wilderness areas and WSAs or congressionally recognized wilderness.

Regarding OHV closures in Wilderness Study Areas (WSAs), the BLM states, “While managing for non-impairment does not necessarily require closure to OHV use, such closure is consistent with the statutory requirement to maintain such areas for wilderness preservation.” This is a fatal admission. By acknowledging that non-impairment under federal law does not require closure to OHV use, it forfeits the argument that closure to OHV use is categorically necessary. Because the BLM still chooses to impose full closure, it violates its consistency obligations.

The BLM gives an “example” of how closure is “consistent” with the statutory requirement. It does not matter how many examples BLM cites, however, because that closure policy is not mandated by the statutory requirements. Yet even the given example is faulty. The BLM posits that “increased use levels above those experienced on the routes when they were inventoried would not conform to the requirement in section 603 to prevent impairment to the WSA.” But the BLM provides no evidence that there are such “increased use levels,” only theorizing that if there were, it would be a problem. Such hypotheticals are an insufficient, even arbitrary, reason for federal action in general, but certainly insufficient to displace the State RMP. In any event, the hypothetical does not describe reality. The State has observed that many roads in WSAs are receiving less use now than in 1976. The BLM can lawfully manage these areas in a manner that aligns with both the non-impairment standard and the State RMP, yet it has chosen not to do so despite its consistency obligations.

State’s Reaffirmation: The BLM has acknowledged the inconsistency of the Proposed RMP with the State RMP regarding the management of LWCs, and its assertion that it has the authority to manage LWCs to protect wilderness characteristics does not give it the authority to manage them inconsistently with the State RMP. The BLM can exercise its discretion in a manner that is consistent with the State RMP. Accordingly, the BLM must manage LWCs under the multiple-use and sustained yield framework unless such management conflicts with the proper care of Monument objects. In those cases, the BLM should impose the minimum limitation on uses necessary to properly care for the Monument objects. More generally, this approach is not only within the BLM’s legal authority but also consistent with the State RMP. The BLM’s proposed additional restrictions on LWCs, as discussed in the consistency review, are not consistent with the State RMP regardless of whether they are within the BLM’s authority. When choosing between exercising its legal authority in a way that is not consistent with the State RMP or in a way that aligns with both federal law and the State RMP, the BLM must choose the latter to comply with the FLMPA consistency requirements.

Regarding WSAs, the BLM can meet its non-impairment obligations and remain consistent with the State RMP by designating these areas as OHV limited rather than fully closing them. The BLM’s admission—that non-impairment does not necessitate OHV closures—aligns with the State’s position. If the BLM can meet its non-impairment obligations without full closure, there is no reason to unnecessarily restrict access. The BLM is choosing to impose closures, despite having the legal authority to manage these areas in a way that maintains access while still meeting the non-impairment standard, which would provide consistency between the Proposed RMP and the State RMP. Regardless, any closures of roads must occur through travel management planning.

Nothing compels the BLM to categorically close lands to all OHV use, regardless of the history or volume of use.

Request for a Meaningful Response: The State is appealing the State Director’s decision to decline to accept the recommendations on the management of LWCs and WSAs because the BLM has failed to engage meaningfully with the issues raised. The BLM has the legal authority to manage LWCs and WSAs in a manner consistent with both federal law and the State RMP, and it is obligated to do so under FLPMA. The BLM’s failure to properly consider the State’s recommendations, particularly in the areas of multiple use and OHV management, is inconsistent with FLPMA’s consistency requirements.

VIII. Travel Management, Land Access, and R.S. 2477 Rights-of-Way

The State appeals the BLM State Director’s decision not to accept any of the State’s recommendations regarding travel, transportation, or land access. The State recommended that the BLM adopt appropriate travel designations that would allow for future travel management planning to be consistent with the adopted State and county transportation systems. The BLM rejected this recommendation, asserting that doing so would violate 43 C.F.R. § 8342.1. The BLM offered the following conclusion statement: “Maximizing motorized vehicle access would be inconsistent with the BLM’s regulatory obligations under 43 CFR 8342.1 to minimize resource impacts and user conflicts, particularly in a national monument where the BLM must ensure the protection of sensitive monument objects.” The BLM further stated that, for similar reasons, it cannot offer land designations that would authorize the state and county transportation systems.

BLM’s Failure to Address the Core Issue: The BLM’s response fails to engage with the core issues at hand. While 43 C.F.R. § 8342.1 provides various considerations for OHV use designations, that does not require OHV use to be eliminated. Rather, it considers the protection of resources, the promotion of safety for “all” users, and the minimization of conflicts “among various uses.” In other words, the protection of natural resources other than Monument objects is to be balanced with access so that those resources are available for multiple uses and sustained yield. The various sub-sections provide that “areas and trails shall be located” in the areas that will minimize conflicts and achieve this balance, not that they will not be located anywhere.

Fundamentally, the BLM ignores that the regulations allow for land to be designated as allowing “limited” OHV use, which is exactly what the State RMP requires. The limited designation can protect resources by providing appropriate access, concentrating impacts on designated roads, reducing user-created trails, and promoting safety. Appropriate roads, by consolidating access, help limit off-trail activity, reducing environmental damage and resource conflicts. Further, roads facilitate safety by allowing for emergency access, providing clearer paths for travelers, and minimizing congestion in uncontrolled areas. This is why designating roads under the limited designation is consistent with 43 C.F.R. § 8342.1. By contrast, designating large areas as entirely closed to OHV use can hamper these critical values that even the regulation recognizes.

Relatedly, the BLM asserts that “maximizing motorized vehicle access would be inconsistent with the BLM’s regulatory obligations,” implying that the State seeks maximal

motorized vehicle access. Yet that again twists what the State proposed and fails to engage in good faith. While the State “has staked out a position that maximizes public and governmental access,” that includes through all appropriate means, including trails for nonmotorized vehicles or hiking, and more importantly such access is in service of seeking “to maximize multiple uses,” not to maximize roads. Maximizing access does not mean maximizing roads, and the two ideas conflict—ensuring maximal access means limiting travel to suitable, safe, and efficient roads that can be properly maintained, and can be located (as they are) in areas that minimize disturbance. By contrast, the vague “appropriate access” provided in the Proposed RMP, in fact, hinders multiple uses, as explained in the Governor’s consistency review and the Protest.

Furthermore, the BLM twice disagrees that the OHV area closures in the Proposed RMP are inconsistent with the State RMP. First, it states that the Proposed RMP is consistent with maintaining “road systems that provide safe, convenient, and equitable access to citizens of all ages and physical conditions” because the Proposed RMP is consistent with previous plans. Second, it states that the OHV area designations pertaining to primitive areas in the Proposed RMP “will not prohibit a broad range of uses in those areas,” which is all that the State RMP requires. Yet the State RMP requires more—the promotion of multiple uses and sustained yield. Moreover, the BLM’s assertion that there is convenient and equitable access to even aged and disabled citizens when no OHV use at all is allowed in large areas of the Monument is false on its face. The proffer in the response that emergency vehicles can still access primitive areas also means little for the State RMP’s values. The BLM again has imposed its flawed interpretation of the State’s RMP to downplay inconsistencies when it should instead defer to the State’s interpretation. The State maintains that the State RMP is inconsistent with the restrictions in the Proposed RMP on these points. As the Governor’s consistency review also states, the State RMP opposes “new roadless areas and similar designations that limit access,” and the Proposed RMP unquestionably does so.

The BLM has the legal authority to designate areas as limited for OHV use and, in doing so, could comply with both the State RMP and its regulatory obligations, including those under 43 C.F.R. § 8342.1. However, by designating areas as closed where State and county transportation systems have roads, the BLM is effectively closing those roads to public access, which contradicts the State’s RMP. The BLM should be able to make designations that balance the protection of resources with the need for access to public lands. The State reaffirms its recommendation that BLM does not designate areas as closed where there are roads that are a part of the State and county’s transportation system. The regulations allow for those areas to be designated as limited to existing or designated roads, meaning the BLM can be consistent with federal law and the State RMP. This recommendation applies to areas with roads that are a part of the State and county transportation system. Other areas where those roads do not exist, like No Man’s Mesa, are not considered in this recommendation.

The Disingenuous Argument: In the second paragraph of the BLM’s response, the BLM suggests that, except for the V-Road, the Proposed RMP retains the existing travel and transportation network from the 2020 GSENM and KEPA Approved Resource Management Plans. This is half-truth, and the BLM is aware of this. In the 2020 planning process, the BLM acknowledged that hundreds of miles of existing roads in the Monument were omitted from the

initial 2000 GSENM Monument Management Plan map and the public had been allowed to continue to travel on those roads unimpeded. Both the State and the BLM agreed that those omitted roads were important and should be evaluated for inclusion in the transportation system. Based on that, the Interdisciplinary Team and the planning leads created the 2020 GSENM and KEPA plans, which allowed for the evaluation and potential designation of these omitted roads as part of the transportation network. The Proposed RMP, however, removes the ability to evaluate and designate most of the omitted roads, which is a significant departure from the GSENM and KEPA 2020 plans. It is misleading to suggest the travel and transportation network would be the same under the Proposed RMP as it would have been under the GSENM and KEPA 2020 plans. If that is the case, then why is the BLM not carrying forward the GSENM and KEPA 2020 travel and transportation management descriptions?

It is misleading for the BLM to claim that the Proposed RMP “retains the existing travel and transportation network” when it eliminates the opportunity to evaluate roads that were previously acknowledged as important. The BLM has been made aware of this discrepancy, yet it has chosen to ignore the critical distinction between what is included in the Proposed RMP and what was decided in the GSENM and KEPA 2020 plans.

Given this background, the BLM’s response does not address or acknowledge the simple fact that the Proposed RMP would close roads currently in use at the land use planning level, a departure from the previous GSENM and KEPA 2020 plans. This contradicts the State policy of maintaining access found throughout the State RMP and repeated at length in the Governor’s consistency review. Even if this inconsistency were necessitated by new regulations—and it is not—the BLM still violated federal law by closing those roads without considering the reliance interests of those who use them. Considering such interests is a bedrock principle of administrative law.

Additionally, because none of the alternatives considered not closing all non-designated routes, an alternative that preserves in-use routes and roads for future travel management planning should be provided for public comment and adopted.

Response to Trail Prohibitions: The third paragraph of the BLM’s response does not address the inconsistency the State raised regarding the prohibition of nonmotorized recreational trails, including paved and mechanized trails, in the Primitive Area. The State’s recommendation (Recommendation No. 2) addressed these restrictions, not only motorized roads. The BLM’s response completely sidesteps this issue and instead discusses only motorized trails. The Primitive Area is the largest area in the Monument and yet it restricts most types of use. The State believes that removing the prohibition on nonmotorized trails, including paved and mechanized trails, in this area would better support tourism and recreation and would provide broader access for a variety of users, which is what the State RMP demands. The State recommends that the prohibition of paved and mechanized trails in the Primitive Area be removed. Regardless, because the BLM has not responded to this recommendation, it must accept it.

R.S. 2477 Rights-of-Way: The State also appeals the BLM’s decision not to provide access to claimed R.S. 2477 routes within the GSENM. The BLM’s response to the inconsistencies

regarding respecting valid existing rights, particularly R.S. 2477 rights-of-way (ROW), highlights the BLM's misunderstanding of FLPMA. FLPMA mandates that BLM land use plans be consistent with State plans to the maximum extent provided that they are consistent with federal law. The BLM seems to misconstrue this to mean that as long as the direction in its land use plan is allowed under federal law, it is exempt from being consistent with State plans.

The State disagrees with the BLM's assertion that of "the claimed RS 2477 rights-of-way (ROW) located in areas designated by the Proposed RMP as OHV closed, all but the V-Road have been closed to public OHV use since 2000." There is a difference between closing a road to public OHV use and omitting it from a transportation map while still allowing the public to drive on it for 24 years. Despite the BLM's assertion that it has been "exercising full possession and control over" these roads, many of these roads have continued to be used by the public and maintained by the County. Whatever authority the BLM claims to have over these roads also does not make the roads' closure consistent with the State RMP or exempts the decision from FLPMA's consistency requirements. Nowhere in the State RMP does it state that if the BLM disputes the State's claim it does not have to honor the claimed R.S. 2477 rights. The State RMP says the opposite, that the "right of the public to have unrestricted access to all roads granted under RS 2477... shall be held inviolate." To be consistent with the State RMP, the BLM must allow public access on all roads the State claims under R.S. 2477, even if the BLM disputes the claim. Absent a policy that requires the BLM to close roads it disputes, the BLM has the legal authority not to close these R.S. 2477 roads for the time being and allow them to be evaluated in travel planning. The BLM's position—that the State RMP requires access only to R.S. 2477 roads that the BLM hasn't yet closed—is nonsensical and directly contradicts the language of the State RMP. It also violates the provisions of FLPMA that prior existing rights be recognized.

Even assuming the BLM has the legal authority to designate claimed R.S. 2477 rights-of-way as closed or to restrict access—and the State does not concede this—that still is not consistent with the State RMP. The BLM has not provided legal authority or policy that requires it to close or keep closed all the claimed public roads in the proposed OHV closed and ROW-excluded areas. The BLM can use a travel management planning process to work towards a consistent transportation network between the State, counties, and the BLM. The BLM did so just four years ago. This approach aligns with the FLPMA consistency requirement.

Specific Appeal of the V-Road Closure: The State also appeals the BLM's decision to close the V-Road. The BLM's position that it has full control over the V-Road does not justify its closure under the State RMP. The State has repeatedly informed the BLM that closing the V-Road is inconsistent with the State RMP because the road is claimed as a public right of way. The State RMP mandates that all public rights of way be left open for public access and closing the V-Road violates that requirement.

The BLM's assertion that "the BLM has no reason to believe that Garfield County has vested title to the V-Road under the logic of the court's recent decisions" is concerning. The BLM is fully aware that the V-Road was constructed before 1976, as evidenced by at least two field tours organized by the BLM during the GSENM and KEPA 2020 planning process. While the field tours did not result in an administrative determination regarding its R.S. 2477 status, the tours

established a “reason to believe” that Garfield County has vested title to the V-Road. In fact, the opposite of the BLM’s claim is more likely –, that it has no reason to believe that Garfield County does not have vested title to the V road.

Further, case law makes it clear that a federal agency cannot close existing county roads asserted to be R.S. 2477 rights-of-way without a reasoned and nonarbitrary basis for doing so. As noted in *Kane County v. Salazar*, the BLM “is not entitled . . . to close existing county roads asserted to be R.S. 2477 rights-of-way without a reasoned and nonarbitrary basis for doing so, such as an administrative determination, based on substantial evidence, that the asserted right-of-way is invalid.” 562 F.3d 1077, 1090 (10th Cir. 2009) (Henry, J., concurring). The BLM has not presented any evidence that the public right of way on the V-Road is invalid, yet it intends to close it. The BLM’s assertion that closing the V-Road is consistent with the State RMP is therefore rejected by the State.

The State reaffirms its recommendation to respect its public right of way on the V-Road and to keep it open for public use. The BLM must honor its obligation to respect these rights and ensure that the V-Road remains open to the public, as required by the State RMP. The BLM is within its authority to leave that road open and, in fact, it is currently open and being used by the public. The BLM has not pointed to any federal policy that would be violated by leaving the V-Road open. The BLM has claimed that the V-Road has negatively impacted the adjacent WSA but has not provided any evidence to support that assertion. As the State explained in its Protest, BLM’s assertion is not only baseless, but it is also at odds with the data on hand. The State asserts that the V-Road has also benefited the adjacent WSA because visitors now have access to features inside the WSA such as the Cosmic Ashtray. The V-Road was a prior existing right at the time the WSA was inventoried, and it was purposefully excluded from the boundaries of the WSA (cherry stemmed). It must be maintained under FLPMA.

IX. Livestock Grazing

The State appeals the BLM’s decision not to accept the majority of its livestock grazing recommendations. Foremost among these concerns are protecting and accommodating livestock grazing and leaving lands available for grazing (Recommendation Nos. 1, 3, and 5 of Section IX). While the BLM has acknowledged that “the Proposed RMP, which would reduce the number of acres available for livestock grazing, congruously decrease AUMs, and include management direction that places restrictions on structural and non-structural range improvements, would be inconsistent with the State RMP,” the BLM asserts that making the changes necessary to be consistent with the State RMP would conflict with federal law and policy. The BLM’s justification is based on the assertions that re-authorizing livestock grazing on these allotments “could impact,” “could adversely impact,” and “could conflict” with the proper care and management of Monument objects, as well as ecological and hydrological functions, and that the Notice of Intent for the GSENM sought “to protect and restore the BLM’s [sic] biological resources.”

While the State appreciates that the BLM at least acknowledges the inconsistency, the BLM’s rationale is insufficient. Mere hypotheticals cannot support categorical decision making in general, and they cannot displace the State RMP’s policies when the BLM could instead make

more fine-grained decisions based on actual data at the implementation and permit level to allow grazing that does not conflict with the protection of Monument objects. Indeed, this is a more specific example of the general problem discussed above with BLM proceeding on a lowest common denominator approach. The BLM's "policy" announced in planning also cannot trump its consistency obligations, otherwise, those obligations would be meaningless.

Even if impacts and conflicts are possible, they are not inevitable across all areas made unavailable for grazing. It is more probable that making allotments available for grazing would not impact, would benefit, and would be consistent with the proper care of Monument objects as well as ecological and hydrological functions as long as it is done intelligently. Furthermore, the Proposed RMP decision on availability would not even decide the question. When lands are made available for grazing, they are not immediately grazed. The BLM is required to go through an environmental review process to determine appropriate grazing levels. This is also the best mechanism for assessing impacts and structuring grazing practices in a way that does not negatively impact Monument objects. Therefore, leaving the currently available ungrazed allotments available for grazing in the future would not conflict with the BLM's ability to comply with FLPMA or Proclamation 10286, as the BLM would be required to conduct its review and authorizing decisions through the EIS process before re-introducing grazing. Additionally, scientific studies were provided to the BLM demonstrating that proper grazing can benefit biological resources, which further supports this approach.

Accordingly, BLM has an obligation to manage livestock grazing at existing levels within existing laws and regulations in a manner that is consistent with the protection of Monument objects and values. In *Western Watersheds Project v. Abbey*, WWP made similar arguments against the BLM that the BLM now makes here – that FLPMA and federal law would be violated by "unreasonably elevating multiple use principles above the protection of Monument objects." 719 F.3d 1035, 1042 (9th Cir. 2013). That court, recognizing the provisions of 43 U.S.C. § 1732(a), held that "although [the Proclamation] requires the protection of monument objects, the Proclamation does not foreclose consideration of multiple-use-and sustainable-yield principles for grazing management. These principles are part of the existing laws that guide the 'BLM in issuing and administering grazing permits.'" *Id.* at 1043. As in that case, here the GSENM Proclamations make clear that grazing is to be managed under existing laws and regulations, which not only do not foreclose the consideration of multiple-use and sustained yield principles but require that these principles to be employed. *See* Proclamation 6920, 61 Fed. Reg. 50223, 50225 (Sept. 18, 1996); Proclamation 10286, 86 Fed Reg. 57335, 57346 (Oct. 8, 2021).

The BLM's objection to calling the closures "permanent" also inappropriately downplays the State's concern. The point is that by closing them at the land use planning level, the BLM is will prevent any further decisions being made through ordinary grazing management until a similarly large land use planning effort occurs again. The decision is effectively permanent and categorical.

The State reaffirms its recommendations to revise the general goals of the Proposed RMP to not designate lands that are currently available for grazing as unavailable for grazing. As mentioned, and in disagreement with the BLM, the reintroduction of stressors that have been

absent for 20 years does not conflict with Section 302 of FLPMA, Proclamation 10286, or the policy to restore biological resources. The reintroduction will be preceded by an environmental assessment that can mitigate and remove any potential negative impacts on biological resources and Monument objects while highlighting the potential positive impacts.

General Goals: Despite acknowledging the inconsistencies, the BLM also appears to backtrack later in its response, stating that the inconsistency with general goals and objectives is “not immediately clear” because the State RMP also seeks to “balance the grazing and livestock needs on public lands in an equitable manner that benefits livestock producers, wildlife populations, and the natural environment.” The issue though, is not that the State RMP recognizes that there are competing values, but that the Proposed RMP subordinates grazing. Nothing in the Proposed RMP seeks to maintain healthy grazing, much less promote it alongside promoting the development and protection of other resources. Yet that is required by the State RMP and multiple-use and sustained yield principles. Thus, as the State explained, the goals in the Proposed RMP must include promoting and providing for appropriate livestock grazing opportunities and recognizing that livestock grazing is protected by federal law. The goals must be revised.

BLM’s Recognition of Some Recommendations: The State recognizes and appreciates the BLM’s decision to change the designation of four pastures from unavailable to available and commends the BLM for making the Proposed RMP more consistent with the State RMP (Recommendation No. 4). That decision reduces the inconsistency with the State RMP on this point but does not eliminate it, nor does it address other relevant recommendations. The State recommended (including Recommendation No. 13) that the limitation to trailing for the four pastures follow, not preceded, 1) a land health determination, including a causal factor determination, demonstrating that livestock grazing is causing the impairment of biological processes, and 2) consideration of other means of reducing harm before limiting grazing, including removing invasive species like tamarisk that are causing impairment. The adaptive management the BLM proposes should conform to this. BLM should consider that not all deviations from land health standards are caused by livestock grazing. Drought and pinion juniper encroachment can affect land health standards. The adaptive management approach must include a causal factor determination for livestock; if livestock are not significantly contributing to the deviation, full grazing should be authorized. The State also reminds the BLM that its decision to stop (or pause) grazing is based on the data from Appendix M, which is nearly 20 years old and doesn’t consider the management changes implemented since the data was collected. To be more consistent with the State RMP, the State recommends that the BLM conduct current land health assessments and causal determinations before removing livestock grazing from these pastures. The State offers its resources to help perform these assessments quickly, as the State has immediate access to qualified environmental consultants in good standing with the BLM who can assist with this task if desired.

More generally, the State also disputes the BLM’s characterization of its recommendations as requiring causal factor determinations to make land use planning decisions. The State instead recommended that the Proposed RMP make a causal factor determination a prerequisite to reducing grazing, to be done at the implementation level. The State agrees that determining causal factors at the land use planning level is inappropriate—but that also means the BLM making

pastures unavailable to grazing based on those same considerations (or worse, hypotheticals) rather than leaving it to permitting and implementation-level decision making is also inappropriate. Accordingly, the State repeats its recommendations requiring that causal factor determination approach (including Recommendation Nos. 11 and 12). If the Director determines not to adopt these recommendations, they should be put to public comment because the BLM did not consider them.

Range Improvements: The State appeals the BLM’s decision to not accept the State’s recommendation regarding structural and nonstructural range improvements (Recommendation 8). The State’s recommendation called for the BLM to allow both structural and nonstructural range improvements based on the needs of ranchers, including convenience, operational efficiency, economic purposes, and even increasing forage primarily for livestock. The State asserts that such improvements should be authorized without requiring a land health assessment to demonstrate a land health problem, focusing instead on enhancing range conditions in a manner consistent with the State RMP’s goals for supporting sustainable grazing and the principles of multiple-use and sustained yield as well as the proper care of Monument objects.

The BLM’s response to the State’s recommendation on structural range improvements suggests that to be consistent with federal law, it can only allow improvements if they support the achievement of range land health based on a land health assessment from the last 10 years. The BLM claims this direction is consistent with its grazing regulations and its policy to protect the GSENM landscape and its associated scenery, as articulated in the July 29, 2022, Notice of Intent. That, again, does not mandate the direction if inconsistent with the State RMP. The State is not challenging that structural improvements should be consistent with range health, only that they must “support” the achievement of BLM standards. The State is asserting that allowing structural improvements for other reasons, such as convenience and efficiency, is equally consistent with federal law and policy.

The BLM fails to explain why allowing structural range improvements for purposes beyond supporting range health, provided they are consistent with range health, would be inconsistent with federal law or policy. Allowing ranchers to modify structural range improvements for operational efficiency and convenience does not harm the “entirety of the GSENM landscape and its associated scenery.” Ranchers are fully capable of making these modifications without negatively impacting the landscape. Moreover, such improvements can enhance the range conditions for livestock, wildlife, and other resources (including Monument objects) in alignment with FLPMA and the State RMP. The BLM also does not address that requiring a current land health assessment is overly restrictive, including because they are often not timely performed. Additionally, the BLM fails to address the State’s objection to the Proposed RMP requiring that any structural improvement in the Primitive Area “protect and enhance GSENM objects.” Provided that the improvement is consistent with protecting specific GSENM objects, it should not be prohibited, and there is no basis in federal law that would trump the State RMP’s policies. That condition too must be removed.

The State reaffirms its recommendation to allow structural range improvements for broader purposes, as long as they are consistent with federal law and policies and do not interfere with the

proper management of Monument objects. There is no evidence that allowing such improvements would harm GSENM objects, and they can, in fact, benefit the overall ecological health of the Monument as a secondary purpose.

Regarding nonstructural range improvements, the BLM asserts that such improvements intended to increase forage for livestock grazing would not be consistent with the protection of GSENM objects or the policy to restore natural biological processes in the Monument. Despite the BLM's claim that this was "demonstrated in the Final EIS," it was not. The BLM has never explained which Monument objects would be harmed by increased forage for livestock or how increased forage would conflict with the protection of Monument objects. The BLM's conclusory statements do not justify a categorical prohibition.

The State argues that, on the contrary, increasing forage could likely benefit Monument objects, wildlife, water resources, and even soil health. Properly managed forage improvements could have a positive effect on the biological resources within the Monument. If the BLM's claim were accurate, then it would also apply to natural processes that increase forage, yet the BLM has not implemented any management prescriptions to prevent natural forage increases. Additionally, the Proposed RMP allows for nonstructural range improvements when they are consistent with the proper care of Monument objects, but it restricts them based on the purpose rather than the effect on the resources. This conflicts with the State RMP and is not necessitated by federal law. As the Governor's consistency review explains, increasing forage specifically for livestock can nevertheless reduce conflicts between livestock and wildlife and can direct livestock away from more vulnerable areas that provide forage. There is no inherent reason that increased forage or even more livestock necessarily will damage Monument objects or biological processes, and the latter must in any event be balanced with multiple uses.

The BLM's claim that nonstructural range improvements for broader purposes would conflict with federal laws and policies is not supported by the response or the EIS. The State reaffirms its recommendation to allow nonstructural range improvements for broader purposes as long as they do not interfere with the proper protection of Monument objects. Doing so would comply with both federal law and policy and be consistent with the State RMP. The BLM should allow these improvements to support ranchers' operational needs while still protecting the Monument objects.

Drought Management Changes: The State appreciates the BLM's acceptance of its recommendations concerning replacing the use of the U.S. Drought Monitor Index with the Vegetation Response Index and the changes to Row 187 (Recommendation No. 10). Nevertheless, before these changes, Row 187 read, "Implement seasonal reductions in AUMs in allotments during drought years. Use the U.S. Drought Monitor as a guide to indicate drought." While the response states that the BLM would not rely on a single data source, nevertheless, this phrasing does not leave room for the BLM to assess whether AUM reductions are necessary even if other sources of information suggested that the full AUM numbers would not negatively impact resources during a drought. The BLM should amend Row 187 to read "consider seasonal reductions" rather than "implement seasonal reductions," which will help ensure that scientific

data and professional judgment drive the decision-making process rather than a single trigger, drought.

Fixed Ceilings on AUMs: The BLM rejects the State’s recommendation to remove fixed ceilings on acres and AUMs for grazing because that would be “inconsistent with the BLM’s policies.” The response bases this assertion on the BLM’s planning handbook. While that handbook is neither a federal law nor regulation and cannot provide a justification for an inconsistency with the State RMP, it also does not support the argument. The response does not state how the handbook supports any designation as not available for grazing. And for lands available for grazing, the handbook states that the BLM should “identify on an areawide basis both the amount of existing forage available for livestock (expressed in animal unit months) and the future anticipated amount of forage available for livestock with full implementation of the land use plan while maintaining a thriving natural ecological balance and multiple-use relationships.” That is not what the Proposed RMP does. The Final EIS makes no effort to identify existing forage available, much less anticipated forage available. That is precisely what the State requests—it is confident that actual forage is substantially greater than that permitted. Regardless, the handbook does not suggest that this identification of forage should then create a ceiling for permitted AUMs, much less for all conditions regardless of seasonal variability. Similarly, there is no support for limiting the acreage available regardless of forage available. The response also states that not having fixed ceilings would be “inconsistent with the BLM’s policy for this planning effort of protecting and restoring biological resources in GSENM.” Yet unless those resources are Monument objects, they cannot justify an inconsistency with the State RMP. And as discussed above, in the Governor’s consistency review, and the Protest, having appropriately increased grazing based on available forage would not necessarily hinder the protection and restoration of other biological resources. Accordingly, the State renews its recommendation related to eliminating fixed ceilings.

Request for Further Determination: The BLM has not addressed the State Recommendation Nos. 7, 9, 12, 13, and 14 under Section IX of the consistency review. The State requests that the BLM provide a determination on these recommendations and provide an additional opportunity to appeal those determinations if necessary.

XI. Invasive Species Management

The State appreciates the BLM’s decision to make changes to its zonal management approach concerning invasive species. The State RMP specifically identifies Russian olive and tamarisk as harmful to riparian areas and highlights the need for active management to remove these species. In aligning the Proposed RMP with the State’s goals, the BLM should adjust the language to match the State RMP’s objective of removing Russian olive and tamarisk plants from all riparian areas by 2030. Furthermore, the State recommends that the BLM remove any limitations on the removal of these species, as long as it is consistent with the proper care and management of Monument objects.

By removing these invasive species, the BLM will be taking necessary actions to restore the ecological balance in riparian areas, which benefits both Monument objects and broader

biological resources. The State reaffirms its recommendation to ensure that the Proposed RMP supports the State's goal of eradicating Russian olive and tamarisk by 2030 and facilitates their removal without unnecessary restrictions.

XII. VRM Classifications along the Highway 89 Utility Corridor

The State is appealing the BLM's decision not to adopt its recommendation to classify the entire congressionally designated utility corridor along Highway 89 as VRM Class IV. The State's recommendation was based on the understanding that Public Law 105-355 prioritizes utility development within this corridor, and a VRM Class IV designation would allow for necessary infrastructure while still addressing visual resource concerns.

BLM's Response and the State's Reaffirmation: In its response, the BLM justifies maintaining the VRM Class II designation for the four-mile segment near the Cockscomb Formation by asserting that this would protect the visual resources associated with the formation. However, the BLM has not provided any evidence or specific reasoning as to why a Class III or Class IV designation would be inconsistent with the proper care and management of the Cockscomb visual resource. While the BLM claims that a Class II designation is necessary to protect visual resources, it does not demonstrate why this is the only approach that would meet the requirements of Proclamation 10286 or FLPMA Section 302.

A Class III or Class IV designation allows for a more flexible approach to managing visual resources while still enabling utility development. Under a Class III designation, the BLM can still impose design prescriptions to minimize visual impacts but can also allow for more modification to the landscape, particularly where existing disturbances, such as the highway and current utility infrastructure, are already present. Class IV offers even greater flexibility, permitting major modifications to the landscape, which would be consistent with the congressional intent to prioritize utility development in the corridor. Importantly, both Class III and Class IV designations allow for the mitigation of visual impacts, meaning that the BLM can protect the Cockscomb formation and other Monument objects without unnecessarily restricting infrastructure development. As the Governor's consistency review states, the State RMP prioritizes protecting access to utilities, the improvement of infrastructure, and the removal of vegetation within and around infrastructure and corridors.

State's Recommendation: The BLM has not shown why a Class III or Class IV designation for this four-mile stretch of the utility corridor would be inconsistent with the proper care and management of the Cockscomb formation's visual resource, nor has it provided any evidence that these designations would violate Proclamation 10286 or FLPMA Section 302. The State reaffirms its recommendation to classify the entire utility corridor as VRM Class IV. If the BLM rejects this recommendation, the State requests that the four-mile segment be managed as VRM Class III, in alignment with the rest of the corridor and consistent with the needs for utility development, while still addressing visual resources in a flexible and manageable way.

XIII. Harvest of Forest Products

The State appeals the BLM's decision not to accept its recommendations regarding the management of forest and woodland products, specifically the blanket prohibition on commercial harvest and restrictions on noncommercial harvest generally and in LWCs.

State's Position: The State RMP encourages the sustainable use of forest resources, including the harvest of forest and woodland products, and emphasizes that such use should be consistent with the goals of wildfire risk reduction, economic development, and rural job opportunities. The blanket prohibition on commercial timber harvest in the Proposed RMP is inconsistent with the State RMP, particularly with regard to small-scale, local commercial operations. The State's concern lies not with large commercial timber sales but with the inability of local residents to engage in small commercial activities, such as cutting and selling firewood for personal use or local sale. These types of operations should be allowed and would align the Proposed RMP more closely with the State RMP's goals for economic opportunity and sustainable resource use.

Additionally, Row 163 of the Proposed RMP imposes a restriction on noncommercial harvest in LWCs managed to protect the wilderness characteristics. This restriction is inconsistent with the State RMP, which supports the sustainable harvest of forestry products in areas designated as LWCs. The State recommends that the BLM remove this prohibition and allow noncommercial harvesting even in those areas when it is not detrimental to Monument objects.

Finally, the policy prohibiting noncommercial harvesting in other areas until the BLM considers it on a site-specific basis should be reversed, and the presumption should be that such harvesting is allowed until the BLM makes a site-specific determination that it must be limited to protect specific GSENM objects.

BLM's Response: The BLM acknowledges that the prohibition on commercial harvest in GSENM is inconsistent with the State RMP but asserts that commercial harvest operations, due to their scale and infrastructure needs, could adversely impact Monument objects and the broader GSENM landscape. The BLM further contends that noncommercial harvest is only prohibited in LWCs managed for the protection of wilderness characteristics and that the BLM has full discretion to manage such areas in a way that prioritizes the protection of biological, cultural, and scenic resources. The response also disputes that the Proposed RMP is inconsistent with the State's position on noncommercial timber harvest in other areas because the BLM would consider it on a site-specific basis.

State's Reaffirmation: The BLM's focus on large-scale commercial timber harvest shows that it has not seriously considered the State's position. The State emphasizes that small-scale commercial harvests, such as local firewood sales, do not pose the same impact as large-scale operations on GSENM's resources. Allowing these small operations would support the State's goals for economic development and community sustainability without compromising the integrity of the Monument or its objects. The State reaffirms its recommendation to allow these types of commercial harvests and to ensure that noncommercial harvesting is permitted where it does not negatively affect Monument objects or other resources.

The State also disagrees with the BLM's assertion that noncommercial harvest is incompatible with the protection of wilderness characteristics in any LWCs. There is room for sustainable, noncommercial resource use that will not harm wilderness characteristics. It is not a serious argument that small-scale personal collection in areas that under the BLM's Proposed RMP are inaccessible by OHV would necessarily diminish wilderness characteristics, yet it would prevent wildfires threatened by invasive species. Such collection is also in keeping with the principles of multiple-use management outlined in the State RMP.

The State also reaffirms its request that the presumption against any such noncommercial harvest in other areas be reversed. The BLM has presented no evidence that the current noncommercial harvest of forest products threatens anything, much less any GSENM objects. It helps to prevent wildfires. A presumption against collection absent site-specific decision making is inconsistent with the State RMP and not necessitated by federal law. Practically, such a policy would mean that most areas would be closed to collection because the very type of sporadic, individual collection that threatens resources the least is also the least likely to be considered in detail for a site-specific decision. The opposite presumption should be adopted. That would still allow for protection where it is needed.

The State requests that the BLM modify the Proposed RMP to allow for small-scale commercial timber harvests (such as firewood sales) in appropriate areas and remove the prohibition on noncommercial harvests in LWCs where it is not detrimental to Monument objects as well as in all other areas where a site-specific decision to limit harvest has not been made. These changes would better align the Proposed RMP with the State RMP's goals for sustainable use, local economic development, and resource management.

XIV. Camping and Recreation Restrictions

The State appeals the BLM's decision not to adopt its recommendations regarding camping and recreation restrictions in the Proposed RMP. The State appreciates the BLM's acceptance of the recommendation to remove the quiet hours for dispersed camping. However, the State is still concerned with the blanket camping permit requirement, particularly for all overnight camping. The State requests that the BLM address its concern on this issue, as outlined below.

The State disagrees with the BLM's assertion that the blanket permit requirement for all overnight camping in GSENM is consistent with the State RMP. While the BLM claims that the permit system is intended to promote safety, educate visitors, and provide visitor use data, the State asserts that requiring a permit for all overnight camping within a 2-million-acre area creates a significant barrier to the public's enjoyment of these lands. There is no evidence that the entire 2-million-acre Monument is experiencing the concerns that would necessitate such a permit system. This blanket permit requirement could deter spontaneous visits, limit public access, and place unnecessary burdens on visitors, particularly in remote areas where visitors need to drive long distances to obtain permits. While the response asserts that the permits would be available not only at visitor centers but also "various trailheads" and online, those provisions are not in the Proposed RMP, only the permit requirement itself is. If BLM does not follow through with this assertion,

the permits will limit access. And even if it does, visitors in remote areas may not be able to access either the physical permit sites or the internet easily.

The State's position is that the BLM's permit system is inconsistent with the State RMP's goals of providing accessible and balanced recreation opportunities because it creates an unnecessary and additional barrier to enjoyment by the public. As noted in the State RMP, recreational access should be made easy and affordable for Utahns and visitors alike. Requiring permits for all camping undermines this objective, particularly when permits are not needed for other types of recreation or public land uses. The State reaffirms its recommendation to remove the blanket permit requirement for all overnight camping in GSENM and to limit the requirement to areas where it is genuinely needed for management purposes, such as in high-traffic areas, to protect sensitive resources, or in areas where additional safety, education, or visitor use data is needed. This would align with the State RMP's emphasis on accessibility and would be consistent with federal law.

Conclusion

The Governor and the State request the Department of Interior's thorough attention to these matters. Because some issues require that the Department of Interior consider for the first time matters that the State Director did not, the State should be afforded additional time within which to address any new decisions on the issues. Also, the Department of Interior should put the proposals that were not part of the planning process, including those identified above, to public comment, as the State Director was required, but failed to do.

Sincerely,

A handwritten signature in black ink, appearing to read "Spencer J. Cox". The signature is stylized with a large initial "S" and a prominent "C".

Spencer J. Cox

Governor